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**Private Copy Levies as Fair Compensation for Film Producers in
Europe**
Demands and Opportunities for Harmonisation

Dissertation Thesis

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Private Copy Levies as Fair Compensation for Film Producers in Europe: Demands and Opportunities for Harmonisation

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Abstract

The divergent national ways of implementing private copy levies have been a source of friction with the EU Internal Market principle of the free movement of goods and services. Several attempts by the EU Commission to harmonise these levy systems have failed.

This thesis provides a critical examination of the results of the most recent attempt to develop a workable solution through an EU mediation process.

Since the recommendations derived from this mediation do not provide a solution which is acceptable for all stakeholders or congruent with economic facts and legal constraints, this thesis has the objective to develop a model for the harmonisation of the different levy systems being in place in 23 out of 28 Member States which can be applied by the EU Commission and national governments.

As the main result of this thesis, a transparent model for the uniform calculation of levies in all EU Member States is developed. This model accounts for economic and legal frame conditions which have been elaborated in critical examination of previous harmonisation attempts. The application of this model on and adequateness for the increasingly important “cloud services” is considered.

Key words: Private Copy Exception, fair compensation, levies, EU, Internal Market, harmonisation, calculation formula

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I. Introduction

The privileging of the use of copyright protected works like movies and music for private purposes which serve neither commercial nor professional objectives together with the introduction of levies as a fair compensation for rightsholders for this exemption of the private use under copyright law was based on technical developments enabling the easy reproduction of copyright protected works by private persons. Rightsholders – e.g. producers, directors, actors of a movie, songwriters, musicians and writers – have an exclusive right to authorise or prohibit the reproduction of their movies, songs or books. The enforcement of this reproduction right became nearly impossible or was hindered by extremely high transaction costs.

When sound recording equipment like tape recorders was introduced into the market in the early 1950s, any individual could make inexpensive reproductions of sound recordings at home. The same happened with copies of audiovisual works when video recorders entered the market in the 1970s. In the middle of the 1980s, the next technical revolution, the ‘digitalisation’ of content came up. This digitalisation of content and the large availability of digital data carriers and digital storage formats has substantially increased the ability of consumers to reproduce – without any loss of quality – protected content and therefore increased the impact of private copying.

From an economic theory perspective, movies, songs, books or magazines are typically referred to as information goods.¹ Information goods have high fixed cost of production but low marginal cost of reproduction. Therefore, free copying threatens to bring the price of these goods down to zero through the competitive process. Furthermore, information goods are non-rival and non-excludable.

Following the neo-classical property-rights approach, this problem can be overcome by establishing “Property Rights” including exclusivity, universality and transferability to ensure efficient allocation of money.² Copyright law has to be seen as such property rights as its

¹ Information is typically defined as anything that can be digitized. Cf. Shapiro, Carl / Varian, Hal R.; *Information as rules. A strategic guide to the network economy.* Harvard 1999.

² Walterscheid, Heike; *Exklusives Eigentum an geistigen Werken, das Recht auf Kopie und effiziente Allokation, - Eine ökonomische Analyse-*. In Fechner, Frank (Hrsg.); *Die Privatkopie. Juristische, ökonomische und*

purpose is to ensure that the creator is adequately remunerated as an incentive for creation.³

These acts of private copying of works which neither can be licensed or controlled nor banned – or only with extremely high transaction costs - are causing economic harm to rightsholders. In cases where transaction costs are much higher than potential license fees, liability rules⁴ including levies which have to be paid are much more effective than copyright protection.

In 1965, Germany introduced an authorisation of this private copying through an exception to the exclusive right of reproduction and also the obligation to indemnify rightsholders. This was done by imposing a levy on the sale price of sound and video recording equipment followed in 1985 by adding a levy on blank tapes for sound and audiovisual recordings which also applies to blank CDs and DVDs. Soon after the introduction of such levies in Germany other European countries followed and also introduced such a levy system into their national legislations.

Based on the definition which was given by the European Union in 2006,⁵ the private copying levy is a form of indirect remuneration for rightsholders, based on the premise that some acts of private copying cannot be licensed for practical purposes by the relevant rightsholders.

A copyright levy is typically attached to certain products (equipment or blank media) that can serve to reproduce audio, audiovisual or textual material such as music, films or books. This compensation is normally imposed on manufacturers, importers or distributors of analogue or digital equipment that allow consumers to make private copies.⁶

technische Betrachtungen. Ilmenau 2007. P. 96,97. In regards to the term „Property Rights“ cf. Schäfer, Hans-Bernd/Ott, Claus; Lehrbuch der ökonomischen Analyse des Zivilrechts. Berlin, Heidelberg ⁴ 2005, p. 98 ff.

³ Cf. Besen, S./Raskind, L.; An introduction to the law and economics of intellectual property. Journal of Economic Perspectives 5: 3-27. 1991.

⁴ Calabresi, Guido/Melamed, Douglas A.; Property Rules, Liability Rules and Inalienability: One View of the Cathedral. Harvard Law Review 1089, 1105 (1972).

⁵ Cf. European Commission; Questionnaire. Stakeholder Consultation on copyright levies in a converging world. N.p. 2006, p. 2. Available at: http://ec.europa.eu/internal_market/copyright/docs/levy_reform/stakeholder_consultation_en.pdf [accessed January 17, 2013].

⁶ Cf. *ibid.*

The private copying exception and the corresponding levies have been harmonised at EU level to a certain extent by Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society (Information Society Directive).⁷ Following this EU Copyright Directive, twenty-three out of twenty-eight Member States (2013, with the exception of only the United Kingdom, Ireland, Malta, Cyprus and Luxemburg) have chosen to implement the private copying exception through a system of remuneration, i.e. a levy on purchases of recording equipment and/or media. In 2012, the overall amount of private copying levies collected in the EU was more than Euro 419 million.

The requirement of fair compensation pursuant to Article 5 of Directive 2001/29⁸ does not preordain the structuring of the national remuneration systems. As Member States have implemented this provision in different ways concerning the methodology used for identifying leviable devices and blank media as well as for the setting of tariffs, this has led to levy systems in the different EU countries varying arbitrarily for the same devices.

The divergent national ways of imposing and administering private copy levies as a fair compensation for the private copying exception according to Directive 2001/29/EC⁹ are seen by the industry as an obstacle for the development of the Internal Market, the development of the Information Society and the competitiveness of the European economy as a whole.¹⁰

This subject – which on the other hand is a very important source of income for all involved rightsholders (see page 28) – has been discussed at the European as well as the national level for decades. The latest attempt by the EU Commission to explore new approaches with regard to the imposing and the administration of these divergent levies for private copying was to appoint Mr. Vitorino as a mediator in order to resume that dialogue. Mr. Vitorino has published his recommendations resulting from the mediation on private copying levies in January 2013.

⁷ European Parliament and the Council of the European Union; Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the Information Society. Brussels 2001.

Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32001L0029:EN:HTML> [accessed January 17, 2013]. Heretofore: Directive 2009/21/EC.

⁸ Ibid.

⁹ Ibid.

¹⁰ Cf. Reinbothe, J.; Private Copying, Levies and DRMs against the Background of the EU Copyright Framework. Speech at DRM Levies Conference, n.p. 2003.

Available at: http://ec.europa.eu/internal_market/copyright/documents/2003-speech-reinbothe_en.htm [accessed January 17, 2013].

The present exposition is taking these developments for reason to demonstrate that the recommendation of the EU mediator Mr. Vitorino provides no harmonisation measures to circumvent these obstacles to the internal market and to develop a more adequate concept which allows avoiding any friction with the Internal Market principle of the free movement of goods.

II. Objectives and methodology

II.1. Objectives

The recommendations presented by Mr. Antonio Vitorino to the Commissioner Internal Market and Services, Mr. Barnier, in January 2013 are based on false assumptions concerning the practice of licensing rights as well as on an incorrect understanding of the impact of different remunerations systems on the Single Market. Therefore, these recommendations cannot be seen as helpful tools to avoid any friction with the Internal Market principle of the free movement of goods by these private copying levy systems.

The main objective of this thesis therefore is to provide recommendations for a harmonisation – if necessary and possible – of the existing levy systems in Europe which have a significant economic impact on consumers, device manufacturers and rightsholders (obliged to be represented through collecting societies) to make these systems as consistent and effective as possible.

Recommendations for the following issues will be provided:

- 1) Harmonisation of private copying levies by recommending an EU copyright law or a voluntary European copyright code (long term solution)
- 2) Harmonisation of private copying levies (short term solution) by recommending:
 - a) Harmonisation of the devices and storage media which are levied in Europe.
 - b) Harmonisation of the tariff systems by developing a transparent formula for the calculation for setting these levies.
- 3) Extension of the private copying remuneration to copying in the cloud computing systems.

These recommendations should help the EU Commission and national governments in the EU to harmonise the levy systems to improve the Internal Market in Europe.

II.2. Used methods (methodology)

II.2.1. Primary data

A) Survey questionnaire

The main objective of the research which has to be seen as a pre-test for the proposed surveys on EU-level was to gain an understanding of consumer behaviour in Germany and to detect to what extent devices are used for copying of audiovisual works in private homes.

A quantitative data collection was used, as this method is centred on the relationship between measurable variables. For sample selection, a simple random sampling taking into account geographical aspect (all over Germany) was done.

A survey questionnaire (see annex) was designed and used as the main data collecting instrument. Open-ended as well as closed-ended questions were used. For the data processing and analysis, all data were categorized and tabulated and the patterns of consumers were interpreted. The methodology used in the research process to gain an understanding of consumer behaviour in Germany concerning private copying is based on a quantitative marketing research with a sample size $n=200$ carried out by interviews over the phone.

This research method was chosen to collect data from the general population as potential respondents. As most people in Germany do have a phone in their homes, it provides a large scale of accessibility of potential respondents. Furthermore, telephone surveys are providing a high level of anonymity for the respondents which is of high importance in regards to items like the question for the source of the copy (see question 5 of questionnaire). In addition, this method is very advantageous in regards to costs and time needed which is of special importance in the context of a study designed as a pre-test with limited sample size and available resources.

The target group were people older than 14 years living all over Germany (The different regions in Germany were selected by phone numbers. 408 persons were called in order to find the required 200 persons willing to participate and over 14 years of age.).

The collected data were used to build up the proposed list of leviable products/classes of products and to answer the question if users are having knowledge about these levies and the reasons for them.

For the study on EU level, an online survey is proposed as this study ideally will include a very large collection of data which is automatically stored in a survey data base, enabling a better handling of the data and a lower probability of data errors.

B) Face to face interviews

Face to face interviews were conducted with the managing directors of film collecting societies in Germany, France, Spain, Belgium and Netherlands. The selection of these countries was governed by the different size of country and the different range of collection (geographically and demographically representative, treatment of US audiovisual works with/without simultaneous publication in the given countries).

II.2.2. Secondary data

A) External desk research – online and offline research of accessible sources

a) The data on tariffs on blank carriers and devices for the years 1991- 2013 as well as all data (collected amount per year) per carrier and devices for all listed EU countries where levy systems are in place (see appendices) are based on surveys provided in the years 1991 through 2012 by Stichting de thuiskopie, the private copying collecting society in the Netherlands and WIPO, the World Intellectual Property Organisation.¹¹ The data collection took place based on an extensive questionnaire which was submitted to collecting societies in 42 (year 2013) countries, including not only EU, but also countries in North America, South America and Africa but only data for EU countries were taken into account.

¹¹ Cf. World Intellectual Property Organisation; Copyright Impact Studies. Available at: http://www.wipo.int/copyright/en/performance/impact_studies.html [accessed August 30, 2013].

The data coming from these studies were categorized per country, per year and per device and/or storage media. The local currencies of all levies up to the year 2000 were converted into Euro. Exchange rates are listed in the annex.

b) Prices, levy rates and the total collected amounts per year were validated and corrected through annual reports from ZPÜ (the German umbrella organisation for private copy levies) for Germany (years 1992-2013)¹² and from Eurocopya, an umbrella organisation of European film collecting societies including France, Belgium, Netherlands, Spain, Poland, Austria and Switzerland. Eurocopya has delivered additional precise data concerning tariffs and total amount of collection per year in these given countries.¹³

The data (a + b) was used to calculate the total amount of collection and should be used in the future as an indicator of changes in copying behaviour and the resulting need to revise the list of leviable products

c) Raw data from the GfK study “Kopierverhalten audiovisueller Werke”¹⁴ (“Copying behaviour of audiovisual works”) was used to calculate the number of private copies relevant for the calculation of a fair remuneration as well as for the calculation of the levy for several devices.

d) Data concerning the development of Home Video in Germany is adopted from a study provided by GfK for FFA.¹⁵

e) Data for the development of the video market in Europe is provided by the Statistical Yearbook 2013 which was compiled by the International Video Federation in collaboration with IHS Screen Digest.¹⁶

¹² Zentralstelle für private Überspielungsrechte (ZPÜ); Geschäftsberichte 1991-2013. Currently only 2011-2013 are publicly available at <https://www.zpue.de/die-zpue/geschaeftsberichte/geschaeftsbericht-2013.html> [accessed August 19, 2014].

¹³ Data only partially publicly available at <http://eurocopya.org/levies/index.htm> – Facts & Figures [accessed August 19, 2014].

¹⁴ GfK SE; Kopierverhalten audiovisueller Werke. Study commissioned by ZPÜ. 2010. Not published. The data was commissioned as the data basis for a new split agreement between German film collecting societies.

¹⁵ Bundesverband Audiovisuelle Medien e.V.; BVV Businessreport 2012/2013. Available at: http://bvvm Medien.de/index.php?content_id=19 [accessed August 30, 2013].

¹⁶ International Video Federation; European Video Yearbook 2013. Available at: <http://www.ivf-video.org/new/index.php?category/Market-information> [accessed May 27, 2014].

The Data provided by GfK for FFA for the territory of Germany (d) and data included in the Statistical Yearbook 2013 by the International Video Federation (e) are used as the basis for the proposed “reference fee for a license” for a private copy.

B) Electronic sources for the legal research

EU directives on private copy levies as well as Court rulings of the Court of Justice of the European Union were researched on relevant websites of the EU¹⁷ and on Curia, the online presence of the Court of Justice of the European Union,¹⁸ as EU directives must be implemented in every Member State.¹⁹ Therefore, national authorities have to adapt their laws to conform to the requirements of the directive. Furthermore, decisions of the ECJ are binding for any court decision based on local law.

¹⁷ E.g.: EUR-Lex: <http://eur-lex.europa.eu/de/index.htm> [accessed September 3, 2013]

¹⁸ http://curia.europa.eu/jcms/jcms/j_6/

¹⁹ Cf.: http://ec.europa.eu/eu_law/directives/directives_en.htm [accessed September 3, 2013].

III. Survey of Literature

III.1. History of private copy levies in Europe

Since the dawn of humanity there have been copyists. In the beginning of mankind, copyists needed long hours of manual work to produce a single copy of a written work and the transmission was therefore only available to an elite.

The invention of the printing press by Guttenberg and the resulting automation of copying of textual works was a revolution. A further revolution was the appearing of the first sound recording equipments on the market in the 1950s. In relation to the film industry, video recorders finding their way into private homes in the late 1970s were seen as a similar revolution, which was met with resistance by the content industry. Jack Valenti, the former president of the Motion Pictures Association of America (MPAA), an umbrella organisation of all major US film production companies – i.e. Paramount, Twentieth Century Fox, Universal, Warner, MGM – declared at a hearing on home recording of copyright protected works that “the VCR is to the American Film producers and the American public as the Boston strangler is to the woman home alone.”²⁰

For the sound recording and the film industry, pirate copying was taking a slice of their market for selling records or DVDs. They therefore tried to have such recording equipment and blank media declared illegal, but without any success.

The advent of the sound and video equipment in those days had the same impact on copyright protected works as the advent of the Internet in our days. These new reproduction devices and supports allowed anyone, both professionals and non-professionals alike, to make relatively easy and cheap records of protected works. In only a few years period, the use of these devices and supports became widespread among the population. In view of the sheer volume of works reproduced, the scope of the rightsholders’ exclusive rights and of the limitation of private use became one of the most difficult and economic significant issues

²⁰ U.S. GOVERNMENT PRINTING SERVICE; HEARINGS BEFORE THE SUBCOMMITTEE ON COURTS, CIVIL LIBERTIES, AND THE ADMINISTRATION OF JUSTICE OF THE COMMITTEE ON THE JUDICIARY HOUSE OF REPRESENTATIVES NINETY-SEVENTH CONGRESS. SECOND SESSION ON H.R. 4783, H.R. 4794 H.R. 4808, H.R. 5250, H.R. 5488, and H.R. 5705. HOME RECORDING OF COPYRIGHTED WORKS. Available at: <http://cryptome.org/hrcw-hear.htm> [accessed January 17, 2013].

of the time, not only from the perspective of the rightsholders themselves, but also from the perspective of the individual users and the manufacturers and retailers of recording equipment.²¹

Up to these technical revolutions, it was accepted by most continental European copyright scholars that the copyright protection does not extend to the private sphere of the individuals. The private or otherwise personal use of copyrighted works without the prior authorization of the rights owner was seen as enabling individuals to participate actively in the public debate and to develop their own personality to its fullest.²²

This was clearly no longer the case with the new home-taping technology²³ as the traditional legitimation could not be extended to cover copies made through this new technology.

Private individuals who made reproductions of sound or audiovisual works for private use were seen as infringing the owner's copyright, as were probably also the manufacturers and retailers of recording equipment necessary for doing so.²⁴

Short of a legal base to outlaw recording equipment and blank media, the discussion moved to the issue of how to mitigate the harm undoubtedly done to rightsholders of music and audiovisual works by these acts of private copying.

In two decisions rendered in 1955 (Grundig Recorder Case)²⁵ and in 1964 (Personalausweise Case)²⁶ the German Federal Supreme Court (BGH) considered that, given the fact that the legislator could not have foreseen the problem of home taping in its 1901 Copyright Act, it was entitled to develop the law by interpretation. Accordingly, it held that in the case of a conflict between the interest of the user of a work and those of a creator, the latter had to be favoured. As Visser explains, the court declared that "there is no general principle in

²¹ Cf.: Runge, K.; Rechtsfragen um das Magnetophon. *GRUR* 05/1951. P. 234; Gentz, G.; Überspielungsfreiheit zum persönlichen Gebrauch? *GRUR* 11/1952. P. 495; Krüger-Nieland, G.; Das Urheberrecht und die Entwicklung der Technik, insbesondere die private Vervielfältigung mittels Magnettonband und Fotokopie. *GRUR* 11/1957. P. 535.

²² Cf.: Kohler, Josef; Urheberrecht an Schriftwerken und Verlagsrecht. Stuttgart 1907. P. 178. Lepaulle, Renée-Pierre; Les droits de l'auteur sur son oeuvre. Paris 1927. P. 7. and Leinemann, Felix; Die Sozialbindung des 'Geistigen Eigentums'. Baden-Baden 1998. P. 112.

²³ Cf. Wistrand, Hugo; Les exceptions apportées aux droits de l'auteur sur ses oeuvres. Paris 1968. P. 318 and Spoor, Jacob Hendrik.; Scripta Manent – de reproductie in het auteursrecht. Groningen 1976. P. 113.

²⁴ Cf. P.Bernt Hugenholtz et al; The Future of Levies in a Digital Environment. Institute for Information Law, Amsterdam 2003.

²⁵ Bundesgerichtshof; Urt. v. 24.06.1955, Az.: I ZR 88/54 (*Mikrokopien*). In: *GRUR* 11/1955. P. 546.

²⁶ Bundesgerichtshof; Urt. v. 29.05.1964, Az.: Ib ZR 4/63. (*Personalausweise*). In: *GRUR* 02/1965. P. 104.

copyright law that maintains that the claims of the copyright holder should stop short of the private sphere of the individual”²⁷. It thereby recognized the authors’ exclusive right to prohibit such private recordings, stating that the unenforceability of these rights was irrelevant to their legal recognition. Moreover, in the opinion of the court, authors had a right to remuneration for the exploitation of their work even if that particular exploitation did not show any direct economic profit.²⁸

Furthermore, the BGH stated the producers and retailers of recording equipment could be held liable for copyright infringement, even if they did not realize the reproductions themselves but provided individuals the necessary means for doing so, as the producers of these equipments took advantage of the popularity of the taping in private homes. In addition, the BGH decided that customers don’t have to reveal their identity to verify whether they are engaged in lawful activities or infringing copyright, as such control is undeniably conflicting with each individual’s right to the inviolability of his home as guaranteed by Article 13 of the Grundgesetz (GG).

The introduction of a levy on the sale of sound and video recording equipment in the Copyright Act of 1965 was a direct consequence of these two decisions. From the report of the German Parliament’s Judiciary Committee it appears that the Committee saw such a levy as the only solution in response to non-enforceable individual claims against private home taping activities. From the outset, it was also clear that consumers would assume the charge put on the producers of recording equipment upon paying the price of the tape recorders. Whether or not the taping equipment was used for the private copying of copyright protected works was deemed irrelevant for the imposition of the levy, because the Committee believed that it rather improbable that, if suitable for private taping, such equipment would never be used in that capacity throughout its lifetime. In fact, the decision not to introduce an additional levy to be paid in relation to blank tapes was deliberate, expressly because in the case of blank tapes it was practically impossible to tell whether they would be used solely for the recording of copyright protected works or not.²⁹

²⁷ Visser, D.J.G.; Copyright Exemptions Old and New. In: Hugenholtz, P.Bernt (ed.); *The Future of Copyright in a Digital Environment*. The Hague 1996. P. 49.

²⁸ Visser; *Copyright Exemptions*. P. 49. Wistrand; *Exceptions apportées*. P. 368.

²⁹ Cf. Reinbothe; *Private Copying*. P. 40.

In 1985, the German Copyright Act (UrhG) was modified in the way that in addition to the long standing levy on recording equipment, a levy was introduced also on blank tapes. The main argument for a levy on blank tapes in 1985 was that the remuneration collected on the sale of recording equipment no longer equalled the dimensions assumed by the legislator when the provision was enacted in 1965. The decrease in remuneration obtained from the sale of recording equipment could be explained by the fact that the average factory price in 1985 was far lower than in 1965. The collecting societies had stressed that, at the same time, this decrease in remuneration collected per unit contrasted with the rapid increase of private home taping.³⁰ Contrary to the position that had prevailed until then, the legislator agreed with the collecting societies that some legal responsibility for infringement of copyright by private home taping could be assumed not just by the producers of recording equipment but also by the producers of blank tapes and cassettes. The argument put forward in 1965, according to which it would be unjust to put a levy on blank material because no distinction can be made between blank material used for purposes affecting copyright and those used for other purposes, was simply put aside in 1985.

Very soon most continental European countries followed the German model by introducing private copy levies either on blank tapes and/or equipments. Additional EU Member States have put in place a levy system to compensate authors and producers for home copying activities since 1965: Austria (1980), Finland (1984), France (1985), Netherlands (1990), Spain (1992), Switzerland (1992), Denmark (1992), Italy (1992), Belgium (1994), Greece (1994), Portugal (1998) and Sweden (1999).³¹ Later on Bulgaria, Croatia, Czech Republic, Hungary, Latvia, Lithuania, Norway, Poland, Romania, Slovakia and Slovenia followed. Only three EU Member States have not implemented a levy system for home taping: Ireland, Luxemburg and the United Kingdom. In the case of the United Kingdom no private copying scheme was introduced, despite favourable recommendations to the government in this sense. On two occasions, the imposition of a blank tape levy on audio and video tapes was put forward; first, in a document presented to the British Parliament by the Secretary of State for Trade and Industry in 1985,³² and once again in the government's 1986 White Paper on Intellectual

³⁰ Collova, Taddeo; Über die Entwicklung der vertraglichen und gesetzlichen Regelung der Vervielfältigung zum persönlichen Gebrauch (private Überspielung) in der Bundesrepublik Deutschland. *UFITA* 125/1994. P. 53.

³¹ Cf. Collova; Entwicklung der Regelung. P. 53

³² Great Britain. Dept. of Trade and Industry; *The Recording and Rental of Audio and Video Copyright Material: A Consultative Document*. London 1985.

Property and Innovation. The pressure from tape manufacturers and consumer groups put a halt to these initiatives.³³

For all involved parties the solution to impose a levy on recording devices and blank media seemed reasonable as tape and video recorders were almost exclusively used to copy protected works.

But with the digital revolution things became more complicated. Almost nobody was using analogue equipment and blank media for private copying anymore. In order to still compensate rightsholders for their losses incurred as a result of private copying now on digital equipment it seemed logical to impose the levies on the digital surrogates. This was criticized by the IT industry and users associations by arguing that a digital device i.e. a computer can be used for multiple issues and therefore levies on digital equipment and media without taking into consideration their actual use may remunerate rightsholders for acts of copying that are not related to their creative work. In the European Union, the EU Copyright Directive 2001/29/EC³⁴ responded to this issue by providing the possibility for Member States to put in place a copyright exception for private copying on condition that rightsholders receive fair compensation.

Under Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society, Member States may provide for certain exceptions from and limitations to the exclusive right of reproduction. One such optional exception applies to acts of private copying (Article 5(2)(b) of the Directive) and allows Member States to introduce an exception to the right of reproduction only for natural persons who copy for private use and for non-commercial purposes (i.e. private copying). According to Article 5(2)(b), Member States may provide for an exception:

in respect to reproductions on any medium made by a natural person for private ends that are neither directly or indirectly commercial, on condition that the rights holders receive fair compensation which takes account of the application or non-application of technological measures referred to in Article 6 to the work or other subject matter concerned³⁵

³³ Music & Copyright; UK Government locks European Levy. Edition 2/1992. P. 5.

³⁴ Directive 2001/29/EC.

³⁵ Article 6(3) of Directive 2001/29/EC defines a 'technological measure' as any technology, device or component that is designed to prevent or restrict acts in respect of copyright-protected works or other subject matter which are not authorised by the rightsholder. Technological measures are deemed 'effective' where the use of the protected work or other subject matter is controlled by rightsholders by means of an access control or protec-

ture and films, can determine how their creation can be used and receive remuneration for it. Copyright is both an incentive to and a reward for creativity.

Copyright and related rights include so-called “economic rights” which enable rightsholders to control (license) the use of their works and other protected material (such as performances, records, audiovisual productions and broadcasts) and be remunerated for their use. These rights normally take the form of exclusive rights and include the right to copy or otherwise reproduce any kind of work and other protected subject matter; the right to distribute copies to the public and the right to communicate to the public performances of such works and other protected subject matter.³⁸

Creativity protected by copyright is one of the cornerstones of the cultural heritage and of a diverse and economically vibrant creative content sector. To support this sector, “Creative Europe”, the newly build program for the cultural and creative sectors for the 2012-2014 Multi-Annual Financial Framework (MFF)³⁹ has significantly increased the budget devoted to the cultural and creative sectors to a total of Euro 1,801 billion (an increase of 37 percent). This increase is in line with the rationale and priorities of the Europe 2020 strategy and its initiatives since investing in the cultural and creative sectors directly contributes to the strategy’s aim to promote smart, sustainable and inclusive growth.

In 2006 the cultural and creative sectors (from published content such as books, newspapers via musical works and sound recordings to films, video on demand and video games) generated a turnover of Euro 650 billion annually, contributing to 2.6% of the EU’s GDP and employing more than 3% of the EU workforce,⁴⁰ while in 2008 the cultural and creative sectors contributed an estimated 4.5% to EU’s GDP and employed some 3.8% of the EU’s workforce.⁴¹

The European Competitiveness Report of 2010⁴² showed that the creative industries accounted for 3% of EU employment (around 6.7 million jobs). On the global stage, the contri-

³⁸ European Commission; MEMO / 12 / 545, Brussels 2012.

³⁹ European Commission; Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, “A Budget for Europe 2020”, COM(2011) final, Brussels 2011.

⁴⁰ KEA European Affairs; Study on the economy of culture in Europe. N.p. 2006. P. 6.

Available at: http://www.keanet.eu/ecoculture/executive_summary_en.pdf [accessed January 17, 2013].

⁴¹ Cf. Tera Consultants; Building a Digital Economy: The importance of saving jobs in the EU’s creative industries. March 2010.

⁴² European Commission; European Competitiveness Report 2010. Luxemburg 2010, p. 17.

bution of these industries to GDP and national employment is much higher, reaching a contribution of 5.4% to GDP, and representing 5.9% of employment on average.⁴³

The purpose of a copyright is to protect the creator of a work from an unauthorized exploitation of his intellectual performance and thus safeguard the remuneration for this work. Copyright corresponds to the moral and patrimonial prerogative recognized by law to authors (author rights) and neighbouring rights of producers and performers. To this end, it gives the creator the exclusive right to exploit the work.

Copyright protection thus allows rightsholders to prevent others from the use and the exploitation of the work without authorization, e.g. by making copies. The right of reproduction is often described as the 'crown right'.⁴⁴ Production rights are exclusive rights to authorize or prohibit all acts of reproduction, be they temporary, virtual or reproduction for private use.

At the latest since the 1960s when sound recording equipment first entered the market and the 1970s when the same happened concerning video recording equipment, the enforcement of reproduction rights became nearly impossible in regards to private use as acts of private copying at home are extremely difficult to monitor or can only be tracked at extremely high transaction costs and very low marginal cost for the reproduction.

So it can easily take millions of Euros/Dollars to produce the first DVD of a (Hollywood) movie while the second DVD is very cheap (under two Euros/one Dollar). This cost structure - high fixed costs and low marginal costs – causes difficulties for competitive markets.⁴⁵ Consequently, if movies can be copied freely, the competitive process will bring the price of the original product and its copies down to zero. But this leaves no margin to recover the huge fixed costs.

⁴³ Cf. World Intellectual Property Organisation; Copyright + Creativity = Jobs and Economic Growth, WIPO studies on the economic contribution of copyright industries. N.p. 2012. Available at: <http://www.ip-watch.org/weblog/wp-content/uploads/2012/02/WIPO-Copyright-Economic-Contribution-Analysis-2012-FINAL-230-2.pdf> [accessed January 17, 2013].

⁴⁴ Cf. e.g. Reinbothe; Private Copying.

⁴⁵ Cf. Varian, Hal R.; Markets for Information Goods. Berkeley 1998.

As a consequence, if creators of the original movies will not be able to recoup the fixed costs of their investment, the number of produced movies will fall/decrease as the creators don't have any incentive for creative activities.⁴⁶

But there is no right without exceptions. In cases where transaction costs are much higher than potential license fees, the property rights giving the exclusive right to authorise or prohibit the reproduction of the copyright protected work are substituted through liability rules.⁴⁷ These liability rules enable the consumer to record the copyright protected work for private use without prior authorisation of the property rights owner. The consumer has to pay a levy to a collecting society as compensation for that private reproduction. This is covered by the Berne Convention allowing its contracting states to provide for exceptions and limitations to the reproduction rights. Until 2001, several EU Member States⁴⁸ have chosen to limit the reproduction right for private copying and to 'downgrade' this exclusive right to a right of equitable remuneration. These rights have to be administered collectively by collecting societies and the levies are put upon recording equipment and/or blank recording media.

The impact of private copying has increased as by digitisation of content and the widespread availability of data carriers the ability of consumers to reproduce protected content has increased. The question of how to deal with this private copying has always been a highly sensitive question in EU Member States.

While working on a "Green Paper on Copyright and the Challenge of Technology" the EU Commission announced that it intended to present a proposal for a limited harmonisation of the different levy schemes in Europe. Due to the complexity of the subject, such a proposal was never published.

From 1997 onwards the Commission started to deal with "private copy schemes" again in the context of the "Directive on Copyright and Related Rights in the Information Society", published in May 2001 as Directive 2001/29/EC. In this directive, the principle of "fair compensation" was introduced as a new concept. Member States are required to ensure "fair

⁴⁶ Cf. Reich, Michael Mark; *Ökonomische Analyse des Urheberrechts in der Informationsgesellschaft*. Munich 2006, p. 51 and Schäfer/Ott; *Ökonomische Analyse*. P. 108.

⁴⁷ Cf. Calabresi/Melamed; *Property Rules, Liability Rules and Inalienability*.

⁴⁸ E.g. France, Germany, Italy, Netherlands, Spain.

compensation” for the exceptions to the reproduction right, in particular the exception for “private copying (Article 5(2)(b)).

As Recital (35) confirms, the term “fair compensation” is linked to the aspect of harm. Furthermore, the form, detailed arrangements or level of any scheme for fair compensation is up to the Member States. Levy schemes are seen as adequate concepts for fair compensation but Member States are not obliged to introduce such schemes (Recitals (35) and (38)).

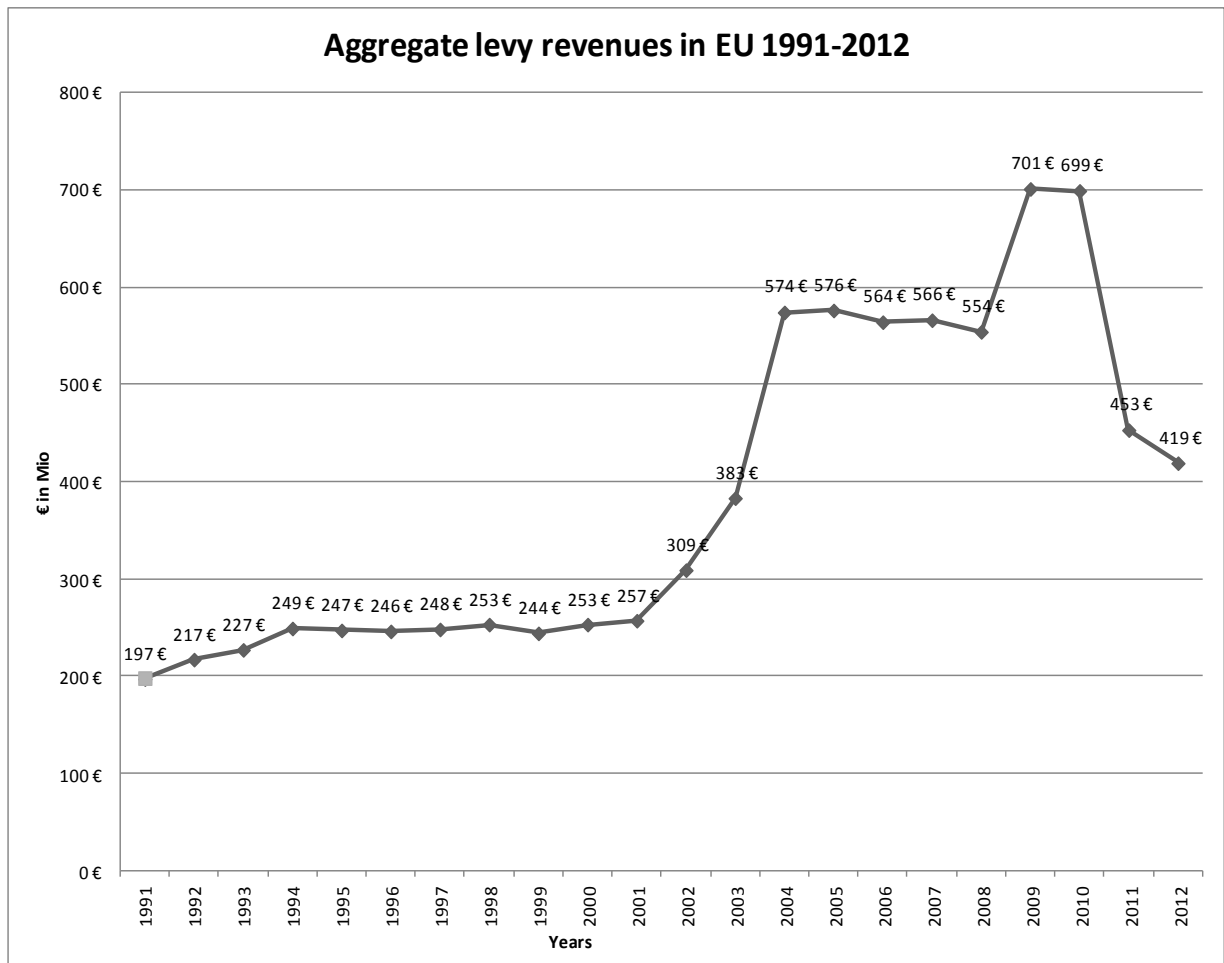
In regards to digital private copying, Recital (38) states that this should have a greater economic impact, and that therefore due account should be taken of the differences between digital and analogue private copying and a distinction should be made in certain respects between them. At the same time, Article 6 provides for a framework which protects the use of digital measures such as copy control devices and digital rights management systems (DRMs), which may also be designed to allow for and to monitor copying in the private sphere and to ensure direct remuneration in the digital environment. Probably the most obvious interface between digital private copying and the levies is contained in Recital (39), which states that “Member States should take due account of technological and economic developments, in particular with respect to digital private copying and remuneration schemes, when effective technological protection measures are available”.

This legal framework aims at ensuring that levy schemes and “fair compensation” take into account the use of these technological systems, as is reflected in Article 5(2)(b).⁴⁹ Following the adaption of the EU Copyright Directive 2001/29/EC, 23 out of 28 Member States have chosen to implement the private copying exception into their local laws on condition that the rightsholders receive fair compensation in form of private copy levies i.e. a levy on recordable equipment and or media.

⁴⁹ Cf. Reinbothe; Private Copying.

III.3. Economic impact of private copy levies in Europe

The private copying compensation is a very important source of revenue for rightsholders. The total revenue generated by private copying remuneration is Euro 8.41 Billion for the years 1991 – 2012 (2012: Euro 419 Million).



Source: Author's Elaboration of data provided by Stichting de ThuisKopie, Eurocopya, WIPO surveys, and ZPÜ audit. See annex B. Compare chapter II.2.2.

The Directive 2001/29/EC does not include any regulation on the form or level of these levy schemes. As a result, the Member States have implemented levy systems in divergent national ways. The methodology for setting levy tariffs differs from one EU country to another. In some countries, the levies are calculated as a) a fixed amount (tariff) or b) as a proportion of the sale price or c) in the form of a lump sum.

Tariffs on Blank Carriers 2012 in Europe (Source: de ThuisKopie): Examples

Tariffs in 2012	Data CD-R	DVD	Memory Stick / Cards	Videocassette	Audiocassette
Austria	0,23 (per 80 min/700MB)	0,36 (per 120 min/4,7 GB)	1,50 < 512 MB - 9,00 >30 GB	0,18 - 60 min	0,12 - 60 min
Belgium	0,12 (per unit)	0,40 (per unit)	0,15 < 2 GB - 1,35 > 16 GB	0,40 per unit	0,12 per unit
Croatia	0,01 (<1 GB)	0,01 (per unit/< 10 GB)	0,55 < 16 GB - 1,10 > 16 GB	0,08 per unit	0,01 per unit
Czech Republic	0,009 (per unit)	0,024 (per unit)	0,032 (max 1,939)	0,073 - 180 min	0,031 - 60 min
Denmark	0,30 (per unit)	0,48 (per unit)	0,68 (per unit)	0,80 - 60 min	0,57 - 60 min
Finland	0,20 (< 1 GB)	0,60 (per 4,7 GB)		0,91 - 120 min	0,30 - 60 min
France	0,35 (per 700 MB)	1,00 (per 4,7 GB)	0,144 < 512 MB - 0,059 > 10 GB	1,29 - 180 min	0,43 - 90 min
Germany	0,062 (up to 900 MB)	0,0139 (per 4,7 GB)	0,10 per piece	0,0870 - 60 min	0,0614 - 60 min
Greece	6 % of sale price	6 % of sale price	6 % of sale price	6 % of sale price	6 % of sale price
Hungary	0,14 (<700 MB) - 0,20 (> 700)	0,051 (< 4,7 GB) - 0,24 (4,7 GB)	0,13 < 64 MB - 10,49 > 32 GB	0,19 per unit	0,080 per unit
Italy	0,15 (per 700 MB)	0,41 (per 4,7 GB)	0,05 > 32 GB to 0,03 > 5 GB	0,29 - 60 min	0,23 - 60 min
Latvia	0,14 (per unit)	0,28 (per unit)		0,08 unit	0,04 unit
Lithuania	6 % of import price	6 % of import price	0,14 < 1 GB - 2,90 > 32 GB	6 % per unit	6 % per unit
Netherlands	0,14 (per unit)	0,60 (per 4,7 GB), DVD + 0,40		0,33 - 60 min	0,23 - 60 min
Poland	1,72 % of sale price	2,53 % of sale price	0,42 % of sale price	3% of sale price	3% of sale price
Portugal	0,05 (per unit)	0,14 (per unit)		0,26 per unit	0,14 per unit
Romania	3 % (per unit)	3 % (per unit)	0,5 % (per unit)	3 % per unit	3 % per unit
Slovakia	6 % of sale price or import price	6 % of sale price or import price	6 % of sale price or import price	6 % of sale price or import price	6 % of sale price or import price
Slovenia	0,03 (per GB/max € 16,69)	0,03 (per GB/max € 16,69)	0,03 (per GB/max € 16,69)	0,10 - 180 min	0,10 - 180 min
Sweden	0,07 (900 MB)	0,29 (4,7 GB)	0,06 > 2 GB - 2,22 > 40 GB	0,002 - min	0,0027 - min
Switzerland	0,040 (525 MB)	0,251 (4,7 GB)	0,202 per GB up to 0,526 per GB	0,372 - 60 min	0,267 - 60 min

Tariffs on devices 2012 in Europe (Source: de ThuisKopie): Examples

Tariffs in 2012	Mp3 player	Hard disc DVD-recorder	Mobile Phones	PC	TV sets with recordable devices
Austria	1,50 (< 512 MB) - 9,00 (< 30 GB)	6,00 (< 80 GB) - 20,00 (< 600 GB and more)			
Belgium	1,00 < 2 GB - 3,00 > 16 GB	3,30 < 256 GB - 13,00 > 1 TB	2,50 per unit 2-16 GB		10,75 per unit > 256 GB
Croatia	1,93 (per unit)	4,13 (per unit)	1,37 per unit	0,82 per unit	5,50 per unit
Czech Republic	1,5 % of sale price	1,74 % of sale price			0,9 % of sale price
Denmark					
Estonia	3% of sale price or import price	3% of sale price or import price	3% of sale price or import price	3% of sale price or import price	3% of sale price or import price
Finland	4,00 (< 512 MB) - 36,00 (>750 GB)	4,00 (< 512 MB) - 36,00 (>750 GB)			12,00 per unit > 25 GB < 50 GB
France	1,00 (< 128 MB) - 20,00 (40 GB)	10,00 (< 40 GB) - 50,00 (560 GB)	7,00 per unit < 8 GB		
Germany	5,00 (per unit)	39,00 (per unit)	16,00 per unit	12,00 per unit	34,00 per unit
Greece	6 % of sale price	6 % of sale price	6 % of sale price		6 % of sale price
Hungary	0,32 (< 32 MB) - 28,96 (80 GB)	10,30 (< 80 GB) - 23,17 (> 250 GB)	10,29 per unit 4 GB - 8 GB		10,30 per unit < 80 GB
Italy	0,64 (< 128 MB) - 12,88 (30 GB)	6,44 (< 40 GB) - 32,20 (1000 GB)	0,90 per unit	2,40 per unit	4,83 > 40 GB < 80 GB
Latvia	1,42 (per unit)	1,42 (per unit)			
Lithuania	0,43 (< 1 GB) - 11,58 (1 TB)	0,43 (< 1 GB) - 11,58 (1 TB)	4,34 per unit 8 to 32 GB	5,79 per unit	5,79 > 32 GB < 250 GB
Netherlands	no levies on devices				
Poland	3 % of sale price	2,23 % of sale price			0,87 % of sale price
Portugal					
Romania	0,5 % of sale price	0,5 % of sale price	0,5 % of sale price		0,5 % of sale price
Slovakia	3 % of sale price or import price	3 % of sale price or import price		0,5 % of sale price or import price	
Slovenia	4,17 (< 2 GB) - 8,35 (> 2 GB)	6,26 (per unit)			
Sweden	0,39 (40 GB) - 33,33 (> 250 GB)	0,39 (per GB < 40 GB) - 33,33 (> 250 GB)			
Switzerland	0,526 (per GB < 8 GB) - 0,243 (per GB > 32 GB)	0,081 (per GB) plus 0,064 per GB > 250 GB	0,202 per 1 GB		
Norway: No tariffs / no levies compensation from Government					
France: is only collecting for the media inserted in listed devices					
Germany: Law suits in progress for all tariffs (excluding Tariff for PC)					
Norway no tariffs at all - remuneration is funded by Government out of national budget					
Portugal: only analogue equipment is subject to remuneration 3 % of selling price set by law					
Romania: levy set by law remuneration for media and equipment agreed between users and collecting societies					
Slovenia: tariffs but no Collection					

In addition, Member States are not imposing levies on the same products. In some countries levies are imposed either on a) on blank tape recording media or b) on recording equipment and on blank media.

