

The Swedish Levy System

GUN MAGNUSSON

Chief Executive, COPYSWEDE
Stockholm, Sweden

Ladies and Gentlemen, Colleagues and Friends,

We in Sweden are beginners when it comes to systems of compensation for private copying. Legislation in Sweden only entered into force on 1 January, 1999, after years of loud complaints from copyright holders.

Because we are following far behind most other European countries, the Swedish legislator has had plenty of models on which to base the Swedish system. And this shows through in the arrangements we have chosen. The Swedish system does not differ greatly from those of our neighbors, such as Denmark and Finland, and it also strongly resembles the Dutch and French systems that we heard about earlier today.

One particular point perhaps needs to be mentioned at this stage. Against the background of the political discussion that preceded the legislation, great care was exercised in structuring the blank tape levy to operate under civil law. The levy was designed to minimize as far as possible similarities with a tax or charge under public law.

The details of the Swedish system are described in this small brochure in English. Copies of the brochure, and of the text of what I am about to tell you, are available, so I would suggest that you can “down pencils” for a while.

I will not be going into all the details. What I want instead to do is to describe how the Swedish system operates and say something about how effective it is in terms of the role it is designed to play.

What is the levy supposed to cover?

What the Swedish levy is supposed to cover is copying, for private use, of works and neighboring rights that are available in the form of sound and moving images.

Reprographic use is not included, nor is use at schools, institutions or businesses. Under Swedish legislation the scope for copying sound and moving images there is restricted. Access to copyright protected material by organizations of these types is allowed via standard agreements, with or without the aid of extended collective licenses.

Sweden has not yet implemented the EU copyright directive, but a parliamentary bill is now in the pipeline. This bill will further restrict the legal scope for private copying.

It will not be permissible for whole literary works to be copied, apart from small-scale works such as poems. Because copying of entire works by university students etc. for their private use will be banned, there is no need to introduce levies, for example, on certain photocopiers.

In addition, it will not be permissible to copy illegally published music or other works from the Internet, and in this way the Swedish legislator intends to avoid imposing a private copying levy on personal computers.

What demands have to be met?

An effective levy system must meet certain demands. These fall into two categories, demands of a political nature and demands as to effectiveness relative to the objective set. First, the “political” demands.

1. Political demands

a. Connection between device and copying

If collection of the private copying levy is to work in practice, it must – at least logically – be acceptable to the public. If the levy meets with strong resistance from ordinary people, this will quickly undermine the whole system

This means that the levy must be charged on such products that make the connection between private copying and the levy clear and direct.

In Sweden’s legislation, this is expressed by the provision that the levy is to be paid for devices that are capable of recording sound and moving images and that are *especially suitable* for copying for private use.

To emphasize that this is a measure of civil law, the text of the law does not mention which devices are concerned. In addition, it is not a public authority that decides. The responsibility for the decision is placed with the collecting organization. In the event of any dispute, it is ultimately a general court of law that decides which devices will be subject to the levy. Such disputes will be settled via proceedings under civil law.

As a result of excellent collaboration between the copyright organizations and representatives of the importers, this has been dealt with through agreements. The list of devices subject to the levy is expanding in pace with technological developments. It contains both analogue and digital devices. This has not led to any major problems in practice. So, in this respect, the law works.

b. Certain groups must be exempt to ensure political acceptability

The next category of political demands is that, to ensure political acceptability, certain groups must be exempt. The law states that devices for the disabled, and devices used for purposes other than private copying, are exempt. The practical implementation of this demand has also been arranged through agreement with industry representatives and the organizations for the disabled. Our small brochure has more details on this.

c. Minimal bureaucracy

The next demand is that the system must be easy to use and unbureaucratic to those liable to pay. These are manufacturers and importers.

According to the law, the levy becomes payable at the moment of import. In purely practical terms, this is not an ideal solution. At this point, no one knows where the various CDs or cassettes will finally end up. This means that the ability to judge whether various batches of goods will be used for private copying or professional use is non-existent.

This problem, too, has been solved by negotiation with those who are liable to pay the levy, which was indeed also the intention of the legislators. Because the law is strict in establishing the liability to pay at the moment of import, the copyright holders were able to tempt the importers to the negotiating table. We can offer a better option – that payment may be deferred until the goods are sold on to the next stage – than the law.

Under the agreement, sales are allowed to purchasers registered with COPY-SWEDE – such as organizations for the disabled – or to professional users, without payment of the blank tape levy. Importers can also transfer payment liability to resellers who register with COPYSWEDE.

This has enabled us to rebut one of the most common political objections to generalized nature of the blank tape levy, i.e., that it is payable on all devices regardless of what they are used for.

d. Means of coercion

It is hugely important that no importer should be able to evade payment of the blank tape levy, and thereby to gain competitive advantages. Collection of the levy must leave no one out. So some means of coercion are necessary.

The Swedish legislator does not offer a great deal of help here. Importers are obliged to register with a collection organization, and certain possibilities exist here for compelling registration via the courts. However, as I described just now, there are major gains to be made by those who fall within our net, through voluntary agreement with the copyright holders. So, our preference is to use incentives rather than coercion.

