

STAKEHOLDER CONSULTATION ON COPYRIGHT LEVIES IN A CONVERGING WORLD

June 2006

Who are we ?

The "Association des Utilisateurs de Free" (AdUF, www.aduf.org), is a French Users group incorporated as a non-profit organisation whose members are, for the most part, clients of the Free ISP (an Iliad subsidiary).

Free is the second largest ISP in France, with more than 1.8 millions broadband ("multi-play") subscribers as of March 31, 2006.

As a users group, with more than 45,000 members state-wide, we would like to contribute to the ongoing consultation on copyright levies. In our view end users, being an interested parties, should participate in such consultation.

We thank the Directorate General for the Internal Market and Services for giving us the opportunity to do so.

Being a users group, we will focus our contribution on points relevant to end users. We will skip irrelevant points.

Question 1

A - We do agree with the description of copyright levies.

B - We would like to point out that (at least in France), copyright levies apply to some media that are not necessarily dedicated to unlicensed acts of copying of audio, audiovisual and textual materials.

For instance, (re)writable CDs are subjects to copyright levies, even when used for computer backup or private storage purpose (say, backing up your computer data, or storing your private pictures).

Although theoretically possible, end users are in practice excluded from the copyright levies exemption program that exists, even when they can prove they do not use those media for unlicensed acts of copying.

Considering that the copyright levies on such media exceeds the un-levied price of the media, this is quite unfair.

To our knowledge, there have been no independent studies detailing the relative importance of those different usages.

C - We do not know whether it is efficient or not that the debtor of the copyright levies is not the party that carries out and controls the private copying but, as said above in point B, this being so definitely causes prejudice to some end users.

Question 2

A - We do agree with the description.

C - We do not think the current distribution of copyright levies is fair for rights holders.

In order for rights holders to receive part of the collection, they must be members of a society. Not some society, but a given one (e.g., SACEM if they are in the music business).

If they are not members of that given society, they receive nothing. The same goes for independent artists.

[Many rights holders choose not to be members of those given societies due to the quite strict and exclusive conditions they impose on their members.]

This is also unfair for foreign rights holders (including those living outside the EU).

Rights holders retribution should know no borders. And it should be as fair as humanely possible.

D - We do not think those nationals receive a proportion of copyright levies that corresponds to the actual amount of copying of their works or other subject matter.

In particular, we think "big names" benefit the most, to the prejudice of the "smaller" ones.

More money for the riches, less for the others, in other words.

E - Copyright levies are in essence unsuitable for fair retribution, as there exists no ways to accurately know what is copied, and how often.

Copyright levies could be used as a way to feed a fund whose purpose would be to encourage artistic creation and such, but pretending it could be used to accurately compensate for alleged "economic harm" is a lie, plain and simple.

Question 3

B - We do think the ratios should be harmonised. Actually, following our proposal in point E above, we think that, taking into account the various demographics, adjusting them so that each member state receives a share of the global collection proportional to its demographics would be a solution.

But then, considering that not all member state do copyright levies, a national-level-only redistribution could be a better solution.

It would allow each member state to decide how to encourage artistic creation, at its (national) level.

Question 4

A - We do not have crystal balls, hence we cannot predict the future. But the assessment on the growth of digital and technologically protected sales looks plausible to us.

C - Compared to the copyright levies system, licensing models through digital sales can definitely provide better remuneration of rights holders.

D - It is difficult to say, again, but the double pay (i.e., the fact that end users remunerate the rights twice, once through digital sales and again through copyright levies) does not help the development of digital sales in Europe.

Question 5

A - We do agree with the assessment.

B - In many cases, we do not think private copying causes harm to rights holders.

In order for private copying to cause harm to rights holders, it would have to have a significant impact on sales.

Available figures (annual results, sales studies, etc.) show no such thing, or, at least, no direct correlation between the "economic harm" alleged by (some) rights holders due to private copying and the observed figures fluctuations.

C - There is a need for a clear definition here, and we fear there is quite a difference between the various participants' ones.

When an end user buy, say, a movie on a DVD, what does she buy exactly ?

- the right to view *this* very DVD as much as she likes, in the family circle ?
- the right to view *this* movie, in any format as long as it originates from the DVD (say, on a portable flash movie player), again in the family circle ?
- something else ? what ?

This is a fundamental question, and even rights holders have yet to agree amongst themselves on an answer. For instance, some CDs contain copies of their tracks in a "computer friendly" format (allowing easy playback on computer or portable player) with no restriction, which implies buying those CDs allows you to listen to them on your CD player *and* your computer, legally, and without further payment. Others use DRM-protected files which can prevent or even forbid playback on a computer (or on an operating system (OS) not supported by copyright holders, allowing monopoly of some operating systems and preventing interoperability). Others do not seem to care.

D - As stated earlier, some uses of those devices or media are not theoretically subject to copyright levies, because they cannot cause harm.

But in practice (in France), copyright levies always apply.

This is not fair.

Question 6

D - It is quite interesting to note that, with respect to copyright levies, the end user is considered guilty by default (at least in France, again, this may be different in other member states). And actually has no way to escape the levies.

We thought it was up to the claimant (here, the rights holders) to prove the harm, so that he could be rightfully indemnified.

How easily it seems to be forgotten...

Question 7

A - We do agree with the analysis.

B - We do not think such multi-function or multi-purpose devices should attract a copyright levy when their most common use is not the copying of protected content. But in practice some already do in France (for instance, set top boxes).

C - We do not think that infrastructure services should attract a copyright levy in a converging world.

But we do think that ISP should contribute to encourage artistic creation if (and only if) they do provide "multi-play" services such as television or video or music on demand. Just like television or radio stations do. But not in the form of a copyright levy, which is, we think, inadequate for this purpose.

D - We do think there is a link between levies on multi-function devices and the development of the digital economy.

Levies impedes this development, both by the price hike they incur and the incomprehension it causes in the minds of end users.

Less and less rights for the end users, at a higher price.

E - We do think copyright levies have an effect on new business models for the distribution of contents.

They just makes things harder and pricier, for absolutely no benefits for end users.

Question 8

One of the biggest benefit of the European Union was the free circulation of goods. It looks like, for the benefit of a tiny minority, this may come to an end.

Question 9

[not relevant]

Question 10

We do think the text correctly reflect the consumers position.

With respect to the in-built potential for "double compensation", we think it is more of a "triple compensation" : we pay the levies in the sales price, we pay the levies in the player and/or media, and we also pay (indirectly, but this has a price) the DRM royalties. In other words, we pay more, for less.

We also think that the current situation, in which availability is limited by territories, is a significant step back, and is hardly acceptable.

Consumers need protection, not uncertainty and limitations.