Practical Implementation (Source: de Thuiskopie)		
Country	Levies on Media	Levies on Devices
Austria	X	
Belgium	X	
Croatia	X	X
Czech Republic	X	X
Denmark	X	
Finland	X	X
France	X	
Germany	X	X
Greece	X	X
Hungary	X	X
Italy	X	X
Latvia	X	X
Lithuania	X	X
Netherlands	X	
Norway		
Poland	X	X
Portugal	X	
Slovakia	X	X
Slovenia	X	X
Spain		
Sweden	X	X
Switzerland	X	X

The divergent national ways of implementation and administration of these private copy levies have been a source of friction with the Internal Market principles of the free movement of goods and services for quite some time. The fact that one and the same product can be subject to a levy in one of the Member States but not in another leads to distortions of competition and obstacles to the free movement of such products. Furthermore, the widely varying tariff levels have to be added to that problem.

Therefore, the whole levy systems are attacked by the industry as these levies have to be paid by manufacturers, importers and dealers of IT and entertainment hardware devices and storage media that might be used for private copying.

Since 2004 the EU Commission deals with a reform to harmonise these levy systems. In 2006, the European Commission was working on a "Recommendation / Fair Compensation

for Private Copying in a Converging Environment” which was not adopted in the end.⁵⁰ Nevertheless, in this draft the European Commission explained levies as “a form of indirect remuneration for rightsholders, based on the premise that some acts of private copying cannot be licensed for practical purposes by the relevant rightsholders.” The intention of the recommendation was to encourage rightsholders to find ways to license individually and perhaps over time phase out levies.⁵¹ Consumers should not be charged twice, once for copy-protected individually licensed content, and once for private copying (that may, or may not be permitted under the licence).⁵²

This draft recommendation was blocked out of French concern to lose an income stream through collecting societies for creators and also a source of socio-cultural subsidies.⁵³

In July 2008, the European Commission set up a Stakeholder Platform including collecting societies, industry representatives and consumer organisations with the aim to negotiate a consensus about modernizing the system of private copy levies.⁵⁴ Only little progress was made. In January 2010, representatives of the information technology, consumer electronics and telecommunications sectors (coordinated under the Digital Europe umbrella) withdrew from the talks. ICT firms have since focused on challenging levy tariffs through the court system, while calling for a regulation of levies as a part of a Directive on Pan-European Licensing.⁵⁵

⁵⁰ Cf. Institut für Urheber- und Medienrecht; Press release: EU-Entwurf zur Reform der Leerträgervergütung vom Tisch. Munich, December 15, 2006. and Institut für Urheber- und Medienrecht; Press release: EU-Kommission will Leerträgervergütung auf Minimum reduzieren. Munich, November 2, 2006.

⁵¹ For a comprehensive analysis of the ‘phase out’ agenda of Directive 2001/29/EC, see P.B. Hugenholtz et al; *The Future of Levies*.

⁵² European Commission; Green Paper – Copyright and related rights in the Information Society. COM/95/0382 final. Brussels 1995. Available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:51995DC0382&from=EN> [accessed September 22, 2014], [emphasis added]: “where there is the technical means to limit or prevent private copying, *there is no further justification for what amounts to a system of statutory licensing and equitable remuneration*”.

⁵³ Cf. Copyright Levies Alliance; Industry Condemns Commission Backdown on Reform: Reform of Copyright Levies Abandoned Following Opposition from France. N.p. 2006. Available at: http://www.digitaleurope.org/DocumentDownload.aspx?Command=Core_Download&EntryId=496 [accessed September 18, 2014]. According to the French lobby platform *copie privée* (<http://copieprivee.org>), levies contribute to artistic vitality “by remunerating the creators we love and by helping nearly 5,000 cultural events we enjoy attending all over France. Private copy is necessary for music, circus acts and literature to live.” In France, 25% of collected revenues (in 2010, just under €50m) are used to fund cultural events.

⁵⁴ European Commission; Background Document: ‘Fair compensation for acts of private copying’. Brussels 2008. Available at: http://ec.europa.eu/internal_market/copyright/docs/levy_reform/background_en.pdf [accessed February 13, 2014].

⁵⁵ Cf. Digital Europe; Digital Europe Input to Framework Directive on Collective Rights Management. N.p., 2011. Available at: <http://www.digitaleurope.org/Portals/0/Documents/Digital%20Economy/Copyright%20Levies/DIGITALEURO>

In May 2011, the European Commission published an intellectual property strategy paper announcing “comprehensive legislative action” regulating levy systems by 2012. Section 3.3.4 is headed “Private copying levies”:⁵⁶

The proper functioning of the internal market also requires conciliation of private copying levies with the free movements of goods to enable the smooth cross-border trade in goods that are subject to private copying levies. Efforts will be redoubled to kick-start a stakeholder agreement built on the achievements of a draft Memorandum of Understanding brokered by the Commission in 2009. A high level independent mediator will be appointed in 2011 and tasked with exploring possible approaches with a view to harmonizing the methodology used to impose levies, improve the administration of levies, specifically the type of equipment that is subject to levies, the setting of tariff rates, and the interoperability of the various national systems in light of the cross-border effects that a disparate levy system has on the internal market. A concerted effort on all sides to resolve outstanding issues should lay the ground for comprehensive legislative action at EU level by 2012.

In November 2011, Commissioner Barnier appointed Mr. Antonio Vitorino⁵⁷ as mediator in order to resume the dialogue on private copying remuneration. In his statement⁵⁸ delivered by Mr. Antonio Vitorino on April 2, 2012 when he announced the start of the mediation process on private copying he identified the following issues as core issues:

1. Methodology for setting tariffs
2. Cross-border sales
3. Determination of the person or the entity liable to pay the levy
4. Visibility of the levy
5. Private copying in the context of new digital forms of distribution of copyright-protected content and the implications for levy systems

In January 31, 2013, the mediation process on private copying levies was concluded with the presentation of Mr. Vitorino’s recommendations to the Commissioner Internal Market and Services, Mr. Barnier. In his speech given on that day Commissioner Barnier said

I am very grateful to António Vitorino for accepting this difficult mission and carrying it out in such a smooth and constructive manner. His recommendations will constitute an essential contribution towards progress in this difficult matter, and will feed into the process on content in the Digital Single Market launched in December. Our objective is to achieve a well-functioning Digital

PE_CRM_POP_02032011.pdf [accessed September 19, 2014]. Digitaleurope is a lobbying group of the European ICT industry.

⁵⁶ European Commission; A single market for intellectual property rights: Boosting creativity and innovation to provide economic growth, high quality jobs and first class products and services in Europe. COM(2011) 287 final. Brussels 2011.

Available at: http://ec.europa.eu/internal_market/copyright/docs/ipr_strategy/COM_2011_287_en.pdf [accessed January 18, 2013].

⁵⁷ Former European Commissioner for Justice and Home Affairs

⁵⁸ European Commission; Statement by Mr. Antonio Vitorino on the mediation process concerning private copying and reprography levies. N.p. 2012. Available at: http://ec.europa.eu/commission_2010-2014/barnier/docs/speeches/20120402/statement_en.pdf [accessed April 3, 2013].

Single Market and to enable new business models to thrive and meet changing consumer expectations and preferences.⁵⁹

III.4. Recommendations resulting from the Mediation on Private Copying Levies

III.4.1. Core elements of Mr. Vitorino's recommendation⁶⁰

1) In order to favour the development of new and innovative business models in the digital single market, based on licensing agreements between service providers and rightsholders, he recommends:

Clarifying that copies that are made by end users for private purposes in the context of a service that has been licensed by rightsholders do not cause any harm that would require additional remuneration in the form of private copying levies.

2) In order to simplify the functioning of the levy systems and ensure the free movement of goods and services in the Internal Market, his recommendations are:

Levies should be collected in cross-border transactions in the Member States in which the final consumer resides.

The liability for paying levies should be shifted from the manufacturers' or importers' level to the retailers' level while simplifying the levy tariff system.

Manufacturers and importers ought to be obliged to inform collecting societies about their transactions concerning goods subject to a levy.

Levies should be made visible for the final customer.

3) In order to achieve more coherence in regards to the process of setting levies he recommends:

⁵⁹ Medialaws.eu; Mediation on private copying and reprography levies: Antonio Vitorino presents his Recommendations to Commissioner Barnier. N.p. 2013. Available at: <http://www.medialaws.eu/mediation-on-private-copying-and-reprography-levies-antonio-vitorino-presents-his-recommendations-to-commissioner-barnier/> [accessed April 3, 2013].

⁶⁰ Vitorino, Antonio; RECOMMENDATIONS resulting from the MEDIATION ON PRIVATE COPYING AND REPROGRAPHY LEVIES. Brussels 2013. Available at: http://ec.europa.eu/internal_market/copyright/docs/levy_reform/130131_levies-vitorino-recommendations_en.pdf [accessed September 5, 2013].

“Harm” should be defined uniformly across the EU as the value consumers attach to the additional copies in question (lost profit).

A procedural framework that would reduce complexity, guarantee objectiveness and ensure the observance of strict time-limits should be provided.

In the case of a new product being introduced to the market, the decision as to the applicability of levies should be taken within 1 month following its introduction. The provisional level of tariffs applicable should be determined not later than 3 months after its introduction.

The ultimate level of the applicable levy should, to the extent possible, not be superior to the one imposed temporarily. If nevertheless this were the case, the resulting difference should be payable gradually and could be split into several instalments.

The final tariff applicable to a given product should be agreed or set within 6 months period from its introduction on the market.

III.4.2. Reaction on Mr. Vitorino’s recommendation

As expected the reaction from the IT industry represented by Digital Europe⁶¹ for Europe and Bitkom⁶² representing the German IT industry and the reaction of the representatives of rightsholders organisations SAA, Eurocopya, AEPO-ARTIS and GESAC⁶³ is twofold.

While the IT industry warmly welcomes the recommendations of the EU mediator, the European organisations of authors, performers and producers were strongly disagreeing with the main proposals. They expressed that

⁶¹ Digitaleurope; ANTONIO VITORINO’S RECOMMENDATIONS ON PRIVATE COPYING AND REPROGRAPHY LEVIES. Building on the Mediator’s recommendations. Available at: http://www.digitaleurope.org/DocumentDownload.aspx?Command=Core_Download&EntryId=542 [accessed September 3, 2013].

⁶² Bundesverband Audiovisuelle Medien e.V.; Stellungnahme. Antonio Vitorinos Reformvorschläge für urheberrechtliche Abgaben. 22 May 2013, n.p.. Available at: http://www.bitkom.org/files/documents/BITKOM-Stellungnahme_Vitorinos_Empfehlungen_zu_Urheberrechtlichen_Abgaben.pdf [accessed September 3, 2013].

⁶³ AEPO-ARTIS, EUROCOPYA et al; Private Copying – Rightholders statement on Mr. Vitorino’s recommendations. 6 February 2013, n.p.. Available at: <http://www.saa-authors.eu/de/news/88/> [accessed September 3, 2013].

[i]n the event that the European Commission were to accept these recommendations, the result would: i) have a negative effect on consumers; ii) damage the interests of rightholders (and thus damage the development of European culture); and iii) increase the complexity of licensing agreements. The parties that would benefit are only importers and manufacturers of recording media/devices which are mainly non EU companies.⁶⁴

In their opinion, Mr. Vitorino's statement that copies made by end users as private copies from licensed services do not cause harm and should therefore not require any remuneration (recommendation 1) is proposing in fact a "phase-out" of the levy systems for the so-called "new business models in the digital environment".⁶⁵ From the point of view of the IT industry, this recommendation is encouraging new and emerging business models in the digital era⁶⁶ as the customers do not have to pay twice for the same licensed content and the rightholder can very easily include royalties for this act of private copying in the license fee paid by the service operator.

The recommendation made by the EU mediator will be subject of a detailed critical analysis in the next chapter.

III.5. Alternatives to levies on devices and storage media

However, there are also stakeholders which advocate alternative solutions to levy based systems. On October 4, 2012 Digital Europe – a membership organisation of 60 global corporations and 32 EU based national trade associations of IT, telecoms and electronic companies has published a paper⁶⁷ encouraging the EU Commission in the mediation process performed by Mr. Vitorino to replace the various levy systems in place with alternative forms of compensation.

In Digital Europe's view, the levy based system being in place in 23 Member States within the EU is a relic from the analogue era and is not fitting into the digital economy. Article 5(2)(b) of Directive 2001/29/EC is mentioning that a "fair compensation" has to be paid for the exceptions to the reproduction right, in particular for "private copying".

⁶⁴ Ibid.

⁶⁵ Cf.: Recommendation p. 6.

⁶⁶ Digitaleurope; ANTONIO VITORINO'S RECOMMENDATION. P. 1.

⁶⁷ Digitaleurope; Alternatives to device-based copyright levies. Brussels, 4 October 2012. Available at: http://www.digitaleurope.org/Portals/0/Documents/Digital%20Economy/Copyright%20Levies/DIGITALEUROPE_ALTERNATIVES%20TO%20DEVICE%20BASED%20LEVIES.pdf [accessed September 2, 2013].

This Directive is not mentioning a levy based system to ensure “fair compensation”. Therefore, although most of the EU Member States have implemented levy systems into their local copyright laws and have extended these levies also to devices and media storage in the digital world alternative solutions are possible under this directive. Alternative non levy based solutions are implemented in Norway and since 2012 in Spain.

In their paper, Digital Europe is making a number of concrete suggestions for alternative compensation models. The proposed models are the following:

1) Priced into purchase option

a) Licensing, not levies

The “fair compensation” which has to be paid according to article 5(2)(b) of the EU Copyright Directive⁶⁸ for private copies should be included in the license fee and any additional claims for a fair compensation for additional copies are exhausted. Mr. Vitorino has taken up this proposal in his recommendation. To underline this opinion, Digital Europe is referring to a report by Oxera⁶⁹ ordered by Nokia showing the welfare effect for all concerned groups (manufacturers, rightsholders and consumers) by such a phasing out of levies.

b) Payment closer to end-users

The proposal to switch the liability for paying the fee from the manufacturers or importers to the customers (end user) is strictly speaking not an alternative model. Nevertheless, in Digital Europe’s opinion this shift would be a solution for the fragmentation of the Single Market and the practical application of the ECJ Padawan ruling with its exception for business use.

This suggestion was also picked up by the mediator Mr. Vitorino in his recommendation (see above).

2) Public funded option

a) State budget

⁶⁸ Directive 2001/29/EC.

⁶⁹ Oxera Consulting Ltd; Is there a case for copyright levies? An economic impact analysis. May 2011. Available at: <http://www.oxera.com/Oxera/media/Oxera/downloads/reports/Is-there-a-case-for-copyright-levies-May-2011.pdf?ext=.pdf> [August 30, 2013]. For more details see chapter III.6..

Norway and since January 1, 2012 also Spain have a system in place funding royalties to rightsholders out of the state budget. In 2012 Norway has allocated Euro 5.5 million from the national budget for this purpose while Spain assigned 5 million Euro (total collection in Spain in 2011 was 61.9 million, see annex).

b) Radio and Television fee

Digital Europe proposes that in EU Member States where consumers pay a fee for receiving TV and radio broadcasts, the mandate for the collection of that Radio and Television fee should be expanded to the collection of the compensation for harm caused by private copying.

c) R&D Funding

Digital Europe proposes that such funding might take the form of grants from EU funds. They refer to the EU program "Creative Europe".⁷⁰

d) Dedicated lottery

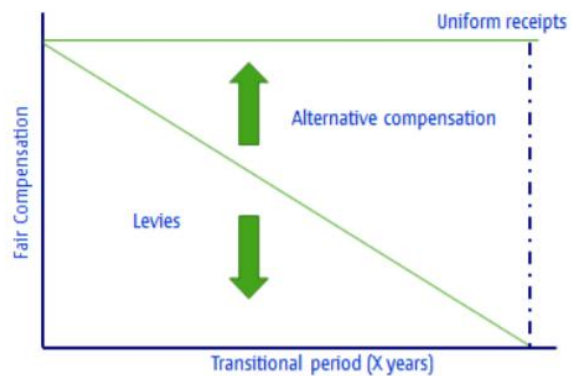
Like the health and sport sector receiving funding from lotteries, Digital Europe is proposing that the creative sector could also be supported by fundings out of this pot. This funding should only be distributed to rightsholders in the creative sector suffering harm from acts of private copying. The extent of harm and the relevant compensation should be determined at Member State level.

As mentioned above, such a switch from levy based systems to alternative solutions would not require an amendment in section 5 of the EU Copyright Directive 2001/29/EC. A recommendation from the mediator Mr. Vitorino to change the levy based systems to another solution is in Digital Europe's opinion the best way forward. The choice how and in which

⁷⁰ For general information cf.: http://ec.europa.eu/programmes/creative-europe/index_en.htm [accessed August 30, 2013].

timeframe this change is implemented should be with the Member States. This principle would avoid a 'big bang'. Digital Europe is proposing to gradually reduce the levy in a given period of e.g. three years and to compensate for the drastic reduction in collected monies through the equally gradual phase-in of the chosen alternative solutions.

Fair Compensation over the transitional period



Note: It is up to Member States to choose the rate of change during the transitional period

(Chart from: Digitaleurope; Alternatives to device-based copyright levies. P. 10.)

III.6. Phasing-out of levies

Furthermore, the possibility of a phasing-out of levies is under discussion. In April 2011, a study issued by Oxera Consulting Ltd⁷¹ which was commissioned by Nokia, a hardware manufacturer who is also active in the distribution of digital music, explored the economic rationale for copyright levies. The main findings on the economic effects in this study are the following:

- 1) The legal "harm"-based rationale for copyright levies was suitable when analogue technology was prevalent. However, in the digital world rightsholders have alternative means of ensuring their remuneration at their disposal, i.e. digital rights management and direct licensing.
- 2) The levy systems being in place are creating distortions and inefficiencies for consumers, rightsholders and manufacturers. They are an obstacle to innovation, investment and the development of the Single Market in Europe.

⁷¹ Cf. fn 69.

3) The welfare effects of copyright levies are the following:

a) Manufacturers: They are either absorbing the levies as extra cost or integrate them into the retail prices, depending on the elasticity of supply and demand. Both ways are having a negative impact on the financial performance of the company and diminish the incentive for further investment. Furthermore, the various levels of levies (most often 5-10% of the retail price) are creating difficulties in the financial planning of companies.

b) Rightsholders: They are receiving a financial benefit from the copyright levies but the higher prices under inclusion of these levies may diminish the sale of the product and therefore the revenues paid from collecting societies to the rightsholder.

c) Consumers: They are affected by the higher retail price when manufacturers are passing on these levies. This can reduce the sale of devices and to some extent also the demand for downloads.

d) Creators of musical content: While the effects on consumers and manufacturers (higher prices and lower margins) are clear, the effects on creators needed further analysis. It has been argued that removing copyright levies would significantly alter the incentives for creators, reducing the amount and diversity of available content.⁷²

In their economic simulation-based modelling, Oxera found out that for the majority of songwriters copyright levies are only a very small portion of their income and that this group is therefore only marginally affected by removing the levies. In Oxera's opinion the direct licensing of digital music is an economically more efficient mechanism to remunerate rightsholders.

Additionally, Oxera modelled a scenario of digital growth after removal of the levy system and with direct licensing which could result in a gain between Euro 975 million to 1.88 billion focused on the music market in the EU.

⁷² EconLaw Strategic Consulting; Economic Analysis of Private Copy Remuneration. Madrid, 26 September 2007. Available at: http://www.gesac.org/FR/ACTUALITE/COMMUNIQUESPRESSE/download/COMMUNIQUEFR_20071108_Rapport%20ECONLAW.pdf [accessed September 2, 2013].

Effect of removing copyright levies (€m per year):	Scenario 1: Limited dynamic growth	Scenario 2: Moderate dynamic growth and some new business models	Scenario 3: High dynamic growth and many new business models
on consumer surplus	601	809	1,088
on manufacturers' surplus	166	166	166
on song writers' revenues	-16	7	30
on performers' revenues	1	24	48
on producers' (record labels') revenues	223	384	548
Total EU-wide impact (€m)	975	1,389	1,880

(Chart from: Oxera; Is there a case for copyright levies? P. 3.)

In February 2012, another study commissioned by a group of rightsholder organisations (IFPI, GESAC, Eurocopya and others) was published by Compass Lexecon⁷³ with the objective to analyse and provide an economic opinion on the Oxera study. This study came to the conclusion that the removal of the private copying levies would have negative effects for rightsholders, consumers and manufacturers. The economists at Compass Lexecon argued that the Oxera study is based on false assumption and that the removal of levies would not result in the win-win situation predicted by Oxera.

Their study predicted the following welfare effects:

- a) Manufacturers: Their revenues might decrease in the long term, as the rightsholders incentive to create new content which stimulates the demand for devices and media would be alleviated.
- b) Rightsholders: They would lose the revenues generated by the private copying levies and following from this their incentive to create new content would decrease. Furthermore, the study shows that rightsholders would not benefit from the increase in sales after elimination of the levies.

⁷³ COMPASS LEXECON; The welfare effects of private copying levies. N.p. 2012. Available at: http://www.saa-authors.eu/dbfiles/mfile/4000/4078/Study.Economic_analysis_of_the_copyright_levies.pdf [accessed September 2, 2013].

c) Consumers: They would benefit from lower prices, but less content would be available.

Summary welfare effects according to Compass Lexecon

	Static	Dynamic	Balance
Right holders	(-) Direct revenue loss	(-) Diminish incentives to innovate	(-)
Device manufacturers	(+) Profit increase	(-) Profit decrease due to lower content availability	?
Consumers	(+) Price reduction *	(-) Lower content availability	?

Note: () Assuming total or partial pass-through rate from device manufacturers*

(Chart from: COMPASS LEXECON; Welfare effects. P. 16)

IV. Results

IV.1. Results of Mr. Vitorino's recommendations

IV.1.1. Legal and economic effects of these recommendations on the existing levy systems in the EU (only dealing with private copy compensation under exclusion of recommendations for reprography levies)

IV.1.1.1. The Exception for Private Copying

The first part of Mr. Vitorino's recommendations is dealing with copies which are covered by a private copying exception (including payment of levies) and copies covered by a contractual license in the online sector. He recommends to

[c]larify that copies that are made by end users for private purposes in the context of a service that has been licensed by rightsholders do not cause any harm that would require additional remuneration in the form of private copying levies.⁷⁴

It is correct that copies which are already subject of a contractual license cannot be at the same time subject of a statutory remuneration claim but Mr. Vitorino failed to realize the existence of the private copying in local laws in Europe imposes limits de lege lata on contractual license agreements.

IV.1.1.2. Relation between licensing agreements and private copying exception

On Page 7, first paragraph Mr. Vitorino stated:

Usually, a service provider acquires a license from the rightholder that covers all [*emphasis added by authors*] copyright relevant acts involved in the provision of the service, including the reproduction of copyright protected content by the end user. Such licensing agreements also reflect the view and the expectations of the end user.

This assumption made by the mediator that the license granted to an online provider also covers all copies made by private users is not correct.

⁷⁴ Recommendation, P. 9.

The license of German film producers⁷⁵ granted to an online provider covers only the rights needed for the respective offer plus the first download (technically necessary) by the end user.

All other additional copies made by the end users from this first download are not licensed and cannot be licensed as copies of protected works made (within the limits of existing DRM systems) in the private sphere are covered by a statutory exception to copyright provided for in the 2001 Copyright Directive and transferred into e.g. German Copyright law Section 53 Abs. 1-3 UrhG. The end users receive legal certainty for copies made for private use and have paid a license fee for the first download.

Nevertheless, the question if the possibility of fair compensation (paid through a levy) ceases to apply if a rightsholder has explicitly or by implication agreed to reproduction of his works is included in the questions that the German Federal Court of Justice (BGH) has referred to the European Court of Justice (ECJ).⁷⁶

The recommendation is not reflecting this problem at all and assumes that contractual licenses are possible for those private copies which are already permitted by the exception for private copying. This misunderstanding leads to the following statement:

In light of all the above, my view is that licensed copies should not trigger the application of levies. The opposite view would pave the way for double payments. Consumers cannot be expected to show understanding for such double payments.⁷⁷

and to the proposal to

[c]larify that copies that are made by end users for private purposes in the context of a service that has been licensed by rightsholders do not cause any harm that would require additional remuneration in the form of private copying levies.⁷⁸

It is logically impossible that a remuneration is paid twice for the same usage if a remuneration is paid once for the contractual license (first download) and second for the statutory remuneration claim to the copies covered by the exception of the private copying schemes (private additional copies from the download copy). Furthermore, different users are in-

⁷⁵ Confirmed by the legal departments of four important German film production companies, UFA, KirchMedia, Telepool and Bavariafilm.

⁷⁶ Bundesgerichtshof; Beschluss I ZR 30/11, 21 July 2011. Question 5. Available at: <http://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=en&nr=57518&pos=0&anz=1> [accessed September 19, 2014].

⁷⁷ Recommendation, p. 8.

⁷⁸ Ibid.

volved, on one side the service provider and on the other side the private end users. As stated earlier on, the copies made by private users on the basis of the first download are causing harm to the involved rightsholders as these copies cannot be subject of the contractual license fee.

IV.1.2. Impact of the recommendation on rightsholders and consumers

Mr. Vitorino proposed in this recommendation to limit the scope of private copying by excluding copies made in the context of a licensed service and favoured licensed private copying under the assumption that rightsholders are in a position to negotiate extra remuneration for private copies made from the first download as part of their license agreements with online services. This proposed is contrary to the private copy levy systems applied today in 27 EU countries and would lead to the following results

IV.1.2.1. For consumers

- a) The private copying remuneration would be disconnected from the private copies made by customers as the fee could only be prized into the license fee agreed upon between rightsholders and online service.
- b) Unless private copies have been authorized by the rightsholders, consumers are not legally entitled to make copies for private purposes.
- c) Reintroduction of DRM systems (technical protection measures) to limit consumers copying capacity. These technical protection measures have been massively rejected by consumers in the past. Therefore this solution was not chosen in Europe under the Copyright Directive in 2001.
- d) Any additional amount which has to be included in the license fee as remuneration for private copies made by the consumers will lead to an increase of the price consumers have to pay to get access to the services.

IV.1.2.1. For the rightsholders:

a) From a theoretical perspective, transformation of the private copying levy system into a contractual license system (which is not only covering the first download but also all additional copies made) would probably not have an impact on the rightsholders as the disadvantages and the advantages of this transformation would offset each other. Changing the system would as a general rule be bound to result in an increase in the license fee for the new extended scope of a contractual license and in a decrease of the private copying remuneration due to the new reduced scope of the statutory authorization.⁷⁹

b) However, this proposal is disregarding the way in which the creative sector for audiovisual works is organized. The rightsholders (i.e. producers and distributors) negotiating with the online providers are not the same group of rightsholders as the ones benefitting now from the private copy levies (i.e. authors, performers and producers). Performers and authors, based on production contracts in which they are transferring their exclusive rights to producers (buy-out), are unable to save any authorization for the use of their work and therefore not part of the licensing process, neither directly as individuals nor indirectly through their collecting societies. This contractual situation will eliminate performers and authors from any possible additional remuneration that may be achieved by the negotiation of the licensing agreements.

c) This problem was acknowledged by Mr. Vitorino when he wrote:

I understand that such authors and performers sometimes suffer from a lack of bargaining power.” However, he follows by saying: “I do not think, however, that private copying levies are the right way to address this imbalance. Mandatory rules in copyright contract law or labour law would, in my view, be a better manner to ensure that authors and performers receive an adequate share when their works and other protected subject-matter are exploited. Another option would be to help them organize themselves better in order to conduct negotiations more successfully. The principle of subsidiarity, however, should be given specific consideration when examining this issue at EU level.⁸⁰

⁷⁹ Cf. AEPO-ARTIS / EUROCOPYA / GESAC / SAA; Private Copying - Rightsholders' statement on Mr Vitorino's recommendations. 06.02.2013. N.p. 2013. Available at: <http://www.saa-authors.eu/en/news/88/Private-Copying---Rightholders-statement-on-Mr-Vitorinos-recommendations&page=15> [accessed September 19, 2014].

⁸⁰ Recommendation, p. 8.

Such mandatory rules in copyright contract law to ensure that authors are receiving a fair share were proposed by the SAA in the “White Paper on Audiovisual Authors Rights and Remuneration in Europe” in 2011.⁸¹

Unless such a reform in copyright contract law is in place in all the EU-countries now having the private copying compensation, a shift to a license system would lead to 100% loss of income for authors in the digital age.

In the meantime, the most probable possible scenario is that in the absence of corresponding market power of the rightsholders it would be impossible for producers to negotiate an increase of the license fees with the online providers (e.g. iTunes) having a very dominant negotiating position vis-à-vis rightsholders (European producers). The probable result is that rightsholders are losing the remuneration for private copying even if the private use of their works doesn't change.

On June 27, 2013 the ECJ (fourth chamber) has confirmed that legal opinion in joined Cases C-457/11 to C-460/11.⁸²

As an answer to a request made by the Federal Court of Justice (BGH), question 5

whether the fact that rightsholders have expressly or implicitly authorized reproduction of their protected work or other subject-matter affects the fair compensation which is provided, on a compulsory or optional basis, under the provisions of Directive 2001/29, and, where appropriate, whether such authorization may mean that no compensation is due. (ECJ judgement, point 30)

the ECJ stated that

the answer to the fifth question is that, in the context of an exception or limitation provided for by the relevant provision of Directive 2001/29, an act by which a rightholder may have authorised the reproduction of his protected work or other subject-matter has no bearing on the fair compensation owed, whether it is provided for on a compulsory or an optional basis under then relevant provision of that directive. (ECJ judgement, point 40)

With this ruling the court made clear that an act by which a rightsholder might have licensed reproduction of his protected work for a first download has no bearing on the fair compensation owned by the rightsholders for additional copies for private use.

⁸¹ Society of Audiovisual Authors; Audiovisual authors' rights and remuneration in Europe. SAA White Paper. February 2011. N.p.. Available at: http://www.saa-authors.eu/dbfiles/mfile/1200/1256/SAA_white_paper_english_version.pdf [accessed September 5, 2013].

⁸² Court of Justice of the European Union (Fourth Chamber); Judgement of the Court. Joined Cases C-457/11 to C-460/11. 27 June 2013. N.p.. Available at: <http://new.eur-lex.europa.eu/legal-content/EN/TEXT/PDF/?uri=CELEX:62011CA0457&from=EN> [accessed September 5, 2013].

IV.1.3. Improving the functioning of the remuneration systems in the single market

IV.1.3.1. Obligation to pay levies only in the country of destination

The second part of the recommendation is dealing with the improvement of the recommendation system through levies.

It proposes to “Collect levies in cross-border transactions exclusively in the member state in which the final customer resides.”⁸³ This recommendation is founded on difficulties by cross-border trades within the EU caused by the different national levy systems.

As an explanation for this recommendation, Mr. Vitorino is mentioning a judgement made by the ECJ (third chamber) on June 16, 2011 in Case C-462/09.⁸⁴ In Case 462/09 the referring court, the Hoge Raad der Nederlanden, has asked the ECJ to rule on the following questions:

[W]hether the provisions of Directive 2001/29, in particular Article 5(2)(b) and (5) thereof, must be interpreted as containing criteria which make it possible to determine who must be regarded as responsible for paying fair compensation on the basis of the exception of copying for private use. (point 18)

and

whether, in a case of distance selling between a purchaser and a commercial seller of reproduction equipment, devices and media, who are established in different Member States, Directive 2001/29 requires national law to be interpreted so that fair compensation can be recovered from the person responsible for payment who is acting on a commercial basis. (point 30)

In this judgement, the Court of Justice ruled that

the person who has caused the harm to the holder of the exclusive reproduction right is the person who, for his private use, reproduces a protected work without seeking prior authorisation from that rightholder, it is, in principle, for that person to make good the harm related to that copying by financing the compensation which will be paid to that rightholder. (point 26)

and

The Court has however admitted that, given the practical difficulties in identifying private users and obliging them to compensate rightholders for the harm caused to them, it is open to Member States to establish a ‘private copying levy’ for the purposes of financing fair compensation, chargeable not to the private persons concerned but to those who have the digital reproduction

⁸³ Recommendation, p. 12.

⁸⁴ Court of Justice of the European Union (Third Chamber); Judgement of the Court. Case 462/09. Stichting de ThuisKopie / Opus Supplies Deutschland GmbH, M. van der Lee, H. van der Lee. 16 June 2011. N.p. Available at: <http://curia.europa.eu/juris/document/document.jsf?jsessionid=9ea7d0f130d5e16e5e0d29c145a0ab80eb8a59d11dfa.e34KaxiLc3eQc40LaxqMbN4OahmTe0?text=&docid=85089&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=3766952> [accessed September 4, 2013].

equipment, devices and media and who, on that basis, in law or in fact, make that equipment available to private users or who provide copying services for them. Under such a system, it is the persons having that equipment who must discharge the private copying levy. (point 27)

With this recommendation, the mediator is proposing to extend the principle that in cases of distance sales occurring from a EU Member State to consumers being located in another Member State where a levy system is in place, the distance seller should be held responsible for the payment of those levies being applicable in a country where such a consumer is located (country of destination) to the distributors, manufacturers or importers which have to pay the levies in the first instance based on local copyright laws.

Thus a proposed fundamental change of the status quo is not necessary and helpful, as 18 out of 23 EU Member states have put exports refunds and/or exemption schemes in place.

Whenever a device or storage media is crossing a national border within the EU, the importer has to pay the given levy in his country regardless of the levies that have already been paid in other Member States. Consequently, in the majority of cross-border transactions products are, at least, levied twice: first in the Member State where they are manufactured (or imported from outside the EU), and a second time in the Member State into which they are imported in order to be sold to the final customer.⁸⁵

In all cases when it is clear that the imported product will be re-exported, the levy which normally has to be paid when the product is imported is not applied (exemption scheme). This regulation is in place in Germany⁸⁶ and also in other EU-countries like France, Spain, Austria and Belgium.⁸⁷ For all other cases of double payments of different tariffs or in cases in which only storage media and not hardware is subject to a levy in the country of re-export, the Member States have put refund systems in place (based on Art 5 Abs 2b of the Directive).

In Germany, ZPÜ has concluded agreements between the associations of importers and manufacturers⁸⁸ and ZPÜ (representing all German collecting societies) entitling the importers and manufacturers to deduct the levies paid for exported hardware and storage media from the levies to be remunerated by them.⁸⁹ The same refund system applies in Germany

⁸⁵ Ibid.

⁸⁶ Info received from ZPÜ.

⁸⁷ Info received from Eurocopya.

⁸⁸ Interview with Dr. Till Zimmer, Legal Director of ZPÜ.

⁸⁹ Bitkom, BCH, ZiZCO

when the concerned devices and storage media are exported not by the original importer or manufacturers being subject to the levy, but by a downstream trading channel. The general agreements also make provision for claims in favour of third parties.

The question as to whether a remuneration system, under which an obligation to pay levies also exists for those companies that re-export hardware and storage media before selling them to the end user, constitutes fair compensation within the meaning of the Copyright Directive, when the party liable to pay the levy is entitled to claim a refund from the collecting society was referred by the Austrian Supreme Court to the ECJ.⁹⁰

On July 11, 2013 the ECJ (second chamber) made in that case C-521/11 the following judgement:

In the light of the foregoing observations, the answer to the fourth question is that Article 5(2)(b) of Directive 2001/29 must be interpreted as meaning that the obligation undertaken by a Member State to pay, on the placing on the market, for commercial purposes and for consideration, of recording media suitable for reproduction, a private copying levy intended to finance the fair compensation under that provision may not be excluded by reason of the fact that a comparable levy has already been paid in another Member State. (Point 66)

Furthermore, the ECJ stated in this judgement that “a person who has previously paid that levy in a Member State which does not have territorial competence may request its repayment in accordance with its national law.” (Point 65)

Following this, the Member States having put refund systems in place are acting according to EU law.

IV.1.3.2. Shifting of the liability to pay levies to the retailer level to comply with the ECJ ruling in the Padawan vs SGAE case C-467/08

The recommendation proposes to “Shift the liability from the manufacturer’s or importer’s level to the retailer’s level while at the same time simplifying the tariff system [.]”⁹¹

⁹⁰ Court of Justice of the European Union (Second Chamber); Judgement of the Court. Case C-521/11. 11 July 2013. N.p.. Available at: <http://curia.europa.eu/juris/document/document.jsf?text=&docid=139407&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=4471445> [accessed September 5, 2013].

⁹¹ Recommendation, p. 15.

All Member States which make use of introducing a private copying exception to the authors' exclusive reproduction right laid down in European Union law (Directive 2001/29/EC Article 5(2)) must provide for the payment of fair compensation to authors affected by the application on that exception.⁹² Therefore, in principle all products capable of making copies can be subject to the levy system.

In October 21, 2010 the ECJ (third chamber) has judged in the case C-467/08 (Padawan) that

a system for financing fair compensation [...] is compatible with the requirements of a 'fair balance' only if the digital reproduction equipment, devices and media concerned are liable to be used for private copying and, therefore, are likely to cause harm to the author of the protected work. There is therefore, having regard those requirements, a necessary link between the application of the private copying levy to the digital production equipment, devices and media and their use [emphasis added] for private copying.

Consequently, the indiscriminate application of the private copying levy to all types of digital reproduction equipment, devices and media, including in the case expressly mentioned by the national court in which they are acquired by persons other than natural persons for purposes clearly unrelated to private copying, does not comply with Article 5(2) of Directive 2001/29. (point 52 and point 53)

Based on that judgement a distinction has to be made between digital devices and media supplied to private end users and those products that "are left to non-private users and are clearly reserved for uses other than the production of private copies."⁹³ These latter transactions do not have to be subject to the private copying levies.

For Mr. Vitorino, the simplest, clearer and economically more justifiable way to take this differentiating requirement into account is to limit the obligation to pay the levies to the retailers (as the final point of sales) that sell the devices and media to a natural person as a private user, as private copy levies should apply exclusively to purchases made by natural persons.

As the retailer sells to end users, he is in a position to recognise whether the customer is a private or non-private user. Mr. Vitorino stated that in cases where this is not clear using a VAT-number for a purchase could, for example, be a strong indication that a product will not be used for private purposes.⁹⁴

The proposed limitation of the private copy levies for devices and storage media only to products sold to private users and the exemptions for all professional users (without the

⁹² Directive 2001/29/EC. Point 36.

⁹³ ECJ Padawan guiding principle No. 3.

⁹⁴ Recommendation, p. 15 and 16.

limitation of this exception for professional use) has to be seen as a new exemption not being covered by Directive 2001/29/EC. This recommendation however seems to be at odds with the ECJ ruling in the Padawan case. In the guiding principle 3 of the Padawan judgement the ECJ clarified that professional uses should be excluded, but not all professional users.

It is correct that with the private copy levy systems being in place in which the levies have to be paid by the manufacturers and importers of the devices and media it is general not known who the subsequent end users of the levied products will be.

To fulfil the requirement of the Padawan decision to differentiate between private and non-private use, the EU Member States have established refund- or certification/exemption-models.

In Germany, institutions under public law (e.g. hospitals, prisons, courts) and state facilities are seen as non-private end users. Importers and manufacturers being liable to pay the private copying levy can be exempted ex ante when selling directly to these kinds of institutions or facilities. This can be done very easily by filling a formulary at ZPÜ for this institution or state facility. The procedure only has to be performed once and is published on the website of the ZPÜ in order to inform all manufacturers and importers of devices and media that this entity has a certificate and is exempted ex ante.

However, this ex ante exemption can only be used in all cases of direct sales in which manufacturers and importers supply the devices and storage media directly to the non-private end users.

Furthermore, all other commercial end users are able to be refunded ex post by the umbrella organisation of collecting societies (ZPÜ in Germany). It is only necessary to fill in a formulary confirming that e.g. the bought DVDs are used for business purposes only. With this formulary together with the invoice of the bought device and/or storage media, the commercial end user will be reimbursed for any remuneration paid in excess after it has been checked that the private copying levy has been paid by the manufacturer or importer at the beginning of the sales-chain.

