



The Printing Group

STATEMENT ON COPYRIGHT LEVIES ON MULTIFUNCTIONAL PRINTERS AND PRINTERS

Executive Summary

The Printing Group, a coalition of the leading European manufacturers of printing devices consisting of Epson, Konica Minolta, Hewlett-Packard, Dell, Canon, Lexmark and Brother, has been founded to support a modern copyright legislation in the EU member states. This includes a fair compensation of authors and rights holders according to the Directive 2001/29 Copyright in the Information Society. Unfortunately the Directive does not include any concrete guidance on the interpretation of fair compensation leading to diverse results in parts of the Internal Market. Further, in contradiction of the intention of the EU Directive, the Printing Group observes that copyright legislation in several member states does not pursue the aim of harmonizing and modernizing legislation in Europe but follows the individual national views. New copyright levies for Printing and other IT devices under discussion in the member states will erect new

barriers for free trade in Europe and will distort the internal market. The Printing Group concentrates its efforts on explaining and the appropriateness of adopting copyright legislation to the digital environment through individual remuneration of rights holders via Digital Rights Management (DRM) and other direct licensing systems to political decision makers and further stakeholders. This ensures that the basis of the private copying "fair compensation" copyright levy is the actual harm caused to rightholders as a result of such permissible private copying acts and takes into account any other payments received by rightholders.

Situation

The Printing Industry is confronted throughout many of the EU member countries with a copyright levy system, which was introduced to compensate rightholders for legally permissible private copying of copyright protected materials by consumers and which is being extended in some EU member states to capture other devices such as multifunctional devices (those combining copier, printer and scanner functionalities) and, eventually, conventional printers.

The **Directive 2001/29 Copyright in the Information Society the European Union** aimed to harmonise and modernise copyright legislation throughout Europe. However, most Member States have chosen different ways to implement the directive in national law. In fact new drafts of copyright legislation very often seem to lead to an extension of copyright levies to more IT devices than ever before, in some cases including only multifunctional devices, while in others capturing also conventional printers.

Position of the Printing Industry

The current copyright levy system is intransparent, unfair to consumers, manufacturers and even copyright holders, disproportionate and outdated. Technology and the marketplace have evolved to the point where the application or extension of the existing levy system, which was introduced with the intention of balancing the interests of copyright holders, consumers and manufacturers fairly, is no longer appropriate. The existing levy scheme was created for the limited analogue environment

where not only were certain products used massively for copying copyrighted materials but also a direct licensing approach was not feasible.

In the digital environment of the Information Technologies, flat rate levies have lost their justification as they lead to unrealistic results and no longer achieve their aim of providing appropriate compensation for permissible private copying.

On one hand, **most digital devices are not primarily used for private copying purposes** – it is an ancillary function. Their actual use is totally unrelated to copyright (business purposes, printing documents produced by the user itself, etc). On the other hand, an **individual licensing and individual and direct compensation of rights holders** via Digital Rights Management Systems (DRM) is **possible** for digital content such as materials available online. In fact, when a consumer purchases an online DRM protected text, he subscribes to a licensing agreement. The license fee already compensates for any potential private copies. Furthermore, when a consumer has legal access to any text available online, there is also an explicit (or in some case implicit) license that authorizes the consumer to print such text. This is not private copying but licensed use.

Merely expanding and maintaining outdated copyright levies schemes to new digital products leads to increased costs, both for consumers and industry and hinders the development of innovative products and services in Europe, seriously compromising the Lisbon agenda. It will also lead to massive trade distortion within the European Market. Most importantly, such levies no longer fulfill their aim, which is to adequately compensate copyright holders for permissible private copying acts.

Solution

The Printing Group supports the fair compensation of rights holders. The first choice for compensation is the individual remuneration via direct licensing (using Digital Rights Management Systems to manage and enforce licensing as desired by the copyright holder). For a transitional period, the Printing Group agrees to pay a copyright levy for Multifunctional Printers (MFPs) and scanners based on the actual amount of private copying of works of rights holders. The levy should be capped at 2-3% of the import price and should only compensate copies made for private and non-commercial use. Levies must not be applied to printers.

Details

- 1. User behavior and harm**
- 2. Primary use of a device and mere suitability to copy**
- 3. Business use**
- 4. Account of technical protection measures (DRMs) or previous payment**
- 5. Private copying vs. reprography**
- 6. Trade distortion**
- 7. A 2-3% cap on MFPs**

8. Levies do not apply to printers

Annex: Overview on Copyright Levies on IT products used for reprography in Europe

1. User behavior and actual harm

Collecting societies are claiming copyright levies which do not reflect the actual harm caused to right holders.

