

12 March 2013

ANTONIO VITORINO'S RECOMMENDATIONS ON PRIVATE COPYING AND REPROGRAPHY LEVIES

BUILDING ON THE MEDIATOR'S RECOMMENDATIONS

1- INTRODUCTION

DIGITALEUROPE warmly welcomes the recommendations of the EU Mediator, Mr. Antonio Vitorino, contained in his comprehensive and thoughtful report which, not only recognizes the value of licensed digital services, a measure which would encourage new and emerging business models in the digital era, but also proposes constructive short to medium term solutions in order to ensure a smoother and fairer functioning of the current system. Furthermore, it acknowledges that current levy systems create major issues for the internal market and that material changes are necessary.

DIGITALEUROPE believes that artists and creators deserve to be rewarded fairly for their creativity and stimulated to produce innovative new content. Consumers want rich content offerings delivered in new and innovative ways to their ever-evolving array of digital devices such as tablets, pcs, TVs and smart phones. Mr. Vitorino has made a number of critical recommendations, which would represent the most significant policy development in this space for very many years and, if implemented, would significantly help to achieve these important goals.

2- MR. VITORINO'S RECOMMENDATIONS

DIGITALEUROPE supports each one of Mr. Vitorino's insightful recommendations and key observations:

Vitorino Recommendations	
1	Licensed content should not be subject to levies
2	Cross-border levies payable in country of destination (only)
3a	Liability moved to retailer (POS)
3b	Clear ex-ante exemption schemes (to comply with Padawan)
4	In reprography, shift from hardware-based to operator levies
5	Visible levies for consumers (shown on sales receipt)
6	Uniform 'harm' definition across EU based on lost profit
7a	Reduce complexity of tariff setting and ensure strict time limits
7b	Ensure strict time limits for setting tariffs on new categories of product
Observations and suggestions made by Vitorino	
	Reduce number of applicable tariffs (product categories)
	Levies subject to judicial review

DIGITALEUROPE

Rue de la Science, 14 >> B-1040 Brussels [Belgium]

T. +32 2 609 53 10 >> F. +32 2 609 53 39

www.digitaleurope.org

Transparency register member for the Commission: 64270747023-20

3- KEY POINTS IN THE VITORINO REPORT:

- The current national way of imposing/administering levies is a source of friction with internal market principles
- Mr. Vitorino acknowledges DIGITALEUROPE's proposals for alternatives to the current device-based system which proposes a path towards a fairer compensation system fit for the digital era. In Mr. Vitorino's own words, "*I do believe that some alternatives deserve further consideration.*"
- The trend is towards access (i.e. cloud) over ownership based models, which will spell a significant decrease in traditional private copying. This trend will benefit consumers enormously.
- Mr. Vitorino emphasises the value of licensed digital services which are already a reality today. He calls for clarification that private copying of licensed copies should not trigger a levy, as licensed copies already grant permission to the consumer and do not cause harm to the rightsholder. On the contrary, the current system means consumers pay twice for the same licensed content and this should be addressed. This simple measure would encourage new and emerging business models in the digital era.
- A shift on levy liability would easily resolve key issues concerning cross-border transactions and the legal requirement that private copying levies do not apply to professional users. Therefore, where levies still exist, they should be paid at the point of sale, not by the manufacturer/importer – and they should be visible to the consumer (i.e. shown on the sales receipt).
- Operator levies are another specificity in the area of reprography. Several Member States operate a so-called dual system, consisting of hardware based levies (as in private copying) and operator levies. Operator levies are usually based on contractual agreements between collecting societies and organisations heavily engaged in reprographic copying (e.g. the operators of copy shops, universities, libraries, etc...). Operator levies pose no obstacle to the free movement of goods and services and are therefore, from an Internal Market perspective, clearly preferable to hardware-based levies. The recommendation to shift the payment liability to the retailer's level also extends to reprography.
- Harm to be compensated must be assessed on the value that consumers attach to legal private copying. In Mr. Vitorino's own words, "*it would be necessary to assess not the **actual** number of copies made but rather the **hypothetical** (lower) number of copies that could have been licensed in the absence of the exception.*"

4- CALL FOR ACTION

Recognizing that Mr. Vitorino's recommendations would help to alleviate the current device-based levy system as an interim measure on a path towards alternative solutions, **DIGITALEUROPE calls for.....**

- a. the European Commission to articulate at the earliest opportunity its intention to seek ways of implementing Mr. Vitorino's recommendations within a reasonable time frame;

- b. the European Commission to build on the momentum created by the mediation process and work together as a matter of priority with all stakeholders including industry, consumers and indeed Member States on developing effective solutions for implementing all the Mediator's recommendations without delay;
- c. Member States to put in place before the end of 2013 proposals for implementing each and every one of the Mediator's recommendations, with a view to implementation during 2014 at the latest;
- d. the European Commission to encourage and work together with Member States to ensure a uniform approach and outcome to implementing the Mediator's recommendations;

and importantly:

- e. the European Commission to promote an environment conducive to a comprehensive public debate, both at EU and Member State level and in engagement with the European Parliament, on the topic of alternatives with a view to charting a path towards fairer compensation solutions fit for the digital era. DIGITALEUROPE welcomes the opportunity to be part of this debate which should include the widest range of stakeholders, including consumers and retailers. Member States should also be encouraged to participate.

ABOUT DIGITALEUROPE

DIGITALEUROPE represents the digital technology industry in Europe. Our members include some of the world's largest IT, telecoms and consumer electronics companies and national associations from every part of Europe. DIGITALEUROPE wants European businesses and citizens to benefit fully from digital technologies and for Europe to grow, attract and sustain the world's best digital technology companies.

DIGITALEUROPE ensures industry participation in the development and implementation of EU policies. DIGITALEUROPE's members include 60 global corporations and 33 national trade associations from across Europe. In total, 10,000 companies employing two million citizens and generating €1 trillion in revenues. Our website provides further information on our recent news and activities: <http://www.digitaleurope.org>

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