The question if the indiscriminate collection of a private copying levy on the first sale of recording media may under certain conditions be compatible with EU law was brought by the Oberster Gerichtshof (Supreme Court, Austria) to the Court of Justice seeking a ruling on the interpretation of the relevant provision (Article 5(2)(b)) of Directive 2001/29/EC in case C-521/11.⁹⁵ In that case C-521/11 the Court (second chamber) judged on July 11, 2013 that

Article 5(2)(b) of Directive 2001/29 must be interpreted as meaning that it does not preclude legislation of a Member State which indiscriminately applies a private copying levy on the first placing on the market in national territory, for commercial purposes and for consideration, of recording media suitable for reproduction, while at the same time providing for a right to reimbursement of the levies paid in the event that the final use of those media does not meet the criteria set out in that provision, where, having regard to the particular circumstances of each national system and the limits imposed by Directive 2001/29, which is for the national court to verify, practical difficulties justify such a system of financing fair compensation and the right to reimbursement is effective and does not make repayment of the levies paid excessively difficult.

This judgement is covering the procedure European collecting societies have put into place to comply with the ECJ's ruling in the Padawan case in such a way that non-private end users can be exempted ex ante through a "certification model" or based on ex-post reimbursement through collecting societies (refund model).⁹⁶

By shifting the liability to pay the levies to the retailers the enforcement of these levy systems would be much more complicated and not simplified at all. The levy would have to be paid by a large number of retailers which are in their majority SME's⁹⁷ instead of a limited group of importers and manufacturers. The expenses for administration as well as for the legal enforcement of the claims would be many times higher than at present.

ZPÜ in Germany is dealing today with 600 manufacturers and importers and assumes that the number of relevant retailers in Germany would be twenty times higher.

The administrative expense involved in the implementation of the blank tape levy systems as well as the costs for the legal enforcement of these claims against the industry liable but unwilling to pay or to give information are now Euro 5 million in Germany⁹⁸ and would very probably increase immensely. Furthermore, the necessary changes in the national copyright

⁹⁵ Cf. fn 89.

⁹⁶ Information provided by the managements of producers societies organized in Eurocopya (www.eurocopya.org)

⁹⁷ SME: Small and medium-sized enterprises. For the official EU-definition see: http://ec.europa.eu/enterprise/policies/sme/facts-figures-analysis/sme-definition/index_en.htm [September 5, 2013].

⁹⁸ Interview with Dr. Till Zimmer, Legal Director of ZPÜ.

laws would take some time and would lead to disadvantages by the loss of revenues for the rightsholders and high enforcement costs as shifting the liability to pay the levies to retailers would mean to enforce them again for this new group.

As the existing ex-ante exemption and ex-post reimbursement models are in compliance with the Padawan ruling which was decided by the ECJ in case C-521/11 and the shifting of the levy liability to retailers would be cost intensive, there is no need to change the national copyright laws to implement this recommendation.

IV.1.3.3. Visibility of levies to the end users

It is recommended to create an obligation to make the statutory remuneration for private copying being included in the purchase price of storage media visible to the final customers.

The recommendation states:

“Make levies visible for customers.”⁹⁹

This is a very important issue in terms of transparency. As found out through the pretest research (see annex) customers do not know at all about the levy being included in the price they are paying for the device or the storage media.

In the Padawan vs SGAE case (C-467/08), the ECJ stressed that

nothing prevents those [manufacturers and importers] liable to pay the compensation from passing on the private copying levy in the price charged for making the reproduction equipment, devices and media available or in the price for the copying service applied. Thus, the burden of the levy will ultimately be born [sic!] by the private user who pays that price. In those circumstances, the private user for whom the reproduction equipment, devices or media are made available or who benefit from a copying service must be regarded in fact as the person indirectly liable to pay fair compensation. (point 48)

This judgement was confirmed in case C-462/09 (Stichting de ThuisKopie / Opus Supplies Deutschland GmbH, M. van der Lee, H. van der Lee).

Therefore, the applied levy should be separately shown on the invoice of the final consumers. This provision to make the levy visible for the consumer (final customer) is already im-

⁹⁹ Recommendation, p. 19.

plemented in France.¹⁰⁰ Without being separately indicated on the final consumers invoice, a refund of this levy is not possible under French copyright law.

If the levies are shown on invoices to the final customers, it would facilitate the refund of remunerations to non-private users as the collecting societies versus their umbrella organisations could much easier verify whether the remuneration had been paid by the manufacturers or importers. Therefore, this recommendation is to be welcomed.

Furthermore, consumers paying this levy should be adequately informed about the underlying copyright exception (allowing them to make private copies). France has put this demand for information into the French copyright¹⁰¹ by stating that the consumer should receive a brochure relating to the remuneration and its purpose. Additionally, this brochure also has to provide information on the possibility of concluding agreements for exception or reimbursement for that levy in case the bought storage media is only used for professional purposes. Violations of these regulations are punished with a fine of no more than Euro 3,000.¹⁰²

IV.1.4. Standardisation of the term “harm” and the process for drawing up tariffs

IV.1.4.1. Harmonisation of the term “harm”

The varying approaches taken by the EU Member States in the EU concerning the determination of products subject to levies and towards the methodology for setting the tariff is in Mr. Vitorino’s opinion an obstacle to the free movement of goods and services in the Internal Market.¹⁰³

In his opinion, no comprehensive harmonisation in regards to the goods subject to levies and the applicable tariffs is necessary but a harmonisation of the methods of establishing the remuneration, in particular the term ‘harm’ and the procedure of drawing up tariffs.

¹⁰⁰ LOI n° 2011-1898 du 20 décembre 2011 relative à la rémunération pour copie privée. 20 December 2011. N.p, article 3 § I. Available at: www.droit-medias-culture.com/Loi-no-2011-1898-du-20-decembre.html [accessed September 5, 2013].

¹⁰¹ Cf. *ibid.*

¹⁰² Cf. *ibid.*, Article 3.

¹⁰³ See: Recommendation, p. 19.

A uniform definition of the term “harm” is proposed as a starting point for standardizing the process. The recommendation proposes to:

Ensure with regard to the process of setting levies by defining ‘harm’ uniformly as the value consumers attach to additional copies in question (lost profit).¹⁰⁴

In countries like Germany, France, Belgium, Austria and Switzerland – which all introduced a private copyright exemption with remuneration systems for that exemption in their national copyright laws before the EU reacted with the Copyright Directive 2001/29/EC – these remuneration systems are not limited to the level of harm rightsholders can suffer from that exception, but extended to a claim for equitable remuneration.

Nevertheless, Article 13 (1a + 1b) of the Directive 2004/48/EC¹⁰⁵ on the enforcement of intellectual property rights provides guidance how the damage should be calculated (e.g. negative economic consequences including lost profits or amount of royalties or fees applicable when a proper authorization would have been requested (Art 13(1)(b)).

Furthermore, the ECJ in the judgement in case C-467/08 (Padawan vs SGAE) clarified that

in order to determine the level of that compensation, account must be taken – as a ‘valuable criterion’ – of the ‘possible harm’ suffered by the author as a result of the act of reproduction concerned[.] (point 39)

and that

fair compensation must be necessarily be calculated on the basis of the criterion of the harm caused to authors of protected works by the private copying exception. (point 42)

Insofar, Mr. Vitorino’s statement that “the current legal framework is silent on what constitutes harm”¹⁰⁶ is not applicable.

Even if one would assume that all Member States would agree on the definition of ‘harm’ as lost profit with regards to the process of tariff setting, this would not lead to a harmonisation of the levies for private copying in the EU.

Mr. Vitorino proposed to calculate the lost profit on hypothetical license fees the rightsholders would have obtained.¹⁰⁷ As the license fees are very different between EU Member

¹⁰⁴ Recommendation, p. 21.

¹⁰⁵ European Parliament and the Council of the European Union; Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights. 29 April 2004. N.p. 2004. Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:195:0016:0025:en:PDF> [accessed September 5, 2013].

¹⁰⁶ Recommendation, p. 20.

States as they are based on various factors like purchase power in the given Member State as well as the copyright protected work as such (e.g. Blockbuster new/old, documentary)¹⁰⁸ the ‘harm’ and therefore the levies in the various EU Member States would be different, too.

Furthermore – as discussed under IV.1.3.1. – different remuneration systems are not leading to double payments of the levy as by implementation of refund or exemption schemes in place, the levy is only paid in the country of destination.

IV.1.4.2. Process for drawing up tariffs

The Recommendation suggests that the procedure for drawing up tariffs should be streamlined. It advises to

Ensure more coherence with regard to the process of setting levies by providing a procedural framework that would reduce complexity, guarantee objectiveness and ensure the observance of strict time-limits.¹⁰⁹

Additionally, the following time table is proposed:

- 1) In the case of a new product being introduced on the market, the decision as to the applicability of levies should be taken within 1 month following its introduction. The provisional level of tariffs applicable should be determined not later than within 3 months following its introduction.
- 2) The ultimate level of the applicable levy should, to the extent possible, not be superior to the one imposed temporarily. If nevertheless this were the case, the resulting difference should be payable gradually and could be split into several installments.
- 3) The final tariff applicable to a given product should be agreed or set within 6 months period from its introduction to the market.¹¹⁰

Collecting societies have repeatedly complained about the length and burdensome process to bring new devices and storage media into the existing levy systems. Therefore, streamlining the tariff setting in general is well-founded and advisable but the currently proposed timeframe is unrealistic.

All countries where collecting societies have to negotiate and agree on the new tariffs with the industry – as the tariffs are not set by law – are struggling with an increased number of

¹⁰⁷ Recommendation, p. 20.

¹⁰⁸ Information obtained from Motion Pictures Association European Office, Brussels (European representation of the MPAA, involved in Europe-wide licensing).

¹⁰⁹ Recommendation, p. 29.

¹¹⁰ Recommendation, p.22.

court proceedings from the industry whose products would be affected to delay or even block any payments for private copying. In Germany, collecting societies have to publish tariffs which are based on empirical studies on how new products enabling private copying by consumers are used. This procedure is time and money consuming. Furthermore, the published tariffs are not binding and do therefore not oblige the industry neither to accept nor to pay. The following court procedures can take up to a decade from the first filing up to a national binding ruling by the Federal Court of Justice (BGH). As a consequence, the collection of the private copy levies is decreasing while the money spent for these proceedings is increasing.

Speeding up the procedure for fixing tariffs – even if the recommendation could be implemented – would not mean at all that the corresponding payments would be made simultaneously.

IV.1.5. Summary

Mr. Vitorino failed to understand the relationship between private copies being covered by the private copying exception (including levies) and copies made by the first download which are covered by the contractual license in the online sector. His assumption that the license granted to an online provider covers all copies made by the private users is not correct, as contractual licenses for private copies (copies made from the first download) are *de lege lata* not possible as these copies are already permitted by the exception of the private copying.

The coexistence of the contractual license for the first download and the private copy exception including a fair compensation was confirmed by the ECJ.¹¹¹

The recommendation to pay the levies only in the country of destination would lead to a fundamental change in the status quo within the EU. This fundamental change is not necessary, as 18 out of 28 EU Members have put ex post refunds and /or exemption schemes in place. The ECJ has confirmed that these refund systems are in accordance with EU law.¹¹²

¹¹¹ Cf. fn 82.

¹¹² Cf. p. 50.

Also, the recommendation to shift the obligation to pay the levies from the importers and manufacturers to the retailers would entail fundamental changes in national copyright laws inducing high enforcement costs. As in practice ex-ante exemption and ex post reimbursement are in place, no justification for such fundamental change in the system is given.

The recommendation that levies should be made visible for the customers is very welcomed but should be supported by additional information.

The proposal to define “harm” uniformly as lost profit would not lead to a harmonisation of private copy levies without a solution for the calculation of said lost profit. Furthermore, it is not necessary as the current legal framework is not silent on what constitutes harm.

The recommendation to streamline the procedure of drawing up tariffs is – in general - welcome, but the proposed timeframe is unrealistic.

After unsuccessful attempts in 2004, 2006 and 2008, the European Commission failed again in 2013 to find ways to harmonize the remuneration systems in Europe.

IV.2. Results of alternatives to the device/storage media based levies and of phasing-out of these levies¹¹³

IV.2.1. Results of alternatives to the levies in place in the EU

1. The proposal that the “fair compensation” which has to be paid according to article 5(2)b) of the EU Directive¹¹⁴ for private copying should be included in the license fee was also picked up by Mr. Vitorino’s recommendation. The reasons for rejecting such a proposal are based on the same arguments used in rejecting Mr. Vitorino’s recommendation (see chapter IV.1.).

2. As mentioned under III.5.1.b the proposal to switch the liability for paying the fee from the manufacturers or importers to the consumer is strictly speaking not an alternative to the device/storage media based levy systems and was brought up to make the ECJ decision in

¹¹³ The proposal to introduce a “culture flat rate” which would allow Internet users by paying a fixed amount to remix and share copyright protected works for private purposes and its possible extension to private copying will not be dealt with here as such a ‘general’ flat rate without a connection to the harm caused is not in accordance with Article 5 of Directive 2001/29/EC.

¹¹⁴ Directive 2001/29/EC.

the Padawan case possible. Mr. Vitorino has also picked up this point in his recommendation. Here, the reasons for rejecting such a proposal correspond to the grounds for rejection of Mr. Vitorino's recommendation, too.

3. Furthermore, it is proposed to pay the copyright levies out of public funds. The suggested options are to pay the levies a) out of the state budget b) out of a broader radio and television fee or c) out of R+D funding or lottery programs. The proposal to switch the levy based system to this alternative system by paying the "fair compensation" for the private copy exception out of public funds - e.g. out of the state budget - would not require an amendment in Article 5 of the EU Copyright Directive 2001/29/EC.

Article 5(2)b) is only talking about "fair compensation" and leaves it up to the Member States how they will arrange the payment for this fair compensation. They are not obliged to introduce levy systems (Recitals (35) and (38)).

Therefore, Norway has decided to compensate rightsholders for private copying through the State Budget. The harm for the rightsholders is determined year by year through studies on the use of copyright protected works. In 2012, Norway has allocated Euro 5.5 Million out of the state budget as "fair compensation".

On Dec 30, 2011, the Spanish government has adopted the Royal Decree 1889/2011¹¹⁵ on urgent tax and budget measures. With this decree, the Spanish government as of January 1, 2012 has abolished the private copy levy system mentioned in Article 25.4 CPI (Ley de Propiedad Intelectual – the Spanish Copyright Act of 1996) and has decided to pay the fair compensation out of the State Budget. The Spanish government has assigned 5 Million Euros as fair compensation out of the state budget for 2012 and 2013 while in 2011 the amount paid by manufacturers, importers and distributors of devices and storage media based on the levy system in place was 61.9 Mio Euros.

Such a complete modification of the private copy levy system raises questions in regards to its compatibility with the Copyright Directive 2001/29/EC and the ECJ ruling in the case C-467/08 (Padawan).

¹¹⁵ Real Decreto N° 1889/2011, de 30 de diciembre de 2011, por el que se regula el Funcionamiento de la Comisión de Propiedad Intelectual. Available at: <http://www.wipo.int/wipolex/en/details.jsp?id=11770> [accessed February 3, 2014].

As mentioned earlier (see Chapter IV.1.3.2.), the ECJ has decided in Case C-467/08 that the indiscriminate application of the private copying levy to all types of digital reproduction equipment, devices and storage media which are acquired by persons other than natural persons for purposes clearly unrelated to private copying does not comply with Article 5(2) of Directive 2001/29/EC.

Based on the ECJ ruling that an indiscriminate application of the copyright levy to all users of such devices, equipment and storage media is incompatible with Directive 2001/29/EC, charging the levy through the State Budget built by all users and even non-users of such equipment, devices and media also can't be in conformity with Directive 2001/29/EC.

IV.2.2. Results of “phasing-out of levies”

In principle, the legal framework of the Copyright Directive 2001/29/EC supports the use of generally called “Digital Rights Management” (DRM) systems by protecting technical measures and by requiring Member States to take into account the application or non-application of technical measures when providing for fair compensation in the context of the private use exception for which fair compensation is required.¹¹⁶ When such DRM systems are in place and are operational and effective, rightsholders should be able to ensure the exploitation of their rights together with an adequate revenue stream by using these DRM systems.

The EU Commission has referred to an abolishment of levies in a world where rightsholders have at their disposal the technical means to control private copying. “It is expected that digital technology may allow the effective control of private copying, and the replacement of levy schemes by individual licensing solutions which are under development (in the context of “electronic copyright management”), at least in the on-line environment.”¹¹⁷

Certain copyright levies may eventually be replaced by effective technical measures. Indeed, a growing use of technological measures should eventually lead to a natural, market driven phasing out of levies.

¹¹⁶ Recital 35 and Article 5(2)b).

¹¹⁷ Commission of the European Communities; Commission Staff Working Paper: Digital Rights. Background, Systems, Assessment. SEC (2002) 197. Brussels 2002.

Past experience has shown that DRM systems have not been accepted by the users as the DRM systems which were in place splintered the market due to various formats and DRM schemes. Furthermore, it was easy to circumvent these DRM systems.

In 2008, the US Major Companies Fox, Paramount, Universal, Sony and Time Warner (ex Walt Disney Studios) have tried to launch a new initiative called "Open Market". Open Market is a set of policy decisions and a software and service framework that would allow interoperability of various formats and DRM schemes.¹¹⁸ However, the "Open Market"-DRM system was not accepted and is not in place as of today.

On March 27, 2012 the Court of Appeal in The Hague has ruled that the abolition of the compensation for private copying is contravening Directive 2001/29/EC if no alternative system is established to ensure that the rightsholders receive fair compensation.¹¹⁹¹²⁰

IV.2.3. Summary

As shown in the results of alternatives to the levies in place in the EU (IV.2.1.), these alternatives will not lead at all to a harmonisation of the levy systems in Europe and are either *de lege lata* not possible (license granted to an online provider covers all copies made by the private user afterwards) or is not in conformity with Directive 2001/29/EC. This lack in conformity pertains to all proposals to pay the levies out of the state budget, out of a broader radio or television fee, or out of R+P funding or lottery programs in which there is no direct link between the user of the levied devices and storage media and the payment for the fee being made by the community or groups of the community.

¹¹⁸ Arrington, Michael; Movie Labels To Launch New "Open Market" Play Anywhere Scheme As Last Ditch Effort To Save DRM. 26 August 2008. Available at: <http://techcrunch.com/2008/08/26/movie-labels-to-launch-new-open-market-play-anywhere-scheme-as-last-ditch-effort-to-save-drm/> [accessed February 4, 2014].

¹¹⁹ European Parliament; Answer given by Mr. Barnier on behalf of the Commission. OJ C 180 E, 21/06/2012. Available at: <http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2011-010727&language=EN> [accessed February 4, 2014].

¹²⁰ Court of Appeal The Hague; Case nr: 200.074.515/01, Court case nr: 313094/ HA ZA 08-1916, Foundation NORMA vs The State of the Netherlands. The Hague 2012. Available at: <http://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:GHSGR:2012:BV9880> [accessed February 4, 2014].

Furthermore, the results of the proposal of “Phasing-out of levies” (IV.2.2.) and their welfare effects cannot be interpreted as a viable alternative system to the compensation for private copying through the levy system. DRM systems which could lead to a natural and market driven phasing out of these levies are at least currently not accepted and circumvented by the users, which prompted several companies like Paramount and Universal to forgo DRM systems for their products.

In regards to the often contradictory results of studies commissioned by different interest groups in regards to probable welfare effects for consumers, manufacturers of devices and blank media and rightsholders, it can be assumed that this mostly points to an urgent need for qualified studies carried out by an independent authority. Only economically sound and fully independent studies on the welfare effects of studies and their impact on retail prices can give a clear picture. Studies commissioned by the EU Commission would be an obvious solution.

V. Recommendation for the harmonisation of private copying levies on EU level

V.1. Recommendation for a long term solution

Whenever the European Commission launched any legal action in the past to review, harmonise or modernise copyright related issues, the Commission has exercised their Union's competence by adopting directives. Based on Article 288(3) TFEU (ex Article 249 TEC) "[a] directive shall be binding, as to the result to be achieved upon each Member State to which it is addressed but shall leave to national authorities the choice of form and methods."¹²¹

When adopting Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society in May 2001, the adoption of a Directive was one of the possible legal acts of the EU. At the time, the EU didn't have any mandate to replace the local legislator in the given Member States in the field of intellectual property rights and therefore in the field of copyright. The Treaty on European Union (TEU)¹²² including modifications resulting from the amendments introduced by the treaties of Maastricht, Amsterdam and Nice which was in place in 2001 did not include an expressed legal basis to assign any competence on copyright issues to the European Community.¹²³

Apart from references in Article 30 and Article 133 TEU giving competence for international negotiations, the intellectual property right was not mentioned in the Treaty on European Union.¹²⁴

Therefore, the Directive 2001/29/EC dealing with the harmonisation of certain aspects of copyright was based on the more general authorization given by Art. 47(2), 55 and 95 TEU. These articles empowered the EU to harmonize the laws of the Member States on copyright

¹²¹ Official Journal of the European Union 2012/C 326/01; Consolidated version of the Treaty on the Functioning of the European Union (TFEU). Article 288.

¹²² Official Journal of the European Union 2012/C 326/01; Consolidated version of the Treaty on European Union. P. 13 ff. Available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:C:2012:326:TOC> [accessed April 11, 2014].

¹²³ Cf. Reinbothe, Jörg; Geistiges Eigentum und die Europäische Gemeinschaft. In: Zeitschrift für Europäisches Privatrecht 2000, 10.

¹²⁴ Cf. Schippan, Martin; Die Harmonisierung des Urheberrechts in Europa im Zeitalter von Internet und digitaler Technologie. Schriftenreihe des Archivs für Urheber-, Film-, Funk- und Theaterrecht. Baden-Baden 1999.

to establish an internal market and ensure that competition in this internal market is not distorted.

As shown in chapter IV.1., Directive 2001/29/EC did neither manage to harmonise the copyright exceptions nor the involved devices and storage media and also not the resulting private copying levies as each Member State is free to adapt its local laws to meet the end result laid down in that EU Directive. These divergent national ways of imposing and administering the private copy levies are seen as a source of friction with the internal market principles of the free movement of goods and services. Therefore, the EU Commission has reflected in its communication of May 24, 2011 “A Single Market for Intellectual Property Rights - Boosting creativity and innovation to provide economic growth, high quality jobs and first class products and services in Europe”¹²⁵ on how to create a single market for intellectual property rights in order to boost creativity and innovation.

As one of the key policy initiatives listed in this communication, the mediation process of Mr. Vitorino was mentioned with the goal of exploring

possible approaches with a view to harmonising the methodology to impose levies, improve the administration of levies, specifically the type of equipment that is subject to levies, the setting of tariff rates, and the inter-operability of the various national systems in light of the cross-border effects that a disparate levy system has on the internal market.¹²⁶

As shown in chapter IV, the recommendation made by Mr. Vitorino failed to achieve these goals, too.

Another option to stop the ongoing European debate concerning the private copying exceptions together with the involved levies is a unification of the copyright acts in the EU based on Article 118 TFEU.

On December 1, 2009 the Treaty of Lisbon¹²⁷ entered into force and amends the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU). Article 118 TFEU authorizes the EU, in the context of the internal market, to create unitary intellectual property rights.

¹²⁵ A single market for intellectual property rights.

¹²⁶ A Single Market for Intellectual Property Rights. P. 12-13.

¹²⁷ The Treaty of Lisbon clarifies the division of competences between the European Union (EU) and Member States. It introduces a precise classification for the first time in the founding treaties, distinguishing between three main types of competence: exclusive competences, shared competences and supporting competences. Cf.: Official Journal of the European Union 2007/C 306/01; Treaty of Lisbon. Amending the Treaty on European Union and the Treaty establishing the European Community.

IPR (Intellectual Property Rights) comprise industry property rights such as patents, trademarks, designs and geographical indications copyright and rights related to copyright (neighbouring rights).¹²⁸

As seen in the past, Directive 2001/29/EC has not led to any harmonisation. Therefore, it is necessary that the EU uses the measure of a regulation to put in place a European copyright system as “regulations are the most direct form of EU law – as soon as they are passed, they have binding legal force throughout every Member State, on a par with national laws. National governments do not have to take action themselves to implement EU regulations.”¹²⁹ With this legislative tool, the obstacle of the Member States different levy systems which are causing distortions of the internal market can be overcome.

Furthermore, an updated and more flexible legal framework concerning copyright exceptions in the digital age can be introduced to give industry, users and rightsholders the opportunity to take advantage of the internal market as a whole.

According to Article 4, 2a TFEU the Union (EU) shares the competence with the Member States in the area of the internal market. “Shared competences” according to Article 4 TFEU mean that “the EU and Member States are authorised to adopt binding acts in these fields. However, Member States may exercise their competence only in so far as the EU has not exercised, or has decided not to exercise, its own competence”.¹³⁰

The exercise of competence of the EU is subject to three fundamental principles which are laid down in Article 5 TEC:

- 1) the principle of conferral: the Union has only the competences conferred upon it by the treaties (Article 5.1. + 5.2. TEC)
- 2) the principle of proportionality: the exercise of EU competences may not exceed what is necessary to achieve the objectives of the Treaties (Article 5.4. TEC)
- 3) the principle of subsidiarity: for shared competences, the EU may intervene only if it is capable of acting more effectively than the Member States (Article 5.3. TEC)

¹²⁸ Cf. A Single Market for Intellectual Property Rights. P. 3.

¹²⁹ European Commission; What are EU regulations?

http://ec.europa.eu/eu_law/introduction/what_regulation_en.htm [accessed March 4, 2014].

¹³⁰ Treaty on the Functioning of the European Union.

Up to now, the principle of subsidiarity was never treated as a serious obstacle by the ECJ.¹³¹ The principle of proportionality requests that the measures taken by the EU are to be suited, required and appropriate.

The ECJ (Grand Chamber) in Case C-479/04 *Laserdisken ApS v Kulturministeriet* ruled in recital 33 that

the Treaty provides for the establishment of an internal market and the institution of a system ensuring that competition in the internal market is not distorted, and harmonisation of the laws of the Member States on copyright and related rights contributes to the achievement of these objectives.¹³²

As the unification of the copyright and the neighbouring rights is not only necessary but essential for an effective operation of the internal market principle, regulation based on Article 118 TFEU are possible.

A unified copyright system could be based on a unitary copyright code replacing national laws or on optional EU-wide copyright code which might co-exist with distinct national copyright laws.¹³³

Needless to say that establishing a unitary EU copyright legislation will not be an easy task. Unlike the homogeneity of the US market, the copyright laws and practice in the various Member States vary considerably. The significant differences between copyright regulations and systems being in place are especially based on the different copyright approaches between common-law-country Great Britain where copyright law is based on case law developed through court decisions and the other continental EU civil-law-countries where copyright issues are handled through legal codes.

Furthermore, languages, markets and cultural traditions are different from Member State to Member State which will lead to the result that EU Member States will try to protect their cultural diversities and identities.

The “Green Paper on the online distribution of audiovisual works in the European Union: opportunities and challenges towards a single digital market” published by the Commission

¹³¹ Lienbacher, Georg in: Schwarze, Jürgen (Hrsg.); EU-Kommentar. Baden-Baden 2 2005.

¹³² Case C-479/04. Available at:

<http://curia.europa.eu/juris/showPdf.jsf?text=&docid=63876&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=50623> [accessed March 4, 2014].

¹³³ Mazziotti, Giuseppe; Copyright in the EU Digital Single Market. Report of the CEPS Digital Forum. Brussels 2013.

on July 13, 2011,¹³⁴ referred to such a unitary EU copyright code. The Commission undertook in the “IPR Strategy”¹³⁵ to examine the more far-reaching approach of the creation of a comprehensive unitary European Copyright Code. Such a unitary European Copyright Code could be based on a codification of the existing EU copyright directives where the need to go beyond the current harmonisation will be examined. It could also provide the opportunity to examine whether the exceptions and limitations to copyright allowed under the Information Society Directive¹³⁶ need to be updated.

In addition to such a code, the feasibility of creating an optional unitary copyright title on the basis of Article 118 TFEU could be examined.¹³⁷ An optional title could be made available on a voluntary basis and co-exist with national titles. Future authors or producers of audiovisual works would have the option to register their works and then obtain a single title that would be valid throughout the EU. The feasibility, actual demand for and the tangible advantages of such a title, together with the consequences of its application alongside existing territorial protection must be thoroughly examined.

Based on Article 118 TFEU, the EU has put in place unitary patent protection on December 11, 2012.¹³⁸ An agreement for this unitary patent protection was reached with 25 Member States. Only Spain and Italy abstained.¹³⁹ The creation of uniform protection in the area of industrial property rights like trademarks, models and design and patents is much easier as these industrial property rights are not acquired automatically on the basis of international treaties or national legislation. Such rights and their protection depend on fulfilling formalities, especially registration. They can be contested and confirmed by the “EU Copyright Office”.

¹³⁴ European Commission; Green Paper on the online distribution of audiovisual works in the European Union: opportunities and challenges towards a digital single market. COM(2011) 427 final. Brussels 2011. Available at: http://ec.europa.eu/internal_market/consultations/docs/2011/audiovisual/green_paper_COM2011_427_en.pdf [accessed March 10, 2014].

¹³⁵ Cf. A Single Market for Intellectual Property Rights.

¹³⁶ Directive 2001/29/EC.

¹³⁷ Cf. A Single Market for Intellectual Property Rights.

¹³⁸ European Parliament and the Council of the European Union; REGULATION (EU) No 1257/2012 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 17 December 2012 - implementing enhanced cooperation in the area of the creation of unitary patent protection. Brussels 2012. Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:361:0001:0008:en:PDF> [accessed March 10, 2014].

¹³⁹ Court of Justice of the European Union (Grand Chamber); Judgement of the Court. C-274/11 and C-295/11. 16 April 2013. N.p.. Available at: <http://curia.europa.eu/juris/document/document.jsf?jsessionid=9ea7d0f130d6f560e26bac5949129437fbc49ac0c01a.e34KaxiLc3eQc40LaxqMbN4OaN4Le0?text=&docid=136302&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=18708> [accessed March 10, 2014].

The situation is different concerning copyright. Rightsholders are protected as soon as the work is created. Based on the Bern Convention,¹⁴⁰ the TRIPS Agreement¹⁴¹ and the WIPO Copyright Treaty (WCT)¹⁴² the work is protected all over the world. Furthermore, a European registration system being envisaged as a formality that would be a condition for the actual exercise of copyright would be in clear contradiction with the Berne Convention (Article 5.2).

An EU copyright law or a unitary European Copyright Code (not including fulfilling any formalities in order to exercise the rights) has to harmonize the copyright systems in place in the Member States in full compliance with international treaties as well as at a high level of protection since such rights are crucial to intellectual creation.¹⁴³ EU law is following this direction by seeking to establish a high level of protection for authors of works, allowing them to obtain an appropriate reward for the use of the works.¹⁴⁴

This principle has to be taken into account in order to avoid that the Member States agree on a single EU copyright title on the lowest common level. A unified copyright system in Europe will be a long term solution and will include significant changes of the existing national copyright laws.

V.2. Recommendation for a short term solution

As shown under V.1., the introduction of an EU Copyright Code or an optional unitary Copyright title will take a very long time and most likely decades to achieve given the different laws and views across the EU and will most likely raise a number of issues based on the complexity of the task.

The issue of private copying levies has been discussed at EU level for years and especially in the recent past, first by the recommendations on private copying levies published by the EU

¹⁴⁰ Berne Convention for the Protection of Literary and Artistic Works. Available at: <http://www.wipo.int/treaties/en/ip/berne/> [accessed March 10, 2014].

¹⁴¹ Agreement on Trade-Related Aspects of Intellectual Property Rights. Available at: http://www.wto.org/english/tratop_e/trips_e/t_agm0_e.htm [accessed March 10, 2014].

¹⁴² WIPO Copyright Treaty (adopted in Geneva on December 20, 1996). Available at: http://www.wipo.int/treaties/en/text.jsp?file_id=295166 [accessed March 10, 2014].

¹⁴³ Directive 2001/29/EC, recital 9.

¹⁴⁴ cf. Court of Justice of the European Union; PRESS RELEASE No 25/13. Judgement in Case C-607/11. Luxembourg 2013. Available at: http://europa.eu/rapid/press-release_CJE-13-25_en.htm [accessed March 10, 2014].

appointed mediator Antonio Vitorino in January 2013,¹⁴⁵ then following the adoption of the “Castex report”¹⁴⁶ on private copying levies dated September 20, 2013 by the EU Parliament.

The recommendations from the Vitorino report and the Castex report are different, but both are coming to the conclusion that the EU should stick to the existing private copying schemes based on levies which have to be paid for private copying as that compensation for a loss for copyright holders is established as an essential part of their income.¹⁴⁷ On December 5, 2013, the EU started a public consultation on the review of the EU copyright rules¹⁴⁸ which was open for answering the questionnaire until March 5, 2014.¹⁴⁹

This consultation was set out as an EU action in the EU “Communication on Content in the Digital Single Market”¹⁵⁰ to complete the EU effort to review and modernise the EU copyright legislative framework.¹⁵¹

In this Communication, the Commission announced its plan for new legislation in the domains of e.g. out-of-print works, access to works for visually impaired persons and technology based solutions.¹⁵² Unfortunately, the EU Commission in this document made no reference to the need for re-opening InfoSoc Directive 2001/29/EC in order to approve and modernise the section on copyright exception and the involved levies.

A very different scenario is underway in the UK, where the Intellectual Property Office (IPO) has been implementing recommendations based on the Hargreaves Report of 2011¹⁵³ to modernise the framework of copyright exceptions. The most important challenge in this UK

¹⁴⁵ Cf. Recommendation.

¹⁴⁶ European Parliament, Committee on Legal Affairs. Rapporteur: Françoise Castex; Report on private copying levies (2013/2114(INI)). 17 February 2014. Available at: <http://www.europarl.europa.eu/sides/getDoc.do?type=REPORT&mode=XML&reference=A7-2014-0114&language=EN> [accessed April 11, 2014].

¹⁴⁷ Cf. Losehand, Joachim; Castex vs. Vitorino: Die Zukunft der Privatkopie in Europa. 12 November 2013. Available at: <http://irights.info/castex-vs-vitorino-die-zukunft-der-privatkopie-in-europa> [accessed April 11, 2014].

¹⁴⁸ Cf. European Commission; Press Release: Copyright – Commission launches public consultation. Brussels, 5 December 2013. Available at: http://europa.eu/rapid/press-release_IP-13-1213_en.htm [accessed April 11, 2014].

¹⁴⁹ Part IV Question 64 to 74, page 52-59 is only dealing with private copying and fair remuneration.

¹⁵⁰ European Commission; COMMUNICATION FROM THE COMMISSION On content in the Digital Single Market. COM(2012) 789 final. 18 December 2012. Available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52012DC0789> [accessed April 14, 2014].

¹⁵¹ As announced in the Intellectual Property Strategy (COM (2011)287 final) and based on market studies and impact assessment and legal drafting work as announced in COM (2012)789.

¹⁵² Cf. COM (2012) 789 final.

¹⁵³ Hargreaves, Ian; Digital Opportunity. A Review of Intellectual Property and Growth. N.p., May 2011. Available at: <http://www.ipso.gov.uk/ipreview-finalreport.pdf> [accessed April 14, 2014].

reform plan¹⁵⁴ is the introduction of a now technology neutral private copying exception into UK copyright law which applies equally to all types of private storage and all types of copyright works. It will allow a lawful owner or buyer of a copy of a work to reproduce that copy for their personal use, but would not permit them to share copies with other people.¹⁵⁵

This exception allowing reproduction of lawfully acquired content for strictly personal use will not be followed by the payment of remuneration for the rightsholders as the UK government considers that levies or other compensation are neither required nor desirable in the context of such a narrow provision.¹⁵⁶

But Article 5(2)(b) of the Copyright Directive 2001/29/EC requires exactly this kind of fair compensation but gives EU Member States the option of freely estimating the desirability of declassifying the exclusive right to authorise private copying into a statutory license, on condition that this declassification is accompanied by fair compensation in favour of rightsholders. Furthermore, the level of such compensation has to take the presence and operation of technological measures into account.¹⁵⁷ Member States are given the option of determining the form, the detailed arrangement and the level of fair compensation – also in the digital world depending on whether private copying causes minimal harm to rightsholders or not.¹⁵⁸

As Directive 2001/29/EC has not given a guideline to the EU Member States, highly divergent levy systems with widely varying tariff levels were put in place by 23 out of 28 Member States.¹⁵⁹ As the recording devices and media which are included in the levies are often differing from Member State to Member State, a product can be subject to a levy in one country but not in another which is seen as an obstacle to the free movement of goods and a distortion of competition in the Internal Market.¹⁶⁰

The solution for these problems for the Internal Market is – in the short term – a harmonisation of levy systems as well as of the involved tariffs.

¹⁵⁴ HM Government; Modernising Copyright: A modern, robust and flexible framework. Government response to consultation on copyright exceptions and clarifying copyright law. N.p., December 2012. Available at: <http://www.ipo.gov.uk/response-2011-copyright-final.pdf> [accessed April 14, 2014].

¹⁵⁵ Cf. *ibid*, p. 25.

¹⁵⁶ Cf. *ibid*, p. 24.

¹⁵⁷ Directive 2001/29/EC, recital 35, in fine.

¹⁵⁸ Directive 2001/29/EC, recital 35.

¹⁵⁹ Only UK, Luxembourg, Malta, Ireland and Cyprus do not have a levy system in place.

¹⁶⁰ For a detailed description of the differences between EU Member States' levy systems see chapter III.3..

V.2.1. Harmonisation of the products which can be subject to a levy

In the judgement of the ECJ in Case C-467/08 (Padawan vs SGAE) the ECJ stated that “the fact that that equipment or devices are able to make copies is sufficient in itself to justify the application of the private copying levy, provided that the equipment or devices have been made available to natural persons as private users.”¹⁶¹

This general “leviability” of equipment and storage media depends following this ECJ decision only on technical capability of the product to make copies. Therefore, as a first starting point for a harmonisation, the EU Member States should get rid of the distinction of imposing levies either on blank tape recording media or on recording equipment and on blank media (see page 23). The fundamental difficulty in upholding this distinction is especially obvious in the cases of France and Austria where the levies in principle are imposed only on blank media. However, the levies in these cases are extended to devices when blank media (e.g. hard disks) are incorporated in them (e.g. TV decoders, video recorders, MP3/4 players).

The determination of the products which should be levied or which are within the scope of the private copying exception differs from EU country to EU country based on the different copyright regulations. In the Czech Republic, Denmark, Estonia, Greece, Italy, Lithuania, Norway, Poland, Portugal, Slovakia and Spain the decision on which products are to be levied is taken by direct government intervention (in the copyright acts enacted by the governments). In Belgium, France and Netherlands the decision is made by government appointed bodies (either the Ministry of Economy, a specific administrative commission or by a negotiating body appointed by the Ministry of Justice). In Austria, Croatia, Germany and Switzerland, the decision is made as a result of negotiation between the collecting societies, rightsholders and the consumer electronics and IT industries. In Finland, Hungary, Latvia and Sweden a list of products on which levies are imposed is fixed by law after negotiations between the involved parties (rightsholders, collecting societies, industry) under the guidance of the Ministry of Education and Culture.¹⁶²

¹⁶¹ Case C-467/08 (Padawan vs SGAE)

¹⁶² Cf. World Intellectual Property Organization; International Survey on Private Copying. Law & Practice 2013. Available at: http://www.wipo.int/export/sites/www/freepublications/en/copyright/1037/wipo_pub_1037_2013.pdf [April 10, 2014].

The EU Member States are determining on which products levies are imposed for reasons of their use as a means to private copying. For example, levies are imposed on PCs only in Croatia, Germany, Italy, Latvia, Lithuania and the Netherlands, tablets only in France, Germany,¹⁶³ Netherlands and Switzerland¹⁶⁴ but not in all other EU Member States. This has been a source of friction with the Internal Market principle of the free movement of goods and services.

Contrary to Mr. Vitorino's proposal that products (or classes of products) to be levied should continue to be identified at the national level - as such an approach of drawing up a list of leviable products would bear the risk of being burdensome¹⁶⁵ - authorizing an EU institution (e.g. Eurostat)¹⁶⁶ to develop such determinations on the European level and to ensure a regular and technology-wise review and update of that list of products to be levied would be more adequate. Eurostat, the statistical office of the EU providing the EU among other things with statistical data on EU business and with a budget of Euro 91.2 million in 2012 and 850 staff members in 2014 can easily fulfil this task.

V.2.2. Current methods of calculation and their drawbacks

V.2.2.1. Calculation of levies as a percentage of price

Member States normally apply a fixed tariff directly linked to the storage capacity of the storage media and or device based on GB or minutes.¹⁶⁷ As a variant to these fixed tariffs, some EU Member States have applied a tariff based on a percentage of the sales or import prices to determine the levies.

Furthermore, the Czech Republic, Latvia and Lithuania have chosen to combine these two types of tariffs by calculating the levies through a combination of a fixed tariff (blank media based on capacity) and a percentage of sale prices (devices).

¹⁶³ ZPÜ-published tariff: Euro 15.18.

¹⁶⁴ Cf. Law & Practice 2013, page 6.

¹⁶⁵ Cf. Recommendation. P. 10

¹⁶⁶ Cf. http://epp.eurostat.ec.europa.eu/portal/page/portal/about_eurostat/introduction/who_does_what [accessed April 14, 2014].

¹⁶⁷ Cf. chapter III.3..

Overview of countries that apply a percentage as tariffs	
Country	Levy as a percentage of price
Czech Republic	Range from 1.59% to (CD writer) to 3% (eBook Reader) of sales price only applied to devices
Estonia	8% on storage media based on value of goods 3% on recording devices based on value of goods
Greece	6% on all storage media and devices based on the import price
Latvia	6% on CD and DVD media 4% on USB Flash Drives Fixed tariff of Euro 1.42 per device
Lithuania	6% on storage media per unit based on first sales price (Memory Card and USB excluded) USB and Memory Card as well as all devices are calculated based on capacity
Poland	Range from 0.17% to 3% of sales price of media or devices
Romania	3% from the tax value for storage media 0.5% from the tax value for recording devices
Slovakia	6% of sales or import price for storage media 3% of sales or import price for devices

The method to calculate the levies based on sale or import price of the storage media and/or devices is in contradiction with the Directive 2001/29/EC and with judgements of the European Court of Justice. The concept of “fair compensation”, within the meaning of Article 5(2)(b) of Directive 2001/29/EC, is an autonomous concept of European Union law which must be interpreted uniformly in all the Member States that have introduced a private copying exception, irrespective of the power conferred upon them to determine, within the limits imposed by European Union law and in particular by that directive, the form, detailed arrangements, and the level of that fair compensation.¹⁶⁸

Furthermore, the ECJ clarified in the Padawan case

that Article 5(2)(b) of Directive 2001/29/EC must be interpreted as meaning that the ‘fair balance’ between the persons concerned means that fair compensation must be calculated on the basis of the criterion of the harm caused to authors of protected works by the introduction of the private copying exception. It is consistent with the requirements of that ‘fair balance’ to provide that persons who have digital reproduction equipment, devices and media and who, on that basis, in law or in fact, make that equipment available to private users or provide them with copying services are the persons liable to finance the fair compensation, in as much as they are able to pass on to private users the actual burden of financing it.¹⁶⁹

The ECJ made clear that copying by a natural person acting in a private capacity must be regarded as an act likely to cause harm to the rightsholder of the concerned work.¹⁷⁰ There-

¹⁶⁸ Padawan, recitals 32, 36, 37.

