



SECOND CALL FOR COMMENTS

'FAIR COMPENSATION FOR ACTS OF PRIVATE COPYING'

RESPONSE OF THE INTERACTIVE SOFTWARE FEDERATION OF EUROPE -REPRESENTING THE EUROPEAN VIDEOGAME INDUSTRY-

ISFE, the Interactive Software Federation of Europe represents the European interactive software industry¹ which produces entertainment and educational software ('videogames') for use on personal computers, videogame consoles, portable devices and mobile phones. The videogame industry is the fastest growing 'content' sector in Europe.

1. Videogames are computer programs as protected by the Directive on the Legal Protection of Computer Programs (91/250/EEC). Thus, it is already a matter of EU law that no exception to the reproduction right (in the form of a private copy exception or otherwise) may be instituted beyond this Directive and the exceptions permitted there. Therefore as no private copy of a computer software is permissible under EU and member state national law, no private copy levies are payable in respect of interactive software (videogames) to their publishers. ISFE is also fundamentally opposed to the promotion of any concept which would allow or justify any private copy of a videogame.

2. Any imposition of copy levy payments on so called next generation videogame consoles is unwarranted as the function of such consoles is overwhelmingly to allow game play on and offline, not to allow copying, and the private copy exception is fundamentally an exception to the exclusive right of reproduction. Any implementation of such levies at the national level can only damage and fragment the fragile and embryonic internal market in cutting edge electronic equipment of this type. We also refer here to the Commissions own Background Document of 02/14/2008 in this matter which states that current levy systems do not recognise whether in fact a user actually utilises the device for reproductions at all.

3. ISFE membership is opposed, in any event, to the current copy levy systems as operated in Europe for the following reasons:

A. The current systems is lacking in transparency and has been implemented in a way which is neither consistent nor harmonious in manner throughout the Member States.

¹ **ISFE** Membership consists of the following: **Associations** - AESVI (Italy), ADESE (Spain), BIU (Germany), BLISA (Belgium), ELSPA (UK), FIGMA (Finland), MDTS (Sweden), MUF (Denmark), NVPI (The Netherlands), NSM (Norway), OVUS (Austria), SELL (France), SIEA (Switzerland). **Companies** – Activision, Atari, Eidos, Electronic Arts, Konami, Microsoft, Nintendo, SCEE (Sony Computer Entertainment Europe), Take 2, THQ, UbiSoft, VUG (Vivendi Universal Games), The Walt Disney Company France

B The current systems do not accurately or fairly reflect the actual economic cost of private copying or consequent harm to rights-holders.

C. There is a lack of transparency in the application of the copyright levies, as well as in their distribution to rights-holders which among other things, creates confusion for consumers, distributors and negatively impacts the functioning of the market.

4. Lastly, the Commission, via EU-regulation or otherwise, should finally recognise the effect of copy management systems and whether levy systems should continue to apply at all. This situation was anticipated by the Commission at the time of preparation and finalization of Directive 2001/29/EC (commonly known as the EU Copyright Directive).

The objective of the Commission's Questionnaire set out below is clearly to gain information from those entities with specific experiences of the collections and distributions of the levy monies. As ISFE's membership is not, for the reasons explained above, concerned with these matters, it is unfortunately, unable to contribute in depth to the replies sought.

A. Main characteristics of the private copying levy systems

1) Does Table 1 on equipment and blank media levies reflect the situation correctly? Is the information contained in Table 1 still correct?

ISFE has no comment as its members do not receive monies under any EU member state's private copy levy regime.

2) How could the legal uncertainties as to which equipment is levied in different jurisdictions be dealt with?

If any such levies are to continue to exist their application and administration must be made subject to a centralised legal instrument at EU level. This instrument should also provide for the elimination of levies as soon as the necessary technology is operational to limit the copying to which they are said to relate.

3) What would be the fairest method to determine the private copying levy rate that applies to digital equipment and blank media?

This should be done by way of transparent and consistent approaches among member states with input from all affected parties including consumers, rights holders and from those industries affected by any such levies.

4) Have new levies on either equipment or media have been introduced or abolished since 2006?

