

ZEGGAR Hicham (MARKT)

From: Helen Smith <hsmith@impalamusic.org>
Sent: 11 March 2013 17:39
To: BARNIER Michel (CAB-BARNIER)
Cc: MARTIN-PRAT Maria (MARKT); JORNA Kerstin (MARKT); Olivia.Regnier@ifpi.org; Frances.Moore@ifpi.org; Matthieu Philibert
Subject: IFPI-IMPALA letter - Vitorino recommendations on private copying levies
Attachments: IFPI-IMPALA letter - Vitorino Recommendations on private copying levies - 11 March 2013.pdf

Dear Commissioner Barnier,

Cc: Kerstin Jorna, Director Directorate D Intellectual Property, DG Markt / Maria Martin-Prat, Head of Unit D1 Copyright, DG Markt

Please find enclosed a joint letter from IFPI and IMPALA regarding Mr. Vitorino's recommendations on private copying levies.

We copy the letter below for ease of reference.

We look forward to your thoughts.

Kind regards,
Helen Smith

Helen Smith
IMPALA
70 Coudenberg
1000 Brussels
Belgium
Phone: +32 2 503 31 38
Fax: +32 2 503 23 91
www.impalamusic.org

Dear Commissioner,

As the organisations representing independent and major record companies across the world, we are writing to you regarding Mr. Vitorino's recommendations on private copying levies.

We have participated actively in the Mediation on private copying levies that you launched in November 2011. Now that the recommendations have been presented by Mr Vitorino to the Commission, we would like to convey to you our preliminary reactions.

We welcome the Mediator's confirmation that the right holders should, as a priority, be able to license their rights and that, for the rest, levies are a legitimate way to compensate right holders for the copying of their content by private individuals.

We fully agree with Mr. Vitorino's statement that any attempts to broaden the interpretation of the private copying exception with a view to bypassing the licensing process should not be supported.

We do have some important concerns, however, with the Mediator's conclusion that "copies made by end users for private purposes in the context of a service that has been licensed by right holders do not cause any harm that

would require additional remuneration in the form of private copying levies". There are limits on the ability of right holders to effectively license the copies that are made by private individuals. One reason is that, contrary to what is assumed by the Mediator, control via technology over these copies is not necessarily possible. Music services in particular have had to largely stop using technological protection measures that limit private copying due to negative consumer reaction. In addition, national law restricts the possibility to license private uses in some countries. As a result, private copying levies continue to be an appropriate mechanism to compensate for the private copies that are made. There is therefore a significant risk that, unless clarified, Mr Vitorino's recommendations could end up undermining the very compensation systems they are intended to improve.

We also note with satisfaction that the Mediator confirms that levies on recording media and equipment are an appropriate means to compensate for private copying, in contrast to some other alternatives such as state funds which would sever the link between the act of copying and the compensation.

Furthermore, we agree with the definition of "harm", adopted by the Mediator, as the "missed licensing opportunities" for the right holders due to private copying.

However, some of the Mediator's recommendations require in our view further reflection, including:

- The suggestion to shift the liability to pay levies from manufacturers and importers to retailers
Currently levies are collected from importers or distributors in most countries, and exemptions are provided in case of exportation outside the country. Shifting the liability for payment from a limited number of importers and distributors to an almost limitless number of retailers would make the collection of levies more cumbersome and more expensive and could give rise to fraud. We think that this suggestion should be studied further as it could in our view have an overall negative effect on the effectiveness of levy collections.
- The proposal that private copying levies should not apply to goods sold to "professional" users
The European Court of Justice clarified in the so-called "Padawan" decision that private copying levies must not be applied in the case of uses unrelated to private copying, such as professional uses. In contrast to the Mediator's recommendation, we believe that the exemption from the obligation to pay the private copying levy should be based on the use made of a particular media or device, and not on the nature of the user. This assessment should be made, in our view, on the basis of consumer studies rather than be left to the retailers' discretion.

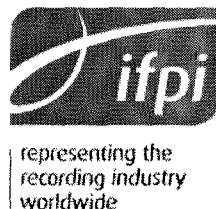
We stand ready to work with the Commission and the Member States to further improve the ways for rightholders to obtain remuneration or compensation for the copying of their content by private individuals. This system should continue to enable the right holders to license their rights as a priority, while ensuring fair compensation for what is not licensed. We are also committed to work on ways to improve the harmonisation of levy systems across Europe.