¹⁶⁹ Padawan, recitals 38, 39, 42.

¹⁷⁰ Padawan, recital 44.

fore, according to the ECJ, it is in principle up to that person to make good the harm related to that copying by financing the compensation which will be paid to the rightsholder.¹⁷¹

Based on Directive 2001/29/EC,¹⁷² it is open to the Member States to establish a private copying levy for the purposes of financing fair compensation chargeable not to the private persons concerned, but to those who have the digital reproduction equipment, devices and media, and who, on that basis, in law or in fact, make that equipment available to private users or who provide copying services for them. Under such a system, it is the persons having that equipment who must discharge the private copying levy¹⁷³ but nothing prevents those liable to pay the compensation from passing on the private copying levy in the price charged for making the reproduction equipment, devices and media available or in the price for the copying service supplied. Thus, the burden of the levy will ultimately be borne by the private user who pays that price. In those circumstances, the private user for whom the introduction equipment, devices and media are made available or who benefit from a copying service must be regarded in fact as the person indirectly liable to pay fair compensation,¹⁷⁴ as the person making private copies causes the harm to the rightsholder.¹⁷⁵

In general, the compensation for the use (private copying) of a work is the amount a rightsholder might have received for granting his permission for that use which is the license fee. The loss of that license fee (lost profit) is the harm that the rightsholder suffers and which has to be fairly compensated for.¹⁷⁶

The sales price of a storage media and/or a device has nothing to do with a license fee. Furthermore, there is no connection with the price of a storage media and/or a device which is due to the manufacturer or importer. These are not the debtors of the fee, as the ECJ¹⁷⁷ made clear that the fee has to be paid by those who are making the copies.

In light of the foregoing explanation, the EU Commission should inform the Member States calculating the fee on a percentage basis of the price of storage media and/or devices that

¹⁷¹ Padawan, 2nd sentence, recital 45.

¹⁷² Padawan, Recital 35 / last sentence.

¹⁷³ Padawan, recital 46.

¹⁷⁴ Padawan, recital 48.

¹⁷⁵ Kröber, Christian. In: GRUR 2009/55

¹⁷⁶ Court of Appeal The Hague; ECLI:NL:GHSGR:2010:BO3982. 15 November 2010. Point 4.7. Available at: <http://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:GHSGR:2010:BO3982> [accessed May 28, 2014].

¹⁷⁷ Padawan.

by doing so, they act in violation of Directive 2001/29/EC as well as the judgements of the ECJ.

V.2.2.2. Currently applied methods of calculation (Germany) and their drawbacks

As shown in chapter III.3., the existing systems of levies for the fair compensation of rightsholders vary substantially from EU Member State to Member State. The levies are differing in terms of methods of application as well as in regards to possible charged parties. All involved parties (rightsholders, industry and collecting societies) agree that common principles for the methodology for tariff setting as well as more transparency would be required in order to harmonise these systems in order to avoid the perception of levy systems as an obstacle to the Internal Market.

Up to now, the setting up of levies requires negotiations and agreements with the industry which often engages in lawsuits to postpone or avoid payments.¹⁷⁸ This leads for example in Germany to the result that since the beginning of 2008 only agreements for PCs and USB-sticks are in place and that court procedures concerning all other tariffs set by the collecting societies are in process.¹⁷⁹ This in turn causes a halting of collection of levies and of the distribution of remunerations to rightsholders (see page 21).

One of the main problems in the negotiations between the industry on one side and the rightsholders represented by their respective collecting societies on the other side is the interpretation of the term 'fair compensation'. The EU Commission has explained in a background document for Directive 2001/29/EC that

[t]he term 'fair compensation' is not identical to the term 'equitable remuneration' as it is used in Articles 4(4) and 8(2) of the EC rental and lending rights directive. While the notion of 'equitable remuneration' is based on the assumption that authors are entitled to remuneration for every act of usage of their protected works, fair compensation is, *inter alia*, linked to the possible harm

¹⁷⁸ Cf. Dreier, Thomas; Padawan und die Folgen für die deutsche Kopiervergütung. In: ZUM 4/2011, p. 281 ff.

¹⁷⁹ ZPÜ had 46 court procedures in place in 2013 – no final rulings.

that derives from acts of private copying (cf. Recital 35 of the Directive). Article 5(2)(b) therefore requires that any payment to rightholders must be compensatory in nature.¹⁸⁰

Additionally, the EU Commission stated that

[t]his is explained further in recital 35. The payment of any compensation should take into account: (i) the ‘possible harm to the rightholders’; (ii) whether rightholders ‘have already received payment’; and (iii) that no obligation for payment arises where there is minimal harm to rightholders. Fair compensation is for the harm that could result from the act of private copying itself (‘harm to the rightholders resulting from the act in question’).¹⁸¹

Furthermore, the ECJ has decided¹⁸² that the term “fair compensation” is an autonomous concept of the European Union law which must be interpreted uniformly in all Member States but at the same time it has expressly granted permission to each of the Member States to determine, for its own territory, the most appropriate criteria.

In addition to this, the ECJ ruled¹⁸³ that the “fair compensation” has to be calculated on the basis of the criterion of the harm caused to rightholders of protected works by the introduction of the private copying exception.¹⁸⁴

It is not necessary to provide definite proof that private copies were made and harm was caused to the rightholder of the protected work,¹⁸⁵ as the fact that equipment or devices are able to make copies is sufficient in itself to justify the application of the private copy levy when they are made available to private users.¹⁸⁶

¹⁸⁰ European Commission; Background Document “Fair Compensation for Acts of Private Copying”. Brussels, 2008. P.4. Available at: http://ec.europa.eu/internal_market/copyright/docs/levy_reform/background_en.pdf. [accessed August 8, 2014]

¹⁸¹ Ibid, p. 4, fn 7.

¹⁸² Court of Justice of the European Union (Sixth Chamber); Judgement of the Court. Case C-245/00. 6 February 2003. Available at:

<http://curia.europa.eu/juris/liste.jsf?pro=&lgrec=de&nat=or&oqp=&dates=&lg=&language=en&jur=C%2CT%2CF&cit=none%252CC%252CCJ%252CR%252C2008E%252C%252C%252C%252C%252C%252C%252C%252C%252C%252Ctrue%252Cfalse%252Cfalse&num=C-245%252F00&td=%3BALL&pcs=Oor&avg=&page=1&mat=or&jge=&for=&cid=238879> [accessed May 28, 2014].

¹⁸³ Padawan.

¹⁸⁴ Ibid, recital 50.

¹⁸⁵ Ibid, recital 54.

¹⁸⁶ Ibid, recital 56.

Such an interpretation is supported by the wording of recital 35 in the preamble to Directive 2001/29/EC. That recital mentions, as a valuable criterion for determination of an adequate “fair compensation”, not only the harm as such, but also the “possible harm”.¹⁸⁷

On the one hand, the ECJ states that the technical capability of the devices and storage media to make private copies is sufficient to justify the application of the levy but on the other hand it also stipulates that the actual use has to be taken into consideration. The rightsholders have to be compensated¹⁸⁸ as a recompense for the harm suffered¹⁸⁹ and that fair compensation must necessarily be calculated on the basis of the criterion of the harm caused to the rightsholder.¹⁹⁰ The adequate fair compensation for the harm caused is even in Germany alone calculated in two different ways:

1) Calculation method used by the Arbitration Board at the German Patent and Trademark Office¹⁹¹

The Arbitration Board uses the following criteria for the calculation of a fair remuneration:

- a) Average of the consumer price of the device.
- b) Percentage of use of the device for copying of copyright protected material. This percentage has to be determined through empirical studies.
- c) This percentage then has to be compared with the other (non copy) functions of the device.

Example: PCs are used to make copies in a percentage of 10%. 20% of this usage is copies of copyright protected material and the average consumer price of a PC is 600 Euro. The resulting formula in this case would be $600(EUR) \times 10\% \times 20\% = 12(EUR)$. The fair remuneration therefore would be 12 EUR.

In a further step, the Arbitration Board has set the following caps:

For storage media: If the use for copyright protected works is

¹⁸⁷ Ibid, recital 57.

¹⁸⁸ Ibid, recital 39.

¹⁸⁹ Ibid, recital 40.

¹⁹⁰ Ibid, recital 42.

¹⁹¹ Based on Section 14 Copyright Administration Law, any disputes concerning tariffs must apply to the Arbitration Board which then proposes a settlement (not binding). Without such a proposal, no court proceedings can be launched (Sect. 16 Copyright Administration Law).

- Less than 25%, the cap is 12% of the consumer price
- Between 25% and 50%, the cap is 14% of the consumer price
- Between 50% and 75%, the cap is 16% of the consumer price
- Between 75% and 100%, the cap is 18% of the consumer price

For devices: The cap is not based on the use of the device, but the fair compensation should not be higher than 13.5% of the consumer price.¹⁹²

2) Calculation used by the collecting societies represented by ZPÜ in Germany

ZPÜ is using the following criteria for the calculation:

- a) Average of the retailer price of Audio CD.
- b) The license fee for the music authors, performers and producers of 9.009% (per group) of the retailer price.¹⁹³
- c) Based on the tariffs fixed by German copyright law until 31.12.2007, the tariff for audiovisual has to be calculated by a multiplication with factor 3.8.
- d) These amounts have to be deducted by a maximum of 75%. This deduction is necessary as the difference between a license fee for the first (original) exploitation and a copy for private use has to be taken into consideration.

Example: Average retailer price of an Audio CD is 12 Euro. 9.009% thereof is about 1 Euro x 3 (music authors, performers and CD producers) equals 3 Euro (per hour). For audiovisual works, the levy has to be multiplied by 3.8. The result is 11.40 Euro (which equals the average consumer price of retail DVD in Germany).¹⁹⁴

Following the ZPÜ methods, the result is that as a fair compensation the fee for audio works (per hour) is Euro 0.75 (25% of 3 Euro) and for audiovisual works (per hour) Euro 2.85 (25% of Euro 11,40). These amounts are the same for copies made on all different devices and with all kinds of storage media and are in accordance with the principle of equal treatment.

¹⁹² Schiedsstelle nach dem Urheberrechtswahrnehmungsgesetz beim Deutschen Patent und Markenamt; Einigungsvorschlag 15.02.2012 – Sch-Urh 38/08. 2012. Not published.

¹⁹³ GEMA / IFPI (now „Bundesverband der Musikindustrie“); Settlement. AzSch-Urh 28/00. 12 April 2005. Not published.

¹⁹⁴ Own calculation based on figures provided in written submission by Dr. Stefan Müller for Rechtsstreit ZVEI / ZPÜ. Not published.

On July 11, 2013 the regional appeal Court (OLG) in Munich has decided to follow the methods of the ZPÜ to calculate the harm based on missed license fees,¹⁹⁵ but with the following corrections:

- a) Percentage of the use of devices and storage media for copying of copyright protected materials based on empirical studies
- b) A further deduction of 20% for all devices which are copying on CD and DVDs
- c) A further deduction of 50% for all other devices

The further deductions (b + c) are necessary as copies made through circumvention of digital rights systems are not covered by the private copying exception as these copies cannot be seen as legal private copies.

The same applies to all cases in which the copy is made from an obvious illegal source.

V.2.2.3. Result

As mentioned under point V.2.2.1., a calculation based on the price a consumer has to pay for the device or storage media cannot be the correct way to calculate a fair compensation for the harm rightsholders have to suffer by private copies. The retailer prices paid by the person making copies for their private use with these devices and media are not only including royalties for the rightsholders, but also VAT, production costs and the costs of distribution and marketing. Only rightsholders (authors and producers) are protected by copyright and therefore are the only parties entitled to compensation through the levy regimes in Europe as the harm for not being able to exercise their exclusive rights through the private copying exception solely accrues to them. The retail and distribution market is indirectly involved but cannot participate in the involved levies as they are not seen as copyright protected rightsholders.

But the methods used by ZPÜ in Germany (calculation of fair remunerations analog to a license fee) are neither transparent nor completely comprehensible. On one side, ZPÜ is using criteria like levies for audio and storage media which have been in place in Germany until

¹⁹⁵ Oberlandesgericht München; Urteil im Rechtsstreit ZVEI – Zentralverband Elektrotechnik- und Elektroindustrie e.V. gegen Zentralstelle für private Überspielungsrechte (ZPÜ) . Aktenzeichen 6Sch 12/11 WG. München, 11.07.2013.

31.12.2007 to calculate the relation between audio and video as a weighting factor based on licenses for the first use.¹⁹⁶ After that calculation, deduction is made for the secondary use of the rights by private persons to take into consideration the change of inventory value between the original and the copy.¹⁹⁷

Furthermore, the use of caps based on changing consumer prices in both calculation methods is deeply questionable.

V.2.3. Recommendation for a method of calculation of levies as fair compensation within the meaning of Article 5(2)(b) of Directive 2001/29/EC

A) “Reference fee for a license” – first exploitation on DVD

In December 2013, the International Video Federation (IVF) and its member organisations in Belgium, Denmark, Finland, France, Germany, Italy, the Netherlands, Norway, Spain, Sweden, Switzerland UK and USA has published the European Video Yearbook 2013 introducing statistics as an “Industry Overview” for the European Video Markets.¹⁹⁸ The statistics included therein have been compiled by the IVF members in collaboration with IHS Screen Digest, an international research and analysis company.¹⁹⁹

In 2012, the European consumers spent Euro 9.2 billion on buying and renting audiovisual content, be it on DVD and Blu-ray Discs (BD) or through Digital Video and TV video on demand. Thereof, Euro 7.7 billion was spent on DVD and BD with Euro 6.7 billion accruing to purchases and 975 million being spent on rental.²⁰⁰

The spending on audiovisual content through digital/online platforms and services – which are defined as TV-based video-on-demand (TV VOD) and digital retail (also known as EST),

¹⁹⁶ Cf. Becker, Jürgen / Müller, Stefan; Die Bestimmung der Höhe der angemessenen Vergütung für private Vervielfältigung. In: Schierholz, Anke / Melichar, Ferdinand (Hg.); Kunst, Recht und Geld. Festschrift für Gerhard Pfennig zum 65. Geburtstag. München 2012, S. 373-386.

¹⁹⁷ For details, see *ibid.*

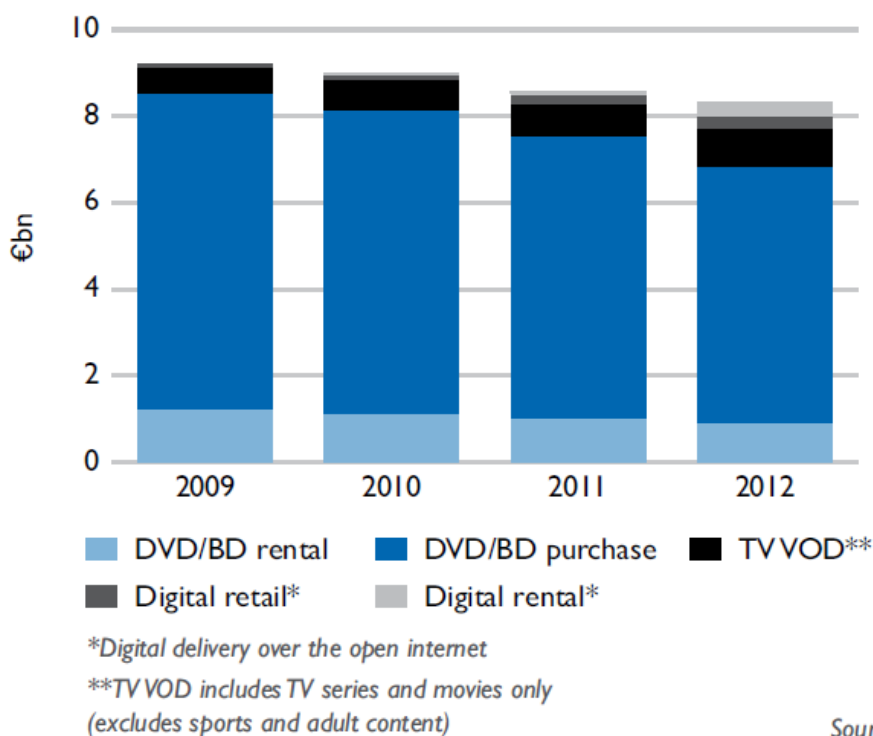
¹⁹⁸ International Video Federation; Europe: The Industry Overview 2013. Available at: <http://www.ivf-video.org/new/index.php?category/Market-information> [accessed May 23, 2014].

¹⁹⁹ www.ih.com

²⁰⁰ Cf. IVF Industry Overview 2013, p. 8.

rental and subscription services accessed via computers and Internet connected television²⁰¹ - rose to a total of Euro 1.6 billion in 2012 (Euro 1.2 billion in 2011). The largest generator of digital video spending is TV VOD with an amount of Euro 884.5 million, followed by digital retail with an amount of Euro 276.4 million. The digital rental amounted to Euro 202.7million and the digital video consumption by subscription to 194.6 million.²⁰²

Europe: Total consumer spending on home entertainment



The amount of Euro 9.233 billion spent in Europe can be split into Euro 6.976 billion for the purchase of traditional physical video discs or digital videos and Euro 2.256 billion for renting either physical or digital DVDs. Digital video consumption by subscription or through TV or Internet VOD equal renting the audiovisual product. These figures come to a split of 75.55% for purchase and 24.44% for rental. For simplification purposes, the split of 75% to 25% will be heretofore used.

The average consumer retail and rental prices for a DVD in Europe are the following:

²⁰¹ Cf. IVF Yearbook 2012, p. 7.

²⁰² Cf. IVF Industry Overview 2013, p. 8-9.

Average consumer price of retail DVD disc	
	2012 (€)
Belgium	12.0
Denmark	11.1
France	12.5
Germany	11.4
Ireland	10.3
Italy	10.4
Netherlands	10.1
Norway	13.9
Portugal	9.6
Spain	11.8
Sweden	11.0
Switzerland	15.1
UK	10.0
All Western Europe	11.60
Croatia	4.2
Hungary	5.0
Poland	6.7
All Europe	10.56

Data from IVF Industry Overview 2013, averages own calculation

In order to be able to determine the harm which film producers suffer from private copying, it is indispensable to calculate the license fee film producers are receiving from the average consumer retail price of a DVD and from the average consumer DVD rental price. In a first step, the VAT and the levies included in the retail and the rental prices have to be deducted. The following tables are the authors elaboration of data provided by the EU Commission (VAT rates)²⁰³ as well as data provided from WIPO.²⁰⁴

²⁰³ European Commission; VAT Rates Applied in the Member States of the European Union. Situation at 13th January 2014. Available at: http://ec.europa.eu/taxation_customs/resources/documents/taxation/vat/how_vat_works/rates/vat_rates_en.pdf [accessed May 26, 2014].

²⁰⁴ WIPO; International Survey on Private Copying.

RETAIL 2012 (€)				
Country	Average consumer price	VAT	Levy	Gross price
Belgium	12.0	2.52	0.40	9.08
Denmark	11.1	2.78	0.48	7.84
France	12.5	2.50	1.14	8.86
Germany	11.4	2.17	0.22	9.01
Italy	10.4	2.29	0.52	7.59
Netherlands	10.1	2.12	0.03	7.95
Portugal	9.6	2.21	0.19	7.20
Sweden	11.0	2.75	0.37	7.88
Switzerland	15.1	1.21	0.33	13.56
All Western Europe	11.47	2.28	0.41	8.77
Croatia	4.2	1.05	0.01	3.14
Hungary	5.0	1.35	0.37	3.28
All Europe	10,22	2,09	0,37	7.89

Ireland, Norway, Spain, UK and Poland are not listed as these countries have not fixed levies, or no levy (UK)

Data on average consumer prices taken from IVF Industry Overview 2013, data on levies from World Intellectual Property Organization; International Survey on Private Copying. Averages own calculation

For the purpose of this work, only the revenue streams for the exploitation of Video DVDs will be examined.

The film producer (video licensor) transfers the video exploitation rights for

- Video DVD to sell / Home Video sell thru rights
- Video DVD to rent / Home Video rental rights

either directly to a video exploitation company (this can be the same company as the video distributor) or in cases of a "Multiple Rights Deal" first to the cinema distributor who afterwards transfers the rights to the video exploitation company.

The video exploitation company is producing the Video DVDs and sells these to retailers and video rental shops towards a payment of the so-called PPD price.²⁰⁵

Calculation of the license fee for film producers for retail DVDs (Based on average prices for retail DVDs, see above.):²⁰⁶

²⁰⁵Published price to dealer.

	Euro
Average consumer price ¹	11,47
VAT	-2,28
Levy	-0,41
Average gross price	8,77
35% margin ²	-3,07
gross PPD	5,70
Sconti, Boni, Discount (15%)	-0,86
net PPD (of exploitation company)	4,84
Video licensor receives 20% of net PPD as "Royalties"	0,97
Royalties are split	
25% video distributor	0,24
75% video licensor/film producer ³	0,73
¹ Average consumer price Western Europe, cf. p. 74	
² Cf. BBE Handelsberatung GmbH; Aktuelle Einzelhandels-Richtwerte ausgewählter Branchen 2011. Not available for the public.	
³ Cf. Castendyk, Dr. Oliver; Erlösstrukturen in den audiovisuellen Medien in Deutschland. In: ZUM 2013 Heft 10. P. 714.	

This means the share for the film producer for retail DVDs is 15% Royalties from gross PPD which as an average for Western Europe equals Euro 0.73.

The license fee for rental DVDs has to be derived from the license fee for retail DVDs correspondent with the split in revenue of 75% for retail and 25% for rental (see page 76). As there is no necessary numerical equivalence of sales and rentals, a simple addition of a license fee for a retail DVD and a license fee for a rental DVD would understate the share of rental.²⁰⁷ Accordingly, the license fee for the film producers is Euro 0.73 (retail) + Euro 0.24 (rental, derived from retail) = Euro 0.97 per DVD.

This amount, calculated as the "reference fee for a license", is expressing the monetary value of the first exploitation as well as the value of a secondary use of an audiovisual work on DVD.

²⁰⁶ Cf. Wallentin, Thomas; Film und Recht. Lectures at Donau-Universität Krems. 2012. Available at: www.ksw.at/service-downloads/ [accessed August 8, 2014].

²⁰⁷ According to own calculations, the average license fee for a single rental DVD (Euro 0.19) amounts only to 20.7 percent of overall fee when combined with the average license fee for a retail DVD.

B) “Reference fee for a license” of a private copy

To calculate the “fair compensation” for a private copy of an audiovisual work (120 min), this “reference fee” has to be reduced in order to take into consideration the difference between an original film DVD and a private copied DVD.

The deduction which has to be made for a private copy in relation to the original copy is 90%. This relationship is based on the effect that royalties for rightsholders for releases after the first release of a DVD are about 65% lower than for the first release²⁰⁸ and an additional deduction of 25% is due to the fact that private copies made by private persons have less value. The reference fee for a license for a private copy therefore is Euro 0.10 per copy of an audiovisual work.

	Euro
License fee for film producers	0.97
90% deduction (65% price erosion, 25% private copies)	-0.87
Reference fee for a license	0.10

The benefit of this method of calculation of a “reference fee for a license” of a private copy is that the value of enabling a private copy is always the same no matter what storage media is used and no matter on what device private persons are executing the process for making their private copies of audiovisual works. Additionally, this method is in accordance with the principle of equal treatment of all EU Member States and their citizens.

C) Calculation of levies as fair compensation of the harm film producers are suffering from private copying

1. Pan European list of recording and storage media which are assumed to be used for purposes of private copying

Up to now, it’s up to each EU Member State to identify the products or classes of products which are to be levied. The extension of levies on new devices and storage media requires always negotiations and agreements with the manufacturers of such products who very often start lawsuits to avoid the payments. These litigations and the involved costs have to be

²⁰⁸ See e.g. the price erosion of ‘older’ DVDs in the Amazon video shop.

executed separately in the different EU Member States. A harmonized Pan European list of these products would work to the benefit of both rightsholders and manufacturers since it would ensure predictability and a faster implementation of levies on new devices.

This EU-wide determination of that list of leviable products should be performed by the Commission or another administrative body and should be periodically updated.

The following list of classes of leviable products for copying of audiovisual works is proposed:

- a) Products with internal storage – PC (Desktop, Notebook, Netbook, Tablet), Recorder (Hard Disc, DVD with HDD, Blu-ray with HDD), Smartphone, set-top boxes
- b) Products without internal storage – Video/DVD/Blu-ray recorder
- c) Storage media – Hard Disc (external, network, multimedia)
- d) Blank Tape, DVD/Blu-ray, USB Stick

These four classes of leviable products were composed in this way out of two reasons:

1. The distinction between products with or without internal storage will improve transparency as this distinction is easily detectable.
2. Secondly, this distinction at the same time is fundamental for the calculation of a fair compensation for the rightsholder for the product category as it is critical in determining if copies can be made with without additional means. The application of 100% (products with internal storage) or 50% (products without internal storage) coefficient of the reference fee for a license for a private copy for the calculation of the levy depends on this distinction.

In V.2.3.B), the reference fee for a license for one private copy is calculated with Euro 0.10, independent of devices and storage media used. That being said, the levy for all products from class a) with internal hard disc should be calculated based on the full reference fee as these products are capable of making private copies without any additional equipment.

As the products in class b) and c) are dependent on each other to be able to make this private copy, in this case the reference for a license for a private should be calculated with 50% of the full reference fee, i.e. Euro 0.05 instead of Euro 0.10. The reduced reference fee will be used once to calculate the levy for the devices from class b) and secondly to calculate the levy for all products from class c) as the latter are necessary to make copies with the devices

from class b). This results in a combined fee for a license for a private copy which is equal to the full reference fee of Euro 0.10. Products in class d) are only levied with 50%, i.e. Euro 0.05, as only one copy is possible.

2. Calculation of the number of private copies

a) Surveys of consumer behaviour in regards to private copying

To calculate the “fair compensation” for a private copy of an audiovisual work, a “reference fee for a license”, it is necessary to find out the number of copies made by the listed products (see 1.). As this kind of surveys is extremely expensive (ZPÜ in Germany has spent more than two million Euros for their commissioned studies), they also should be done on the EU level by conducting surveys in an identical manner in all participating Member States.

These surveys should be done for the products in classes a to c and the participants should indicate exactly which product class they have used for a private copy of which exact listed title. Furthermore, they have to specify which storage media was used if they stored the private copy afterwards (class d).

As the local film collecting societies have the most knowledge about movies and access to film databases, they should be involved to support the EU Commission in the evaluation of the list of audiovisual works and in the calculation of the number of private copies which are a basis for the calculation of the levy. Furthermore, these studies should be periodically updated, not only to provide an up to date basis for the calculation of a levy but also to monitor possible changes in the customers copying behaviour, e.g. a further increase in the storage of audiovisual works in the cloud.

b) Sources used for private copies

It has to be made clear that only legitimate private copies coming from a legal source have to be taken into consideration for the calculation of the levies, as “these levies are not intended to constitute a mechanism to compensate for piracy.”²⁰⁹ This principle is recognised in the majority of the EU Member States either specifically in their copyright acts (e.g.

²⁰⁹ Motion Picture Association; MPA submission in response to the commission’s second call for comments: “Fair compensation for acts of private copying”. 18 April 2008, p. 2.

Finland, Denmark, Germany and Spain) or via case law in France.²¹⁰ Some other EU Member States (e.g. Netherlands, Norway and Austria) are not excluding private copies made from an illegal source from the scope of the private copying exception and compensation. This different treatment of copies from illegal sources was possible as Art 5(2)(b) of Directive 2001/29/EC does not address expressly the lawful or unlawful nature of the source from which a reproduction of the work may be made.²¹¹

But the ECJ (Fourth Chamber) made clear in a judgement²¹² that “[a]s regards the scope of those exceptions and limitations, it must be pointed out that, according to the settled case-law of the Court, the provisions of a directive which derogate from a general principle established by that directive must be interpreted strictly (Case C-5/08 *Infopaq International* EU:C:2009:465, paragraph 56 and the case-law cited).”²¹³

“It follows that the different exceptions and limitations provided for in Article 5(2) of Directive 2001/29 must be interpreted strictly.”²¹⁴

Furthermore, it must be pointed out that Article 5(5) of Directive 2001/29/EC requires that the exceptions and limitations to the reproduction right are to be applied only in certain special cases which do not conflict with a normal exploitation of the work or other subject-matter and do not unreasonably prejudice the legitimate interests of the rightholder.²¹⁵

Article 5(2)(b) of Directive 2001/29/EC [has] to be understood as meaning that the private copying exception admittedly prohibits copyright holders from relying on their exclusive right to authorise or prohibit reproductions with regard to persons who make private copies of their work; however, it precludes that provision from being understood as requiring, beyond that limitation that is provided for expressly, copyright holders to tolerate infringements of their rights which may accompany the making of private copies.²¹⁶

“Article 5(2)(b) of Directive 2001/29 must be interpreted as not covering the case of private copies made from an unlawful source.”²¹⁷

Therefore, all copies listed in consumer surveys which are from unlawful sources, e.g. circumventing DRM or copies made of downloads from illegal internet platforms or internet

²¹⁰ Court d’appel d’Aix-en-Provence 5eme chambre des appels correctionnels Arrêt du 5 septembre 2007. Available at: http://www.legalis.net/spip.php?page=jurisprudence-decision&id_article=2036 [accessed May 26, 2014].

²¹¹ Directive 2001/29/EC, recital 29.

²¹² Court of Justice of the European Union (Fourth Chamber); Judgement of the Court. Case C-435/12. 10 April 2014. N.p.. Available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:62012CJ0435&from=EN> [accessed May 26, 2014].

²¹³ Ibid, recital 22.

²¹⁴ Ibid, recital 23.

²¹⁵ Ibid, recital 24.

²¹⁶ Ibid, recital 31.

²¹⁷ Ibid, recital 41.

networks e.g. peer to peer networks or sharehosters like Rapidshare and usenets) should be skipped and not taken into account for the calculation of any levy.

c) Treatment of private copies made of audiovisual works produced in USA

Based on their neighbouring rights, film producers in Germany and the EU Member States have the exclusive right to authorise or prohibit any kind of reproduction/private copy of their audiovisual works (Article 2(d) Directive 2001/29/EC and section 94 German Copyright Act).

Pursuant to section 128 subsection 1 of the German Copyright Act, only German nationals and German enterprises which have their headquarter in the territory to which the act applies and nationals of another Member State of the European Union or another Contracting Party to the Agreement of the European Economic Area or enterprises which have their headquarter in another Member State of the European Union or in another Contracting Party to the Agreement on the European Economic Area enjoy the protection of section 94 of the German Copyright Act.

Pursuant to section 128 subsection 2, which refers to section 126 subsection 2 and 3 of the Act, foreign nationals enjoy the protection and the rights under section 94 of the German Copyright Act for the audiovisual work published in Germany unless the work was published outside that territory for more than 30 days before it was published in that territory (simultaneous publication). Foreign nationals are further protected as provided by international treaty or in the absence of such treaty if, according to an announcement by the Federal Minister for Justice German nationals enjoy equivalent protection for their works (reciprocity).

There is no international treaty or announcement that would give the US film producers the protection and neighbouring rights as granted under section 94 of the Act. The international treaties relating to copyright do not apply since section 94 does not give the film producers copyrights but neighbouring rights whereas the treaties which relate to neighbouring rights such as the Rome Convention do not protect film producers.

Consequently, unless there has been simultaneous publication of the film, US film producers do not enjoy the protection of section 94 of the German Copyright Act within the 30 day period and are therefore not entitled to fair compensation. In the event of a simultaneous

publication, US film producers would be protected under section 94 of the Act and consequently be entitled to a fair compensation in Germany. This kind of regulation is in place not only in Germany, but also in France, Belgium and the Netherlands.²¹⁸

The survey performed on EU level should therefore ask on a title of title basis which audiovisual works are copied. Copies of US works concerning their neighbouring rights for film producers should only be taken into account when the audiovisual work was either simultaneously published in the given country, or when the applicability of equal protection on the basis of the principle of reciprocity was announced.

Nevertheless, the US authors (directors and writers) are protected through the Berne Convention²¹⁹ as the United States of America has joined this convention in March 1, 1989. Therefore, the US film producers are entitled to receive fair compensation based on their own neighbouring rights when the audiovisual works are simultaneously published or based on assigned author's rights from e.g. writers or directors in accordance with the "work made for hire doctrine". Corresponding to collective bargaining agreements between Writers Guild, Directors Guild and all US film producers which are in place in the US, levies have to be split 50:50 between producers and the guilds.

Therefore, 50% of works without simultaneous publication can be taken into account as they are protected as authors share. The other 50% of US works without simultaneous publication have to be dismissed.

d) Differentiation between feature films, TV movies, episodes of serials and reportages and documentaries

It is necessary to differentiate between these types of works as they are widely varying in regards to their length. As the "Reference fee for a license" of a private copy of Euro 0.10 is based on a license fee for an original DVD with an audiovisual work of a length of 120 minutes, it is not appropriate to apply the same fee to a copy of a work which is much shorter, e.g. an episode of a serial. Therefore, the length of the copied work has to be taken into account, too.

²¹⁸ Information obtained in face to face interviews with the managing directors of the collection societies from France, Belgium and Netherlands representing film producers.

²¹⁹ Berne Convention, Article 4 a.

3. The levy calculated per product has to be based on the economic harm a film producer incurred due to lost licensing opportunities, i.e. payments they would have been able to receive for these copies if no private copying exception had been introduced

As this private copying exception is linked to the fact that direct licensing of the audiovisual work for copies made by consumers is impossible, the film producer has to be compensated exactly correspondent to the amount of copies made from legal sources. One can argue that consumers might not have made the same number of copies if a license fee would have had to be paid by them and that therefore a “hypothetical” lower number of copies²²⁰ should be taken into consideration. The fact that the value of a private copy is lower than the license fee a film producer would receive for a direct license of a copy is taken into account by calculating the “reference fee for a license of a private copy” (see B above).

Furthermore, the idea of calculating a license fee based on a “hypothetical” number of copies is leading again to a marked lack of transparency in the setting of levies and should therefore not be taken into account.

In sum, the formula for calculation of the levy as fair compensation for the rightsholder should be the following:

$$\left(\frac{\text{number of private copies made by a given device}}{\text{number of used devices}} \right) \times (\text{expansion factor of the life expectancy of the product in months})^{221} \times \text{Reference fee for a license for a private copy}$$

²²⁰ Cf. Recommendation, p. 20.

²²¹ The average life expectancy of a private PC is four years. This estimate is based on a study commissioned by ZPÜ in 2011 (PC-study – not published) and performed by GfK (Gesellschaft für Konsumforschung).

V.2.4. Calculation of the levy based on available data for Germany

A) Calculation of the number of private copies

In this example, raw data material from a GfK Consumerpanel commissioned in 2010 by ZPÜ concerning the “Copying behaviour of audiovisual works”²²² is used for the calculation of the relevant number of copies. The primary method of research used by GfK – after an ad hoc screening and face to face interviews to build the questionnaire – was an online diary survey for a period of four weeks and with a sample size of 1,092 consumers with the intended purpose to detect the exact titles of copied works and the sources used.

Only the raw data from the survey concerning titles of the copied audiovisual works and the involved sources as well as the devices used to make these copies are being used here and only a weighting concerning the length of the audiovisual works (see d) below) will be performed.²²³ All further evaluation and calculation was performed by the authors.

a) In a first step, the German titles provided with the raw data were identified and categorised (Feature film US/non US; TV movies; serials US/non US; reports and documentaries; moving pictures (Laufbilder) which are not protected as cinematographic works) on a title by title base using the film database of a German collecting society.²²⁴

The raw data from the GfK Consumerpanel shows that the panellists have made 19.940 copies of audiovisual works. After deducting the moving pictures (e.g. news, sports, talk shows), the remaining number of copies is 17,275.

	feature films not produced in USA	feature films produced in USA	German TV movies	serial not produced in USA	Serials produced in USA	German TV serials	documentaries, reports	Total
number of copies	539	1.847	1.565	367	5.767	3.049	4.035	17,275

b) The next step was to eliminate the copies made from unlawful sources e.g. under circumvention of DRM or copies made of downloads from illegal internet platforms or networks.

²²² Cf. fn 14.

²²³ As this calculation should only be seen as an example for the practical application of the proposed model of fair remuneration, no further weighting of structural data will be performed.

²²⁴ Film database of GWFF (Gesellschaft zur Wahrnehmung zur Wahrnehmung von Film- und Fernsehrechten mbH).

After deducting these copies made from unlawful sources, the remaining number of copies is 16,824.

	feature films not produced in USA	feature films produced in USA	German TV movies	serial not produced in USA	Serials produced in USA	German TV serials	German documentaries, reports	Total
number of copies	539	1.847	1.565	367	5.767	3.049	4.035	17.275
original DVD/Blu-ray with DRM	-15	-25	-2	0	-4	-2	-14	
downloads from Internet using illegal platforms or networks	-96	-56	-9	0	-149	-20	13	
number of copies	428	1.766	1.554	367	5.614	3.027	4.008	16.824

c) Then, the US repertoire was checked on a title per title base if the copied audiovisual works and serials had had a simultaneous publication in Germany within the required period of thirty days. The necessary information on publication dates was provided by the Mediabiz Premium database²²⁵ and by MPAA and IFTA²²⁶.

Based on this evaluation, none of the copied US serials and only 51% of the movies were published in Germany within that period and are therefore protected under the private copying exception. Therefore, only 51% of the copies of US movies can be taken into account for the calculation. Of the 100% of US serials and 49% of US movies without simultaneous publication, only 50% can be taken into account due to author's rights in accordance with the Berne Convention. The remaining number of relevant copies then is 13,524.

²²⁵ Mediabiz is an online and print publication which specializes in information on the media industry. See: www.mediabiz.de [accessed September 18, 2014].

²²⁶ Independent Film & Television Alliance, "a non-profit organization that represents more than 150 members from 23 countries consisting of independent production and distribution companies, sales agents, television companies, and institutions engaged in film finance." Cf. www.ifta-online.org/what-ifta [accessed August 11, 2014].

	feature films not produced in USA	feature films produced in USA	German TV movies	serial not produced in USA	Serials produced in USA	German TV series	German documentaries, reports	Total
number of copies	539	1,847	1,565	367	5,767	3,049	4,035	17,275
original DVD/Blu-ray with DRM	-15	-25	-2	0	-4	-2	-14	
downloads from Internet using illegal platforms or networks	-96	-56	-9	0	-149	-20	13	
number of copies	428	1,766	1,554	367	5,614	3,027	4,008	16,824
US feature films without simultaneous publication		-865						
50% of US feature films without simultaneous publication as author's share		432						
US serials without simultaneous publication as author's share					-5,614			
50% of US serials without simultaneous publication as author's share					2,807			
number of copies	428	1,333	1,554	367	2,807	3,027	4,008	13,524

d) In order to allow the weighting of copies based on the length of the copied work in relation to the typical length of 120 minutes of the DVD covered by the reference fee, an evaluation was done on the length of the copied audiovisual works for the categories serials/episodes, TV movies and reports and documentaries.

Most copies of serial episodes (5 to 45 minutes) were made of episodes with a length of 30 minutes (39.46%), of TV movies (length 75 to 120 minutes) with a length of 90 minutes (46.93%) and for reports and documentaries (length between 45 and 75 minutes) of works with a length of 60 minutes (52.99%). Feature films normally have a length of 120 minutes. This is supported by the survey as 77.23% of all copied feature films are of that length.

Based on the abovementioned figures, the weighted typical length of serials of episodes is 25% of the assumed length of 120 minutes of the work covered by the reference fee. Therefore, only 25% of the number of copies of serials has to be taken into account. Accordingly,

75% of TV movies and 50% of reports and documentaries have to be taken into account. The total number of copies after weighting for length is 6,482.

	feature films not produced in USA	feature films produced in USA	German TV movies	serial not produced in USA	Serials produced in USA	German TV serials	German documentaries, reports	Total
number of copies	539	1,847	1,565	367	5,767	3,049	4,035	17,275
original DVD/Blu-ray with DRM	-15	-25	-2	0	-4	-2	-14	
downloads from Internet using illegal platforms or networks	-96	-56	-9	0	-149	-20	13	
number of copies	428	1,766	1,554	367	5,614	3,027	4,008	16,824
US feature films without simultaneous publication		-865						
50% of US feature films without simultaneous publication as author's share		432						
US serials without simultaneous publication as author's share					-5,614			
50% of US serials without simultaneous publication as author's share					2,807			
number of copies	428	1,333	1,554	367	2,807	3,027	4,008	13,524
number of copies after weighting for length	428	1,333	1,166	92	702	757	2,004	6,482

B) Evaluation of used devices

These remaining relevant copies were recorded with the following devices:

Device	Number of copies
Product class a - with internal storage	
PC (Desktop, Notebook, Netbook, Tablet)	1264
Recorder (Hard Disc, DVD with HDD, Blu-ray with HDD)	3085
Smartphone	19
Product class b - without internal storage	
Video/DVD/Blu-ray recorder	3085
Product class c - external storage media	
Hard Disc (external, network, multimedia)	169
no answer	149
Total	6482

C) Number of devices to make private copies

The participants (n=1092) in the GfK consumer panel "Copying behaviour of audiovisual works"²²⁷ have provided the following answer to the question which devices capable of making copies they are owning and using²²⁸

Device	owned/used by % = number
Product class a - with internal storage	
PC (Desktop, Notebook, Netbook, Tablet)	54,5% = n = 595
Recorder (Hard Disc, DVD with HDD, Blu-ray with HDD)	45,5% = n = 497
Smartphone	8,3% = n= 91
Product class b - without internal storage	
Video/DVD/Blu-ray recorder	57,7% = n= 630
Product class c - storage media	
Hard Disc (external, network, multimedia)	7,1% = n= 76
Data from GfK study "Copying behaviour of audiovisual works". Cf. Fn 223	

D) Calculation of the levy based on the formula²²⁹

Product class a – with internal storage:

²²⁷ Cf. fn. 14.

