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WORKING DOCUMENT

from:	General Secretariat
dated:	Working Party on Intellectual Property (Copyright)
Subject:	Recommendations resulting from the mediation on private copying and reprography levies - Presidency discussion paper

In preparation of the forthcoming exchange of views on the above mentioned subject at the Competitiveness Council on 29 May 2013, delegations will find attached a Presidency paper to be discussed at the next meeting of the Working Party on Intellectual Property (Copyright) on 29 April 2013.

RECOMMENDATIONS RESULTING FROM THE MEDIATION ON PRIVATE COPYING AND REPROGRAPHY LEVIES

Presidency Background Note for the Exchange of Views at the Competitiveness Council 29 May 2013

Since their introduction, reconciling private copying and reprography levies with the proper functioning of the internal market has bedevilled the European copyright system. While levies can constitute a lucrative source of income for rightholders in those Member States that have chosen to operate private copying and reprography exceptions, they can equally create obstacles to the free movement of goods and services.¹ All previous attempts to tackle this important issue have failed, with most stakeholders remaining wedded to entrenched and diametrically opposed views.

At the request of Michel Barnier, Commissioner for Internal Market and Services, Mr António Vitorino, former Commissioner for Justice and Home Affairs, led a stakeholder focused process of mediation throughout 2012, thereby taking the debate on levies to a new stage. The objectives of this mediation, as identified by Mr Vitorino at the start of the process, were: (i) to identify possible ways to tackle the issue of disparate levy systems negatively affecting the functioning of the Single Market; and (ii) to assess the functioning of the private copying and the reprography exceptions in today's fast evolving digital environment.

His recommendations to Commissioner Barnier on 31 January 2013² set out, in a comprehensive manner, his considered views, including on how levy systems could be made more transparent, understandable and legitimate for consumers and all concerned operators. Some of the recommendations could probably be best implemented at national level, while others may require action at EU level. When receiving the results of the mediation process, the Commissioner indicated his intention that the recommendations be taken into account in any further steps to be taken regarding private copying and reprography levies. Commissioner Barnier also suggested that the recommendations could usefully be discussed with Member States.

¹ See Commission Communication of 24 May 2011 “A Single Market for Intellectual Property Rights” COM(2011) 287, p. 12.

² http://ec.europa.eu/internal_market/copyright/docs/levy_reform/130131_levies-vitorino-recommendations_en.pdf. Circulated by the Presidency to delegations on 10 April 2013.

Subsequently, the Presidency has decided it would be appropriate to bring the recommendations to the attention of Ministers at the 29 May Competitiveness Council, and to hold an exchange of views, thereby facilitating discussions on this difficult matter.

In addition, in his recommendations, Mr Vitorino stated that while his remit had not foreseen a consultation with Member States, he considered that such discussion would be needed to find a sustainable and future-proof solution to the problems identified.

A discussion among Member States with a view to sharing recent experiences in this field could therefore assist in identifying the main challenges that should be addressed to ensure the proper functioning of the private copying and the reprography exceptions in the Digital Single Market. Such a debate could lay the ground for a common understanding in which areas action may be required.

I. The on-going debate at national level

Some Member States have recently introduced significant changes to their levy systems. In certain other Member States, changes are being discussed. The topics which are at the heart of these debates at national level largely coincide with the issues raised in Mr Vitorino's recommendations. In particular, several Member States are assessing the functioning of the private copying and reprography exceptions in the context of new business models and new forms of consumption of copyright protected content in the digital environment.

Question 1:

Are there recent developments in your Member State with regard to private copying and reprography exceptions?

II. New and innovative business models in the digital environment

Mr Vitorino emphasises in his recommendations that digital technology and the Internet have changed the distribution of copyright protected content. He notes that consumers increasingly expect to have access to content through multiple devices, when and wherever they please. More and more European companies are changing their business models to meet these new expectations and to benefit from the opportunities provided by digital networks.

The first part of Mr Vitorino's recommendations focuses on the need to foster the development of such new and innovative business models in the Digital Single Market. He proposes the better use of licensing agreements, which in the context of services offered in the digital environment in particular, would allow creators to be remunerated directly. In this regard, Mr Vitorino suggests clarifying that copies made in the context of a service that has been licensed should not require additional remuneration in the form of levies. Copies that were already licensed should not be a cause for remuneration more than once.

Question 2:

Is there a need to clarify the definition of the private copying exception so as to foster the development of new business models based on licensing agreements for all forms of access to and distribution of copyright protected content?

III. Measures aimed at reducing the fragmentation of the Single Market

Levy systems are national in scope and differ substantially with regard to both the products subject to a levy and the rates applicable to those products or to similar equipment. Companies selling their products in various EU markets have to deal with divergent rules and must bear the associated administrative costs. Moreover, there is a risk of multiple payment of the levy.

In the second part of his recommendations, Mr Vitorino proposes to introduce a number of measures aimed at increased the transparency, credibility and simplicity of national levy systems in order to reconcile them with the free movement of goods and services in the Single Market. In particular, he recommends:

- collecting levies in cross-border transactions in the Member State in which the final customer resides;
- shifting the liability to pay levies from manufacturers and importers to retailers or, alternatively, establishing clear and predictable ex ante exemption schemes;
- strengthening operator levies in the field of reprography;
- making levies more visible to the final consumer; and
- introducing more consistency with regard to the process of setting levies, notably by defining “harm” to rightholders uniformly across the EU and simplifying the procedural framework in which levies are set.

Question 3:

What would be the best way to implement recommendations of Mr Vitorino to address the obstacles to the free movement of goods and services created by diverging national levy systems? Which recommendations could be implemented at national level (in those Member States with a levy system in place), and which ones would require action at EU level?