Copyright levies are only intended to compensate authors for legal private copying. They are not compensation for acts of piracy or any other unauthorized copying acts. Piracy is a crime and must not be compensated by levies paid from industry and consumers. Collecting societies, right holders, industry and the member states are obliged to ban and fight piracy effectively. The same would apply to other unauthorized reproductions.

Furthermore, when applying a levy to IT devices, the EU Copyright Directive and the majority of national legislations explicitly refer to the notion of **actual** harm.

The Directive makes it clear that **the actual harm is the yardstick** in determining whether a copyright levy should be applied or not and how high such a levy should be. When the harm is minimal and thus the

potential compensation for the right holder too, no levy should be applied.¹

A basic tenet of law is that the burden of proven damage or harm rests with the claimant. This also applies in copyright law. There should be a clear link between the volume of copied materials and the levy rate. **Potential harm is not a relevant guideline.** Actual volume of copying can be proven by e.g. a study showing lost sales by a rights holder due to private copies of their works.

For example, in autumn 2005, the GfK Market Research Institute asked over 1000 printer owners in Germany about their user behavior². It emerged from this representative survey that, with a total volume of almost 150,000 printed pages, less than 5% of all printouts have content which may be eligible to copyright levies. In fact, part of this percentage has already been compensated through licenses. This low percentage indicates that the harm to rights holders is minimal and therefore no levy should apply to printers. Additionally, it shows that it is unfair to force the broad majority of printer purchasers to pay such a levy in order to compensate the private copying acts of a very small percentage of other users.

In addition, in spring 2006, the London based Market Research Institute RS Consulting realized a survey in Germany³ to establish the percentage of documents reproduced using multi-functional printers (MFPs) and which are protected under Article 53 of the German Urheberrechtsgesetz

¹ Recital 35 of the EU Copyright Directive

² Usage of printers at work and at home, GfK Panel Service, October 2005

³ Usage of multifunctional printers: Analysis of copyright law relevant volumes in Germany, RS Consulting, April 2006

(Copyright Act). To this end, 437 face-to-face interviews were conducted in the homes of randomly selected MFP users across Germany, using German fieldwork agencies GfK and IPSOS. Additionally, a sub-set of the respondents selected at random completed a total of 192 diaries in order to measure their actual MFP usage, to confirm that respondents' recall of printing data in the interview situation was accurate.

Following thorough analysis of all of the survey data, it is evident that only between 3.2% and 4% of MFP usage in Germany is reproduction of copyright-protected documents permitted under Article 53 of the German Copyright Act.

2. Primary use of a device and mere suitability to copy

In many countries, collecting societies are treating multifunctional printers (MFPs) as traditional photocopiers and seek such levies. For example in Germany, although the Annex to German Copyright Law foresees high levies on photocopiers, collecting societies are seeking to impose identical copyright levies also on MFPs, because of their copying capability. Market analyses clearly show that **MFPs are not primarily used for copying**. Their main application is to be used as a printer.

The legislation in several countries states that the **mere suitability of a device to make private copies is sufficient to attract a levy**. This is unjust, as it does not correspond with the inherent aim of copyright levies, which are intended to compensate for legally permissible copying. Actual harm must be established as a prerequisite. In the era of the digital convergence, failure to adhere to this tenet will lead to an uncontrolled

proliferation of levies on any new technology capable of storing or reproducing copyright protected content.

3. Business use

By definition, levies serve to compensate for copies made for private non commercial use. In principle, therefore, businesses are to be excluded from the payment of levies as they are not legitimated to make private copies. However, in practice, levies are paid not only on products sold to end-users who are private individuals (who are legally authorized to make private copies), but also to business end-users who buy such products to make copies of internal working documents and/or other business related purposes, concerning documents and materials that are generally not copyrighted by third parties.

Furthermore, copy centers and reprography bureaus are being requested to pay not only the levy on the products they buy (although the products cannot be used for private copying by the copy centre) but also a reproduction license fee in order to be authorized to make copies (with a maximum cap set up by national legislations) for third parties.

4. Account of technical protection measures (TPMs) or additional payments

The EU Copyright Directive states clearly that the level of fair compensation should take full account of the technological protection measures (see Recital 35 and Recital 39). Further Recital 35 provides that

“where rights holders have already received payment in some other form, for instance as **part of a license fee**, no specific or separate payment may be due.” These principles must be fully applied when considering the application of any levy.

5. Private copying vs. reprography

Some countries have transposed both private copy and reprography exceptions into their legislation; others only one of them. The term “copyright levy” is used to describe both types of compensation/remuneration, which could be based on the private copying exception or the reprography exception.