²²⁸ More than one device could be named.

²²⁹ See p. 91.

PC (Desktop, Notebook, Netbook, Tablet): $\frac{1264 \text{ (copies)}}{595 \text{ (devices)}} \times 48 \text{ (months)} \times 0.10 \text{ (Euro)} = \text{Euro } 10.20$

Recorder (Hard Disc, DVD with HDD, Blu-ray with HDD): $\frac{3085}{497} \times 48 \text{ (months)} \times 0.10 \text{ (Euro)} = \text{Euro } 29.79$

Product class b – without internal storage:

Video/DVD/Blu-ray recorder: $\frac{1796}{630} \times 48 \text{ (months)} \times 0.05 \text{ (Euro)} = \text{Euro } 6.84$

For reasons of insufficient sample size, no calculation will be performed for all other eligible products.

It is impossible to compare these levies calculated based on a reference fee for a license of a private copy, the relevant copies made and the used devices and blank media with levies for the different devices and blank media being in place now. Only a few countries like Croatia, Germany and Latvia have fixed levies per unit, while in other countries the levies are calculated as a percentage of the sales or import price or depending on the storage capacity.

Besides this, it is expected that the total amount of levies to be paid as fair compensation for the private copying exception will increase as the calculated levies based on a reference fee for a license will be in place in all EU Member States for all devices and storage media included in the list of products leviable within the EU.

V.2.5. Summary

a) A standardisation of the different remuneration systems including different levies for different devices and storage media can be reached by a unification of the copyright code in the EU based on Article 118 TFEU. Such a harmonisation of the law contributes to the establishment of an internal market and to a system where the competition in that internal market is not distorted.

Based on the “shared competences” between the EU and the Member States according to Article 4(2)(a) TFEU, the coexistence of an EU-wide copyright code with national copyright

law is possible, too. Such a legislative act on EU level including significant changes in national copyright laws will however take a long time and can only be envisaged as a long term solution.

b) A short term solution can be reached with a Pan European list of recording devices and storage media based on categories like product with or without internal storage capacity as well as groups of products like PCs or storage media. The process now being in place to determine if a new device or storage media should be burdened with a levy will be simplified and will be much more transparent than it is today.

In case a “new product” like a new variant of PCs is entering the market, the actual use of this product for private copying should be determined by studies performed on EU level. As soon as these new products are replacing “older products” which are listed in the Pan European list, they should be burdened with a levy calculated on the basis of the proposed formulae.

Such an approach is avoiding interminable negotiation processes and legal procedures between the industries liable for payments of the levies and the collection societies being in charge of collecting these levies. Additionally, such an approach would provide much higher planning reliability for these industries.

The calculation formula for the levy by once calculating the reference fee for a license for a private copy and considering the real use of the devices or storage media (determined by studies on EU level) is transparent and can be understood and followed by all involved parties.

In addition, as a further aspect of transparency, the users of the recording devices and storage media for making these private copies will be made aware that all products on the Pan European list are burdened with a levy (calculated on EU level with a basis coefficient of Euro 0.10 for a private copy of an audiovisual work (120 minutes)) as a fair compensation for the film producers.

VI. Extension of the private copying levies to cloud computing

VI.1. Background

As part of the Digital Agenda, the European Commission adopted on September 27, 2012 a new strategy to drive European business and government productivity via cloud computing. This new strategy for “unleashing the potential of cloud computing in Europe”²³⁰ is designed to speed up and increase the acceptance of cloud computing across all sectors of the economy in Europe. This can cut IT costs and when combined with new digital business practices also can boost productivity growth and jobs.²³¹

The key actions of the strategy are:

- Cutting through the jungle of technical standards so that cloud users get interoperability, data portability and reversibility;
- Support for EU-wide certification schemes for trustworthy cloud providers;
- Development for model ‘safe and fair’ contract terms for cloud computing contracts including Service Level Agreements

The benefits of adopting cloud computing are shown in a survey prepared by IDC²³² for the commission. As a result of the adoption of cloud computing the survey found out that 80% of organizations reduce costs by 10-20% and enhanced mobile working (46%), productivity (41%) and standardisation as well as new business opportunity (33%) and markets (32%). Furthermore, this adoption of cloud Computing could mean an additional EUR 45 billion of direct spend on cloud computing in the EU in 2020 as well as an overall cumulative impact on GDP of EUR 957 billion, and 3.8 million jobs, by 2020.

²³⁰ European Commission; COM(2012) 529 final. Unleashing the Potential of Cloud Computing in Europe. Brussels 2012.

Available at: http://ec.europa.eu/information_society/activities/cloudcomputing/docs/com/com_cloud.pdf [January 29, 2013]

²³¹ Kretschmer, T.; Information and Communication Technologies and Productivity Growth: A Survey of the Literature. *OECD Digital Economy Papers*, No. 195, OECD Publishing. N.p. 2012. Available at: <http://dx.doi.org/10.1787/5k9bh3jllgs7-en> [January 29, 2013]

²³² International Data Corporation; Quantitative Estimates of the Demand for Cloud Computing in European and the likely Barriers to Uptake. SMART 2011/0045. D4 – Final Report. N.p. 2011. Available at: <http://www.icon-project.eu/docs/upload/201310/Cloud-Computing.pdf> [accessed June 20, 2014].

These cloud computing services are challenging the private copy levy regime in Europe as they are offering storage space as “personal lockers”. Until now, users of copyright protected works have stored data on data carriers in their private homes. These data carriers include, but are not limited to hard discs on computers, USB-sticks and DVDs which are all subject to private copy levies in twenty-three member states.

Recently, cloud service providers are increasingly offering the possibility of central storing of these copyright protected works on servers. As the users of these cloud services have online access to these stored works, storing in private homes is thus no longer necessary. The future behaviour of users for storing their audiovisual works as private copies in the cloud is difficult to predict. There are three (3) possible scenarios:

- (1) Cloud services are not accepted by the users, as an additional fee has to be paid and the services are not available without a network connection.
- (2) The user exclusively stores the works centrally in cloud service systems to make optimum use of the storage space which has been paid for.
- (3) The user stores the works both locally and in the cloud.

For scenarios (2) and (3), the question is therefore whether and to what extent the private copy levy as such may or must cover cloud services. It must thus be ascertained whether and to what extent reproductions, which constitute private copies are created within the framework of individual cloud services so that private copy levies might be payable. Should this not be the case under applicable law (*de lege lata*), it must be considered whether such services should be covered in the future (*de lege ferenda*).

In this context, it must also be considered which acts performed when using cloud services do at all constitute use of the work, which should globally be remunerated through private copy levies and which uses must be licensed individually by contract.

Studies²³³ are showing that the usage of cloud computing in Europe (24%) is dragging behind compared to worldwide usage (34%). 64% of all EU PC users have never heard about cloud computing or have only heard the name. Additionally, the studies came to the result that there are considerable differences in regards to the familiarity with cloud computing in Europe. Only one fourth of all PC users have stated that they are familiar with cloud computing – 28% in Great Britain, 24% in Greece compared to only 11% in Belgium, 10% in France and 9% in Poland.

Furthermore, the actual usage of cloud computing varies from EU Member State to Member State, too. In Greece and Romania, 39% are using cloud computing, 34% in Poland, 19% in France and 17% in Germany.

The studies are also showing that in the EU 86% of all users of cloud computing are doing so for personal purposes, in most of all cases for free offers in the cloud.

VI.2. Definition

There exists no general definition of the terms ‘cloud service’ and ‘cloud computing’. The term ‘cloud’ is commonly used for a big number of different services not carried out on own devices.

However, the common denominator of all these services is that IT resources, such as computing or storage capacity, are bundled by interconnecting a great number of computers and that Internet access is possible from anywhere.²³⁴ A basic cloud computing application, which is particularly relevant to the question of creation of copies of the work, is the flexible provision of online storage space (‘storage as service’) e.g. to offer a backup solution or to enable mobile access to data from anywhere without the need of storage media (e.g. hard

²³³ See: Business Software Alliance / Ipsos Public Affairs; Cloud Computing in der EU: 2012. Overview of central results available at: http://www.bsa.org/~media/Files/Policy/SoftwareInnovation/cloud/EUIpsos_EN.ashx [May 26, 2014]. See also: BITKOM / KPMG AG; Cloud-Monitor 2013. Available at: http://www.bitkom.org/de/publikationen/38338_76669.aspx [May 26, 2014].

²³⁴ Cf. http://de.wikipedia.org/wiki/Cloud_Computing

disc) for the user.²³⁵ The most widely accepted definition appears to be the one put forward by NIST²³⁶ in 2011²³⁷:

Cloud computing is a model for enabling convenient on-demand network access to a shared pool of configurable computing resources (e.g. network, servers, storage, application and services) that can be rapidly provisioned and released with minimal management effort or service provider interaction. This cloud model is composed of five essential characteristics, three service models, and four deployment models.

Essential Characteristics:

On-demand self-service. A consumer can unilaterally provision computing capabilities, such as server time and network storage, as needed automatically without requiring human interaction with each service provider.

Broad network access. Capabilities are available over the network and accessed through standard mechanisms that promote use by heterogeneous thin or thick client platforms (e.g., mobile phones, tablets, laptops, and workstations).

Resource pooling. The provider's computing resources are pooled to serve multiple consumers using a multi-tenant model, with different physical and virtual resources dynamically assigned and reassigned according to consumer demand. There is a sense of location independence in that the customer generally has no control or knowledge over the exact location of the provided resources but may be able to specify location at a higher level of abstraction (e.g., country, state, or datacenter). Examples of resources include storage, processing, memory, and network bandwidth.

Rapid elasticity. Capabilities can be elastically provisioned and released, in some cases automatically, to scale rapidly outward and inward commensurate with demand. To the consumer, the capabilities available for provisioning often appear to be unlimited and can be appropriated in any quantity at any time.

Measured service. Cloud systems automatically control and optimize resource use by leveraging a metering capability¹ at some level of abstraction appropriate to the type of service (e.g., storage, processing, bandwidth, and active user accounts). Resource usage can be monitored, controlled, and reported, providing transparency for both the provider and consumer of the utilized service.

²³⁵ Cf. <http://www.itwissen.info/definition/lexikon/Cloud-Dienst-cloud-service.html>

²³⁶ National Institute of Standards and Technology, a non-regulatory agency of the United States Department of Commerce which serves as a measurement standards laboratory.

²³⁷ NIST; NIST SP 800-145, The NIST Definition of Cloud Computing. Available at: csrc.nist.gov/publications/nistpubs/800-145/SP800-145.pdf

Service Models:

Software as a Service (SaaS): The capability provided to the consumer is to use the provider's applications running on a cloud infrastructure². The applications are accessible from various client devices through either a thin client interface, such as a web browser (e.g., web-based email), or a program interface. The consumer does not manage or control the underlying cloud infrastructure including network, servers, operating systems, storage, or even individual application capabilities, with the possible exception of limited user-specific application configuration settings.

Platform as a Service (PaaS): The capability provided to the consumer is to deploy onto the cloud infrastructure consumer-created or acquired applications created using programming languages, libraries, services, and tools supported by the provider.³ The consumer does not manage or control the underlying cloud infrastructure including network, servers, operating systems, or storage, but has control over the deployed applications and possibly configuration settings for the application-hosting environment.

Infrastructure as a Service (IaaS): The capability provided to the consumer is to provision processing, storage, networks, and other fundamental computing resources where the consumer is able to deploy and run arbitrary software, which can include operating systems and applications. The consumer does not manage or control the underlying cloud infrastructure but has control over operating systems, storage, and deployed applications; and possibly limited control of select networking components (e.g., host firewalls).

Deployment Models:

Private cloud: The cloud infrastructure is provisioned for exclusive use by a single organization comprising multiple consumers (e.g., business units). It may be owned, managed, and operated by the organization, a third party, or some combination of them, and it may exist on or off premises.

Community cloud: The cloud infrastructure is provisioned for exclusive use by a specific community of consumers from organizations that have shared concerns (e.g., mission, security requirements, policy, and compliance considerations). It may be owned, managed, and operated by one or more of the organizations in the community, a third party, or some combination of them, and it may exist on or off premises.

Public cloud: The cloud infrastructure is provisioned for open use by the general public. It may be owned, managed, and operated by a business, academic, or government organization, or some combination of them. It exists on the premises of the cloud provider.

Hybrid cloud: The cloud infrastructure is a composition of two or more distinct cloud infrastructures (private, community, or public) that remain unique entities, but are bound together by standardized or proprietary technology that enables data and application portability (e.g., cloud bursting for load balancing between clouds).

This definition stresses the technological configuration of cloud computing. By viewing cloud as a business model the accent can be placed on the key business process characteristics of cloud computing such as²³⁸:

- Users do not need to invest in their own infrastructures, storage and processing takes place in the cloud rather than at the users premises or on the users devices
- Cloud services can rapidly scale up or down according to demand
- Cloud virtualises computational power so that the physical location of users or computer resources are no longer a constraint
- Computing becomes an operating rather than a capital expenditure item

From a user perspective, the only difference to ‘classical’ data storage is that the user himself doesn’t have to own sufficient storage hardware. As long as there is a fast Internet connection for accessing the stored data, there is little difference in the user experience to “classical” stored data.

Furthermore, as a result of the interconnecting of several thousand servers into one ‘cloud’, it is impossible for the user to know where the accessed data is physically stored.

VI.3. Usual uses of cloud services

Before describing some cloud services as examples,²³⁹ the terms of the respective scope of functions of the service and the acts performed by using the service have to be checked in light of their relevance to be seen as a private copy.

²³⁸ Cf. Kuchida, Kenji E. et al; *The Gathering Storm: Analyzing the Cloud Computing Ecosystem and Implications for Public Policy*. Stanford 2012.

- a) Usage as pure storage space for private copies
- b) combination of a pure storage offer to the user himself and the possibility of sharing the files stored by the user with other persons (e.g. by means of a share function); in this context, it can further distinguished between the possibility of sharing such files with an unlimited number of persons (usually by link) or with a limited number of individual persons (by individually giving access to these persons). If access to these data is enabled by link, i.e. to an unlimited number of persons, it must be assumed, as a rule, that making available to the public is involved. In the case of reproductions made for the purpose of making them available to the public, no private copies are involved so that such reproductions are not subject to private copy levies, but must be licensed. In cases were data is only accessible to a limited number of individuals which are personally related to the user, this access is covered by the private copying exception.
- c) combination of storage of private copies and making available of own files by the service provider which may be accessed by the users (e.g. as matching). If a service enables access to a central file copy made available by the service provider, it is to be assumed that making available to the public is involved which requires licensing. Access to a central file copy is, as a rule, offered in the case of matching. In this case, the user does not store his movie in the cloud, but is given access to the central copies made by the service after matching of the user's files with the files of the service. The same applies if the user acquires an audiovisual work from the service and the service then gives access to the respective central copy.
- d) combination of storage space offer and classical content providing, i.e. the provider offers own content in addition to (and independent of) the content stored by the users; If services offer not only a cloud storage service, but link the same also to a classical download store, they must be licensed a content provider with respect to the download offer. However, the storing of purchased content in the cloud storage space constitutes a private copy for which the private copy levy is payable if a further copy is

²³⁹ See point 4 below.

actually created in that storage space. Where this is not the case, but access to a central copy is made possible, this constitutes making available to the public.²⁴⁰

- e) In the case of streaming, there is no download in a lasting way. However, for technical reasons, also the streaming results in reproductions on the accessing device at least temporarily;

The question of whether and to what extent these reproductions are relevant under copyright law is not answered in a uniform manner. Partly, it is argued that this constitutes (copyright-free) use of the work so that the right of reproduction is not affected.²⁴¹ However, what is correct is that also the temporary reproductions in the context of streaming constitute at least interference with the right of reproduction since neither permanence nor a specific purpose matters in this regard.²⁴² Nevertheless, this temporary 'copy' does not justify a remuneration as no harm for the rightsholder is involved as this temporary copy does not have an own economic value.

VI.4. Assessment of individual services (not including services limited to storage space for music only)

A) Dropbox

The service 'Dropbox'²⁴³ offers 2 Gigabyte (heretofore 'GB') free storage space (base version) or up to 500 GB for US\$ 49.99 per month.

The service is designed as storage space offer and backup solution. This involves the creation of reproductions which are private copies.

²⁴⁰ Lausen, Rechtsanwälte; Cloud services expert opinion. Not available for the public.

²⁴¹ E.g. *Hoeren* is quoted in the article "Kann den Filmegucken Sünde sein" by *Wieduwilt*, published in F.A.Z. on February 2010 (after *Radmann*, ZUM 2010, 387, 389 fn. 17).

²⁴² Cf. *Radmann*, *Friedrich*; *kino.ko* - Filmegucken kann Sünde sein. In: ZUM 2010, 387 ff.

²⁴³ <https://www.dropbox.com>.

The uploaded file may be shared with other users, e.g. in order to jointly access the same data with friends or members of a working group. Files or folders may also be shared with every user via link. Therefore, the making available to the public is involved (see 3., paragraph b)).

B) Strato HiDrive Media

The service 'HiDrive Media'²⁴⁴ of the German provider Strato, which is especially known for webhosting, offers from 20 GB of storage space for € 1.49 up to 5,000 GB for € 149 per month. The service is intended as an 'online hard disk'. Insofar, the storing of files in the cloud and the download thereof results in reproductions which constitute private copies.

The service is designed to make it possible to distribute files via links with the user incurring costs in accordance with the extent of use. They range from ten downloads per access link (with limited period of validity) in the smallest package up to an unlimited number of downloads per access link in the larger packages. This constitutes making public by the respective user (even though only for a period limited from the outset, as the case may be).

C) Ubuntu One

The service 'Ubuntu One'²⁴⁵ offers 5 GB free storage space; additional 20 GB packages cost US\$ 29.99 each per year.

The service makes it possible to store and download files. Data stored in the cloud storage space may also be synchronized with the own computer. These are reproductions which constitute private copies.

D) Facebook

The social network 'Facebook'²⁴⁶ can also be used as a storage service to some extent, e.g. for photos or also (Youtube) videos with music content by uploading the same to the own user profile and thus making reproductions. Unless the profile is public, these are private copies.

²⁴⁴ <http://www.strato.de/online-speicher/privat-speicher/>.

²⁴⁵ <https://one.ubuntu.com/mobile/>

²⁴⁶ <http://facebook.com>

If the profile is public or accessible by an unspecified number of so-called 'friends', this constitutes making available to the public. No private copy is involved in this case.

E) RapidShare

The share hosting service 'RapidShare'²⁴⁷ designates itself as a cloud storage service. Any files can be uploaded there. For every file, 'RapidShare' directly assigns a link through which the file may be accessed again (by the uploader and also by any other persons); access to the file is only possible via the link. This results in reproduction in the cloud which is directly made available to the public by the assignment of the link. No private copying is involved.

F) Amazon Cloud Drive

The service 'Amazon Cloud Drive'²⁴⁸ offers 5 GB free storage space (base version). At a maximum, 1,000 GB storage space is offered for US\$ 500 per year.

The storage space is linked to the Amazon user account through which the user purchases from Amazon. Downloads purchased from Amazon can automatically be stored in the 'Cloud Drive' and may then be accessed in high quality with 256 kBit/s from anywhere.²⁴⁹ Only the user may access the data. There is no possibility of sharing data with other users. Hence, there is no making available to the public in this regard. The storing of a copy of the download in the 'Cloud Drive' constitutes a reproduction in the form of a private copy; if access to a central file copy is given instead, this constitutes making available to the public.

G) YouTube

The service 'YouTube'²⁵⁰ makes it possible for the users to upload and publish videos. Through such uploading, the public is automatically given access to the videos; they may also be detected via the YouTube search function.

This means that there is reproduction upon uploading; however this cannot be regarded as a private copy because it is directly made available to the public.

H) iCloud / iTunes in the Cloud; iTunes Match

²⁴⁷ <http://rapidshare.com>

²⁴⁸ <https://www.amazon.com/cloudrive/learnmore>.

²⁴⁹ Spehr, Michael: Musik in der Cloud. Frankfurter Allgemeine Sonntagszeitung, Edition April 4, 2011, p. V10.

²⁵⁰ <http://www.youtube.com>

The service 'iCloud' stores all files of a user on Apple servers and sends them automatically to all devices registered in the name of the user. There is thus no manual transmission of the files stored by a user on various devices from the Apple range such as Mac-Computer, iPhone and iPad.²⁵¹

All apps purchased by the user from the App Store, all eBooks purchased from the 'iBooks' and all songs from the 'iTunes' music store are also stored in the cloud and thus available on all devices of the user. The 'iTunes' music store is linked to the service 'iCloud' via 'iTunes in the Cloud'²⁵² such that music files purchased from the music store are stored in 'iCloud' and may then be accessed on several devices.

'iCloud' (including 'iTunes in the Cloud') thus involves many reproductions which constitute private copies and also making available to the public if access to a central file copy is given upon purchase of music.

The service 'iTunesMatch' offered for US\$ 24.99 per year searches the music stored on the user's computer, matches it with the songs in the 'iTunes' store²⁵³ and gives the user access hereto so that the user can access them in the cloud (in high quality). This must be regarded as making available to the public.

VI.5. Interim result

For all cloud based services delivering copyright protected audiovisual works the exercise of exclusive licensing right (individual licensing agreements) is favoured and there is no room for extending exceptions to copyright, such as private copying. The rightholders can be remunerated directly (through the right of making available) in all cases of on-demand delivery of copyright protected content through streaming or downloaded copies (like for instance with 'iTunes in the Cloud').

Contractually licensed copies made available to consumers through legal on-demand platforms should not be remunerated through private copying remuneration schemes as this

²⁵¹ <http://www.heise.de/mac-and-i/meldung/iCloud-loest-Apples-MobileMe-ab-1256156.html>.

²⁵² This is how Apple calls this service; it is ultimately a mere combination of 'iTunes' and 'iCloud'.

²⁵³ <http://www.apple.com/de/itunes/itunes-match>. More than twenty million songs are available at present.

first copy made in order to legally download copyright protected content on a PC or directly on any other device falls under the exercise of exclusive rights. Only the subsequent copies performed directly by the consumer from one media and/or device to the other qualifies as private copy and should be remunerated.

Furthermore in all cases where consumers are 'renting' storage space in a cloud to store audiovisual works copied from legal sources in so-called 'personal lockers' (for instance services like 'Dropbox') this storage space could be seen as equivalent to 'traditional' private copy as long as they remain private (i.e. not allowing that this cloud-stored content is shared with others).

VI.6. Applicable law

It is disputable if the private copies made within the framework of the individual services are subject to the private copy levy scheme as it is doubtful which copyright law of which country is applicable.

While cloud services centrally store data and content in the 'cloud', they are usually organized (internally) in a decentralized manner. As a rule, a cloud service consists of several servers which are not necessarily located in one and the same country. Often, it cannot be easily ascertained – at least not by the user – on which server and thus in which specific country the data is stored. Moreover, the operator of the cloud is not necessarily located where the servers are located.²⁵⁴

²⁵⁴ Cf. Federrath, Hannes; Technik der Cloud. In: Zeitschrift für Urheber- und Medienrecht ZUM 58/1 (2014) 1-3.

The principle of the country of protection [Schutzlandsprinzip] applies under copyright law. i.e. the law of the country for which protection is claimed or in which the act of infringement is committed applies.²⁵⁵ Hence, the law of country in which the reproduction occurs applies.

However, what is problematic about the connection with the place of creation of the copy, especially in the case of cloud services, is the fact that the place of creation of the copy, i.e. the place where the server is located, is not readily identifiable. Moreover, it is possible that files 'belonging together', e.g. two episodes of a serial which a user stores in the cloud in quick succession are saved on different servers in different countries. This makes the determination of the applicable law difficult, uncertain and impractical.

This uncertainty can be circumvented. From a technical point of view, the place where the server is located is not crucial for the allocation of resources. It is very easily feasible to add the location of the server as metadata information, to make sure that service users only get access to resources in a clearly defined country or computer center. In principle, cloud computing is working in that way out of reasons of efficiency and cost as normally a storage space which is located close to the user is used.

Furthermore, there is evidence that it is becoming more important for users that their data is protected and located on a server in Europe as a reaction to the eavesdropping by the NSA. For example, the Deutsche Telekom is planning to offer storage space where the data traffic will only take place in Germany.²⁵⁶

For all the cloud computing services in Europe offering storage space to store legal copies of audiovisual works in "personal lockers", the given local copyright laws of the EU Member States are applicable.

²⁵⁵ Art. 8 of the Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II Regulation); Art. 5(2) RBC [Revised Berne Convention]

²⁵⁶ Input given by Thomas Hartmann, LL.M., at Max-Planck-Institut Symposium Institut für Medien- und Urheberrecht, Munich, 18. Oct. 2013.

VI.7. Levies as fair compensation for private copies pursuant to Sections 54 ff. UrhG

The particularity of the private copying remuneration consists in the fact that the payment obligation is not directly linked to the use, but that it anticipates such use and that it is linked to the placing on the market of devices used therefore. The payment obligation is not owed by the user, but by the party responsible for the placing on the market or for the corporation who can pass on the amount of the remuneration to the final user so that the same is captured indirectly (a so-called 'tier-system to indirectly capture the final user').²⁵⁷

This remuneration has to be paid by the manufacturers of all kinds of devices which are typically used for making private copies from legal sources. The measure of the use is only relevant to the amount of the remuneration.

In the case of cloud services it is therefore conceivable that a compensation for a private copy levy has to be paid from the manufacturers of the servers used by the cloud providers. The fact that these servers are not sold to private persons does not change the fact that a private copy levy has to be paid as for devices which are suitable to and intended for making copies it can be assumed that they are actually used therefore.²⁵⁸ Based on the decision of the ECJ in the Padawan Case, this assumption can be refuted in the case of sales to companies / enterprises, as the manufacturers might have to prove that the server and the hard disc are already reserved for other purposes than the making of private copies. In principle, the accrual of a remuneration paid by the manufacturers of servers is conceivable but it is linked to the placing in a given EU Member State or the sale in that EU Member State.

However, from a practical point of view fair compensation which has to be paid by the manufacturers of servers has no impact if the cloud service provider does not acquire the servers in Europe or if they are imported into a EU Member State which has not introduced the private copying exception together with a fair compensation into their local laws (e.g. Great Britain).

Under the presumption that in the future the storing of private copies will take place in the cloud, the remuneration levied on storage media as fair compensation for these copies will

²⁵⁷ BVerfGE [Decision of the German Federal Constitutional Court] 31, 225. 1. Senat, 7 July 1971. Available at: <http://www.servat.unibe.ch/dfr/bv031255.html> [May 27, 2014].

²⁵⁸ Cf. BGH (Bundesgerichtshof); PC als Bild- und Tonaufzeichnungsgerät. ZR 59/10, 30 November 2011.

decrease drastically as it would no longer be necessary that the devices of the user have storage capacity of their own so that the harm caused to rightsholders wouldn't be compensated any more appropriately. Such a result cannot be accepted in view of the obligation to achieve a certain result. The ECJ has decided that

“unless they are to be deprived of all practical effect, the provisions of the Directive on copyright impose on a Member State which has introduced the private copying exception into its national law an obligation to achieve a certain result, meaning that it must guarantee, within the framework of its competences, the effective recovery of the fair compensation intended to compensate the authors harmed by the prejudice sustained, in particular if that harm arose on the territory of a Member State.”²⁵⁹

This obligation to achieve a certain result by the legislative authorities is based on the question, in which Member State the harm for rightsholders accrues by the making of private copies in the cloud. Key is the place where the user is located and where he/she initiates the private copy and not the place where the physical copy is stored. The location of the physical copy is irrelevant for the question of harm, particularly as the private copy can be accessed by the user in the given country. If the private copy is initiated by the user in the EU Member State of his residence, the harm is accrued in that Member State irrespective of the location of the server.

Should the private copy levies be reduced by storing these private copies in personal lockers in the cloud, the legislator has to take measures to balance this development. This can be done by introducing a new separate regulation for operators of cloud services offering storage space in private lockers. In this regard, it would be necessary and possible to also introduce a uniform remuneration scheme (remuneration paid by the operator offering a storage space as private lockers service in the cloud) which is linked to the offering of this service to users in EU Member States and independent of the location of the cloud servers. The operators are able to pass an amount of the remuneration to the final user by adding these levies to the amount billed to the customer for the provision of the storage space in these private lockers. These remunerations would replace or complement the levies users are paying now for USB sticks and DVDs. This replacement by private copies made in the cloud can be followed by a reduction of levies collected for the 'older' storage media (see annex).

As a basis for the calculation of the levies to be paid for private copies which are stored in personal lockers, empirical studies of the actual use of these lockers are necessary. Further-

²⁵⁹ C-462/09. Stichting de ThuisKopie / Opus Supplies Deutschland GmbH.

more, the amount calculated for a copy in the cloud should be the same as for copies on all other storage media.

VI.8. Summary

This private copy levy paid by operators offering storage space as private lockers in the cloud is required under constitutional and European law as compensation for the harm caused to the rightsholder by introducing the private copy exception. This new remuneration to be paid by the operators who are offering these private lockers should be introduced on an international or at least European level. The remuneration should be paid by the cloud service providers for these private lockers to a central point created by the EU or the participants of an international remuneration scheme and should be distributed to the collecting societies in the given countries where the users of these private lockers are located. The Member States in which the users are located are largely determined by the cloud service providers based on the service agreement the users have to sign with them. An approach like this is also congruent with the intention of the EU to promote cloud computing related economic activities in Europe and not having to deal afterwards with a rank growth of remuneration and distribution schemes again.

VII. Conclusion

As has been demonstrated, the economic impact of the private copy levies in Europe is very significant, as the private copying compensation is a highly important source of revenue for the rightsholders of audio and audiovisual works. The total revenue generated by private copy levies was Euro 8.41 billion in the years 1991-2012 (Euro 419 million in 2012).

Following the adoption of the EU Copyright Directive 2001/29/EC, 23 out of 28 Member States have implemented the private copying exception on condition that rightsholders receive fair compensation in the form of private copy levies i.e. levies on recording devices and storage media into their local laws. The divergent ways of administration and implementation of these private copy levies have been a source of friction with the Internal Market principles of the free movement of goods and services for quite some time. The fact that one and the same product can be subject to a levy in one Member State but not in another one or can be subject to different amounts of levies leads to distortions of competition and obstacles to the free movement of such goods. Furthermore, the widely varying tariff levels have to be added to that problem.

In 2004 and 2008 as well as in 2011, the European Commission dealt with a reform to harmonise these levy systems as they are as a whole attacked by the industries which have to pay these levies in the first instance. A mediation process announced by the European Commission in 2011 as a “comprehensive legislative action” ended with the presentation of a recommendation for such a harmonisation of the levy systems in 2013. However, just like with the previous efforts in 2004 and 2008, the EU Commission failed to find ways for a harmonisation of levy systems in the European Union with these recommendations.

The currently discussed alternatives to these levies or the phasing-out of these levies will neither be an instrument for harmonisation nor a possible way to abolish the levy systems as no system to ensure that rightsholders are receiving a fair compensation for the private copying exception is in place.

A harmonisation of these levies – which have to be in place as long as no alternative system of fair compensation for rightsholders is established – can be achieved by calculating the harm due to rightsholders based on their lost profit by being unable to make direct licensing

agreements for these private copies with the end consumers. This calculation of the lost profit for the license fee has to be executed under consideration of the actual number of private copies made from legal and protected sources and not of a 'hypothetical' number of private copies. The basis for the calculation of a reference fee for a private copy should be the amount rightsholders are receiving from the retail price (average price in the EU) of a DVD.

The simple and transparent calculation formula for all levies in the European Union therefore should be the following:

$$\left(\frac{\text{number of private copies made by a given device}}{\text{number of used devices}} \right) \times (\text{expansion factor of the life expectancy of the product in months})^{260} \times \text{Reference fee for a license for a private copy}$$

A list of leviable products or classes of products should be put in place on EU level to give planning reliability to the industry and avoid costly negotiation processes and court procedures between the industry and the collecting societies.

The levies should be introduced for new/other technologies and should follow the users' private copying behaviour when it is obvious that this new/other technology is replacing products on the list forwarded by the EU. This happened with video recorders being replaced by DVD recorders and will most likely happen with the replacement of private copies stored on physical media with the storage of private copies in the cloud. The marked changes in revenue caused by such processes of technological change can clearly be observed by looking at the fluctuations of the amounts collected for the different products per year (compare annex B).

Furthermore, the levies should be made visible for the customer as a separate item on the invoice but should also be explained by additional information on the underlying copyright exception (allowing for legal private copies) and the reference fee for a license for that private copy (Euro 0.10 per copy of an audiovisual work of 120 minutes). To be able to give such clear and simple information to users is very important as users have generally neither

²⁶⁰ The average life expectancy of a private PC is four years. This period is based on a study commissioned by ZPÜ in 2011 (PC-study – not published) and performed by GfK (Gesellschaft für Konsumforschung).

any knowledge on levies being included in retail prices of devices and blank media nor do they know about the amount charged and why this levy is due.

With a calculation of the levy as proposed here and a Pan European list of products liable for private copying, friction with the Internal Market principle of the free movement of goods can be avoided as all liable products are burdened with the same easily calculable levy.

As discussed, the establishment of a unitary EU copyright code would be possible as a long term solution, too. However, because of the EU principle of proportionality which requires the prior exhaustion of other approaches and for reasons of the difficult implementation under inclusion of significant changes to existing national laws, the short term solution developed here within is clearly preferable at least as an adequate intermediate solution.

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ANNEX

A) Questionnaire

1. Introduction and explanation of the reason for this call. Advice on the duration (approx. 10 min) and on the confidentiality of all answers.

2. Are you older than 14 years? (only if respondent sounds young)

If no: End of interview

If yes: Go to question 2

3. Are you making copies of audiovisual works (movies, serials...) for your private use?

If no: End of interview

If yes: Go to question 4

4. What are you taping/copying and how often in a months period?

a) movies (90 min) Number of copies:

b) serials (30-45 min per episode) Number of copies:

c) reports (45 min) Number of copies:

d) news, sports Number of copies:

e) which percentage of the copied movies and serials are US movies/serials?

US movies percentage

US serials percentage

5) Which sources for your private copies are you using?

a) DVD/Blu-ray with DRM (copy protection)

b) DVD/Blu-ray without DRM

c) Video on demand (Vod)

d) free download from Internet

e) TV

f) from another device in your home

g) from a DVD from family or friends

6. Which devices/storage media are you using for your private copy?

a) PC (Desktop/Notebook/Netbook/Tablet)

b) Hard Disc (external HDD)

c) Hard disc recorder, DVD recorder, set-top box, TV device

d) DVD/Blu-ray

e) Cloud

7. Is this your private PC, bought by you as a private person with your private money? (This question is only asked when question 6a is answered in the affirmative.)

Yes

No

8. Do you know about levies being included in the sales price of these devices being used for private copies?

B) Revenues per country

Author's elaboration of data provided by Stichting de Thuiskopie, Eurocopya, WIPO surveys and ZPÜ Audit (Cf. II.2.2.).

Revenues Country AUSTRIA							
Year	1991	1992	1993	1994	1995	1996	1997
Audio revenues							
Audiocassette	2,180,185.03	1,689,643.39	1,576,273.77	1,724,526.35	1,598,802.35	1,504,327.67	1,262,617.82
Data-cd r/rw							
Audio digital							
Minidisc							
HI MD							
Memory cards / in MP3-player or Digital Jukebox							
USB Stick							
Total "Audio"	2,180,185.03	1,689,643.39	1,576,273.77	1,724,526.35	1,598,802.35	1,504,327.67	1,262,617.82
Video revenues							
Videocassette	7,267,283.42	6,486,050.45	5,910,481.60	6,527,473.96	5,370,522.45	5,566,739.10	5,674,512.91
DVD-r/rw (all kinds of)							
DVD (all types)							
Total "Video"	7,267,283.42	6,486,050.45	5,910,481.60	6,527,473.96	5,370,522.45	5,566,739.10	5,674,512.91
Device revenues							
HD Jukebox							
HD DVD recorder							
Hard disc Recorder							
MP3 player / Digital Jukebox							
DVD / SAT Harddisc rec.							
Total "Devices"							
Revenues collected from 1991 to 2012 Austria							
total Revenues	9,447,468.44	8,175,693.84	7,486,755.38	8,252,000.32	6,969,324.80	7,071,066.76	6,937,130.73

Revenues Country AUSTRIA								
Year	1998	1999	2000	2001	2002	2003	2004	2005
Audio revenues								
Audiocassette	1,172,000.00	1,195,000.00	797,000.00	588,000.00	491,000.00	331,000.00	391,000.00	273,000.00
Data-cd r/rw	192,000.00	863,000.00	1,207,000.00	2,061,000.00	6,354,000.00	10,291,000.00	7,851,000.00	7,246,000.00
Audio digital			599,000.00	664,000.00	553,000.00	543,000.00	320,000.00	360,000.00
Minidisc							112,000.00	64,000.00
HI MD								
Memory cards / in MP3-player or Digital Jukebox		8,000.00	56,000.00	63,000.00	154,000.00	174,000.00	362,000.00	
USB Stick								
Total "Audio"	1,364,000.00	2,066,000.00	2,659,000.00	3,376,000.00	7,552,000.00	11,339,000.00	9,036,000.00	7,943,000.00
Video revenues								
Videocassette	5,408,000.00	4,927,000.00	4,418,000.00	3,823,000.00	3,346,000.00	2,873,000.00	2,386,000.00	1,732,000.00
DVD-r/rw (all kinds of)				8,000.00	95,000.00	2,169,000.00	4,405,000.00	
DVD (all types)								4,883,000.00
Total "Video"	5,408,000.00	4,927,000.00	4,418,000.00	3,831,000.00	3,441,000.00	5,042,000.00	6,791,000.00	6,615,000.00
Device revenues								
HD Jukebox							57,000.00	
HD DVD recorder							13,000.00	
Hard disc Recorder								
MP3 player / Digital Jukebox								2,593,000.00
DVD / SAT Harddisc rec.								476,000.00
Total "Devices"							70,000.00	3,069,000.00
Revenues collected from 1991 to 2012 Austria								
total Revenues	6,772,000.00	6,993,000.00	7,077,000.00	7,207,000.00	10,993,000.00	16,381,000.00	15,897,000.00	17,627,000.00

Revenues Country AUSTRIA								
Year	2006	2007	2008	2009	2010	2011	2012	Total
Audio revenues								
Audiocassette	224,000.00	204,000.00	140,000.00	114,000.00	77,000.00	58,000.00	33,000.00	
Data-cd r/rw	6,072,000.00	5,078,000.00	4,321,000.00	3,630,000.00	2,855,000.00	1,900,000.00	1,290,000.00	
Audio digital	229,000.00	210,000.00	151,000.00	169,000.00	148,000.00	96,000.00	79,000.00	
Minidisc	37,000.00	23,000.00	21,000.00					
HI MD								
Memory cards / in MP3-player or Digital Jukebox								
USB Stick				161,000.00	299,000.00	463,000.00	517,000.00	
Total "Audio"	6,562,000.00	5,515,000.00	4,633,000.00	4,074,000.00	3,379,000.00	2,517,000.00	1,919,000.00	85,470,376.39
Video revenues								
Videocassette	1,384,000.00	1,039,000.00	645,000.00					
DVD-r/rw (all kinds of)				443,000.00	340,000.00	203,000.00	176,000.00	
DVD (all types)	5,143,000.00	6,185,000.00	4,755,000.00	4,373,000.00	3,774,000.00	2,904,000.00	2,065,000.00	
Total "Video"	6,527,000.00	7,224,000.00	5,400,000.00	4,816,000.00	4,114,000.00	3,107,000.00	2,241,000.00	116,705,063.89
Device revenues								
HD Jukebox								
HD DVD recorder								
Hard disc Recorder				972,000.00	1,022,000.00	1,140,000.00	1,535,000.00	
MP3 player / Digital Jukebox	2,131,000.00	2,718,000.00	2,017,000.00	1,837,000.00	1,392,000.00	1,163,000.00	921,000.00	
DVD / SAT Harddisc rec.	626,000.00	956,000.00	1,163,000.00					
Total "Devices"	2,757,000.00	3,674,000.00	3,180,000.00	2,809,000.00	2,414,000.00	2,303,000.00	2,456,000.00	22,732,000.00
Revenues collected from 1991 to 2012 Austria								
total Revenues	15,846,000.00	16,413,000.00	13,213,000.00	11,699,000.00	9,907,000.00	7,927,000.00	6,616,000.00	224,907,440.27

Revenues BELGIUM													
Year	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003
Audio revenues													
Audiocassette					203,188.26	844,983.38	939,213.41	856,596.89	992,880.50	1,208,075.33	1,455,750.00	246,992.00	286,179.00
Data-cd r/rw													2,067,009.00
Other audio carriers													
audio cd-r/rw												851,624.00	794,655.00
Minidisc													
Memory cards and USB sticks													
Total "Audio"					203,188.26	844,983.38	939,213.41	856,596.89	992,880.50	1,208,075.33	1,455,750.00	1,098,616.00	3,147,843.00
Video revenues													
Videocassette					346,949.65	2,140,229.90	2,716,535.54	2,533,828.84	2,629,361.10	2,516,862.19	2,532,672.00	1,958,619.00	1,973,387.00
DVD+ r/rw													
DVD- r/rw													
DVD ram													
Other video carriers													
Digital cassettes												2,546.00	1,945.00
Total "Video"					346,949.65	2,140,229.90	2,716,535.54	2,533,828.84	2,629,361.10	2,516,862.19	2,532,672.00	1,961,165.00	1,975,332.00
Device revenues													
DVD hard disk recorder													
Audio Devices (all stand-alone)3%													
Audio Devices (all combined)1,5%					409,859.22	1,163,491.70	1,298,754.78	1,188,104.21	1,384,468.26	1,406,370.32	1,180,241.00	555,496.00	615,097.00
Audio devices												200,900.00	188,249.00
Video Devices (all combined) 1,5%												167,592.00	613,023.00
Video Devices (all stand-alone)3%													
Video devices					530,074.57	2,122,108.04	1,943,838.95	2,121,380.37	1,988,464.13	1,943,160.00	1,916,991.00	1,074,139.00	1,168,358.00
MP3, MP4 players, mobile phones with MP3 and/or MP4 function													
External hard discs													
Home devices with integrated hard discs													
Total "Devices"					939,933.79	3,285,599.74	3,242,593.73	3,309,484.58	3,372,932.38	3,349,530.32	3,097,232.00	1,998,127.00	2,584,727.00
Revenues collected from 1991 to 2012 Belgium													
total Revenues					1,490,071.69	6,270,813.02	6,898,342.68	6,699,910.31	6,995,173.98	7,074,467.83	7,085,654.00	5,057,908.00	7,707,902.00
Exchange Rate BEF-EUR 40.3399													

