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Stakeholders consultation on copyright levies in a converging world, June 2006

The Swedish Consumers' Association have been invited to contribute to the Commission consultation on copyright levies. Our answers are presented in detail below.

A) Background – Our views on the copyright levy system

Copyright levies were born in an analogous environment. As technology has developed, the idea of adding a fee to the media has become obsolete.

The explosion of digital media has been headed by the industry. It is therefore not surprising that the industry has found alternative and additional means to protect their interests. DRM, the industry attempt to control the consumer control over the media they consume, adds further support to the abolition of copyright system. In other words, in the digital world the industry employs a sort of self-help to protect their interests, thereby making the legislative measure that is the copyright levies altogether unnecessary.

Even if one would argue that the copyright levies are needed to compensate rights holders, it is submitted that it is a far to blunt instrument. How can a tariff fee compensate for a loss that cannot even be reasonably estimated?

Copying of digital material takes place in a private environment. One consumer could copy a file 50 or so times, while another could copy it only once. How can a fee, as it stands today, take such differences into consideration? The answer is that it cannot.

The industry argues that the digitalisation of music has caused losses, while the opponents argue that it has opened doors for artists which has lead them into profit-making areas that were previously unexplored. From a bystander perspective, the only reasonable conclusion one can draw is that there is no definitive evidence to support any one conclusion. In other words, it would seem to depend. Therefore, the copyright levies will at least compensate a loss unreasonably; at worst compensate a loss that does not exist.

The copyright levy system does not seem to have ever gained complete acceptance on the European market. The result is that the system has been implemented with great variety as far as the actual media that the levies are applied to is concerned. A trend seems, however, to be growing: the levies are to a greater extent being applied to wholly digital media such as DVD-discs, MP3-players, memory cards etc. Restating what was submitted above, a system that was meant to deal with a situation in the analogous world cannot be expected to provide a functioning solution in the 21st century digital environment that we face today.

Further, there are great differences across the member states in terms of the rate of copyright levies that are imposed. Is this an obstacle to the free movement of goods?

The following contained on page 20 of the report constitutes a good summary of the consumer's expectations:

"Consumer acceptability is key to the widespread deployment of DRM in terms of pricing, availability and user friendliness. The rights of consumers in terms of data security and unfair contract terms are as relevant here as they are in the context of any other e-commerce transaction.

However, as DRM concern the use of works protected by copyright and related rights of others in circumstances where the relevant rights are not subject to exhaustion, labelling requirements indicating what consumers can and cannot do with the acquired content. Furthermore, consumers also consider that all legally downloaded tracks should be playable on various devices and players ("interoperability"). The relatively recent introduction of sophisticated devices such as MP3players has led to the emergence of market leaders which link the device to a proprietary online music store. Whilst consumer acceptance of business models is key, the emergence of those business models also depends on the greater availability for Community wide licensing which is not limited by territory."

Consumers should be able to access and use legitimate services from the territory of a Member State other than that where they are resident.

B) Q&A

1. What are copyright levies?

- A) Yes, we largely agree with the given description.
- B) –
- C) In principal, we do not consider it a problem that the debtor and the collector are different entities. The copyright levy system suffers from far greater problems than this limited point.

2. Who administers copyright levies?

- A) Yes.
- B) –
- C) Again, the problem with the copyright levies goes far beyond the collecting and distributing procedures.
- D) –
- E) However, as far as the distribution channels are concerned, we do consider it to be a problem that current distribution keys can in no way be said to reflect the actual amount of copying of works. The entire copyright levy system is an estimate, and, in our opinion, a largely flawed estimate at that.

3. Distribution of copyright levies

- A) –
- B) –

4. Digital rights management and digital music sales

- A) We largely agree with the given assessment.
- B) –
- C) In our opinion, a system based on licensing models would provide a far superior alternative.
- D) We do believe that it has an impact, but strictly speaking it is likely that DRMs and similar have an even greater impact on digital sales, at least as far as consumer confidence is concerned.

5. Copyright levies and the notion of harm based on private copying

- A) We largely agree.
- B) As we understand the current situation, there is empirical evidence that would seem to support either conclusion. Some reports argue that right holders do indeed suffer from private copying, while others conclude that they largely benefit from it in terms of spreading their artistic message. In conclusion, it would appear fair to say that there is at least a risk that right holders might suffer financially from private copying. With that being said, it is equally clear that this harm is very difficult to calculate. In particular, we do not consider the copyright levy system to be the best, or even particularly good, method of doing this.
- C) The copyright levy system is based on assessments and the presupposing of harm in all cases.
- D) –
- E) –

6. The criteria for establishing whether a levy is imposed on a particular equipment or media

- A) In our opinion levies should not be applied at all and the fact that they are today applied to medias such as hard disks and removable memory cards only adds to our arguments.
- B) –
- C) We agree that the dedicated function of an item, or rather an intellectual right, should be determinative as to whether compensation should be awarded or not. However, we do not believe that the copyright levy system is the appropriate method of providing this compensation.
- D) The main argument for saying that any levy should not be applied to hard media or equipment is that there is no objective and verifiable standard to determine whether it is dedicated to the production of private copies.
- E) –

7. Copyright levies and convergence

- A) We largely agree with the given analysis.
- B) To some extent, the fact that levies are applied to multi-function equipment illustrates the problem as indicated above. It is exceedingly difficult to understand how the application of the copyright levies can be motivated on for example a Playstation module or a scanner, given the original reasons for creating the levy system. In fact, the levy system was created to regulate a different situation in a different technological time-age.
- C) –
- D) –
- E) –

8. The internal market and differences in copyright levy systems

- A) –
- B) –
- C) –
- D) –

Final comment

Although we question the existing copyright levy system we believe that from a consumers perspective the main problem is not a levy system as long as it is fair, harmonised and transparent. But truly a levy system is hard to justify in a DRM environment. The Swedish Consumers' Association do support DRM in theory but do have great concerns that the technical solutions will not be acceptable in the near future as to practical problems for consumers dues to different platforms and the problems of making regular back-up of electronic media. These problems might push consumers to continue illegal downloading.

Stockholm, dated as above

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