

SECIMAVI



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▷ Culture et propriété intellectuelle

The manufacturers represented by SECIMAVI value the protection of intellectual property. They think - nevertheless- that there are several reasons why there is an impellent need to clarify the scope and application of the private copying exception and levies at a EU level and that the digital environment reinforces this need:

- **Private copying** must concern solely legally acquired works or subject-matters;
- National transpositions of the concept of **'fair compensation'** as expressed in Directive 2001/29/EU have to be consistent with the interpretations given by the Court of Justice of the European Union, namely in the Padawan case ;
- The form, the financing/collection and the levels of fair compensation of private copying exception are extremely different amongst Member States and should be harmonized;
- The lack of pan-European coherence and harmonization causes the emergence of transnational grey markets;
- Distortion of competition is to be observed amongst Member States where private copying levies do not exist and those where they are extremely high, like in France. Other national interpretation issues can cause additional competition distortion, as it is the case in France;
- Cross-border transactions often result in undue levy payments and excessive reimbursement difficulty;
- **The digital environment changes the paradigm in which the private copying exception was thought** and developed, unlinking the fruition of a work or subject-matter from the physical medium it is stored onto.

In particular about this last point, SECIMAVI notices that a **“right to copy” is increasingly included in the price of the works themselves, thus transforming an exception into an exclusive right** and taking into account a fair compensation of the harm caused to rightholders by the copies made by private persons for their personal use.

This widespread tendency, leads **SECIMAVI to plead for a generalization of a system where a withholding license would be levied directly on the work and subsequently transferred onto its selling price.**

Therefore private copying levies would be imposed on works (phonograms, videograms, written works, etc.) rather than on recording/storage media, thus de-connecting the fruition of the work from the media it is stored onto (physical media, cloud services, streaming...).

This approach would accommodate the increasing dematerialization of works and the need expressed by consumers for ubiquitous consumption.

For SECIMAVI's full position on European private copy levies see also : <http://www.secimavi.org/les-reacutepponses-agrave-consultations-publiques/secimavi-reponse-a-la-consultation-publique-sur-la-revision-des-regles-de-lunion-europeenne-en-matiere-de-droit-dauteur>