Revenues BELGIUM										
Year	2004	2005	2006	2007	2008	2009	2010	2011	2012	Total
Audio revenues										
Audiocassette	241,170.00					250,795.00	103,646.00	133,145.84	171,711.00	
Data-cd r/rw	6,247,094.00	6,350,978.00	5,714,064.00	5,148,863.00	3,701,223.00	3,143,273.00	2,330,901.00	1,667,104.24	1,190,358.08	
Other audio carriers		243,354.00	83,059.00	57,644.00	42,506.00					
		572,970.00	471,512.00	336,746.00	257,382.00					
audio cd-r/rw	905,991.00									
Minidisc										
Memory cards and USB sticks							1,418,299.30	1,924,495.70	2,426,847.25	
Total "Audio"	7,394,255.00	7,167,302.00	6,268,635.00	5,543,253.00	4,001,111.00	3,394,068.00	3,852,846.30	3,724,745.78	3,788,916.33	55,882,279.18
Video revenues										
Videocassette	2,548,328.00	1,946,674.00	1,297,268.00	906,745.00	721,483.00	430,934.00	249,019.00	182,173.50	154,378.10	
DVD+ r/rw	4,062,741.00	10,094,043.00	10,798,093.00	12,025,217.00	9,798,815.00	8,830,983.00	4,747,153.00	3,421,107.15	2,386,081.48	
DVD- r/rw										
DVD ram										
Other video carriers		1,857.00	1,630.00	3,706.00	24,820.00					
Digital cassettes	6,717.00									
Total "Video"	6,617,786.00	12,042,574.00	12,096,991.00	12,935,668.00	10,545,118.00	9,261,917.00	4,996,172.00	3,603,280.65	2,540,459.58	93,992,902.44
Device revenues										
DVD hard disk recorder			Included hereunder	Included hereunder	Included hereunder					
Audio Devices (all stand-alone)3%		102,227.00	5,219.00	30,239.00	24,648.00					
Audio Devices (all combined)1,5%	444,725.00	324,078.00	223,812.00	212,340.00	149,649.00					
Audio devices	331,363.00					105,929.00	125,575.00	111,287.60	118,295.40	
Video Devices (all combined)1,5%	292,597.00									
Video Devices (all stand-alone)3%		1,680,192.00	1,313,637.00	1,276,694.00	824,204.00					
Video devices	1,550,400.00	141,525.00	126,490.00	83,087.00	63,897.00	358,434.00	4,327,779.00	6,814,492.53	8,790,683.30	
MP3, MP4 players, mobile phones with MP3 and/or MP4 function							4,437,299.50	5,082,168.60	5,502,101.15	
External hard discs						0.00	3,868,096.00	4,766,060.49	2,951,429.55	
Home devices with integrated hard discs							377,722.00	150,377.65	136,005.15	
Total "Devices"	2,619,085.00	2,248,022.00	1,669,158.00	1,602,360.00	1,062,398.00	464,363.00	13,136,471.50	16,924,386.87	17,498,514.55	82,404,919.46
Revenues collected from 1991 to 2012 Belgium										
total Revenues	16,631,126.00	21,457,898.00	20,034,784.00	20,081,281.00	15,608,627.00	13,120,348.00	21,985,489.80	24,252,413.30	23,827,890.46	232,280,101.08

Revenues Bulgaria											
Year	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001
Audio revenues											
Total "Audio"											
Video revenues											
Total "Video"											
Device revenues											
Total "Devices"											
Revenues collected from 1991 to 2011 Bulgaria											
total Revenues											

Revenues Bulgaria											
Year	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	Total
Audio revenues								1678	1466	0	
Total "Audio"								1678	1466	0	3144
Video revenues								629	629	0	
Total "Video"								629	629	0	1258
Device revenues								12017	6785	0	
Total "Devices"								12017	6785	0	18802
total Revenues								14324	8880	0	23204

Revenues Croatia								
Year	1991-2006	2007	2008	2009	2010	2011	2012	Total
Audio revenues								
Audiocassette		631.00	851.00	1,189.00	505.28	290.33	233.09	
Data-cdr/rw		41,090.00	100,959.00	91,005.00	101,433.05	50,760.58	42,250.01	
Memory Card		34,999.00	151,429.00	218,295.00	212,972.89	179,454.53	149,691.86	
USB Stick		25,468.00	78,599.00	79,437.00	99,555.28	78,634.98	73,977.70	
Total "Audio"		102,188.00	331,838.00	389,926.00	414,466.50	309,140.42	266,152.66	1,813,711.58
Video revenues								
Videocassette		7,957.00	12,699.00	15,526.00	6,876.25	7,814.44	4,625.73	
DVD+ r/rw		60,656.00	131,159.00	129,249.00	147,225.74	72,111.75	59,120.59	
DVD- r/rw								
DVD ram								
Total "Video"		68,613.00	143,858.00	144,775.00	154,101.99	79,926.19	63,746.32	655,020.50
Device revenues								
Mp3-player (group of devices which includes various devices with MP3-player feature: digital audio and video player; Cell phone with MP3-player)		29,928.00	703,990.00	1,240,618.00	837,645.97	746,045.06	625,187.39	
DVD Harddisk recorder				21,874.00	24,689.00	4,093.00		
Other devices (Analog audio and video player; HI-FI CD recorder; PC; Hard disc; CD recorder for PC; DVD recorder for PC)		83,895.00	200,600.00	147,125.00	196,565.72	116,997.03	87,765.11	
Total "Devices"		113,823.00	904,590.00	1,409,617.00	1,058,900.69	867,135.09	712,952.50	5,067,018.28
Revenues collected from 1991 to 2012 Croatia								
total Revenues		284,624.00	1,380,286.00	1,944,318.00	1,627,469.18	1,256,201.70	1,042,851.48	7,535,750.36

Revenues Czech Republic					
Year	1991-2009	2010	2011	2012	Total
Audio carriers		5,326.00	3,179.00	2,344.00	
Video carriers		25,843.00	13,749.00	13,438.00	
Minidiscs		386.00	639.00	472.00	
CD		59,448.00	76,751.00	77,051.00	
DVD		242,902.00	307,870.00	263,935.00	
Memory Card, flash disc		418,880.00	596,794.00	915,815.00	
External HDD		605,380.00	695,713.00	650,684.00	
Total "Audio"		1,358,165.00	1,694,695.00	1,923,739.00	4,976,599.00
CD writer		30,223.00	35,549.00	15,405.00	
DVD writer		218,522.00	215,779.00	236,036.00	
Memory Card writer		8,543.00	11,019.00	5,308.00	
HDD internal		708,038.00	733,358.00	685,454.00	
Audio		118,688.00	153,372.00	128,858.00	
Video		282,727.00	326,481.00	264,709.00	
e-book		0.00	8,124.00	13,080.00	
Total "Devices" (2)		1,366,741.00	1,483,682.00	1,348,850.00	4,199,273.00
Revenues collected from 2010 to 2012 Czech Republic					
total Revenues		2,724,906.00	3,178,377.00	3,272,589.00	9,175,872.00

Revenues DENMARK								
Year	1991	1992	1993	1994	1995	1996	1997	1998
Audio revenues								
Audiocassette			767,139.51	2,382,170.06	1,884,202.31	1,359,317.38	1,063,228.45	901,725.39
Data-cd r/rw								
Minidisc								
Memory Card								
USB Stick								
Total "Audio"			767,139.51	2,382,170.06	1,884,202.31	1,359,317.38	1,063,228.45	901,725.39
Video revenues								
Videocassette			363,381.87	5,073,887.65	6,662,001.02	8,842,292.27	7,550,267.83	8,142,445.69
DVD+ r/rw								
DVD- r/rw								
DVD ram								
DVD compensation								
Total "Video"			363,381.87	5,073,887.65	6,662,001.02	8,842,292.27	7,550,267.83	8,142,445.69
Revenues collected from 1991 to 2012 Danmark								
total Revenues			1,130,521.39	7,456,057.71	8,546,203.33	10,201,609.65	8,613,496.27	9,044,171.09
Exchange Rate DKK-EUR 7.4302								

Revenues DENMARK								
Year	1999	2000	2001	2002	2003	2004	2005	2006
Audio revenues								
Audiocassette	955,559.74	888,266.80	1,022,852.68	3,889,531.91	3,500,000.00	2,600,000.00	116,779.00	93,826.00
Data-cd r/rw							1,872,483.00	2,276,349.00
Minidisc							12,617.00	8,054.00
Memory Card							355,705.00	484,966.00
USB Stick								3,624.00
Total "Audio"	955,559.74	888,266.80	1,022,852.68	3,889,531.91	3,500,000.00	2,600,000.00	2,357,584.00	2,866,819.00
Video revenues								
Videocassette	4,912,384.59	4,481,709.78	4,064,493.55	4,051,034.97	3,400,000.00	4,700,000.00	1,587,114.00	958,255.00
DVD+ r/rw							2,422,819.00	1,499,866.00
DVD- r/rw								
DVD ram								
DVD compensation								
Total "Video"	4,912,384.59	4,481,709.78	4,064,493.55	4,051,034.97	3,400,000.00	4,700,000.00	4,009,933.00	2,458,121.00
Revenues collected from 1991 to 2012 Danmark								
total Revenues	5,867,944.34	5,369,976.58	5,087,346.24	7,940,566.88	6,900,000.00	7,300,000.00	6,367,517.00	5,324,940.00

Revenues DENMARK							
Year	2007	2008	2009	2010	2011	2012	Total
Audio revenues							
Audiocassette	59,653.00	27,297.00	23,203.00	14,216.94	7,411.01	0.00	
Data-cd r/rw	1,658,234.00	1,345,907.00	1,258,750.00	923,850.03	717,062.35	517,920.36	
Minidisc	2,898.00	2,903.00	1,228.00	993.79	889.40	19.39	
Memory Card	694,861.00	599,933.00	581,730.00	508,354.92	377,833.46	383,117.55	
USB Stick	275,362.00	460,416.00	577,684.00	568,883.40	627,329.80	603,818.43	
Total "Audio"	2,691,008.00	2,436,456.00	2,442,595.00	2,016,299.08	1,730,526.02	1,504,875.73	39,260,157.07
Video revenues							
Videocassette	571,805.00	404,560.00	214,816.00	78,106.90	38,375.38	61,525.76	
DVD+ r/rw	2,598,049.00	2,680,584.00	2,724,785.00	1,313,260.35	805,135.16	607,598.91	
DVD- r/rw							
DVD ram							
DVD compensation				1,636,617.30	2,015,011.70	2,218,379.71	
Total "Video"	3,169,854.00	3,085,144.00	2,939,601.00	3,027,984.55	2,858,522.24	2,887,504.38	86,680,563.39
Revenues collected from 1991 to 2012 Danmark							
total Revenues	5,860,862.00	5,521,600.00	5,382,196.00	5,044,283.63	4,589,048.26	4,392,380.11	125,940,720.46

Revenues Estonia									
Year	1991-2005	2006	2007	2008	2009	2010	2011	2012	Total
Audio revenues		65,694.00	74,369.00	71,204.00	34,607.00				
Total "Audio"		65,694.00	74,369.00	71,204.00	34,607.00	0.00	0.00	0.00	245,874.00
Video revenues		58,812.00	86,355.00	74,094.00	55,374.00				
Total "Video"		58,812.00	86,355.00	74,094.00	55,374.00	0.00	0.00	0.00	274,635.00
Device revenues		114,574.00	122,728.00	83,202.00	30,115.00			24,883.00	
Total "Devices"		114,574.00	122,728.00	83,202.00	30,115.00	0.00	0.00	24,883.00	375,502.00
Revenues collected from 1991 to 2012 Estonia									
total Revenues		239,080.00	283,452.00	228,500.00	120,096.00	0.00	0.00	24,883.00	896,011.00

Revenues FINLAND							
Year	1991	1992	1993	1994	1995	1996	1997
Audio revenues							
Audiocassettes	2,152,805.46	1,496,872.55	1,799,610.81	2,119,167.87	1,513,691.34	1,665,060.47	1,513,691.34
Data-cd r/rw							
audio cd-r/rw							
Minidisc							
Blu-Ray							
Audio							
Total "Audio"	2,152,805.46	1,496,872.55	1,799,610.81	2,119,167.87	1,513,691.34	1,665,060.47	1,513,691.34
Video revenues							
Video	6,559,329.13	5,667,933.12	5,180,188.14	5,903,396.22	5,533,382.78	7,736,644.62	7,972,107.71
Cassettes							
DVD+ r/rw							
DVD- r/rw							
DVD ram							
Total "Video"	6,559,329.13	5,667,933.12	5,180,188.14	5,903,396.22	5,533,382.78	7,736,644.62	7,972,107.71
Device revenues							
Digital Jukebox							
MP3-player							
Video hard disk recorder							
External Hard Disc							
Digital audio recorder (mp3 total)							
DVD harddisk recorder							
TV with HDD recorder							
Step-top boxes with HDD recorder							
Total "Devices"							
Revenues collected from 1991 to 2011 Finland							
total Revenues	8,712,134.59	7,164,805.67	6,979,798.95	8,022,564.09	7,047,074.12	9,401,705.09	9,485,799.05
Exchange Rate FIM-EUR 5.94573							

Revenues FINLAND								
Year	1998	1999	2000	2001	2002	2003	2004	2005
Audio revenues								
Audiocassettes	1,200,000.00	1,300,000.00	2,200,000.00	2,800,000.00	477,620.00	339,958.00	329,921.00	202,000.00
Data-cd r/rw					3,297,082.00	3,802,913.00	4,457,395.00	3,095,000.00
audio cd-r/rw					178,315.00	189,119.00	114,488.00	71,000.00
Minidisc					133,272.00	103,392.00	72,012.00	47,000.00
Blu-Ray								
Audio								
Total "Audio"	1,200,000.00	1,300,000.00	2,200,000.00	2,800,000.00	4,086,289.00	4,435,382.00	4,973,816.00	3,415,000.00
Video revenues								
Video	6,600,000.00	6,400,000.00	7,200,000.00	6,400,000.00				
Cassettes					6,221,096.00	5,307,169.00	4,254,671.00	3,060,000.00
DVD+ r/rw					42,296.00	461,361.00	2,756,686.00	3,092,000.00
DVD- r/rw								
DVD ram								
Total "Video"	6,600,000.00	6,400,000.00	7,200,000.00	6,400,000.00	6,263,392.00	5,768,530.00	7,011,357.00	6,152,000.00
Device revenues								
Digital Jukebox								
MP3-player								1,049,000.00
Video hard disk recorder								
External Hard Disc								
Digital audio recorder (mp3 total)					3,292.00	24,907.00	134,781.00	
DVD harddisk recorder								358,000.00
TV with HDD recorder								
Step-top boxes with HDD recorder								686,000.00
Total "Devices"					3,292.00	24,907.00	134,781.00	2,093,000.00
Revenues collected from 1991 to 2011 Finland								
total Revenues	7,800,000.00	7,700,000.00	9,400,000.00	9,200,000.00	10,352,973.00	10,228,819.00	12,119,954.00	11,660,000.00

Revenues FINLAND								
Year	2006	2007	2008	2009	2010	2011	2012	Total
Audio revenues								
Audiocassettes	100,000.00	82,518.00	63,531.00	41,000.00	23,000.00	25,000.00	19,000.00	
Data-cd r/rw	2,379,000.00	2,033,928.00	1,606,340.00	1,260,000.00	945,000.00	692,000.00	525,000.00	
audio cd-r/rw	31,000.00							
Minidisc	22,600.00	8,484.00	4,993.00	2,200.00	600.00	600.00	500.00	
Blu-Ray			6,607.00	8,900.00	12,500.00	11,400.00	12,000.00	
Audio								
Total "Audio"	2,532,600.00	2,124,930.00	1,681,471.00	1,312,100.00	981,100.00	729,000.00	556,500.00	46,589,087.84
Video revenues								
Video								
Cassettes	1,760,000.00	931,151.00	299,148.00	133,000.00	58,000.00	43,000.00	26,000.00	
DVD+ r/rw	2,847,000.00	2,740,067.00	2,532,679.00	2,222,000.00	1,787,000.00	1,414,000.00	1,075,000.00	
DVD- r/rw								
DVD ram								
Total "Video"	4,607,000.00	3,671,218.00	2,831,827.00	2,355,000.00	1,845,000.00	1,457,000.00	1,101,000.00	114,216,305.72
Device revenues								
Digital Jukebox	108,000.00							
MP3-player	2,069,000.00	2,665,206.00	2,865,788.00	2,298,000.00	1,641,000.00	997,000.00	774,000.00	
Video hard disk recorder		7,105,302.00	4,651,834.00	2,822,000.00	2,011,500.00	2,245,000.00	2,644,000.00	
External Hard Disc					0.00	1,100,000.00	1,998,000.00	
Digital audio recorder (mp3 total)								
DVD harddisk recorder	541,000.00							
TV with HDD recorder	11,000.00			9,400.00				
Step-top boxes with HDD recorder	1,833,000.00							
Total "Devices"	4,562,000.00	9,770,508.00	7,517,622.00	5,129,400.00	3,652,500.00	4,342,000.00	5,416,000.00	42,646,010.00
Revenues collected from 1991 to 2011 Finland								
total Revenues	11,701,600.00	15,566,656.00	12,030,920.00	8,796,500.00	6,478,600.00	6,528,000.00	7,073,500.00	203,451,403.56

Revenues FRANCE							
Year	1991	1992	1993	1994	1995	1996	1997
Audio revenues							
Audiocassette	18,903,139.25	16,921,358.52	19,512,917.93	18,293,360.56	16,829,891.72	16,200,000.00	14,200,000.00
Data-cd r/rw							
audio cd-r/rw							
Audio Cd							
Minidisc							
Floppy disc							
Hard disk inserted in Hi Fi devices							
Hard discs or Memory inserted into digital audio (mp3) player							
Hard disk inserted in mp3 players							
Integrated memory in MP3 players							
HI MD							
DVD-harddisk recorder							
Harddisk inserted into a Video Recorder							
Memory or hard disk inserted into a multimedia Walkman or devices							
Harddisk inserted a Decoder and TV set							
Memory or hard disk inserted into Hi-Fi devices							
USB sticks and removable memory cards							
external hard discs							
Walkman Phones							
Others							
Tablets							
HD DVD recorder							
Other:PVR							
positioning system (GPS) or a car radio							
Total "Audio"	18,903,139.25	16,921,358.52	19,512,917.93	18,293,360.56	16,829,891.72	16,200,000.00	14,200,000.00
Video revenues							
Videocassette	78,661,450.42	97,717,034.34	96,802,366.31	104,577,044.55	89,454,533.15	82,700,000.00	78,100,000.00
DVD+ r/rw							
DVD- r/rw							
DVD ram							
Other: DVHS							
Hard discs or Memory inserted into digital audio (mp3) player							
DVD-harddisk recorder							
Harddisk inserted into a Video Recorder							
Harddisk inserted in mp3 players							
Memory or hard disk inserted into a multimedia Walkman or devices							
Harddisk inserted a Decoder and TV set							
Harddisk inserted in Hifi devices							
Integrated momory mp3 players							
Memory or hard disk inserted into Hi-Fi devices							
USB sticks and removable memory cards							
external hard discs							
Walkman Phones							
Others							
Tablets							
HD DVD recorder							
Other:PVR							
positioning system (GPS) or a car radio							
Total "Video"	78,661,450.42	97,717,034.34	96,802,366.31	104,577,044.55	89,454,533.15	82,700,000.00	78,100,000.00
Revenues collected from 1991 to 2012 France							
total Revenues	97,564,589.66	114,638,392.86	116,315,284.24	122,870,405.11	106,284,424.87	98,900,000.00	92,300,000.00
Exchange Rate FRF-EUR 6.559757							

Revenues FRANCE								
Year	1998	1999	2000	2001	2002	2003	2004	2005
Audio revenues								
Audiocassette	14,000,000.00	14,200,000.00	13,200,000.00	36,800,000.00	6,450,000.00	3,497,000.00	2,900,000.00	1,920,000.00
Data-cd r/rw								59,222,000.00
audio cd-r/rw					6,310,000.00	5,577,000.00	4,500,000.00	2,480,000.00
Audio Cd								
Minidisc					2,950,000.00	3,238,000.00	1,700,000.00	640,000.00
Floppy disc								
Hard disk inserted in Hi Fi devices					2,000.00	45,000.00	17,000.00	150,000.00
Hard discs or Memory inserted into digital audio (mp3) player								
Hard disk inserted in mp3 players					74,000.00	1,100,000.00	2,300,000.00	2,445,000.00
Integrated memory in MP3 players					50,000.00	220,000.00	970,000.00	5,725,000.00
Hi MD					53,260,000.00	77,270,000.00	76,889,000.00	
DVD-harddisk recorder								1,350,000.00
Harddisk inserted into a Video Recorder								
Memory or hard disk inserted into a multimedia Walkman or devices								
Harddisk inserted a Decoder and TV set								
Memory or hard disk inserted into Hi-Fi devices								
USB sticks and removable memory cards								
external hard discs								
Walkman Phones								
Others								
Tablets								
HD DVD recorder						500.00	365,000.00	
Other:PVR						600,000.00	950,000.00	565,000.00
positioning system (GPS) or a car radio								
Total "Audio"	14,000,000.00	14,200,000.00	13,200,000.00	36,800,000.00	69,096,000.00	91,547,500.00	90,591,000.00	74,497,000.00
Video revenues								
Videocassette	80,000,000.00	69,700,000.00	69,100,000.00	58,500,000.00	55,690,000.00	47,530,000.00	38,100,000.00	25,140,000.00
DVD+ r/rw					770,000.00	6,300,000.00	37,500,000.00	45,260,000.00
DVD- r/rw								
DVD ram								
Other: DVHS					10,000.00		5,000.00	
Hard discs or Memory inserted into digital audio (mp3) player								
DVD-harddisk recorder								1,350,000.00
Harddisk inserted into a Video Recorder								
Harddisk inserted in mp3 players								2,445,000.00
Memory or hard disk inserted into a multimedia Walkman or devices								
Harddisk inserted a Decoder and TV set								
Harddisk inserted in Hifi devices								150,000.00
Integrated momory mp3 players								5,725,000.00
Memory or hard disk inserted into Hi-Fi devices								
USB sticks and removable memory cards								
external hard discs								
Walkman Phones								
Others								
Tablets								
HD DVD recorder						500.00	365,000.00	
Other:PVR						600,000.00	950,000.00	565,000.00
positioning system (GPS) or a car radio								
Total "Video"	80,000,000.00	69,700,000.00	69,100,000.00	58,500,000.00	56,470,000.00	54,430,500.00	76,920,000.00	80,635,000.00
Revenues collected from 1991 to 2012 France								
total Revenues	94,000,000.00	83,900,000.00	82,300,000.00	95,300,000.00	125,566,000.00	145,978,000.00	167,511,000.00	155,132,000.00
France is only collecting on carriers inserted into devices, never on devices by themselves. The amounts collected for these inserted carriers are splitted 50:50 between audio and video.								

Revenues FRANCE								
Year	2006	2007	2008	2009	2010	2011	2012	Total
Audio revenues								
Audiocassette	1,357,519.00	878,929.00	637,948.00	400,827.00	257,716.00	148,114.00	85,131.00	
Data-cd r/rw	52,814,182.00	42,733,966.00	33,068,769.00	21,375,602.00	17,010,859.00	12,204,878.00	8,307,802.00	
audio cd-r/rw	1,884,156.00							
Audio Cd		1,130,730.00	645,252.00	455,442.00	158,347.00	150,977.00	191,066.00	
Minidisc	331,683.00	165,034.00	91,447.00	53,937.00	33,795.00	158,564.00	11,504.00	12,662,533.00
Floppy disc	85,652.00							
Hard disk inserted in Hi Fi devices								
Hard discs or Memory inserted into digital audio (mp3) player	21,890,880.00	22,589,217.00	10,231,081.00	3,872,963.00	3,750,344.00	2,830,192.00	2,267,878.00	
Hard disk inserted in mp3 players								
Integrated memory in MP3 players								
Hi MD								
DVD-harddisk recorder	1,350,000.00							2,700,000.00
Harddisk inserted into a Video Recorder		6,579,826.00	7,026,423.00	5,096,494.50	4,481,098.50	3,162,652.50	1,249,934.50	27,596,429.00
Memory or hard disk inserted into a multimedia Walkman or devices		5,184,363.50	10,112,330.00	10,063,097.50	9,769,916.00	7,156,417.00	5,908,456.00	48,194,580.00
Harddisk inserted a Decoder and TV set		4,197,235.50	2,203,792.50	5,381,525.00	4,138,320.00	6,816,051.00	6,177,226.00	28,914,150.00
Memory or hard disk inserted into Hi-Fi devices		53,897.00	97,728.00	112,720.00	79,970.50		5,601.00	349,916.50
USB sticks and removable memory cards		60,477.00	2,552,172.50	5,178,778.50	6,510,943.50	7,630,703.50	11,573,877.00	33,506,952.00
external hard discs		311,877.50	10,884,328.50	17,372,341.00	23,617,845.00	25,031,691.00	16,230,594.50	93,448,677.50
Walkman Phones			3,536,090.50	8,443,132.00	18,434,074.50	25,250,738.50	26,092,037.00	81,756,072.50
Others			4,843.50	262,462.50	8,932.00	20,789.50		297,027.50
Tablets						1,796,769.00	3,210,659.50	5,007,428.50
HD DVD recorder								365,500.00
Other:PVR								2,115,000.00
positioning system (GPS) or a car radio						87,533.00	335,623.00	423,156.00
Total "Audio"	79,714,072.00	83,885,552.50	81,092,205.50	78,069,322.00	88,252,161.00	92,446,070.00	81,647,389.50	1,109,898,940.48
Video revenues								
Videocassette	14,892,900.00	11,451,880.00	8,013,960.00	4,501,047.00	2,599,503.00	1,125,196.00	2,796,901.00	
DVD+ r/rw	53,241,015.00	51,677,805.00	41,409,482.00	34,007,428.00	27,094,288.00	19,425,738.00	16,381,548.00	20,550,934.00
DVD- r/rw								
DVD ram								
Other: DVHS								
Hard discs or Memory inserted into digital audio (mp3) player				3,872,963.00	3,750,344.00	2,830,192.00	2,267,878.00	
DVD-harddisk recorder	1,350,000.00							2,700,000.00
Harddisk inserted into a Video Recorder		6,579,826.00	7,026,423.00	5,096,494.50	4,481,098.50	3,162,652.50	1,249,934.50	26,346,494.50
Harddisk inserted in mp3 players								2,445,000.00
Memory or hard disk inserted into a multimedia Walkman or devices		5,184,363.50	10,112,330.00	10,063,097.50	9,769,916.00	7,156,417.00	5,908,456.00	42,286,124.00
Harddisk inserted a Decoder and TV set		4,197,235.50	2,203,792.50	5,381,525.00	4,138,320.00	6,816,051.00	6,177,226.00	22,736,924.00
Harddisk inserted in Hifi devices				112,720.00	79,970.50		5,601.00	342,690.50
Integrated memory mp3 players								5,725,000.00
Memory or hard disk inserted into Hi-Fi devices		53,897.00	97,728.00					151,625.00
USB sticks and removable memory cards		60,477.00	2,552,172.50	5,178,778.50	6,510,943.50	7,630,703.50	11,573,877.00	21,933,075.00
external hard discs		311,877.50	10,884,328.50	17,372,341.00	23,617,845.00	25,031,691.00	16,230,594.50	77,218,083.00
Walkman Phones			3,536,090.50	8,443,132.00	18,434,074.50	25,250,738.50	26,092,037.00	55,664,035.50
Others			4,843.50	262,462.50	8,932.00	20,789.50		297,027.50
Tablets						1,796,769.00	3,210,659.50	1,796,769.00
HD DVD recorder								365,500.00
Other:PVR								2,115,000.00
positioning system (GPS) or a car radio						87,533.00	335,623.00	87,533.00
Total "Video"	69,483,915.00	79,517,361.50	85,841,150.50	94,291,989.00	100,485,235.00	100,334,471.00	92,230,335.50	1,795,952,386.25
Revenues collected from 1991 to 2012 France								
total Revenues	149,197,987.00	163,402,914.00	166,933,356.00	172,361,311.00	188,737,396.00	192,780,541.00	173,877,725.00	2,905,851,326.73

Revenues GERMANY							
Year	1991	1992	1993	1994	1995	1996	1997
Audio revenues							
Audiocassettes	11,708,584.08	10,072,450.06	9,663,416.55	9,100,995.49	9,714,545.74	7,260,344.71	8,200,000.00
Data-cd rw (audio share)							
DVD (audio share)							
Data cd-r/rw audio part							
USB							
Total "Audio"	11,708,584.08	10,072,450.06	9,663,416.55	9,100,995.49	9,714,545.74	7,260,344.71	8,200,000.00
Video revenues							
Videocassettes	26,075,885.94	29,910,575.05	26,945,082.14	29,092,508.04	26,893,952.95	25,104,431.37	24,300,000.00
DVD+ r/rw (video share)							
DVD- r/rw (video share)							
DVD ram (video share)							
Data cd-r/rw							
Total "Video"	26,075,885.94	29,910,575.05	26,945,082.14	29,092,508.04	26,893,952.95	25,104,431.37	24,300,000.00
Device revenues							
CD writer (audio share)							
DVD writer (audio share)							
CD writer (video share)							
DVD writer (video share)							
Audio devices	8,538,574.42	7,771,636.59	7,771,636.59	7,925,024.16	7,669,378.22	8,436,316.04	6,700,000.00
Video devices	28,223,311.84	26,689,436.20	19,582,479.05	22,190,067.64	21,985,550.89	24,542,010.30	22,400,000.00
CD-/DVD burner							
PCs 2002 -2009							
HDD							
Mobile phones							
Total "Devices"	36,761,886.26	34,461,072.79	27,354,115.64	30,115,091.80	29,654,929.11	32,978,326.34	29,100,000.00
Adjustment of the value							
Interest							
Other operating income							
Revenues collected from 1991 to 2011 Germany							
total Revenues	74,546,356.28	74,444,097.90	63,962,614.34	68,308,595.33	66,263,427.80	65,343,102.42	61,600,000.00
Exchange Rate DEM-EUR 1.95583							

Revenues GERMANY								
Year	1998	1999	2000	2001	2002	2003	2004	2005
Audio revenues								
Audiocassettes	7,500,000.00	7,000,000.00	12,600,000.00	13,100,000.00	4,398,600.00	3,492,919.00	1,831,986.00	1,433,869.00
Data-cd rw (audio share)								12,145,764.00
DVD (audio share)								
Data cd-r/rw audio part					14,227,821.00	19,949,080.00	20,845,552.00	
USB								
Total "Audio"	7,500,000.00	7,000,000.00	12,600,000.00	13,100,000.00	18,626,421.00	23,441,999.00	22,677,538.00	13,579,633.00
Video revenues								
Videocassettes	25,700,000.00	24,300,000.00	23,200,000.00	20,900,000.00	17,610,658.00	14,787,528.00	10,913,350.00	9,276,249.00
DVD+ r/rw (video share)						6,424,443.00	34,545,386.00	44,410,950.00
DVD- r/rw (video share)								
DVD ram (video share)								
Data cd-r/rw						5,769,971.00	8,933,808.00	5,205,327.00
Total "Video"	25,700,000.00	24,300,000.00	23,200,000.00	20,900,000.00	17,610,658.00	26,981,942.00	54,392,544.00	58,892,526.00
Device revenues								
CD writer (audio share)					6,242,494.00	7,502,533.00	3,422,000.00	1,732,065.00
DVD writer (audio share)						443,763.00	2,002,126.00	2,352,793.00
CD writer (video share)					14,565,818.00	17,505,909.00	7,984,667.00	4,041,485.00
DVD writer (video share)						6,264,675.00	28,264,336.00	33,214,754.00
Audio devices	6,500,000.00	6,900,000.00	7,200,000.00	5,800,000.00	4,038,699.00	6,154,737.00	9,762,147.00	18,755,463.00
Video devices	23,800,000.00	25,900,000.00	27,700,000.00	20,800,000.00	16,246,126.00	13,487,403.00	18,245,558.00	21,154,023.00
CD-/DVD burner								
PCs 2002 -2009								
HDD								
Mobile phones								
Total "Devices"	30,300,000.00	32,800,000.00	34,900,000.00	26,600,000.00	41,093,137.00	51,359,020.00	69,680,834.00	81,250,583.00
Adjustment of the value								
Interest								
Other operating income								
Revenues collected from 1991 to 2011 Germany								
total Revenues	63,500,000.00	64,100,000.00	70,700,000.00	60,600,000.00	77,330,216.00	101,782,961.00	146,750,916.00	153,722,742.00

Revenues GERMANY									
Year	2006	2007	2008	2009	2010	2011	2012	Total	
Audio revenues									
Audiocassettes	821,239.00	2,615,000.00	466,000.00	-795,000.00	1,698,000.00				
Data-cd rw (audio share)	11,086,625.00	9,019,000.00	6,263,000.00			3,361,000.00	9,067,500.00		
DVD (audio share)	3,397,242.00	2,705,000.00	1,959,000.00						
Data cd-r/rw audio part									
USB					3,853,000.00	7,195,000.00	7,580,000.00		
Total "Audio"	15,305,106.00	14,339,000.00	8,688,000.00	-795,000.00	5,551,000.00	10,556,000.00	16,647,500.00	254,537,533.63	
Video revenues									
Videocassettes	6,220,076.00	4,641,000.00	2,504,000.00	1,992,000.00	673,000.00				
DVD+ r/rw (video share)	47,959,406.00	38,179,000.00	27,661,000.00	38,206,000.00	-185,000.00	3,361,000.00	9,067,500.00		
DVD- r/rw (video share)									
DVD ram (video share)									
Data cd-r/rw	4,751,410.00	3,865,000.00	2,684,000.00	11,187,000.00	18,000.00				
Total "Video"	58,930,892.00	46,685,000.00	32,849,000.00	51,385,000.00	506,000.00	3,361,000.00	9,067,500.00	643,084,497.49	
Device revenues									
CD writer (audio share)	1,162,707.00	785,000.00	473,000.00						
DVD writer (audio share)	2,479,476.00	3,269,000.00	3,936,000.00						
CD writer (video share)	2,712,984.00	1,833,000.00	1,105,000.00						
DVD writer (video share)	35,003,165.00	46,159,000.00	55,570,000.00						
Audio devices	17,116,843.00	12,865,000.00	8,870,000.00	13,674,000.00	3,152,000.00	3,020,500.00	65,133,500.00		
Video devices	23,383,170.00	22,906,000.00	15,847,000.00	15,559,000.00	231,000.00	3,020,500.00	65,133,500.00		
CD-/DVD burner				49,797,000.00	5,348,000.00	1,760,000.00	498,000.00		
PCs 2002-2009				160,358,000.00	228,963,000.00	1,760,000.00	498,000.00		
HDD						1,569,000.00	3,841,000.00		
Mobile phones						5,251,000.00	1,079,000.00		
Total "Devices"	81,858,345.00	87,817,000.00	85,801,000.00	239,388,000.00	237,694,000.00	16,381,000.00	136,183,000.00	1,473,531,340.94	
Adjustment of the value						-15,516,000.00	-87,781,000.00		
Interest						3,309,000.00	1,176,000.00		
Other operating income						0.00	520,000.00		
Revenues collected from 1991 to 2011 Germany									
total Revenues	156,094,343.00	148,841,000.00	127,338,000.00	289,978,000.00	243,751,000.00	18,091,000.00	75,813,000.00	2,272,861,372.07	

Revenues GREECE										
Year	1991-1994	1995	1996-2006	2007	2008	2009	2010	2011	2012	Total
Audio revenues										
Total "Audio"						736,937.00	548,949.24	1,045,324.60	53,910.00	2,385,120.84
Video revenues (1995-1999)										
Total "Video"		463,075.11		22,894.00	524,486.00	839,082.00	229,251.87	137,393.16	191,788.60	2,407,970.74
Revenues collected from 1991 to 2012 Greece										
total Revenues		463,075.11		22,894.00	524,486.00	1,576,019.00	778,201.11	1,182,717.76	245,698.60	4,793,091.58

Revenues HUNGARY								
Year	1991	1992	1993	1994	1995	1996	1997	1998
Audio revenues								
Audiocassette	69,571.59			148,297.33	154,888.32	220,432.08	287,440.50	326,620.29
Data-cd r/rw								
Minidisc								
Audio-cd r/rw								
Memory Card								
USB Stick								
Total "Audio"	69,571.59	0.00	0.00	148,297.33	154,888.32	220,432.08	287,440.50	326,620.29
Video revenues								
Videocassettes	234,346.39			255,950.20	295,496.16	390,699.38	372,757.23	594,653.97
DVD+ r/rw								
DVD- r/rw								
DVD ram								
Other high capacity optical disc (Blu-Ray, HD-DVD)								
Total "Video"	234,346.39	0.00	0.00	255,950.20	295,496.16	390,699.38	372,757.23	594,653.97
Device revenues								
Eternal HDD								
MP3-player								
Mobile Phones								
Total "Devices"								
Revenues collected from 1991 to 2012 Hungary								
total Revenues	303,917.98			404,247.53	450,384.47	611,131.45	660,197.73	921,274.26
Exchange Rate HUF-EUR 273.1								

Revenues HUNGARY								
Year	1999	2000	2001	2002	2003	2004	2005	2006
Audio revenues								
Audiocassette	404,979.86	366,166.24	455,144.64	414,000.00	413,510.00	291,557.00	171,014.00	115,878.00
Data-cd r/rw				3,563,145.00	6,606,920.00	6,126,150.00	3,646,905.00	3,118,472.00
Minidisc		17,575.98	26,730.14	17,220.00	13,715.00	10,360.00	4,895.00	6,408.00
Audio-cd r/rw		554,741.85	686,927.87	54,300.00	99,890.00	117,480.00	25,122.00	22,315.00
Memory Card				19,750.00	48,440.00	100,550.00	705,192.00	1,538,434.00
								263,647.00
USB Stick								
Total "Audio"	404,979.86	938,484.07	1,168,802.64	4,068,415.00	7,182,475.00	6,646,097.00	4,553,128.00	5,065,154.00
Video revenues								
Videocassettes	880,263.64	1,186,744.78	1,521,054.56	1,728,720.00	1,986,360.00	1,569,380.00	941,930.00	684,562.00
DVD+ r/rw				31,210.00	634,605.00	1,904,990.00	2,600,344.00	2,561,654.00
DVD- r/rw								
DVD ram								
Other high capacity optical disc (Blu-Ray, HD-DVD)								893.00
Total "Video"	880,263.64	1,186,744.78	1,521,054.56	1,759,930.00	2,620,965.00	3,474,370.00	3,542,274.00	3,247,109.00
Device revenues								
Eternal HDD								
MP3-player				3,245.00	10,730.00	33,860.00	1,593,503.00	3,366,358.00
Mobile Phones								
Total "Devices"				3,245.00	10,730.00	33,860.00	1,593,503.00	3,366,358.00
Revenues collected from 1991 to 2012 Hungary								
total Revenues	1,285,243.50	2,125,228.85	2,689,857.20	5,831,590.00	9,814,170.00	10,154,327.00	9,688,905.00	11,678,621.00

Revenues HUNGARY							
Year	2007	2008	2009	2010	2011	2012	Total
Audio revenues							
Audiocassette	47,828.00	20,965.00	22,544.00	42,203.00	31,070.00	22,143.00	
Data-cd r/rw	2,187,548.00	1,587,212.00	1,349,463.00	1,110,189.00	868,551.00	573,637.00	
Minidisc	2,163.00	1,494.00	1,266.00	918.00	580.00	278.00	
Audio-cd r/rw	14,586.00	5,995.00	4,057.00	2,672.00	2,035.00	3,064.00	
Memory Card	2,322,734.00	2,396,423.00	1,295,617.00	1,714,575.00	1,822,944.00	2,048,906.00	
	426,621.00	319,955.00	1,587,101.00	1,410,707.00	909,830.00	1,571,918.00	
USB Stick			672,900.00	1,152,726.00	1,215,244.00	1,963,217.00	
Total "Audio"	5,001,480.00	4,332,044.00	4,932,948.00	5,433,990.00	4,850,254.00	6,183,163.00	61,968,664.66
Video revenues							
Videocassettes	237,756.00	130,062.00	108,193.00	98,078.00	69,758.00	45,106.00	
DVD+ r/rw	2,930,516.00	2,338,017.00	2,055,494.00	1,964,090.00	1,465,798.00	1,042,778.00	
DVD- r/rw							
DVD ram							
Other high capacity optical disc (Blu-Ray, HD-DVD)	1,041.00	5,742.00	5,830.00	7,961.00	15,769.00	10,732.00	
Total "Video"	3,169,313.00	2,473,821.00	2,169,517.00	2,070,129.00	1,551,325.00	1,098,616.00	32,909,335.31
Device revenues							
Eternal HDD						564,845.00	
MP3-player	3,368,888.00	1,670,409.00	1,839,627.00	2,080,831.00	1,544,646.00	322,649.00	
Mobile Phones					1,341,021.00	3,936,278.00	
Total "Devices"	3,368,888.00	1,670,409.00	1,839,627.00	2,080,831.00	2,885,667.00	4,823,772.00	21,676,890.00
Revenues collected from 1991 to 2012 Hungary							
total Revenues	11,539,681.00	8,476,274.00	8,942,092.00	9,584,950.00	9,287,246.00	12,105,551.00	116,554,889.97

Revenues ICELAND								
Year	1991-1994	1995	1996	1997	1998	1999	2000	2001
Audio revenues								
Audiocassette		35,469.98	22,168.74	28,502.66	19,001.77	27,235.88	10,767.67	17,734.99
Data-cd r/rw								
Minidisc								
Audio-cd r/rw								
Total "Audio"		35,469.98	22,168.74	28,502.66	19,001.77	27,235.88	10,767.67	17,734.99
Video revenues								
Videocassettes		123,511.53	76,007.09	107,676.72	115,277.43	138,712.95	125,411.71	287,560.17
DVD+ r/rw								
DVD- r/rw								
DVD ram								
Other high capacity optical disc (Blu-Ray, HD-DVD)								
Total "Video"		123,511.53	76,007.09	107,676.72	115,277.43	138,712.95	125,411.71	287,560.17
Device revenues								
Discs								136,179.38
CD recorder (external)								
Audio - device		8,867.49	19,001.77	12,667.85	11,401.06	10,134.28	9,500.89	
Video - device		34,836.58	38,003.55	41,170.51	47,504.43	51,938.18	50,671.40	46,237.65
Total "Devices"		43,704.08	57,005.32	53,838.36	58,905.50	62,072.46	60,172.28	182,417.03
Revenues collected from 1991 to 2011 Iceland								
total Revenues		202,685.58	155,181.15	190,017.73	193,184.70	228,021.28	196,351.66	487,712.19
Exchange Rate ISK-EUR 157.88								