In those cases where both exceptions are acknowledged, the same “levy” is intended to compensate both exceptions and there is no breakdown of which percentage of the levy compensates for private copying practices and which percentage corresponds to reprography practices. This lack of transparency further muddies the waters when attempting to evaluate whether the levy claimed is appropriate.

6. Trade distortion

EU Member States are interpreting and implementing the Copyright Directive (2001/29/EC) differently and are developing different legislations and different tariff schemes which can create internal market distortions. Due to the imposed levy system, an MFP bought in Belgium, could have a **€166,00** (VAT excluded)⁴ higher retail price compared to exactly the same

⁴ 20-39 pages per minute (ppm)

device in other countries in the Internal Market such as Denmark, UK, the Netherlands, Luxembourg or France where no levies on MFPs apply. Open borders⁵ in the Internal Market facilitate cross-border shopping and the Internet has helped promote more uniform international standards in an ever-increasing range of products and services in the digital space and eEconomy, which will further distort the trading situation in Europe.

7. A 2-3% cap on MFPs

MFPs are capable of copying copyrighted materials though this is not their primary function. Their primary function is use as a printer to print out non-protected (own) material. The printing industry advocates a cap that corresponds to this subsidiary use of MFPs. Such a cap should be fixed at 2-3% maximum of the import price to avoid:

- ✦ Distortions in the internal market in terms of prices,
- ✦ Unjustifiable enrichment of collecting societies, as is the case when the ratio of the levy on MFPs is more than 100% of the price of the device,
- ✦ The cost of transportation between Member States is estimated at 2-3% of the price of the device. If the levy is higher than the 3% of the selling price, it incites consumers to purchase their product in neighboring countries with lower or no levies. A cap is necessary in order to avoid cross-boundary trade distortions and minimize unfair competition behavior.

⁵ Harmonised consumer rights aid this too

8. Levies do not apply to printers

The Copyright Directive excludes levies where the prejudice is minimal to rightholders (Directive 2001/29, recital 35). Use of printers for private copying is extraordinarily limited⁶, so no prejudice or minimal prejudice will be caused.

Additionally, unlike a reprographic device such as a photocopier, a printer does not use a photocopying process to make reproductions. Printers are output devices, similar to a TV or a monitor of a PC, and not copying devices. Printers do not perform their function in a standalone capacity, i.e. isolated and independent of other equipment, but always require of a flat-bed scanner as initial step in order to “photocopy” a copyrighted material (books or publications). As provided by Recital 35 of the Directive, *“In cases where rightholders have already **received payment in some other form, for instance as part of a licence fee, no specific or separate payment may be due**”*; in this context, it would be necessary to acknowledge levies paid on scanners that might be eventually used to scan any books that may be subsequently printed.

Furthermore, it is necessary to take into account that materials that could be directly printed by users from the Internet are not the subject of private copying, but are the subject of licensed copying.⁷

Finally, all such materials that are licensed by copyright holders in order to be made available in the Internet are separately compensated to such right-holders through revenues obtained by licensors from direct licensing schemes to end-users (using technological protection measures as

⁶ As demonstrated by the study *Usage of printers at work and at home*, GFK Panel Service, October 2005

⁷ According to art.6.4.4 of 2001/29/EC Copyright in the Information Society, in case of licensed online content the exception provided by art. 5.2. b does not apply.

desired by the rights holders) or via advertisements included in such webpages.⁸

###

⁸ Some printing devices, such as standalone photo printers, which are equipped with card slots and can print without a PC, are mainly used to print out photos that are not copyright protected (Gartner Institute forecasts photo printers (A6 format) to represent 48% of the printer market in 2010).

Annex

Overview on copyright levies on IT products used for reprography in Europe

Introduction

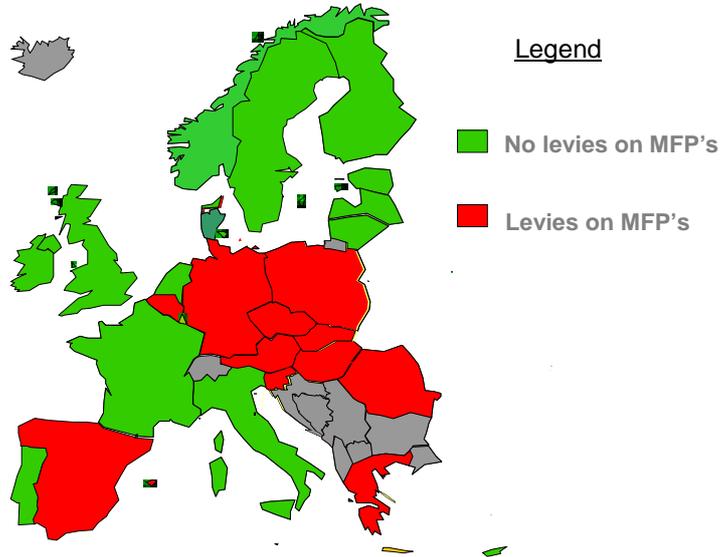
Although the EU tried to harmonize the copyright system in Europe for years, copyright legislation remains extremely diversified. This is especially true for the system of copyright levies. While some countries do not have any kind of copyright levies, in the countries with levy systems there are extremely different levies on product groups (e.g. only on analogue copying machines, only on storage media or/and on IT-equipment) and on IT-Devices, for which the industry and consumers have to pay. Even if different countries ask for levies on the same device, the amount of levies and the criteria vary extremely.

