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ETNO Reflection Document in reply to European Commission stakeholder Consultation on Levies

Summary

ETNO welcomes the opportunity to comment on the Commission's Stakeholder Consultation on Fair Compensation for Acts of Private Copying. ETNO is the leading trade association of major e-communications operators, representing 42 companies from 34 European countries.

Our members are important facilitators and distributors of digital content, through a variety of channels and commercial offers. ETNO recognises the importance of rights holders to be properly compensated, but believes that the system of copyright levies is outdated and not suited to the European Information Society. Copyright levies were introduced in Europe on analogue media, and in some countries also on reproduction equipment, during the 1980's to compensate rightholders for certain excessive copying that was done for private use. Remuneration should be, as far as possible, directly directed towards the usage and the relevant users rather than on all users through levies.

The market for digital content

With the advent of convergence, content is a key driver for growth of our sector and the Information Society. Consumers want to use new broadband-based services to access content, any time, anywhere, using any device. In turn, new media platforms are offering tremendous opportunities for the distribution of legitimate content or other information society services. The Information Society in general is built upon the ability to share content and to interactively develop ideas and facts online.

The aim must be to meet customer demand for price-worthy, secure and user-friendly services - to develop new attractive business models such as for downloading of music and film. Together with rights holders, ETNO member companies explore new market possibilities to deliver content.

Operators are rolling out new innovative offers for consumers to access content, which rely on DRMs or subscription mechanisms in co-operation with rights holders. DRM systems are used to offer rights holders protection against unauthorised distribution of their copyright protected content, and enable them to offer controlled rights of access. Such systems prevent unlicensed copying of copyright protected content and allow users to consume the content they access on demand. DRMs ensure remuneration based on actual use.

Levies are not justified when Technical Protection Measures (TPMs) are available.¹

Many rights holders are also opting for DRM-free models, selling content in different ways and with appropriate price structures. Other options are also being developed such as buying content with a certain number of copies already “bought” included, protected by DRMs. Paying through a levy is not transparent for consumers, and risks causing a backlash against new digital content offers intended to grow the content market and the Information Society in Europe.

The aim of any legislation in the field of copyright should be to present incentives for new consumer-friendly and competitive digital content offers. Levies, which are more comparable to a tax, do not provide for such incentives. In addition, when used in parallel with DRM, levies are unnecessarily raising the price of digital products and services, thereby impeding the development of online content markets.

Levies are not and should not be seen as an answer to the problem of copyright infringements – this is being dealt with in other work currently undertaken by the Commission, most notably the consultation and future Recommendation on Content Online, to which ETNO has contributed².

In the context of technological developments, it is also important to remember that storage capacity of terminal equipment is largely used by consumers for storing User-Generated Content as well as documents and other files.

More generally, ETNO wishes to refer to the Commission’s consultation on ‘Copyright levies in a converging world’ of June 2006, which in itself already pointed to a lot of the problems inherent to in the non-harmonised system of levies.

Conclusion

ETNO strongly believes that a wider application of copyright levies will not benefit the further deployment of the European Information Society.

¹ Recital 39, Directive 2001/29/EC

² See ETNO RD 280

Levies were developed to address problems relating to the specificities of the analogue world. In the context of a converged industry, technological advances have meant a broadening of business models for the distribution of content including through TPMs. In addition, what can be used as storage, what that storage is used for and how to protect stored content has evolved dramatically.

ETNO would welcome support for more transparent, technical protection measures which empowers users to decide on what basis they access content, and allow rights holders corresponding compensation.