



ANDEC
ASSOCIAZIONE NAZIONALE IMPORTATORI
E PRODUTTORI DI ELETTRONICA CIVILE

Survey on Private Copying **Responses from ANDEC Confcommercio**

Please Note: Since ANDEC represents the “consumer electronics” industry, the answers to the Questionnaire shall exclusively relate to the issue of private copying and not of reprography.

1. Methodology for setting levy tariffs

How could methodological coherence in tariff setting for private copying levies be achieved across the EU?

ANDEC believes that private copying levies should be calculated as a percentage rate of the sale price of equipment and recording media and that said levy tariff-rate should be the same for all EU countries.

We are convinced that this system is much more equitable and logical since, while media recording capacity continue to increase and prices continue to fall, the resultant broadening gap favours abusive practices and illegal imports. It would thus be much more equitable to return to a system which calculates levies also on a percentage of the sale price of the recording media, rather than on its capacity.

It must also be considered that, for the same capacity, the packaging can markedly influence the sale price.

In this way, it will be possible to eradicate the elusion phenomena while at the same time providing a boost to the industry’s recovery and, with it, the gradual and significant increase of levy amounts paid to the national collecting societies.

In addition, it is necessary that levy tariffs be finally standardized across all the European countries so as to avoid the negative commercial and competitive distortions generated to date by the present dysfunctional diversity of levy systems.

2. Cross-border sales

- 1) How should levies be collected in cross-border transactions?*
- 2) How should double payment be avoided in cross-border sales?*

3. Determination of the person or entity liable to pay the levy

- 1) Who should be liable to pay private copying levies?*

According to ANDEC, private copying levy should be applied within the country of sale to the end-consumer and at the time of sale between the last seller and the final end-user of the media and recording equipment.

It must also be pertinently made clear that the levy is solely intended for the personal use of media and equipment by private home users/individuals, with the exclusion of any professional use by any person or entity such as businesses, public administrations, etc.

The accountable entity should thus be the last seller (usually the retailer).

Only at the time of such sale it is in fact possible to ascertain whether the purchaser/end-user is a private user/individual - and hence apply the private copying levy - or a professional user to whom the levy does not apply. Said criteria applies to cross-border sales and to those sales taking place within the national borders of each EU country: the final purchaser shall pay the levy, if due, to the seller who in turn will forward it to the collecting society appointed to collect and distribute the levies to the rightholders.

Any other solution to the problem - and more specifically, as it happens in Italy, subjecting all media and recording equipment to the payment of the levy concurrently with the first sale of the same, in a sales chain sometimes including further transactions before the final one to the end-user - will give rise to insurmountable problems relating to (i) the impossibility of knowing at the time of the sale preceding the final one to the end-user whether this latter one is a private user (liable to pay the levy) or a professional user (not liable) and (ii) to the fact that with a similar practice all professional users gain the right to request reimbursement for all amounts paid as levy, with huge procedural complications and ever-increasing disputes.

4. Visibility of the levy

1) Should an obligation be introduced to display the levy on each invoice in the sales chain, including on the consumer's invoice?

The amount relating to private copying levy should only be displayed on those invoices concerning the sale of media and recording equipment issued to the end-user, while must be excluded from this requirement all preceding transactions in the relevant sales chain.

5. Private copying and reprography in the context of new digital technologies

1) In what way are levy systems affected by new business models and technological developments? Do such developments allow rightholders to control and license copying by private individuals to such an extent that it could have a material impact on the way private copying and reprography is dealt with at EU level?

The technological developments and the new business models do inevitably determine an increase of the elusion phenomena and levy avoidance.

This phenomena stems from the fact that the new media and new business models do introduce new digital content features entirely different from those foreseen by the national regulations on private copying matters whilst providing a list of the type of media and equipment subject to levy together with the payment and collection method for the same. This causes, on the one hand, the spreading of activities which, although allowing the duplication of audio/video files elude paying levies, and, on the other, levies to be applied to equipment and media which are thus unduly penalized.

In order to continuously monitor the market and identify the technological developments and new business models attracting levies, it seems fittingly appropriate to institute a permanent technical committee within the EU with the task of keeping the reference market under constant observation for the correct application of private copying levy (or rather its exclusion) on new products and on different business models.

As a matter of fact, in broad terms, the national and EU institutions should try to strike a reasonable balance between protecting rightholders' position and public access to knowledge. The effective accomplishment of such balance could even render unnecessary the need of establishing a private copying levies system.

Milano, 31st May 2012