Collecting societies used this situation to build up extremely incoherent and intransparent levy schemes. By using not appropriate categories to determine the amount of a levy, they try to get more money out of industry and consumers.

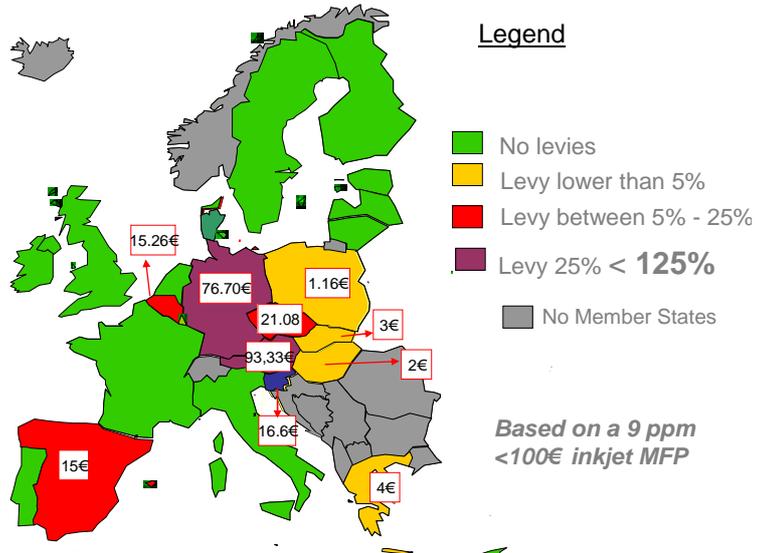
Some examples of this strategy:

- ✦ Although consumers usually use Multifunctional Printers only for black and white copies, collecting societies in Germany are asking for a double levy if the device is able to do colour print outs or copies. However, there is no relationship between the remuneration of authors and the question if a text will be copied in black and white or in colour.
- ✦ In some countries the levy rate is linked to the printing speed, although there is no evidence that in a household using a high printing speed of a multifunctional printer the number of print outs increases. Printing speed is not relevant for the amount of printing or copying; in households it is a matter of consumer convenience.
- ✦ Collecting societies also try to use printing speed to shift devices in higher categories by trying to classify the "Draft Mode" of a printing device as the "Standard Mode" and thus demanding higher tariffs.

EU overview levies on MFP's



Proportionality of requested levies for MFP's



Distortion of Internal Markets

Tariffs currently under negotiation in Austria.

Copyright Decree with new tariffs still to be adopted in the Czech Republic.

EU Overview on Printers and MFPs

Overview on requested levies in 20 Member States for a Printer (colour) and a Multi-Functional Printer (colour) with a capability of 10 to 19 pages per minute. Devices in these categories are available in a range from 50 Euro (Printers) and 100 Euro (MFPs) on.

Country	Levy Rate Printer	Levy Rate MFP
Austria	21 Euro ⁹	93,33 Euro
Belgium	0	51,08 Euro
Czech Republic	Up to 4% of Sale Price ¹⁰	Up to 4% of Sale Price
Denmark	0	0
Estonia	0	0
Finland	0	0
Germany	50 Euro	102,26 Euro
Greece	0	4% of Sale Price
Hungary	2% of Sale Price	2% of Sale Price
Italy	0	0
Latvia	0	0
Lithuania	3% of Sale Price	3% of Sale Price
Netherlands	0	0
Poland	0	1,38 % of Sale Price
Portugal	0	3% of Sale Price
Slovakia	0	3% of Sale Price
Slovenia	0	25 Euro
Spain	0	16,67 Euro
Sweden	0	0
United Kingdom	0	0

⁹ Levy claim by AustroMechana. New tariffs under negotiation.

¹⁰ New Copyright Decree to be adopted