

Rightholders' statement on Mr Vitorino's recommendations

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The undersigned European organisations of authors, performers and producers have taken note of the recommendations presented by Mr Antonio Vitorino, which mark the conclusion of the mediation process on private copying levies initiated by the European Commission.

We strongly disagree with the main orientations recommended by Mr Vitorino. In the event that the European Commission were to accept these recommendations, the result would: i) have a negative effect on consumers; ii) damage the interests of rightholders (and thus damage the development of European culture); and iii) increase the complexity of licensing agreements. The parties that would benefit are only importers and manufacturers of recording media/devices, which are mainly non EU companies.

Our main concern is that licensing is seen as a way of eradicating private copying levies, which is contrary to the model applied today in most EU countries where both systems are complementary. By adopting such a position, Mr Vitorino goes back in time to when the very principle of the private copying exception in the digital era was challenged by those who called for the implementation of technical protection measures instead. This was not the solution ultimately chosen in Europe under the 2001 Copyright Directive.

By stating that **copies made by end-users for private purposes from a licensed service do not cause any harm (therefore not requiring the corresponding remuneration from private copying levies)**, Mr Vitorino basically suggests eliminating private copying levies, notably for so called "new business models in the digital environment".

This appears to represent a gross misconception of the private copying system. Licensed services receive authorisation for the exploitation of works based on the specificities of each business model, while the remuneration for private copying is organised through the levy-based system to guarantee that users are able to make private copies, whatever the service's business model.

With this recommendation, Mr Vitorino proposes to get rid of the exception when services are licensed, under the assumption that rightholders should include the price of private copies in the authorisation.

Such a proposal would:

- disconnect the private copying remuneration from the actual private copies made by end-users;
- deprive consumers of their ability to legally make copies for private purposes unless such copies have been authorised by rightholders. This would involve the re-introduction of technological protection measures which consumers have massively rejected in the past;
- imply that rightholders would have to negotiate the remuneration for private copies made by consumers with the corresponding services. Not only are these services in a very dominant negotiation position, but also any supplementary remuneration obtained risks increasing the price paid by consumers to have access to such services. Moreover, without the fair compensation system,



some rightholders might even not have the chance to enter into negotiation with the services for a payment of private copying of their works.

Several other proposals recommended by Mr Vitorino concerning the functioning of existing levy systems would also have significant negative consequences.

- Shifting **liability to pay levies from the limited group of manufacturers and importers to the multitude of retailers** would make the administration and enforcement of the private copying system uncertain, costly and favour the development of fraud.
- The recommendation that **private copying levies should not apply to goods sold to companies** does not take into consideration the fact that devices acquired by legal entities can also be used for private purposes by the employees of such users (e.g. smartphones, tablets); the exemption from the obligation to pay the private copying levy should therefore be based on the effective use made of the media/device, and not on the nature of the user.
- Lastly Mr Vitorino's position that **the decision of whether a product is subject to a levy should be left to Member States** seems to be in contradiction with his own statement that *"the diverging approaches taken by Member States both towards the determination of products subject to levies and towards the methodology for setting the tariffs lie at the heart of the challenges levies pose to the free movement of goods and services in the Internal Market"*.

The undersigned organisations regret that Mr Vitorino didn't consider the rightholders' proposals to improve the levy-based system nor he did pay attention to the main drawbacks of his recommendations on authors, performers and producers, to the detriment of European creation and cultural diversity. We call on the European commission and the Member States to reconsider these aspects of Mr Vitorino's proposals and to envisage a more balanced approach.

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