We look forward to discussing this matter with you further and thank you for your continued support to the creative community, and to the music sector in particular .

Yours sincerely,

Olivia Regnier
Director IFPI European Office
Square de Meeus 40
B - 1000 Brussels
Tel: +32 (0)2 511 92 08
Fax: +32 (0)2 502 30 77
www.ifpi.org

Helen Smith
Executive Chair IMPALA
70 Coudenberg
B-1000 Brussels
Tel: +32 (0)2 503 31 38
Fax: +32 (0)2 503 23 91



Michel Barnier
European Commissioner
for Internal Market and Services
European Commission
149, rue de la Loi
B - 1049 Brussels

Brussels, 11 March 2013

Dear Commissioner,

As the organisations representing independent and major record companies across the world, we are writing to you regarding Mr. Vitorino's recommendations on private copying levies.

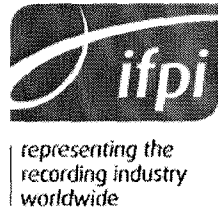
We have participated actively in the Mediation on private copying levies that you launched in November 2011. Now that the recommendations have been presented by Mr Vitorino to the Commission, we would like to convey to you our preliminary reactions.

We welcome the Mediator's confirmation that the right holders should, as a priority, be able to license their rights and that, for the rest, levies are a legitimate way to compensate right holders for the copying of their content by private individuals.

We fully agree with Mr. Vitorino's statement that any attempts to broaden the interpretation of the private copying exception with a view to bypassing the licensing process should not be supported.

We do have some important concerns, however, with the Mediator's conclusion that "copies made by end users for private purposes in the context of a service that has been licensed by right holders do not cause any harm that would require additional remuneration in the form of private copying levies". There are limits on the ability of right holders to effectively license the copies that are made by private individuals. One reason is that, contrary to what is assumed by the Mediator, control via technology over these copies is not necessarily possible. Music services in particular have had to largely stop using technological protection measures that limit private copying due to negative consumer reaction. In addition, national law restricts the possibility to license private uses in some countries. As a result, private copying levies continue to be an appropriate mechanism to compensate for the private copies that are made. There is therefore a significant risk that, unless clarified, Mr Vitorino's recommendations could end up undermining the very compensation systems they are intended to improve.

We also note with satisfaction that the Mediator confirms that levies on recording media and equipment are an appropriate means to compensate for private copying, in contrast to some other alternatives such as state funds which would sever the link between the act of copying and the compensation.



Furthermore, we agree with the definition of “harm”, adopted by the Mediator, as the “missed licensing opportunities” for the right holders due to private copying.

However, some of the Mediator’s recommendations require in our view further reflection, including:

- **The suggestion to shift the liability to pay levies from manufacturers and importers to retailers**

Currently levies are collected from importers or distributors in most countries, and exemptions are provided in case of exportation outside the country. Shifting the liability for payment from a limited number of importers and distributors to an almost limitless number of retailers would make the collection of levies more cumbersome and more expensive and could give rise to fraud. We think that this suggestion should be studied further as it could in our view have an overall negative effect on the effectiveness of levy collections.

- **The proposal that private copying levies should not apply to goods sold to “professional” users**

The European Court of Justice clarified in the so-called “Padawan” decision that private copying levies must not be applied in the case of uses unrelated to private copying, such as professional uses. In contrast to the Mediator’s recommendation, we believe that the exemption from the obligation to pay the private copying levy should be based on the use made of a particular media or device, and not on the nature of the user. This assessment should be made, in our view, on the basis of consumer studies rather than be left to the retailers’ discretion.

We stand ready to work with the Commission and the Member States to further improve the ways for rightholders to obtain remuneration or compensation for the copying of their content by private individuals. This system should continue to enable the right holders to license their rights as a priority, while ensuring fair compensation for what is not licensed. We are also committed to work on ways to improve the harmonisation of levy systems across Europe.

We look forward to discussing this matter with you further and thank you for your continued support to the creative community, and to the music sector in particular.

Yours sincerely,

Olivia Regnier
Director IFPI European Office
Square de Meeus 40
B - 1000 Brussels
Tel: +32 (0)2 511 92 08
Fax: +32 (0)2 502 30 77
www.ifpi.org

Helen Smith
Executive Chair
IMPALA
70 Coudenberg
B-1000 Brussels
Tel: +32 (0)2 503 31 38
Fax: +32 (0)2 503 23 91
www.impalamusic.org