Revenues ICELAND										
Year	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
Audio revenues										
Audiocassette	46,385.00	82,742.00	31,342.00							
Data-cd r/rw										
Minidisc										
Audio-cd r/rw	517,762.00	611,786.00	587,967.00							
Total "Audio"	564,147.00	694,528.00	619,309.00							
Video revenues										
Videocassettes	211,869.00	218,137.00	236,942.00							
DVD+ r/rw										
DVD- r/rw		66,444.00	199,332.00							
DVD ram										
Other high capacity optical disc (Blu-Ray, HD-DVD)										
Total "Video"	211,869.00	284,581.00	436,274.00							
Device revenues										
Discs										
CD recorder (external)	80,234.00	99,039.00	120,351.00							
Audio - device										
Video - device										
Total "Devices"	80,234.00	99,039.00	120,351.00							
Revenues collected from 1991 to 2011 Iceland										
total Revenues	856,250.00	1,078,148.00	1,175,934.00			451,600.00	232,453.00	204,361.00		

Revenues ITALY												
Year	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002
Audio revenues												
Audiocassette		261,843.65	2,510,393.70	331,410.39	3,661,267.91	3,824,121.24	3,539,140.75	3,342,000.00	3,272,000.00	1,205,000.00	3,264,000.00	3,056,000.00
Data-cd r/rw												
Minidisc												
Audio - cd r/rw												
Memory Card												
USB Stick												
Total "Audio"		261,843.65	2,510,393.70	331,410.39	3,661,267.91	3,824,121.24	3,539,140.75	3,342,000.00	3,272,000.00	1,205,000.00	3,264,000.00	3,056,000.00
Video revenues												
Videocassette		775,098.51	2,522,220.56	1,525,303.81	2,516,158.09	2,403,975.22	2,513,803.09	2,509,000.00	1,949,000.00	2,014,000.00	1,911,000.00	2,005,589.00
DVD+ r/rw												
DVD- r/rw												
DVD ram												
Cassettes												
DVD-r/rw												
Blue Ray												
Total "Video"		775,098.51	2,522,220.56	1,525,303.81	2,516,158.09	2,403,975.22	2,513,803.09	2,509,000.00	1,949,000.00	2,014,000.00	1,911,000.00	2,005,589.00
Device revenues												
MP3-player												
External HDD												
Mobile Phone												
Computer												
DVD hard disk recorder												
DVD writer and recorder												
CD writer and recorder												
Video Recording Equipment												
Jukebox												
HD DVD recorder												
CD recorder (external)												
HiFi tape recorder												2,322,975.00
Audio Device		174,252.56	70,548.01	159,378.60	1,575,234.81	1,495,826.81	1,701,353.86	2,086,000.00	2,304,000.00	1,967,000.00	2,120,000.00	
Video Device												
Total "Devices"		174,252.56	70,548.01	159,378.60	1,575,234.81	1,495,826.81	1,701,353.86	2,086,000.00	2,304,000.00	1,967,000.00	2,120,000.00	2,322,975.00
Revenues collected from 1991 to 2012 Italy												
total Revenues		1,211,194.72	5,103,162.27	2,016,092.80	7,752,660.81	7,723,923.27	7,754,297.70	7,937,000.00	7,525,000.00	5,186,000.00	7,295,000.00	7,384,564.00
Exchange Rate ITL-EUR 1936.27												

Revenues ITALY											
Year	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	Total
Audio revenues											
Audiocassette	1,547,504.00	2,974,688.00	1,773,032.00	1,160,943.00	397,039.00	520,419.00	288,709.00	406,613.00	256,580.00	98,628.00	
Data-cd r/rw	7,170,462.00	28,691,813.00	26,512,855.00	23,665,655.00	26,717,875.00	20,714,316.00	16,150,137.00	8,776,833.00	5,929,101.00	3,039,825.00	
Minidisc	56,014.00	111,883.00	59,569.00	45,818.00	23,618.00	18,162.00	9,261.00				
Audio - cd r/rw	720,673.00	1,939,716.00	1,473,458.00	1,120,855.00		651,292.00					
Memory Card	14,572.00	92,441.00	181,607.00	-1,012.00	778.00	1,640.00		759,442.00	2,384,533.00	2,806,217.00	
USB Stick								1,788,097.00	4,181,062.00	6,010,678.00	
Total "Audio"	9,509,225.00	33,810,541.00	30,000,521.00	25,992,259.00	27,139,310.00	21,905,829.00	16,448,107.00	11,730,985.00	12,751,276.00	11,955,348.00	229,510,578.64
Video revenues											
Videocassette	5,979,829.00	18,656,314.00	13,422,146.00	9,541,299.00	5,944,118.00	5,211,936.00	2,427,102.00	1,297,382.00	485,289.00	65,245.00	
DVD+ r/rw	13,446.00	63,547.00	21,728,128.00	26,514,993.00	28,000,633.00	24,750,935.00	19,027,794.00	10,942,586.00	8,179,638.00	4,454,814.00	
DVD- r/rw											
DVD ram			117,437.00	65,574.00	56,340.00	46,941.00					
Cassettes	954,275.00	14,855,020.00									
DVD-r/rw											
Blue Ray								19,989.00	33,497.00	34,535.00	
Total "Video"	6,947,550.00	33,574,881.00	35,267,711.00	36,121,866.00	34,001,091.00	30,009,812.00	21,454,896.00	12,259,957.00	8,698,424.00	4,554,594.00	245,535,930.28
Device revenues											
MP3-player	17,833.00	173,447.00	788,387.00	1,884,059.00	3,265,893.00	1,693,251.00	926,791.00	1,573,006.00	4,116,949.00	3,540,019.00	
External HDD								4,404,375.00	12,335,612.00	7,766,264.00	
Mobile Phone								9,192,148.00	15,560,813.00	18,048,990.00	
Computer								5,442,131.00	9,782,451.00	9,259,014.00	
DVD hard disk recorder					1,527,031.00						
DVD writer and recorder					4,278,134.00	5,462,956.00	4,224,892.00	1,686,257.00	613,016.00	368,076.00	
CD writer and recorder					201,037.00	183,471.00	30,483.00	13,353.00	19,652.00	15,003.00	
Video Recording Equipment	699,159.00	2,001,858.00	880,801.00	394,241.00	304,325.00	1,623,932.00	940,295.00	4,297,499.00	19,607,770.00	15,638,909.00	
Jukebox		11,400.00									
HD DVD recorder	138,816.00	1,517,782.00	2,488,818.00	3,291,815.00							
CD recorder (external)	178,752.00	680,126.00	511,348.00	371,453.00							
HiFi tape recorder	1,169,852.00	759,600.00	486,657.00	356,905.00							
Audio Device	118,470.00	418,091.00	1,365,748.00	938,861.00	239,224.00	783,083.00	502,238.00	1,203,120.00	523,151.00	592,170.00	
Video Device	163,021.00	1,112,622.00	1,001,083.00	1,570,251.00							
Total "Devices"	2,485,903.00	6,674,926.00	7,522,842.00	8,807,585.00	9,815,644.00	9,746,693.00	6,624,699.00	27,811,889.00	62,559,414.00	55,228,445.00	213,254,609.65
Revenues collected from 1991 to 2012 Italy											
total Revenues	18,942,678.00	74,060,348.00	72,791,074.00	70,921,710.00	70,956,045.00	61,662,334.00	44,527,702.00	51,802,831.00	84,009,114.00	71,738,387.00	688,301,118.56

Revenues LATVIA										
Year	1991-2004	2005	2006	2007	2008	2009	2010	2011	2012	Total
Audio revenues										
Audiocassettes		3,279.00	3,735.00	2,044.00	1,425.00	746.00	615.15	399.54	209.62	
Minidisc		369.00	205.00	118.00	186.00	72.00	10.84	6.40	10.54	
audio cd-r/rw		321,327.00	289,559.00	220,206.00	142,440.00	86,393.00	40,887.22	45,377.09	31,231.00	
Total "Audio"		324,975.00	293,499.00	222,368.00	144,051.00	87,211.00	41,513.21	45,783.03	31,451.16	1,190,851.40
Video revenues										
Videocassettes		21,134.00	10,434.00	10,773.00	3,838.00	3,211.00	1,056.74	619.55	299.91	
DVD + r/rw		148,181.00	231,285.00	305,402.00	291,913.00	183,669.00	87,515.72	81,640.69	57,496.76	
USB Flash drive									2,445.16	
Total "Video"		169,315.00	241,719.00	316,175.00	295,751.00	186,880.00	88,572.46	82,260.24	60,241.83	1,440,914.53
Device revenues										
All types of PCs									70,235.80	
MP3-player		127,811.00	116,605.00	50,024.00	56,415.00	27,481.00	16,661.83	13,185.75	13,160.14	
DVD harddisk recorder		5,667.00	13,383.00	8,238.00	9,185.00	1,771.00	257.54	34.15	359.99	
CD writer		33,717.00	38,350.00	17,207.00	4,163.00	630.00	406.94	589.07	1,580.81	
Video tape recorder		16,298.00	5,483.00	2,448.00	330.00	4,394.00	85.37	0.00	0.00	
DVD writer (internal or external)		38,231.00	91,421.00	139,892.00	91,730.00	50,058.00	56,265.28	81,289.25	30,958.84	
Total "Devices"		221,724.00	265,242.00	217,809.00	161,823.00	84,334.00	73,676.96	95,098.22	116,295.58	1,236,002.76
Revenues collected from 1991 to 2012 Latvia										
total Revenues		716,014.00	800,460.00	756,352.00	601,625.00	358,425.00	203,762.63	223,141.49	207,988.57	3,867,768.69

Revenues LITHUANIA										
Year	1991-2004	2005	2006	2007	2008	2009	2010	2011	2012	Total
Audio revenues										
Audiocassettes		10,611.00	11,796.00	2,621.00	6,933.00	15,299.00	276.40	156.32	146.77	
Data-cd r/rw		97,877.00	62,050.00							
All type CD				13,570.00	78,632.00	143,240.00	40,711.12	22,694.89	25,788.60	
Memory Card, USB Stick		1,419.00	12,927.00	38,945.00	269,797.00	121,031.00	0.00	0.00	176,249.12	
Non-intergrated Memory Cards							0.00	0.00	163,989.19	
Mini disc							190.10	124.70	30.90	
Blu-ray									279.06	
Total "Audio"		109,907.00	86,773.00	55,136.00	355,362.00	279,570.00	41,177.62	22,975.91	366,483.64	1,317,385.17
Video revenues										
Videocassettes		26,107.00	23,590.00	14,583.00	33,315.00	43,945.00	10,095.11	5,004.81	3,401.60	
DVD+ r/rw		33,528.00	55,476.00	14,704.00	103,395.00	253,277.00	80,111.30	37,944.27	29,604.38	
DVD- r/rw										
DVD ram										
Total "Video"		59,635.00	79,066.00	29,287.00	136,710.00	297,222.00	90,206.41	42,949.08	33,005.98	768,081.47
Device revenues										
HDD		80,473.00			309,578.00	134,220.00			87,839.95	
PC									883,309.64	
SSD									10,804.03	
Digital and analogue audio and video player									38,931.74	
Mobile Phones									552,531.13	
Total "Devices"		80,473.00	0.00	0.00	309,578.00	134,220.00	0.00	0.00	1,573,416.49	2,097,687.49
Revenues collected from 1991 to 2012 Lithuania										
total Revenues		250,015.00	165,839.00	84,423.00	801,650.00	711,012.00	131,384.03	65,924.99	1,972,906.11	4,183,154.13

Revenues NETHERLANDS											
Year	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001
Audio revenues											
Audio Cassette		2,813,437.34	5,399,984.57	3,720,997.77	5,218,472.49	4,265,534.03	4,220,156.01	3,700,000.00	3,900,000.00	3,400,000.00	3,200,000.00
Data cd-r/rw									100,000.00	4,300,000.00	9,200,000.00
audio cd-r/rw											
Minidisc											
Total "Audio"		2,813,437.34	5,399,984.57	3,720,997.77	5,218,472.49	4,265,534.03	4,220,156.01	3,700,000.00	4,000,000.00	7,700,000.00	12,400,000.00
Video revenues											
Video cassettes		1,315,962.63	7,805,019.72	7,578,129.61	9,393,250.47	8,168,043.89	9,030,226.30	8,200,000.00	7,900,000.00	8,200,000.00	5,200,000.00
DVD-r/Rw											
DVD+r/rw											
Total "Video"		1,315,962.63	7,805,019.72	7,578,129.61	9,393,250.47	8,168,043.89	9,030,226.30	8,200,000.00	7,900,000.00	8,200,000.00	5,200,000.00
Revenues collected from 1991 to 2012 Netherlands											
total Revenues		4,129,399.97	13,205,004.29	11,299,127.38	14,611,722.96	12,433,577.92	13,250,382.31	11,900,000.00	11,900,000.00	15,900,000.00	17,600,000.00
Exchange Rate NLG-EUR 2.20371											

Revenues NETHERLANDS												
Year	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	Total
Audio revenues												
Audio Cassette	2,357,388.00	1,081,613.00	434,368.00	700,000.00	400,000.00	291,000.00	112,000.00	158,000.00	125,000.00	110,000.00	51,000.00	
Data cd-r/rw	8,778,372.00	12,271,518.00	12,453,572.00	11,000,000.00	8,100,000.00	7,304,000.00	5,784,000.00	5,071,000.00	2,299,000.00	3,284,000.00	1,819,000.00	
audio cd-r/rw			487,534.00									
Minidisc			156,705.00									
Total "Audio"	11,135,760.00	13,353,131.00	13,532,179.00	11,700,000.00	8,500,000.00	7,595,000.00	5,896,000.00	5,229,000.00	2,424,000.00	3,394,000.00	1,870,000.00	138,067,652.21
Video revenues												
Video cassettes	6,842,260.00	4,776,459.00	3,764,447.00	2,900,000.00	1,200,000.00	1,206,000.00	880,000.00	524,000.00	268,000.00	238,000.00	71,000.00	
DVD-r/Rw		556,503.00	3,504,608.00	11,500,000.00	10,100,000.00	10,448,000.00	10,234,000.00	9,132,000.00	8,128,000.00	5,578,000.00	3,434,000.00	
DVD+r/rw			8,838,016.85									
Total "Video"	6,842,260.00	5,332,962.00	16,107,071.85	14,400,000.00	11,300,000.00	11,654,000.00	11,114,000.00	9,656,000.00	8,396,000.00	5,816,000.00	3,505,000.00	176,913,926.46
Revenues collected from 1991 to 2012 Netherlands												
total Revenues	17,978,020.00	18,686,093.00	29,639,250.85	26,100,000.00	19,800,000.00	19,249,000.00	17,010,000.00	14,885,000.00	10,820,000.00	9,210,000.00	5,375,000.00	314,981,578.67

Revenues NORWAY								
Year	1991	1992	1993	1994	1995	1996	1997	1998
Audio & Video	6,121,074.86	6,965,783.19	5,472,240.93	5,606,904.57	4,652,016.89	4,896,859.89	5,508,967.37	5,031,523.54
Revenues collected from 1991 to 2013 Norway								
total Revenues	6,121,074.86	6,965,783.19	5,472,240.93	5,606,904.57	4,652,016.89	4,896,859.89	5,508,967.37	5,031,523.54
Exchange Rate NOK-EUR 8.1685								

Revenues NORWAY							
Year	1999	2000	2001	2002-2004	2005	2006	2007
Audio & Vide	4,896,859.89	3,623,676.32	3,366,591.17		4,000,000.00	4,100,000.00	4,200,000.00
Revenues collected from 1991 to 2013 Norway							
total Revenue	4,896,859.89	3,623,676.32	3,366,591.17		4,000,000.00	4,100,000.00	4,200,000.00

Revenues NORWAY							
Year	2008	2009	2010	2011	2012	2013	Total
Audio & Video	4,500,000.00	4,954,248.00	5,215,686.00	5,372,549.00	5,211,790.45	5,383,877.87	
Revenues collected from 1991 to 2013 Norway							
total Revenues	4,500,000.00	4,954,248.00	5,215,686.00	5,372,549.00	5,211,790.45	5,383,877.87	99,080,649.94

Revenues Poland									
Year	1991-1996	1997	1998	1999	2000	2001	2002	2003	2004
Audio revenues									
Audiocassettes		155,613.77	103,742.51	160,000.00	100,000.00				
Audio - devices		363,098.79	389,034.42	350,000.00	310,000.00				
Audio (carriers + devices)						540,000.00	450,000.00	1,090,000.00	1,380,000.00
Total "Audio"		518,712.56	492,776.93	510,000.00	410,000.00	540,000.00	450,000.00	1,090,000.00	1,380,000.00
Video revenues									
Video - cassettes		207,485.02	259,356.28	300,000.00	230,000.00				
Video - device		1,141,167.62	1,426,459.53	1,290,000.00	1,360,000.00				
Video (carriers + devices)						1,360,000.00	1,200,000.00	850,000.00	1,470,000.00
Total "Video"		1,348,652.64	1,685,815.81	1,590,000.00	1,590,000.00	1,360,000.00	1,200,000.00	850,000.00	1,470,000.00
Revenues collected from 1991 to 2012 Poland									
total Revenues		1,867,365.20	2,178,592.73	2,100,000.00	2,000,000.00	1,900,000.00	1,650,000.00	1,940,000.00	2,850,000.00
Exchange Rate PLN-EUR 3.8557									

Revenues Poland									
Year	2005	2006	2007	2008	2009	2010	2011	2012	Total
Audio revenues									
Audiocassettes									
Audio - devices									
Audio (carriers + d	2,543,861.00	3,298,026.00	2,533,916.00	3,143,551.00	1,956,746.00	1,606,780.00	1,451,327.00	1,368,315.00	
Total "Audio"	2,543,861.00	3,298,026.00	2,533,916.00	3,143,551.00	1,956,746.00	1,606,780.00	1,451,327.00	1,368,315.00	23,294,011.48
Video revenues									
Video - cassettes									
Video - device									
Video (carriers + d	1,292,712.00	1,795,796.00	1,756,665.00	1,763,018.00	552,053.00	300,808.00	303,208.00	300,362.00	
Total "Video"	1,292,712.00	1,795,796.00	1,756,665.00	1,763,018.00	552,053.00	300,808.00	303,208.00	300,362.00	19,159,090.45
Revenues collected from 1991 to 2012 Poland									
total Revenues	3,836,573.00	5,093,822.00	4,290,581.00	4,906,569.00	2,508,799.00	1,907,588.00	1,754,535.00	1,668,677.00	42,453,101.93

Revenues PORTUGAL										
Year	1991-2004	2005	2006	2007	2008	2009	2010	2011	2012	Total
Revenues collected from 1991 to 2012 Portugal										
total Revenues		5,112,962.00	6,238,951.00	5,752,919.00	4,594,998.00	3,633,984.00	2,359,418.00	2,292,392.00	1,179,084.00	31,164,708.00

Revenues Romania							
Year	1991-2007	2008	2009	2010	2011	2012	Total
Audio revenues							
Audiocassette		11,089.00	652.00	611.00	414.00	145.00	
Data-cd r/rw		528.00	8,070.00	578.00	591.00	254.00	
CD blank		93,446.00	83,799.00	43,326.00	40,779.00	39,128.00	
Minidisc		261.00	10.00	80.00	409.00	12.00	
Memory Card			52,275.00				
USB Stick			14,315.00				
Total "Audio"		105,324.00	159,121.00	44,595.00	42,193.00	39,539.00	390,772.00
Video revenues							
Videocassettes		238.00	130.00	153.00	10.00	31.00	
DVD+ r/rw		91,749.00	77,509.00	58,996.00	59,693.00	192,640.00	
Blu ray disc			88.00	164.00	291.00	1,617.00	
Total "Video"		91,987.00	77,727.00	59,313.00	59,994.00	194,288.00	483,309.00
Device revenues							
Memory Card				70,568.00	132,356.00	89,548.00	
USB Stick				21,314.00	19,735.00	15,094.00	
MP3-player		22,902.00	17,636.00				
DVD harddisk recorder		6,695.00	6,355.00				
HD DVD recorder			1.00	556.00	2,344.00	3,121.00	
Audio recorder		50,048.00	5,155.00	4,714.00	5,083.00	1,864.00	
Video recorder		1,920.00	996.00	614.00	1,792.00	315.00	
CD Writer/Recorder		1,973.00	3,436.00	351.00	11.00	126.00	
DVD Writer/Recorder		19,192.00	32,351.00	10,977.00	19,098.00	14,430.00	
Mobile Phones			155,437.00	622,634.00	1,103,496.00	1,478,855.00	
MP3-recorder		2,201.00	6,806.00	16,031.00	12,980.00	8,193.00	
TV and digital recorders			24,765.00	22,084.00	43,197.00	59,453.00	
CD writer built in computer			1,284.00	734.00	951.00	1,147.00	
DVD writer built in computer			8,162.00	22,349.00	20,974.00	24,764.00	
External Hard disk			9,730.00	31,815.00	38,732.00	24,394.00	
Hard disk built in computer			17,808.00	41,363.00	38,937.00	46,602.00	
Total "Devices"		104,931.00	289,922.00	866,104.00	1,439,686.00	1,767,906.00	4,468,549.00
Revenues collected from 1991 to 2012 Romania							
total Revenues		302,242.00	526,770.00	970,012.00	1,541,873.00	2,001,733.00	5,342,630.00

Revenues SLOVAKIA										
Year	1991-1994	1995	1996	1997	1998	1999	2000	2001	2002	2003
Audio revenues										
Audio cassettes		19,928.06	24,430.34	20,076.63	21,187.00	52,911.00	121,295.00	427,662.00	33,640.00	16,294.00
CD-r/rw									24,487.00	38,170.00
Minidisc									2,744.00	7,282.00
Memory cards									2,049.00	976.00
Data cd -r/rw									70,650.00	46,107.00
USB Stick										
Total "Audio"		19,928.06	24,430.34	20,076.63	21,187.00	52,911.00	121,295.00	427,662.00	133,570.00	108,829.00
Video revenues										
Videocassettes		24,584.57	18,532.23	19,895.64	28,053.00	69,314.00	122,023.00	551,578.00	138,784.00	114,724.00
DVD+ r/rw									229,200.00	148,146.00
DVD- r/rw										
DVD ram										
Total "Video"		24,584.57	18,532.23	19,895.64	28,053.00	69,314.00	122,023.00	551,578.00	367,984.00	262,870.00
Device revenues										
MP3-player									21.00	1,113.00
DVD harddisk recorder									9,918.00	6,378.00
CD recorder									15,118.00	17,678.00
HiFi tape recorder									262,279.00	108,492.00
TV with recorder									9,990.00	5,541.00
SET TOP BOX										
Total "Devices"									297,326.00	139,202.00
Revenues collected from 1991 to 2012 Slovakia										
total Revenues		44,512.63	42,962.57	39,972.27	49,240.00	122,225.00	243,318.00	979,240.00	798,880.00	510,901.00
Exchange Rate SKK-EUR 42.45										

Revenues SLOVAKIA										
Year	2004	2005	2006	2007	2008	2009	2010	2011	2012	Total
Audio revenues										
Audio cassettes	11,646.00	71,151.00	103,485.00	4,206.00	4,546.00					
CD-r/rw	40,205.00	5,180.00	4,706.00	143,200.00	164,885.00					
Minidisc	7,918.00	3,621.00	3,641.00	4,120.00	3,983.00					
Memory cards	560.00	1,273.00	22,604.00	48,270.00	52,811.00					
Data cd -r/rw	15,314.00	20,710.00	779.00	605.00	508.00					
USB Stick				13,724.00	14,971.00					
Total "Audio"	75,643.00	101,935.00	135,215.00	214,125.00	241,704.00	13,024.00	112,216.00	141,623.00	76,061.00	2,041,435.03
Video revenues										
Videocassettes	91,524.00	92,264.00	61,220.00	35,101.00	18,595.00	11,508.00				
DVD+ r/rw	226,494.00	161,757.00	166,040.00	185,020.00	203,513.00	198,305.00				
DVD- r/rw										
DVD ram										
Total "Video"	318,018.00	254,021.00	227,260.00	220,121.00	222,108.00	209,813.00	104,560.00	75,756.00	120,557.00	3,217,048.44
Device revenues										
MP3-player	7,546.00	48,744.00	61,833.00	98,392.00	96,118.00					
DVD harddisk recorder	90,232.00	134,034.00	167,526.00	223,278.00	241,225.00					
CD recorder	20,018.00	21,262.00	17,258.00	26,135.00	28,253.00					
HiFi tape recorder	153,447.00	49,930.00	72,441.00	120,375.00	140,070.00					
TV with recorder	3,031.00	1,257.00	1,257.00	1,251.00	1,050.00					
SET TOP BOX					6,845.00					
Total "Devices"	274,274.00	255,227.00	320,315.00	469,431.00	513,561.00	389,279.00	475,067.00	165,369.00	236,470.00	3,535,521.00
Revenues collected from 1991 to 2012 Slovakia										
total Revenues	667,935.00	611,183.00	682,790.00	903,677.00	977,373.00	612,116.00	691,843.00	382,748.00	433,088.00	8,794,004.47

Revenues SLOVENIA					
Year	1991-2007	2008	2009	2010	2011
Audio revenues					
Total "Audio"					
Video revenues					
Total "Video"					
Device revenues					
Total "Devices"					
Revenues collected from 1991 to 2011 Slovenia					
total Revenues		1130250	978090	no collection	no collection

Revenue SPAIN												
Year	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002
Audio revenues												
Audiocassette			1,851,117.28	4,285,216.30	5,787,746.57	5,841,837.65	6,364,718.19	7,170,000.00	6,790,000.00	6,580,000.00	5,430,000.00	3,336,464.00
Data cd-r/rw												
Audio cd r/rw												719,971.00
Minidisc												9,033.00
Memory Card (audio share)												7,090.00
DVD r/rw data (audio %)												
Memory Card (Video share)												
USB (Audio share)												
USB (Video share)												
Total "Audio"			1,851,117.28	4,285,216.30	5,787,746.57	5,841,837.65	6,364,718.19	7,170,000.00	6,790,000.00	6,580,000.00	5,430,000.00	4,072,558.00
Video revenues												
Videocassette			4,489,560.42	5,300,926.76	9,435,890.04	9,886,649.12	10,595,843.40	12,820,000.00	12,820,000.00	11,150,000.00	10,410,000.00	9,506,473.00
DVD+ r/rw												
DVD- r/rw												
DVD RAM												
Data cd-r/rw (video share)												
Total "Video"			4,489,560.42	5,300,926.76	9,435,890.04	9,886,649.12	10,595,843.40	12,820,000.00	12,820,000.00	11,150,000.00	10,410,000.00	9,506,473.00
Device revenues												
MP3-player												1,960.00
mobile phone												5,269.00
MP4 (audio share)												
MP4 (video share)												
HiFi tape recorder												1,331,764.00
CD recorder (external)					1,171,973.60	1,177,983.72	1,238,084.94	1,410,000.00	1,550,000.00	1,680,000.00	1,500,000.00	1,063.00
CD recorder (Video share)												
DVD recorder												10,133.00
CD/DVD recorder (Audio)												
CD/DVD recorder (Video)												
VHS recorder												
Minidisc recorder												357.00
Extern Hard disk (Audio)												
Extern Hard disk (Video)												
TV hard drive recorder with DVD recorder												
TV with DVD recorder												
TV hard disc recorder												
Digital tuner decoder with hard disk												
Audio devices			516,870.41	2,512,230.60								
Video devices			607,022.23	2,722,584.83	5,643,503.66	6,148,353.83	6,677,244.48	7,650,000.00	9,260,000.00	9,690,000.00	7,380,000.00	7,461,905.00
Total "Devices"			1,123,892.64	5,234,815.43	6,815,477.26	7,326,337.55	7,915,329.41	9,060,000.00	10,810,000.00	11,370,000.00	8,880,000.00	8,812,451.00
Revenues collected from 1991 to 2012 Spain												
total Revenues			7,464,570.34	14,820,958.49	22,039,113.87	23,054,824.32	24,875,891.00	29,050,000.00	30,420,000.00	29,100,000.00	24,720,000.00	22,391,482.00
Exchange Rate ESP-EUR 166.386												

Revenue SPAIN											
Year	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	Total
Audio revenues											
Audiocassette	2,026,397.00	694,736.00	418,601.00	238,446.00	113,978.00	48,302.00	19,998.00				
Data cd-r/rw	5,243,855.00	31,209,917.00	19,690,347.00	18,355,853.00	13,027,522.00	8,132,832.00	5,161,166.00	3,629,177.00	1,960,514.00		
Audio cd r/rw	845,740.00	862,239.00	575,716.00	320,188.00	208,219.00	121,336.00	51,900.00	45,402.00	34,032.00		
Minidisc	38,379.00	236,956.00									
Memory Card (audio share)	5,125.00	129,721.00	345,612.00	149,446.00	109,130.00	1,841,091.00	3,537,281.00	3,289,601.00	2,889,158.00		
DVD r/rw data (audio %)	97,575.00	733,140.00	854,213.00	906,320.00	680,899.00	766,138.00	822,666.00	614,979.00	316,538.00		
Memory Card (Video share)						157,211.00	309,826.00	285,581.00	250,817.00		
USB (Audio share)						1,418,292.00	2,437,407.00	2,440,678.00	2,144,860.00		
USB (Video share)						123,126.00	211,599.00	211,883.00	186,202.00		
Total "Audio"	8,257,071.00	33,866,709.00	21,884,489.00	19,970,253.00	14,139,748.00	12,608,328.00	12,551,843.00	10,517,301.00	7,782,121.00	0.00	195,751,056.99
Video revenues											
Videocassette	7,494,499.00	5,548,003.00	3,596,764.00	2,336,953.00	1,344,410.00	720,194.00	288,819.00				
DVD+ r/rw	656,716.00	6,994,100.00	10,686,258.00	11,627,896.00	8,498,523.00	13,954,260.00	9,739,317.00	7,280,419.00	3,747,350.00		
DVD- r/rw	2,050,228.00	13,175,426.00	13,051,478.00	13,871,430.00	10,655,682.00						
DVD RAM	77,103.00	564,323.00	290,447.00	81,081.00	49,437.00	23,555.00	33,567.00	16,446.00	5,592.00		
Data cd-r/rw (video share)	747,462.00	4,530,059.00	2,813,670.00	2,624,396.00	1,856,902.00	1,530,754.00	1,384,868.00	906,625.00	489,766.00		
Total "Video"	11,026,008.00	30,811,911.00	30,438,617.00	30,541,756.00	22,404,954.00	16,228,763.00	11,446,571.00	8,203,490.00	4,242,708.00	0.00	261,760,120.74
Device revenues											
MP3-player	2,864.00	126,139.00	213,899.00	107,336.00	43,728.00	1,684,926.00	2,161,294.00	2,041,461.00	1,816,303.00		
mobile phone	1,022.00					8,639,437.00	16,838,225.00	18,582,770.00	17,843,540.00		
MP4 (audio share)						181,055.00	403,994.00	469,676.00	251,491.00		
MP4 (video share)						2,142,996.00	4,781,747.00	5,559,184.00	2,976,693.00		
HiFi tape recorder	1,196,656.00	961,464.00	766,909.00	577,158.00	468,293.00	246,735.00	166,881.00				
CD recorder (external)	5,695.00	18,623.00	10,135.00	8,988.00	1,256.00	5,876.00	620.00	76.00	56.00		
CD recorder (Video share)						1,279.00	5,323.00	10,605.00	33,754.00		
DVD recorder	431,897.00	358,056.00	2,202,155.00	2,765,002.00	2,331,023.00		144,772.00	266,620.00	225,685.00		
CD/DVD recorder (Audio)						1,763,269.00	3,139,975.00	3,590,408.00	2,525,099.00		
CD/DVD recorder (Video)						5,205,798.00	7,488,009.00	8,620,682.00	6,062,843.00		
VHS recorder							323,857.00				
Minidisc recorder	211.00	720.00	3,320.00	402.00	499.00	11.00					
Extern Hard disk (Audio)						697,282.00	1,320,139.00	1,529,133.00	1,231,108.00		
Extern Hard disk (Video)						8,253,710.00	15,626,453.00	18,100,310.00	14,572,592.00		
TV hard drive recorder with DVD recorder						1,471,465.00	801,801.00	272,195.00	2,371.00		
TV with DVD recorder							212,616.00	325,046.00	215,580.00		
TV hard disc recorder							1,341,024.00	2,058,708.00	866,844.00		
Digital tuner decoder with hard disk						6,144.00	324,888.00	2,021,136.00	1,249,392.00		
Audio devices											
Video devices	5,933,625.00	4,781,863.00	3,134,647.00	1,636,739.00	1,316,546.00	855,268.00					
Total "Devices"	7,571,970.00	6,246,865.00	6,331,065.00	5,095,625.00	4,161,345.00	31,155,251.00	55,081,618.00	63,448,010.00	49,873,351.00	5,000,000.00	311,313,403.30
Revenues collected from 1991 to 2012 Spain											
total Revenues	26,855,049.00	70,925,485.00	58,654,171.00	55,607,634.00	40,706,047.00	59,992,342.00	79,080,032.00	82,168,801.00	61,898,180.00	5,000,000.00	768,824,581.02

Revenues SWEDEN								
Year	1991-1998	1999	2000	2001	2002	2003	2004	2005
Audio revenues								
Audio Cassettes		670,000.00	930,000.00	910,000.00	423,147.00	103,249.00	63,748.00	164,874.00
Audio-cd r/rw					126,197.00	103,964.00	52,765.00	52,471.00
Minidisc					165,144.00	5,128,603.00	4,917,322.00	23,991.00
Data-cd r/rw					3,400,339.00	387,897.00	236,001.00	4,766,440.00
USB Memory								
Total "Audio"		670,000.00	930,000.00	910,000.00	4,114,827.00	5,723,713.00	5,269,836.00	5,007,776.00
Video revenues								
Video Cassettes		1,870,000.00	4,190,000.00	3,930,000.00	3,696,754.00	3,345,935.00	2,322,367.00	1,431,158.00
DVD+ r/rw							1,635,820.00	6,845,019.00
DVD- r/rw								
DVD ram								
Total "Video"		1,870,000.00	4,190,000.00	3,930,000.00	3,696,754.00	3,345,935.00	3,958,187.00	8,276,177.00
Device revenues								
Audio Player								
Video Player								
External Hard Drive								
Data			920,000.00	2,070,000.00				
Jukebox								
MP3-player					2,295.00	10,679.00	173,410.00	403,872.00
DVD harddisk recorder								1,796,056.00
HD DVD recorder					2,245.00	2,117.00	7,990.00	
Total "Devices"			920,000.00	2,070,000.00	4,540.00	12,796.00	181,400.00	2,199,928.00
Blank Media								
Revenues collected from 1991 to 2012 Sweden								
total Revenues		2,540,000.00	6,040,000.00	6,910,000.00	7,816,121.00	9,082,444.00	9,409,423.00	15,483,881.00
According to new information from 2013, amount for 2011 retroactively had to be reduced by 271,000.00 Euro								

Revenues SWEDEN								
Year	2006	2007	2008	2009	2010	2011	2012	Total
Audio revenues								
						-271,000.00		
Audio Cassettes	141,568.00	120,214.00	125,139.00	82,408.00	67,039.00	54,412.00	9,848,764.00	
Audio-cd r/rw	32,617.00							
Minidisc	17,437.00							
Data-cd r/rw	4,180,744.00	3,541,348.00	2,613,636.00	1,195,210.00	972,657.00	717,012.00		
USB Memory				N/A	N/A	178,786.00		
Total "Audio"	4,372,366.00	3,661,562.00	2,738,775.00	1,277,618.00	1,039,696.00	679,210.00	9,848,764.00	46,244,143.00
Video revenues								
Video Cassettes	1,087,093.00	574,408.00	296,717.00	217,724.00	188,628.00	66,099.00		
DVD+ r/rw	7,389,120.00	8,456,929.00	6,896,958.00	3,997,151.00	3,546,245.00	2,462,705.00		
DVD- r/rw								
DVD ram								
Total "Video"	8,476,213.00	9,031,337.00	7,193,675.00	4,214,875.00	3,734,873.00	2,528,804.00	0.00	64,446,830.00
Device revenues								
Audio Player				1,403,468.00	1,114,710.00	745,987.00		
Video Player				3,329,324.00	3,999,883.00	4,149,836.00		
External Hard Drive				N/A	N/A	301,596.00		
Data								
Jukebox								
MP3-player	1,077,056.00	1,010,089.00	1,249,525.00					
DVD harddisk record	4,947,675.00	5,433,082.00	3,221,573.00					
HD DVD recorder								
Total "Devices"	6,024,731.00	6,443,171.00	4,471,098.00	4,732,792.00	5,114,593.00	5,197,419.00	0.00	37,372,468.00
Blank Media								
Revenues collected from 1991 to 2012 Sweden								
total Revenues	18,873,310.00	19,136,070.00	14,403,548.00	10,225,285.00	9,889,162.00	8,405,433.00	9,848,764.00	148,063,441.00

Revenues SWITZERLAND									
Year	1991-1996	1997	1998	1999	2000	2001	2002	2003	2004
Audio revenues									
Audio Cassettes		2,326,397.65	2,390,000.00	2,220,000.00	2,050,000.00	2,050,000.00	1,730,000.00	2,660,000.00	3,500,000.00
Data-cd r/rw									
Compact Cassettes / Mini Disc									
Total "Audio"		2,326,397.65	2,390,000.00	2,220,000.00	2,050,000.00	2,050,000.00	1,730,000.00	2,660,000.00	3,500,000.00
Video revenues									
Video Cassettes		5,644,334.12	5,780,000.00	5,170,000.00	4,500,000.00	4,660,000.00	3,990,000.00	3,750,000.00	3,840,000.00
DVD+ r/rw									
DVD- r/rw									
DVD ram									
Total "Video"		5,644,334.12	5,780,000.00	5,170,000.00	4,500,000.00	4,660,000.00	3,990,000.00	3,750,000.00	3,840,000.00
Device revenues									
Digital audio storage media & recording divices (Digital Jukebox, MP3-player)									
Digital audiovisual storage media & recording divices (DVD harddisk recorder, Cable/Sat-Settop-Box with Harddisk)									
Total "Devices"									
Revenues collected from 1991 to 2012 Switzerland									
total Revenues		7,970,731.76	8,170,000.00	7,390,000.00	6,550,000.00	6,710,000.00	5,720,000.00	6,410,000.00	7,340,000.00
Exchange Rate CHF-EUR 1.7									

Revenues SWITZERLAND									
Year	2005	2006	2007	2008	2009	2010	2011	2012	Total
Audio revenues									
Audio Cassettes						146,953.00	106,346.24	54,097.97	
Data-cd r/rw	2,721,274.00	2,179,362.00	2,116,839.00	1,545,047.00	1,363,072.00	1,537,453.19	1,095,971.52	759,415.99	
Compact Cassettes / Mini Disc	590,867.00	386,569.00	315,563.00	189,472.00	160,212.00				
Total "Audio"	3,312,141.00	2,565,931.00	2,432,402.00	1,734,519.00	1,523,284.00	1,684,406.18	1,202,317.77	813,513.96	34,194,912.56
Video revenues									
Video Cassettes	1,641,262.00	981,778.00	892,794.00	465,082.00	404,406.00	367,620.00	232,875.22	157,112.36	
DVD+ r/rw	5,116,680.00	5,095,811.00	6,572,910.00	5,119,442.00	4,331,123.00	4,250,991.14	3,271,077.39	2,505,251.71	
DVD- r/rw									
DVD ram									
Total "Video"	6,757,942.00	6,077,589.00	7,465,704.00	5,584,524.00	4,735,529.00	4,618,611.14	3,503,952.61	2,662,364.07	78,740,549.94
Device revenues									
Digital audio storage media & recording divices (Digital Jukebox, MP3-player)									
Digital audiovisual storage media & recording divices (DVD harddisk recorder, Cable/Sat-Settop-Box with Harddisk)									
Total "Devices"			1,424,719.00	8,649,852.00	6,947,398.00	4,511,761.46	2,833,089.05	2,138,446.99	
Revenues collected from 1991 to 2012 Switzerland									
total Revenues	10,070,083.00	8,643,520.00	11,952,060.00	22,443,306.00	16,133,395.00	11,827,653.45	8,308,484.85	6,536,729.97	152,175,964.04

