

ROADMAP

Title of the proposal: Fair compensation for **private copying: copyright levies reform**

Expected date of adoption of the proposal: Autumn 2006

A. Initial impact assessment screening

1. What are the main problems identified?

Copyright levies were first introduced for analogue equipment and media used to copy copyright works. However, copyright levies are now increasingly applied to digital equipment and media as a form of compensation for rightholders whose works are subject to private copying. The Commission is concerned that copyright levies are being applied to digital equipment and media without due account being given to the impact on new technologies and equipment especially the availability and use of so called “digital rights management” technologies which can provide alternative ways of compensating right-holders. Furthermore, there is a lack of transparency about the application, collection and distribution of the copyright levies to right-holders. Unless this problem is addressed, it will hamper the move to a knowledge based economy and the fulfilment of the Lisbon Agenda goals.

Are they unlikely to be solved satisfactorily by the sole action of Member States? (principle of subsidiarity – necessity test)

Policy in relation to compensation for private copying is set by Directive 2001/29 on the harmonisation of copyright and related rights. Directive 2001/29 provides that Member States may choose whether to introduce an exception for private copying. Moreover, Directive 2001/29 gives Member States flexibility in determining the form of any system of fair compensation for right-holders. There is limited guidance on the scope of what constitutes “fair compensation” in a recital (Recital 35).

It was not possible to get greater agreement/harmonisation when the Directive was adopted in 2001. It was therefore decided in 2001 to leave it to the market to develop in line with the flexibility accorded to Member States and that in time digital rights management technologies would become more widely available and copyright levies would be phased out. However, the relevant provisions of Directive 2001/29 have been applied differently by Member States. There are divergent policies amongst Member States on what constitutes fair compensation. This was borne out by a consultation held by DG Markt in 2004 with Member States and all stakeholders. The aim of the Consultation was to assess the criteria used by MS in relation to copyright levies in the period since adoption of Directive 2001/29 i.e. 2001-2004. DG Markt concluded there is no common ground amongst Member States on the interpretation of the relevant provisions of Directive 2001/29 (Article 5(2)(b) and the extension to digital media and equipment. The Consultation also revealed that levies are unequally applied in terms of the equipment, media and the amounts across Member States and that there is a lack of transparency in relation to the collection, distribution. The availability and use of “digital rights management” technologies have not had an impact on Member States’ policy.

2. What are the main policy objectives?

The main policy objective is to ensure that the scope and level of systems for fair compensation established by Member States for acts of private copying takes account of the application of digital rights management technologies. To that extent, criteria should be established to assist Member States on what constitutes availability and use of digital rights management technologies. Moreover, there should also be criteria in place to ensure transparency in relation to the application, collection and distribution of copyright levies to right-holders.

3. What are the policy options? What regulatory or non-regulatory instruments could be considered?

(a) Do nothing and let the market develop: Since the adoption of Directive 2001/29, in the period 2001-2005, the Commission advocated letting the market develop.

(b) Amend Directive 2001/29 and in particular the provisions dealing with fair compensation for private copying (Article 5(2) (b) by removing the flexibility accorded to Member States to determine the mode and level of fair compensation.

(c) Establish guidance or criteria, by way of a recommendation which would: (1) assist Member States in identifying the availability and use of digital rights management technologies; and also (2) provide for transparency in relation to the application, collection and distribution of copyright levies;

4. What are the impacts likely to result from each policy option and who is affected? Which impacts are likely to warrant further analysis (cf. list of impacts in the impact assessment guidelines)?

(a) Do nothing and let the market develop: Since the adoption of Directive 2001/29, in the period 2001-2005, the Commission advocated letting the market develop. In the light of the Consultation held by DG Markt in 2004, allowing the market to develop unassisted in that period, did not produce the required result which was that DRM technologies would become more widely used and factored into systems of fair compensation. Indeed, the opposite is true –copyright levies developed for the analogue environment are beginning to become entrenched in the digital environment.

(b) Amend Directive 2001/29 and in particular the provisions dealing with fair compensation for private copying (Article 5(2) (b) by removing the flexibility accorded to Member States to determine the mode and level of fair compensation. This is likely to produce a binding result but would be a lengthy legislative process.

(c) Establish guidance or criteria, by way of a recommendation which would: (1) assist Member States in identifying the availability and use of digital rights management technologies; and also (2) provide for transparency in relation to the application, collection and distribution of copyright levies. This likely to be very welcome by all stakeholders including Member States as it would provide much needed interpretative guidance on the relevant provisions of Directive 2001/29 including benchmarks on determining availability and use of DRM technologies.

B. Planning of further impact assessment work

5. What information and data is already available? What further information needs to be gathered? How will this be done (e.g. internally or by an external contractor) and by when? What type and level of analysis will be carried out (cf. principle of proportionate analysis)?

Dg Markt has considerable information and data at its disposal in relation to copyright levies which has been gathered since 2001. Above all, there are the results of the consultation held in October 2004 where a comprehensive questionnaire was sent to Member States and replies received from all of them. DG Markt has also tendered a study on the application of Directive 2001/29 for the purposes of producing an evaluation of that Directive and the results should be available in the course of 2006. There is also another study which has been tendered on the review of the copyright acquis which may also be relevant. Moreover, many stakeholders, especially the ICT industry that is principally affected by copyright levies have commissioned their own studies and have made these available to the Commission.

6. Which stakeholders & experts will be consulted, how and at what stage?

Since 2001, there has been continual consultation with stakeholders both the private sector and Member States including a formal consultation in October 2004. There is a contact committee established under Directive 2001/29 which meets every 6 months and is attended by Member States where there will be ongoing consultation. Prior to adoption, meetings of the committee are scheduled for October 14th 2005, March 2006 and October 2006.

7. Will an inter-service steering group be set up for the IA? Yes,