We believe that there are ongoing discussions in France and other countries to widen the scope of the copy levy base.

B. Economic, social and cultural dimension of private copying levies

5) Can you provide updated figures for 2007 on the amount of levies collected in those jurisdictions that apply a levy scheme?

ISFE has no comment as its members do not receive monies under any EU member state's private copy levy regime.

6) Are you aware of further economic studies on the topics discussed in the Document?

No

7) Table 5 reflects the percentage of private copying levies and the resulting amounts that are allocated to cultural and social funds. Does this table summarise the situation correctly? Could you provide updated figures for 2007?

ISFE has no comment as its members do not receive monies under any EU member state's private copy levy regime.

8) What kind of events are funded by the sums set aside for cultural funds in the different jurisdictions? Who are the main beneficiaries of these monies?

ISFE has no comment as its members do not receive monies under any EU member state's private copy levy regime.

9) What percentages of cultural funds are spent on cultural events and what percentages on pensions or social payments?

ISFE has no comment as its members do not receive monies under any EU member state's private copy levy regime.

10) Should there be a Community-wide (binding or indicative) threshold for cultural fund deductions?

ISFE has no comment on this matter

11) What share of individual rightholders' revenues do private copying levies represent?

ISFE has no comment as its members do not receive monies under any EU member state's private copy levy regime.

C. Cross-border trade and e-commerce issues

12) Is there a refund system available in your jurisdictions when particular equipment or media is exported to another Member State? If so, are there

limitations as to the category of traders or individuals who are entitled to such a refund upon exportation?

ISFE has no information of this type.

13) What is the most suitable system of refunds upon exportation? Who is the most suitable party to claim those refunds?

ISFE has no comment as its members do not receive monies under any EU member state's private copy levy regime.

14) Does Table 6 on national refund and exemption systems reflect the situation correctly? Please complete and update the table.

ISFE has no comment as its members do not receive monies under any EU member state's private copy levy regime.

15) Who is the most suitable party to pay private copying levies? Should private end consumers be exempt to self-report intra-community purchases of blank media and equipment?

As ISFE feels that these levies should not be applied at all to next generation game consoles this question does not arise.

D. Professional users of ICT equipment

16) How do private copying levies affect professional users (SMEs, others)?

ISFE has no comment on these matters

17) How should collecting societies take into account professional users? Should professional users be exempted from payments in the first place or should such users be entitled to a refund after payment?

ISFE has no comment on these matters

E. Grey market

18) Has the size of the grey market increased since 2006?

ISFE has no information of this type

19) What are the measures Member States, collecting societies and the ICT industry are taking to reduce the size of grey market in their jurisdictions?

ISFE has no information of this type.

F. Consumer issues

20) Are you aware of consumer surveys on private copying behaviour which are used as a basis for setting the levy rates? And consumer surveys on the main sources of works or sound recordings that are privately copied?

No.

21) How should private copying levy schemes evolve to take into account convergence in consumer electronics?

ISFE has no comment as its members do not receive monies under any EU member state's private copy levy regime.

G. Double payment

22) What are the main issues that consumers face when paying for digital downloads?

ISFE has no comment as its members do not receive monies under any EU member state's private copy levy regime.

23) Should licensing practices be adopted to account for contractually authorised copies?

ISFE has no comment as its members do not receive monies under any EU member state's private copy levy regime.

H. Alternative licensing

24) If rightholders decide that their works can be disseminated for free, how should this be taken into account when collecting private copying levies?

ISFE has no comment as its members do not receive monies under any EU member state's private copy levy regime. We do, in any event, feel that copy levy schemes are a totally unsatisfactory way of compensating rights holders for unauthorised dissemination of their works.

I. Distribution issues

25) What is the typical frequency and schedule of levy payouts?

ISFE has no comment as its members do not receive monies under any EU member state's private copy levy regime.

26) What are the main issues encountered with respect to cross-border distribution?

ISFE has no comment as its members do not receive monies under any EU member state's private copy levy regime.

27) What are the average administrative costs in levy administration (in per cent of collected revenue)?

ISFE has no comment as its members do not receive monies under any EU member state's private copy levy regime.

**ISFE Secretariat,
Brussels.
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