Revenues Overview							
Years		1991	1992	1993	1994	1995	1996
Austria	Audio	2,180,185.03	1,689,643.39	1,576,273.77	1,724,526.35	1,598,802.35	1,504,327.67
	Video	7,267,283.42	6,486,050.45	5,910,481.60	6,527,473.96	5,370,522.45	5,566,739.10
	Devices	0.00	0.00	0.00	0.00	0.00	0.00
	Total	9,447,468.44	8,175,693.84	7,486,755.38	8,252,000.32	6,969,324.80	7,071,066.76
Belgium	Audio	0.00	0.00	0.00	0.00	203,188.26	844,983.38
	Video	0.00	0.00	0.00	0.00	346,949.65	2,140,229.90
	Devices	0.00	0.00	0.00	0.00	939,933.79	3,285,599.74
	Total	0.00	0.00	0.00	0.00	1,490,071.69	6,270,813.02
Bulgarien	Audio	0.00	0.00	0.00	0.00	0.00	0.00
	Video	0.00	0.00	0.00	0.00	0.00	0.00
	Devices	0.00	0.00	0.00	0.00	0.00	0.00
	Total	0.00	0.00	0.00	0.00	0.00	0.00
Croatia	Audio	0.00	0.00	0.00	0.00	0.00	0.00
	Video	0.00	0.00	0.00	0.00	0.00	0.00
	Devices	0.00	0.00	0.00	0.00	0.00	0.00
	Total	0.00	0.00	0.00	0.00	0.00	0.00
Czech Republic	Audio	0.00	0.00	0.00	0.00	0.00	0.00
	Video						
	Devices	0.00	0.00	0.00	0.00	0.00	0.00
	Total	0.00	0.00	0.00	0.00	0.00	0.00
Czech Republic	Audio	0.00	0.00	0.00	0.00	0.00	0.00
	Video						
	Devices	0.00	0.00	0.00	0.00	0.00	0.00
	Total	0.00	0.00	0.00	0.00	0.00	0.00
OSA	Video	0.00	0.00	0.00	0.00	0.00	0.00
	Devices	0.00	0.00	0.00	0.00	0.00	0.00
	Total	0.00	0.00	0.00	0.00	0.00	0.00
	Czech Republic	Audio	0.00	0.00	0.00	0.00	0.00
INTEGRAM	Video	0.00	0.00	0.00	0.00	0.00	0.00
	Devices	0.00	0.00	0.00	0.00	0.00	0.00
	Total	0.00	0.00	0.00	0.00	0.00	0.00
	Danmark	Audio	0.00	0.00	767,139.51	2,382,170.06	1,884,202.31
Video		0.00	0.00	363,381.87	5,073,887.65	6,662,001.02	8,842,292.27
Devices		0.00	0.00	0.00	0.00	0.00	0.00
Total		0.00	0.00	1,130,521.39	7,456,057.71	8,546,203.33	10,201,609.65
Estonia	Audio	0.00	0.00	0.00	0.00	0.00	0.00
	Video	0.00	0.00	0.00	0.00	0.00	0.00
	Devices	0.00	0.00	0.00	0.00	0.00	0.00
	Total	0.00	0.00	0.00	0.00	0.00	0.00
Finland	Audio	2,152,805.46	1,496,872.55	1,799,610.81	2,119,167.87	1,513,691.34	1,665,060.47
	Video	6,559,329.13	5,667,933.12	5,180,188.14	5,903,396.22	5,533,382.78	7,736,644.62
	Devices	0.00	0.00	0.00	0.00	0.00	0.00
	Total	8,712,134.59	7,164,805.67	6,979,798.95	8,022,564.09	7,047,074.12	9,401,705.09
France	Audio	18,903,139.25	16,921,358.52	19,512,917.93	18,293,360.56	16,829,891.72	16,200,000.00
	Video	78,661,450.42	97,717,034.34	96,802,366.31	104,577,044.55	89,454,533.15	82,700,000.00
	Devices	0.00	0.00	0.00	0.00	0.00	0.00
	Total	97,564,589.66	114,638,392.86	116,315,284.24	122,870,405.11	106,284,424.87	98,900,000.00
Germany	Audio	11,708,584.08	10,072,450.06	9,663,416.55	9,100,995.49	9,714,545.74	7,260,344.71
	Video	26,075,885.94	29,910,575.05	26,945,082.14	29,092,508.04	26,893,952.95	25,104,431.37
	Devices	36,761,886.26	34,461,072.79	27,354,115.64	30,115,091.80	29,654,929.11	32,978,326.34
	Total	74,546,356.28	74,444,097.90	63,962,614.34	68,308,595.33	66,263,427.80	65,343,102.42
Greece	Audio	0.00	0.00	0.00	0.00	0.00	0.00
	Video	0.00	0.00	0.00	0.00	463,075.11	0.00
	Devices	0.00	0.00	0.00	0.00	0.00	0.00
	Total	0.00	0.00	0.00	0.00	463,075.11	0.00
Hungary	Audio	69,571.59	0.00	0.00	148,297.33	154,888.32	220,432.08
	Video	234,346.39	0.00	0.00	255,950.20	295,496.16	390,699.38
	Devices	0.00	0.00	0.00	0.00	0.00	0.00
	Total	303,917.98	0.00	0.00	404,247.53	450,384.47	611,131.45
Iceland	Audio	0.00	0.00	0.00	0.00	35,469.98	22,168.74
	Video	0.00	0.00	0.00	0.00	123,511.53	76,007.09
	Devices	0.00	0.00	0.00	0.00	43,704.08	57,005.32
	Total	0.00	0.00	0.00	0.00	202,685.58	155,181.15

Revenues Overview							
Year		1997	1998	1999	2000	2001	2002
Austria	Audio	1,262,617.82	1,364,000.00	2,066,000.00	2,659,000.00	3,376,000.00	7,552,000.00
	Video	5,674,512.91	5,408,000.00	4,927,000.00	4,418,000.00	3,831,000.00	3,441,000.00
	Devices	0.00	0.00	0.00	0.00	0.00	0.00
	Total	6,937,130.73	6,772,000.00	6,993,000.00	7,077,000.00	7,207,000.00	10,993,000.00
Belgium	Audio	939,213.41	856,596.89	992,880.50	1,208,075.33	1,455,750.00	1,098,616.00
	Video	2,716,535.54	2,533,828.84	2,629,361.10	2,516,862.19	2,532,672.00	1,961,165.00
	Devices	3,242,593.73	3,309,484.58	3,372,932.38	3,349,530.32	3,097,232.00	1,998,127.00
	Total	6,898,342.68	6,699,910.31	6,995,173.98	7,074,467.83	7,085,654.00	5,057,908.00
Bulgarien	Audio	0.00	0.00	0.00	0.00	0.00	0.00
	Video	0.00	0.00	0.00	0.00	0.00	0.00
	Devices	0.00	0.00	0.00	0.00	0.00	0.00
	Total	0.00	0.00	0.00	0.00	0.00	0.00
Croatia	Audio	0.00	0.00	0.00	0.00	0.00	0.00
	Video	0.00	0.00	0.00	0.00	0.00	0.00
	Devices	0.00	0.00	0.00	0.00	0.00	0.00
	Total	0.00	0.00	0.00	0.00	0.00	0.00
Czech Republic	Audio	0.00	0.00	0.00	0.00	0.00	0.00
	Video						
	Devices	0.00	0.00	0.00	0.00	0.00	0.00
	Total	0.00	0.00	0.00	0.00	0.00	0.00
Czech Republic	Audio	0.00	0.00	0.00	0.00	0.00	49,135.00
OSA	Video	0.00	0.00	0.00	0.00	0.00	184,544.00
	Devices	34,876.12	70,572.89	100,485.27	154,644.28	0.00	908,440.00
	Total	34,876.12	70,572.89	100,485.27	154,644.28	0.00	1,142,119.00
Czech Republic	Audio	0.00	0.00	0.00	0.00	0.00	0.00
INTEGRAM	Video	0.00			0.00	0.00	0.00
	Devices	34,876.12	70,572.89	100,485.27	151,257.33	0.00	0.00
	Total	34,876.12	70,572.89	100,485.27	151,257.33	0.00	0.00
Danmark	Audio	1,063,228.45	901,725.39	955,559.74	888,266.80	1,022,852.68	3,889,531.91
	Video	7,550,267.83	8,142,445.69	4,912,384.59	4,481,709.78	4,064,493.55	4,051,034.97
	Devices	0.00	0.00	0.00	0.00	0.00	0.00
	Total	8,613,496.27	9,044,171.09	5,867,944.34	5,369,976.58	5,087,346.24	7,940,566.88
Estonia	Audio	0.00	0.00	0.00	0.00	0.00	0.00
	Video	0.00	0.00	0.00	0.00	0.00	0.00
	Devices	0.00	0.00	0.00	0.00	0.00	0.00
	Total	0.00	0.00	0.00	0.00	0.00	0.00
Finland	Audio	1,513,691.34	1,200,000.00	1,300,000.00	2,200,000.00	2,800,000.00	4,086,289.00
	Video	7,972,107.71	6,600,000.00	6,400,000.00	7,200,000.00	6,400,000.00	6,263,392.00
	Devices	0.00	0.00	0.00	0.00	0.00	3,292.00
	Total	9,485,799.05	7,800,000.00	7,700,000.00	9,400,000.00	9,200,000.00	10,352,973.00
France	Audio	14,200,000.00	14,000,000.00	14,200,000.00	13,200,000.00	36,800,000.00	69,096,000.00
	Video	78,100,000.00	80,000,000.00	69,700,000.00	69,100,000.00	58,500,000.00	56,470,000.00
	Devices	0.00	0.00	0.00	0.00	0.00	0.00
	Total	92,300,000.00	94,000,000.00	83,900,000.00	82,300,000.00	95,300,000.00	125,566,000.00
Germany	Audio	8,200,000.00	7,500,000.00	7,000,000.00	12,600,000.00	13,100,000.00	18,626,421.00
	Video	24,300,000.00	25,700,000.00	24,300,000.00	23,200,000.00	20,900,000.00	17,610,658.00
	Devices	29,100,000.00	30,300,000.00	32,800,000.00	34,900,000.00	26,600,000.00	41,093,137.00
	Total	61,600,000.00	63,500,000.00	64,100,000.00	70,700,000.00	60,600,000.00	77,330,216.00
Greece	Audio	0.00	0.00	0.00	0.00	0.00	0.00
	Video	0.00	0.00	0.00	0.00	0.00	0.00
	Devices	0.00	0.00	0.00	0.00	0.00	0.00
	Total	0.00	0.00	0.00	0.00	0.00	0.00
Hungary	Audio	287,440.50	326,620.29	404,979.86	938,484.07	1,168,802.64	4,068,415.00
	Video	372,757.23	594,653.97	880,263.64	1,186,744.78	1,521,054.56	1,759,930.00
	Devices	0.00	0.00	0.00	0.00	0.00	3,245.00
	Total	660,197.73	921,274.26	1,285,243.50	2,125,228.85	2,689,857.20	5,831,590.00
Iceland	Audio	28,502.66	19,001.77	27,235.88	10,767.67	17,734.99	564,147.00
	Video	107,676.72	115,277.43	138,712.95	125,411.71	287,560.17	211,869.00
	Devices	53,838.36	58,905.50	62,072.46	60,172.28	182,417.03	80,234.00
	Total	190,017.73	193,184.70	228,021.28	196,351.66	487,712.19	856,250.00

Revenues Overview							
Years		2003	2004	2005	2006	2007	2008
Austria	Audio	11,339,000.00	9,036,000.00	7,943,000.00	6,562,000.00	5,515,000.00	4,633,000.00
	Video	5,042,000.00	6,791,000.00	6,615,000.00	6,527,000.00	7,224,000.00	5,400,000.00
	Devices	0.00	70,000.00	3,069,000.00	2,757,000.00	3,674,000.00	3,180,000.00
	Total	16,381,000.00	15,897,000.00	17,627,000.00	15,846,000.00	16,413,000.00	13,213,000.00
Belgium	Audio	3,147,843.00	7,394,255.00	7,167,302.00	6,268,635.00	5,543,253.00	4,001,111.00
	Video	1,975,332.00	6,617,786.00	12,042,574.00	12,096,991.00	12,935,668.00	10,545,118.00
	Devices	2,584,727.00	2,619,085.00	2,248,022.00	1,669,158.00	1,602,360.00	1,062,398.00
	Total	7,707,902.00	16,631,126.00	21,457,898.00	20,034,784.00	20,081,281.00	15,608,627.00
Bulgarien	Audio	0.00	0.00	0.00	0.00	0.00	0.00
	Video	0.00	0.00	0.00	0.00	0.00	0.00
	Devices	0.00	0.00	0.00	0.00	0.00	0.00
	Total	0.00	0.00	0.00	0.00	0.00	0.00
Croatia	Audio	0.00	0.00	0.00	0.00	102,188.00	331,838.00
	Video	0.00	0.00	0.00	0.00	68,613.00	143,858.00
	Devices	0.00	0.00	0.00	0.00	113,823.00	904,590.00
	Total	0.00	0.00	0.00	0.00	284,624.00	1,380,286.00
Czech Republic	Audio	0.00	0.00	0.00	0.00	0.00	0.00
	Video						
	Devices	0.00	0.00	0.00	0.00	0.00	0.00
	Total	0.00	0.00	0.00	0.00	0.00	0.00
Czech Republic	Audio	69,707.00	201,275.00	0.00	0.00	0.00	0.00
	Video	96,295.00	339,516.00	0.00	0.00	0.00	0.00
	Devices	844,669.00	617,858.00	0.00	0.00	0.00	0.00
	Total	1,010,671.00	1,158,649.00	1,373,282.00	1,516,751.00	3,165,578.00	4,867,439.00
Czech Republic	Audio	0.00	0.00	157,768.00	0.00	369,773.00	1,311,796.00
	Video	0.00	0.00	215,981.00	0.00	467,777.00	910,247.00
	Devices	0.00	0.00	539,053.00	0.00	1,221,506.00	1,720,826.00
	Total	0.00	0.00	912,802.00	1,100,401.00	2,059,056.00	3,942,869.00
Danmark	Audio	3,500,000.00	2,600,000.00	2,357,584.00	2,866,819.00	2,691,008.00	2,436,456.00
	Video	3,400,000.00	4,700,000.00	4,009,933.00	2,458,121.00	3,169,854.00	3,085,144.00
	Devices	0.00	0.00	0.00	0.00	0.00	0.00
	Total	6,900,000.00	7,300,000.00	6,367,517.00	5,324,940.00	5,860,862.00	5,521,600.00
Estonia	Audio	0.00	0.00	0.00	65,694.00	74,369.00	71,204.00
	Video	0.00	0.00	0.00	58,812.00	86,355.00	74,094.00
	Devices	0.00	0.00	0.00	114,574.00	122,728.00	83,202.00
	Total	0.00	0.00	0.00	239,080.00	283,452.00	228,500.00
Finland	Audio	4,435,382.00	4,973,816.00	3,415,000.00	2,532,600.00	2,124,930.00	1,681,471.00
	Video	5,768,530.00	7,011,357.00	6,152,000.00	4,607,000.00	3,671,218.00	2,831,827.00
	Devices	24,907.00	134,781.00	2,093,000.00	4,562,000.00	9,770,508.00	7,517,622.00
	Total	10,228,819.00	12,119,954.00	11,660,000.00	11,701,600.00	15,566,656.00	12,030,920.00
France	Audio	91,547,500.00	90,591,000.00	74,497,000.00	79,714,072.00	83,885,552.50	81,092,205.50
	Video	54,430,500.00	76,920,000.00	80,635,000.00	69,483,915.00	79,517,361.50	85,841,150.50
	Devices	0.00	0.00	0.00	0.00	0.00	0.00
	Total	145,978,000.00	167,511,000.00	155,132,000.00	149,197,987.00	163,402,914.00	166,933,356.00
Germany	Audio	23,441,999.00	22,677,538.00	13,579,633.00	15,305,106.00	14,339,000.00	8,688,000.00
	Video	26,981,942.00	54,392,544.00	58,892,526.00	58,930,892.00	46,685,000.00	32,849,000.00
	Devices	51,359,020.00	69,680,834.00	81,250,583.00	81,858,345.00	87,817,000.00	85,801,000.00
	Total	101,782,961.00	146,750,916.00	153,722,742.00	156,094,343.00	148,841,000.00	127,338,000.00
Greece	Audio	0.00	0.00	0.00	0.00	0.00	0.00
	Video	0.00	0.00	0.00	0.00	22,894.00	524,486.00
	Devices	0.00	0.00	0.00	0.00	0.00	0.00
	Total	0.00	0.00	0.00	0.00	22,894.00	524,486.00
Hungary	Audio	7,182,475.00	6,646,097.00	4,553,128.00	5,065,154.00	5,001,480.00	4,332,044.00
	Video	2,620,965.00	3,474,370.00	3,542,274.00	3,247,109.00	3,169,313.00	2,473,821.00
	Devices	10,730.00	33,860.00	1,593,503.00	3,366,358.00	3,368,888.00	1,670,409.00
	Total	9,814,170.00	10,154,327.00	9,688,905.00	11,678,621.00	11,539,681.00	8,476,274.00
Iceland	Audio	694,528.00	619,309.00	0.00	0.00	0.00	0.00
	Video	284,581.00	436,274.00	0.00	0.00	0.00	0.00
	Devices	99,039.00	120,351.00	0.00	0.00	0.00	0.00
	Total	1,078,148.00	1,175,934.00	0.00	0.00	451,600.00	232,453.00

Revenues Overview							
Years		2009	2010	2011	2012	2013	Total COUNTRIES
Austria	Audio	4,074,000.00	3,379,000.00	2,517,000.00	1,919,000.00		85,470,376.39
	Video	4,816,000.00	4,114,000.00	3,107,000.00	2,241,000.00		116,705,063.89
	Devices	2,809,000.00	2,414,000.00	2,303,000.00	2,456,000.00		22,732,000.00
	Total	11,699,000.00	9,907,000.00	7,927,000.00	6,616,000.00		224,907,440.27
Belgium	Audio	3,394,068.00	3,852,846.30	3,724,745.78	3,788,916.33		55,882,279.18
	Video	9,261,917.00	4,996,172.00	3,603,280.65	2,540,459.58		93,992,902.44
	Devices	464,363.00	13,136,471.50	16,924,386.87	17,498,514.55		82,404,919.46
	Total	13,120,348.00	21,985,489.80	24,252,413.30	23,827,890.46		232,280,101.08
Bulgarien	Audio	1,678.00	1,466.00	0.00			3,144.00
	Video	629.00	629.00	0.00			1,258.00
	Devices	12,017.00	6,785.00	0.00			18,802.00
	Total	14,324.00	8,880.00	0.00			23,204.00
Croatia	Audio	389,926.00	414,466.50	309,140.42	266,152.66		1,813,711.58
	Video	144,775.00	154,101.99	79,926.19	63,746.32		655,020.50
	Devices	1,409,617.00	1,058,900.69	867,135.09	712,952.50		5,067,018.28
	Total	1,944,318.00	1,627,469.18	1,256,201.70	1,042,851.48		7,535,750.36
Czech Republic	Audio	0.00	1,358,165.00	1,694,695.00	1,923,739.00		4,976,599.00
	Video						0.00
	Devices	0.00	1,366,741.00	1,483,682.00	1,348,850.00		4,199,273.00
	Total	0.00	2,724,906.00	3,178,377.00	3,272,589.00		9,175,872.00
Czech Republic	Audio	1,236,103.00	0.00	0.00			1,556,220.00
OSA	Video	1,236,103.00	0.00	0.00			1,856,458.00
	Devices	1,844,772.00	0.00	0.00			4,576,317.56
	Total	4,316,978.00	0.00	0.00			18,912,045.56
Czech Republic	Audio	1,341,270.00	0.00	0.00			3,180,607.00
INTEGRAM	Video	546,649.00	0.00	0.00			2,140,654.00
	Devices	1,463,187.00	0.00	0.00			5,301,763.61
	Total	3,351,106.00	0.00	0.00			11,723,425.61
Danmark	Audio	2,442,595.00	2,016,299.08	1,730,526.02	1,504,875.73		39,260,157.07
	Video	2,939,601.00	3,027,984.55	2,858,522.24	2,887,504.38		86,680,563.39
	Devices	0.00	0.00	0.00	0.00		0.00
	Total	5,382,196.00	5,044,283.63	4,589,048.26	4,392,380.11		125,940,720.46
Estonia	Audio	34,607.00	0.00	0.00	0.00		245,874.00
	Video	55,374.00	0.00	0.00	0.00		274,635.00
	Devices	30,115.00	0.00	0.00	24,883.00		375,502.00
	Total	120,096.00	0.00	0.00	24,883.00		896,011.00
Finland	Audio	1,312,100.00	981,100.00	729,000.00	556,500.00		46,589,087.84
	Video	2,355,000.00	1,845,000.00	1,457,000.00	1,101,000.00		114,216,305.72
	Devices	5,129,400.00	3,652,500.00	4,342,000.00	5,416,000.00		42,646,010.00
	Total	8,796,500.00	6,478,600.00	6,528,000.00	7,073,500.00		203,451,403.56
France	Audio	78,069,322.00	88,252,161.00	92,446,070.00	81,647,389.50		1,109,898,940.48
	Video	94,291,989.00	100,485,235.00	100,334,471.00	92,230,335.50		1,795,952,386.25
	Devices	0.00	0.00	0.00	0.00		0.00
	Total	172,361,311.00	188,737,396.00	192,780,541.00	173,877,725.00		2,905,851,326.73
Germany	Audio	-795,000.00	5,551,000.00	6,303,009.97	7,795,630.07		233,637,043.60
	Video	51,385,000.00	506,000.00	2,006,860.22	4,246,095.55		632,662,857.71
	Devices	239,388,000.00	237,694,000.00	9,781,129.81	63,771,274.38		1,330,748,470.75
	Total	289,978,000.00	243,751,000.00	18,091,000.00	75,813,000.00		2,272,861,372.07
Greece	Audio	736,937.00	548,949.24	1,045,324.60	53,910.00		2,385,120.84
	Video	839,082.00	229,251.87	137,393.16	191,788.60		2,407,970.74
	Devices	0.00	0.00	0.00	0.00		0.00
	Total	1,576,019.00	778,201.11	1,182,717.76	245,698.60		4,793,091.58
Hungary	Audio	4,932,948.00	5,433,990.00	4,850,254.00	6,183,163.00		61,968,664.66
	Video	2,169,517.00	2,070,129.00	1,551,325.00	1,098,616.00		32,909,335.31
	Devices	1,839,627.00	2,080,831.00	2,885,667.00	4,823,772.00		21,676,890.00
	Total	8,942,092.00	9,584,950.00	9,287,246.00	12,105,551.00		116,554,889.97
Iceland	Audio	0.00	0.00	0.00			2,038,865.68
	Video	0.00	0.00	0.00			1,906,881.59
	Devices	0.00	0.00	0.00			817,739.02
	Total	204,361.00	0.00	0.00			5,651,900.29

Revenues Overview							
Year		1991	1992	1993	1994	1995	1996
Italy	Audio	0.00	261,843.65	2,510,393.70	331,410.39	3,661,267.91	3,824,121.24
	Video	0.00	775,098.51	2,522,220.56	1,525,303.81	2,516,158.09	2,403,975.22
	Devices	0.00	174,252.56	70,548.01	159,378.60	1,575,234.81	1,495,826.81
	Total	0.00	1,211,194.72	5,103,162.27	2,016,092.80	7,752,660.81	7,723,923.27
Latvia	Audio	0.00	0.00	0.00	0.00	0.00	0.00
	Video	0.00	0.00	0.00	0.00	0.00	0.00
	Devices	0.00	0.00	0.00	0.00	0.00	0.00
	Total	0.00	0.00	0.00	0.00	0.00	0.00
Lithuania	Audio	0.00	0.00	0.00	0.00	0.00	0.00
	Video	0.00	0.00	0.00	0.00	0.00	0.00
	Devices	0.00	0.00	0.00	0.00	0.00	0.00
	Total	0.00	0.00	0.00	0.00	0.00	0.00
Netherlands	Audio	0.00	2,813,437.34	5,399,984.57	3,720,997.77	5,218,472.49	4,265,534.03
	Video	0.00	1,315,962.63	7,805,019.72	7,578,129.61	9,393,250.47	8,168,043.89
	Devices	0.00	0.00	0.00	0.00	0.00	0.00
	Total	0.00	4,129,399.97	13,205,004.29	11,299,127.38	14,611,722.96	12,433,577.92
Norway	Audio	6,121,074.86	6,965,783.19	5,472,240.93	5,606,904.57	4,652,016.89	4,896,859.89
	Video						
	Devices						
	Total	6,121,074.86	6,965,783.19	5,472,240.93	5,606,904.57	4,652,016.89	4,896,859.89
Poland	Audio	0.00	0.00	0.00	0.00	0.00	0.00
	Video	0.00	0.00	0.00	0.00	0.00	0.00
	Devices	0.00	0.00	0.00	0.00	0.00	0.00
	Total	0.00	0.00	0.00	0.00	0.00	0.00
Portugal	Audio	0.00	0.00	0.00	0.00	0.00	0.00
	Video						
	Devices						
	Total	0.00	0.00	0.00	0.00	0.00	0.00
Romania	Audio	0.00	0.00	0.00	0.00	0.00	0.00
	Video	0.00	0.00	0.00	0.00	0.00	0.00
	Devices	0.00	0.00	0.00	0.00	0.00	0.00
	Total	0.00	0.00	0.00	0.00	0.00	0.00
Slovakia	Audio	0.00	0.00	0.00	0.00	19,928.06	24,430.34
	Video	0.00	0.00	0.00	0.00	24,584.57	18,532.23
	Devices	0.00	0.00	0.00	0.00	0.00	0.00
	Total	0.00	0.00	0.00	0.00	44,512.63	42,962.57
Slovenia	Audio	0.00	0.00	0.00	0.00	0.00	0.00
	Video	0.00	0.00	0.00	0.00	0.00	0.00
	Devices	0.00	0.00	0.00	0.00	0.00	0.00
	Total	0.00	0.00	0.00	0.00	0.00	0.00
Spain	Audio	0.00	0.00	1,851,117.28	4,285,216.30	5,787,746.57	5,841,837.65
	Video	0.00	0.00	4,489,560.42	5,300,926.76	9,435,890.04	9,886,649.12
	Devices	0.00	0.00	1,123,892.64	5,234,815.43	6,815,477.26	7,326,337.55
	Total	0.00	0.00	7,464,570.34	14,820,958.49	22,039,113.87	23,054,824.32
Sweden	Audio	0.00	0.00	0.00	0.00	0.00	0.00
	Video	0.00	0.00	0.00	0.00	0.00	0.00
	Devices	0.00	0.00	0.00	0.00	0.00	0.00
	Total	0.00	0.00	0.00	0.00	0.00	0.00
Switzerland	Audio	0.00	0.00	0.00	0.00	0.00	0.00
	Video	0.00	0.00	0.00	0.00	0.00	0.00
	Devices	0.00	0.00	0.00	0.00	0.00	0.00
	Total	0.00	0.00	0.00	0.00	0.00	0.00
Total Audio		41,135,360.26	40,221,388.70	48,553,095.06	47,713,046.71	51,274,111.93	47,929,417.58
Total Video		118,798,295.30	141,872,654.10	150,018,300.75	165,834,620.79	156,513,307.96	153,034,244.17
Total Devices		36,761,886.26	34,635,325.35	28,548,556.29	35,509,285.83	39,029,279.05	45,143,095.76
Total YEAR		196,695,541.81	216,729,368.15	227,119,952.10	249,056,953.33	246,816,698.93	246,106,757.51
Total YEAR in Mio		197	217	227	249	247	246

Remarks: Iceland: 2005-2009 unknown; Norway: 2002 + 2004 unknown. As per May 20, 2014.

Revenues Overview							
Years		1997	1998	1999	2000	2001	2002
Italy	Audio	3,539,140.75	3,342,000.00	3,272,000.00	1,205,000.00	3,264,000.00	3,056,000.00
	Video	2,513,803.09	2,509,000.00	1,949,000.00	2,014,000.00	1,911,000.00	2,005,589.00
	Devices	1,701,353.86	2,086,000.00	2,304,000.00	1,967,000.00	2,120,000.00	2,322,975.00
	Total	7,754,297.70	7,937,000.00	7,525,000.00	5,186,000.00	7,295,000.00	7,384,564.00
Latvia	Audio	0.00	0.00	0.00	0.00	0.00	0.00
	Video	0.00	0.00	0.00	0.00	0.00	0.00
	Devices	0.00	0.00	0.00	0.00	0.00	0.00
	Total	0.00	0.00	0.00	0.00	0.00	0.00
Lithuania	Audio	0.00	0.00	0.00	0.00	0.00	0.00
	Video	0.00	0.00	0.00	0.00	0.00	0.00
	Devices	0.00	0.00	0.00	0.00	0.00	0.00
	Total	0.00	0.00	0.00	0.00	0.00	0.00
Netherlands	Audio	4,220,156.01	3,700,000.00	4,000,000.00	7,700,000.00	12,400,000.00	11,135,760.00
	Video	9,030,226.30	8,200,000.00	7,900,000.00	8,200,000.00	5,200,000.00	6,842,260.00
	Devices	0.00	0.00	0.00	0.00	0.00	0.00
	Total	13,250,382.31	11,900,000.00	11,900,000.00	15,900,000.00	17,600,000.00	17,978,020.00
Norway	Audio	5,508,967.37	5,031,523.54	4,896,859.89	3,623,676.32	3,366,591.17	0.00
	Video						
	Devices						
	Total	5,508,967.37	5,031,523.54	4,896,859.89	3,623,676.32	3,366,591.17	0.00
Poland	Audio	518,712.56	492,776.93	510,000.00	410,000.00	540,000.00	450,000.00
	Video	1,348,652.64	1,685,815.81	1,590,000.00	1,590,000.00	1,360,000.00	1,200,000.00
	Devices	0.00	0.00	0.00	0.00	0.00	0.00
	Total	1,867,365.20	2,178,592.73	2,100,000.00	2,000,000.00	1,900,000.00	1,650,000.00
Portugal	Audio	0.00	0.00	0.00	0.00	0.00	0.00
	Video						
	Devices						
	Total	0.00	0.00	0.00	0.00	0.00	0.00
Romania	Audio	0.00	0.00	0.00	0.00	0.00	0.00
	Video	0.00	0.00	0.00	0.00	0.00	0.00
	Devices	0.00	0.00	0.00	0.00	0.00	0.00
	Total	0.00	0.00	0.00	0.00	0.00	0.00
Slovakia	Audio	20,076.63	21,187.00	52,911.00	121,295.00	427,662.00	133,570.00
	Video	19,895.64	28,053.00	69,314.00	122,023.00	551,578.00	367,984.00
	Devices	0.00	0.00	0.00	0.00	0.00	297,326.00
	Total	39,972.27	49,240.00	122,225.00	243,318.00	979,240.00	798,880.00
Slovenia	Audio	0.00	0.00	0.00	0.00	0.00	0.00
	Video	0.00	0.00	0.00	0.00	0.00	0.00
	Devices	0.00	0.00	0.00	0.00	0.00	0.00
	Total	0.00	0.00	0.00	0.00	0.00	0.00
Spain	Audio	6,364,718.19	7,170,000.00	6,790,000.00	6,580,000.00	5,430,000.00	4,072,558.00
	Video	10,595,843.40	12,820,000.00	12,820,000.00	11,150,000.00	10,410,000.00	9,506,473.00
	Devices	7,915,329.41	9,060,000.00	10,810,000.00	11,370,000.00	8,880,000.00	8,812,451.00
	Total	24,875,891.00	29,050,000.00	30,420,000.00	29,100,000.00	24,720,000.00	22,391,482.00
Sweden	Audio	0.00	0.00	670,000.00	930,000.00	910,000.00	4,114,827.00
	Video	0.00	0.00	1,870,000.00	4,190,000.00	3,930,000.00	3,696,754.00
	Devices	0.00	0.00	0.00	920,000.00	2,070,000.00	4,540.00
	Total	0.00	0.00	2,540,000.00	6,040,000.00	6,910,000.00	7,816,121.00
Switzerland	Audio	2,326,397.65	2,390,000.00	2,220,000.00	2,050,000.00	2,050,000.00	1,730,000.00
	Video	5,644,334.12	5,780,000.00	5,170,000.00	4,500,000.00	4,660,000.00	3,990,000.00
	Devices	0.00	0.00	0.00	0.00	0.00	0.00
	Total	7,970,731.76	8,170,000.00	7,390,000.00	6,550,000.00	6,710,000.00	5,720,000.00
Total Audio	49,992,863.33	48,315,431.81	49,358,426.87	56,324,565.19	88,129,393.48	133,723,269.91	
Total Video	155,946,613.13	160,117,074.74	145,256,036.28	143,994,751.45	126,059,358.28	119,562,652.97	
Total Devices	42,082,867.61	44,955,535.85	49,549,975.38	52,872,604.21	42,949,649.03	55,523,767.00	
Total YEAR	248,022,344.06	253,388,042.40	244,164,438.53	253,191,920.85	257,138,400.79	308,809,689.88	
Total YEAR in Mio	248	253	244	253	257	309	

Revenues Overview							
Years		2003	2004	2005	2006	2007	2008
Italy	Audio	9,509,225.00	33,810,541.00	30,000,521.00	25,992,259.00	27,139,310.00	21,905,829.00
	Video	6,947,550.00	33,574,881.00	35,267,711.00	36,121,866.00	34,001,091.00	30,009,812.00
	Devices	2,485,903.00	6,674,926.00	7,522,842.00	8,807,585.00	9,815,644.00	9,746,693.00
	Total	18,942,678.00	74,060,348.00	72,791,074.00	70,921,710.00	70,956,045.00	61,662,334.00
Latvia	Audio	0.00	0.00	324,975.00	293,499.00	222,368.00	144,051.00
	Video	0.00	0.00	169,315.00	241,719.00	316,175.00	295,751.00
	Devices	0.00	0.00	221,724.00	265,242.00	217,809.00	161,823.00
	Total	0.00	0.00	716,014.00	800,460.00	756,352.00	601,625.00
Lithuania	Audio	0.00	0.00	109,907.00	86,773.00	55,136.00	355,362.00
	Video	0.00	0.00	59,635.00	79,066.00	29,287.00	136,710.00
	Devices	0.00	0.00	80,473.00	0.00	0.00	309,578.00
	Total	0.00	0.00	250,015.00	165,839.00	84,423.00	801,650.00
Netherlands	Audio	13,353,131.00	13,532,179.00	11,700,000.00	8,500,000.00	7,595,000.00	5,896,000.00
	Video	5,332,962.00	16,107,071.85	14,400,000.00	11,300,000.00	11,654,000.00	11,114,000.00
	Devices	0.00	0.00	0.00	0.00	0.00	0.00
	Total	18,686,093.00	29,639,250.85	26,100,000.00	19,800,000.00	19,249,000.00	17,010,000.00
Norway	Audio	0.00	0.00	4,000,000.00	4,100,000.00	4,200,000.00	4,500,000.00
	Video						
	Devices						
	Total	0.00	0.00	4,000,000.00	4,100,000.00	4,200,000.00	4,500,000.00
Poland	Audio	1,090,000.00	1,380,000.00	2,543,861.00	3,298,026.00	2,533,916.00	3,143,551.00
	Video	850,000.00	1,470,000.00	1,292,712.00	1,795,796.00	1,756,665.00	1,763,018.00
	Devices	0.00	0.00	0.00	0.00	0.00	0.00
	Total	1,940,000.00	2,850,000.00	3,836,573.00	5,093,822.00	4,290,581.00	4,906,569.00
Portugal	Audio	0.00	0.00	5,112,962.00	6,238,951.00	5,752,919.00	4,594,998.00
	Video						
	Devices						
	Total	0.00	0.00	5,112,962.00	6,238,951.00	5,752,919.00	4,594,998.00
Romania	Audio	0.00	0.00	0.00	0.00	0.00	105,324.00
	Video	0.00	0.00	0.00	0.00	0.00	91,987.00
	Devices	0.00	0.00	0.00	0.00	0.00	104,931.00
	Total	0.00	0.00	0.00	0.00	0.00	302,242.00
Slovakia	Audio	108,829.00	75,643.00	101,935.00	135,215.00	214,125.00	241,704.00
	Video	262,870.00	318,018.00	254,021.00	227,260.00	220,121.00	222,108.00
	Devices	139,202.00	274,274.00	255,227.00	320,315.00	469,431.00	513,561.00
	Total	510,901.00	667,935.00	611,183.00	682,790.00	903,677.00	977,373.00
Slovenia	Audio	0.00	0.00	0.00	0.00	0.00	0.00
	Video	0.00	0.00	0.00	0.00	0.00	0.00
	Devices	0.00	0.00	0.00	0.00	0.00	0.00
	Total	0.00	0.00	0.00	0.00	0.00	1,130,250.00
Spain	Audio	8,257,071.00	33,866,709.00	21,884,489.00	19,970,253.00	14,139,748.00	12,608,328.00
	Video	11,026,008.00	30,811,911.00	30,438,617.00	30,541,756.00	22,404,954.00	16,228,763.00
	Devices	7,571,970.00	6,246,865.00	6,331,065.00	5,095,625.00	4,161,345.00	31,155,251.00
	Total	26,855,049.00	70,925,485.00	58,654,171.00	55,607,634.00	40,706,047.00	59,992,342.00
Sweden	Audio	5,723,713.00	5,269,836.00	5,007,776.00	4,372,366.00	3,661,562.00	2,738,775.00
	Video	3,345,935.00	3,958,187.00	8,276,177.00	8,476,213.00	9,031,337.00	7,193,675.00
	Devices	12,796.00	181,400.00	2,199,928.00	6,024,731.00	6,443,171.00	4,471,098.00
	Total	9,082,444.00	9,409,423.00	15,483,881.00	18,873,310.00	19,136,070.00	14,403,548.00
Switzerland	Audio	2,660,000.00	3,500,000.00	3,312,141.00	2,565,931.00	2,432,402.00	1,734,519.00
	Video	3,750,000.00	3,840,000.00	6,757,942.00	6,077,589.00	7,465,704.00	5,584,524.00
	Devices	0.00	0.00	0.00	0.00	2,053,954.00	15,124,263.00
	Total	6,410,000.00	7,340,000.00	10,070,083.00	8,643,520.00	11,952,060.00	22,443,306.00
Total Audio	186,060,403.00	236,174,198.00	197,768,982.00	193,933,353.00	187,593,039.50	166,547,566.50	
Total Video	132,115,470.00	250,762,915.85	269,021,418.00	252,271,105.00	243,897,387.50	217,319,093.50	
Total Devices	65,132,963.00	86,654,234.00	107,404,420.00	114,840,933.00	130,852,167.00	163,527,245.00	
Total YEAR	383,308,836.00	573,591,347.85	575,568,102.00	563,662,543.00	565,959,772.00	553,624,047.00	
Total YEAR in Mio	383	574	576	564	566	554	

Revenues Overview							
Years		2009	2010	2011	2012	2013	Total COUNTRIES
Italy	Audio	16,448,107.00	11,730,985.00	12,751,276.00	11,955,348.00		229,510,578.64
	Video	21,454,896.00	12,259,957.00	8,698,424.00	4,554,594.00		245,535,930.28
	Devices	6,624,699.00	27,811,889.00	62,559,414.00	55,228,445.00		213,254,609.65
	Total	44,527,702.00	51,802,831.00	84,009,114.00	71,738,387.00		688,301,118.56
Latvia	Audio	87,211.00	41,513.21	45,783.03	31,451.16		1,190,851.40
	Video	186,880.00	88,572.46	82,260.24	60,241.83		1,440,914.53
	Devices	84,334.00	73,676.96	95,098.22	116,295.58		1,236,002.76
	Total	358,425.00	203,762.63	223,141.49	207,988.57		3,867,768.69
Lithuania	Audio	279,570.00	41,177.62	22,975.91	366,483.64		1,317,385.17
	Video	297,222.00	90,206.41	42,949.08	33,005.98		768,081.47
	Devices	134,220.00	0.00	0.00	1,573,416.49		2,097,687.49
	Total	711,012.00	131,384.03	65,924.99	1,972,906.11		4,183,154.13
Netherlands	Audio	5,229,000.00	2,424,000.00	3,394,000.00	1,870,000.00		138,067,652.21
	Video	9,656,000.00	8,396,000.00	5,816,000.00	3,505,000.00		176,913,926.46
	Devices	0.00	0.00	0.00	0.00		0.00
	Total	14,885,000.00	10,820,000.00	9,210,000.00	5,375,000.00		314,981,578.67
Norway	Audio	4,954,248.00	5,215,686.00	5,372,549.00	5,211,790.45	5,383,877.87	99,080,649.94
	Video						0.00
	Devices						0.00
	Total	4,954,248.00	5,215,686.00	5,372,549.00	5,211,790.45	5,383,877.87	99,080,649.94
Poland	Audio	1,956,746.00	1,606,780.00	1,451,327.00	1,368,315.00		23,294,011.48
	Video	552,053.00	300,808.00	303,208.00	300,362.00		19,159,090.45
	Devices	0.00	0.00	0.00	0.00		0.00
	Total	2,508,799.00	1,907,588.00	1,754,535.00	1,668,677.00		42,453,101.93
Portugal	Audio	3,633,984.00	2,359,418.00	2,292,392.00	1,179,084.00		29,985,624.00
	Video						0.00
	Devices						0.00
	Total	3,633,984.00	2,359,418.00	2,292,392.00	1,179,084.00		31,164,708.00
Romania	Audio	159,121.00	44,595.00	42,193.00	39,539.00		390,772.00
	Video	77,727.00	59,313.00	59,994.00	194,288.00		483,309.00
	Devices	289,922.00	866,104.00	1,439,686.00	1,767,906.00		4,468,549.00
	Total	526,770.00	970,012.00	1,541,873.00	2,001,733.00		5,342,630.00
Slovakia	Audio	13,024.00	112,216.00	141,623.00	76,061.00		2,041,435.03
	Video	209,813.00	104,560.00	75,756.00	120,557.00		3,217,048.44
	Devices	389,279.00	475,067.00	165,369.00	236,470.00		3,535,521.00
	Total	612,116.00	691,843.00	382,748.00	433,088.00		8,794,004.47
Slovenia	Audio	0.00	0.00	0.00			0.00
	Video	0.00	0.00	0.00			0.00
	Devices	0.00	0.00	0.00			0.00
	Total	978,090.00	0.00	0.00			2,108,340.00
Spain	Audio	12,551,843.00	10,517,301.00	7,782,121.00	0.00		195,751,056.99
	Video	11,446,571.00	8,203,490.00	4,242,708.00	0.00		261,760,120.74
	Devices	55,081,618.00	63,448,010.00	49,873,351.00	5,000,000.00		311,313,403.30
	Total	79,080,032.00	82,168,801.00	61,898,180.00	5,000,000.00		768,824,581.02
Sweden	Audio	1,277,618.00	1,039,696.00	679,210.00	9,848,764.00		46,244,143.00
	Video	4,214,875.00	3,734,873.00	2,528,804.00	0.00		64,446,830.00
	Devices	4,732,792.00	5,114,593.00	5,197,419.00	0.00		37,372,468.00
	Total	10,225,285.00	9,889,162.00	8,405,433.00	9,848,764.00		148,063,441.00
Switzerland	Audio	1,523,284.00	1,684,406.18	1,202,317.77	813,513.96		34,194,912.56
	Video	4,735,529.00	4,618,611.14	3,503,952.61	2,662,364.07		78,740,549.94
	Devices	9,874,582.00	5,524,636.13	3,602,214.47	3,060,851.94		39,240,501.54
	Total	16,133,395.00	11,827,653.45	8,308,484.85	6,536,729.97		152,175,964.04
Total Audio	145,284,310.00	148,607,217.13	150,527,533.49	138,399,626.50	5,383,877.87	2,449,975,763.73	
Total Video	222,873,202.00	155,284,894.42	140,489,834.40	118,030,958.81	0.00	3,734,828,093.86	
Total Devices	331,601,544.00	364,724,205.28	161,519,552.46	163,035,631.44	0.00	2,133,083,448.42	
Total YEAR	700,941,507.00	668,616,316.83	452,536,920.35	419,466,216.75	5,383,877.87	8,409,899,595.00	
Total YEAR in Mio	701	699	453	419	5	8410	