Otherwise, we have very slight powers at our disposal. We have benefited greatly from being a small nation, where everyone knows everyone else and rumours travel fast. We are also a rather law-abiding nation. The Swedish people are used to high taxes. The blank tape levy is relatively modest, and it is more worthwhile to smuggle spirits and cigarettes than CDs and cassettes. I would venture that we have been lucky to date, and we have very good control over the market. Even the importers agree.

Now we come to the second category of demands, i.e., the need for effectiveness relative to the objective set.

2. Effectiveness relative to objective

a. Adequate compensation

The level of payment must be sufficient to provide compensation for private copying. The sums involved must be such to make distribution of individual amounts possible to those entitled, and worthwhile.

In Sweden, the sums collected are low, compared to other European countries. On average, the amount collected in Europe is around EUR 0.96 per capita, while in Sweden it is EUR 0.88 per capita. There may of course be several reasons why the Swedish figure is so low, but the major factor is that the level of remuneration stated in the law is low, at EUR 0.13 per recordable hour, subject to a maximum of EUR 0.66 per device.

The amount of remuneration is stated in the text of the law. Here, there is actually no scope for negotiation by the parties in the market – not even downward. In the case of CD-R data disks, we have agreed with the importers to ignore this provision. Many CD-Rs are also used by private individuals for purposes other than private copying of copyright protected material – for example, for storage of private photographs. As a result, we have agreed that, on the basis of surveys of copying practices, the levy should be set at 62.5% of the maximum rate, i.e., at approximately EUR 0.08/ hour.

Sweden's proposed new legislation raises the rate of remuneration by just over 20 %. The ceiling of EUR 0.66 is removed and, for digital devices with integral memory, a rate of SEK 0.07/megabyte is set for media capable of being recorded on several times. A rate of SEK 0.025/megabyte is established for once-recordable media such as CD-R format disks. In view of the developments in data compression technology, our judgment is that this is too low.

The Swedish legislator also approves of the way we work with the importers, and now proposes legislative confirmation that adjustment of the rate of remuneration is permissible in certain circumstances.

It is my opinion that the level of remuneration in Sweden has to be raised further to meet the requirement of effectiveness relative to the objective, and to rep-

resent “fair compensation for private copying”. Right now, we are at the limit, and when the EU expands to include all the new Member States, compensation will also be extended to many more copyright holders. The “Best Before” period for levy systems is short, and the legislator must be aware of that.

b. Reasonable collection costs

The second efficiency requirement is that collection costs should be low. According to our legislation, the levy is to be collected by an organization that represents several copyright holders in the sector. There is no legal monopoly for a single appointed organization. In theory, several organizations could compete for the task.

In practice, however, COPYSWEDE administers collection of the levy on behalf of its own member organizations and the organizations representing film producers, phonogram producers and radio and TV corporations, and represents the copyright holders.

We also administer remuneration for other rights on behalf of the same groups. This includes licensing of cable retransmission of TV and radio programs. So we have secured certain benefits of scale, which otherwise could not easily be achieved in a small nation such as ours. In 2002, costs represented 3.4 % of the amount collected.

c. Efficient and fair distribution

Now to the most important demand of all: an effective and fair system of distribution. Without this, the blank tape levy loses its legitimacy.

In my introduction, I pointed out that our system operates under civil not public law. For that reason, the Swedish legislator did not require any part of the blank tape levy to be set aside for general, cultural and/or social purposes.

The organizations are not prohibited from doing this, but it would require the consent of the copyright holders concerned.

Instead, the legislator took the view that the levy should as far as possible be distributed individually among those entitled to receive it, i.e., authors, performers and producers of films and phonograms. Broadcasters are not entitled to receive payments in their capacity as broadcasters, but only if they are also producers.

Computer programs do not carry any entitlement to remuneration because they may not be copied for private use.

The law is applied under the national treatment principle, although only on behalf of copyright holders in the EEA region. On the basis of reciprocity, the government can order that the law shall be applied to rights originating from copyright law in other countries. This has not yet happened.

The details of the distribution system for remuneration are described in the brochure. Distribution takes place in these stages.

Stage 1: 5 1/3 % is allocated to broadcasters.

Stage 2: The remaining remuneration is shared among three categories –

Film producers

Phonogram producers

COPYSWEDE, i.e., all authors and performers

Different amounts are distributed for each of the categories of audio, video and CD-R

In Stage 3, payments are distributed individually within each category.

As far as I am aware, it is unusual that an umbrella organization such as COPYSWEDE distributes payments to separate individuals. We do. In most countries, remuneration is transferred to the relevant copyright organization, which then distributes the remuneration to the individuals. KOPIOSTO, our sister society in Finland, uses the same kind of system as ours for distribution of remuneration. All categories of authors and performers are included, except for authors in the field of music and the phonogram recordings of performers, where the procedure briefly is as follows.

Individual distribution by COPYSWEDE is made for copying of films and TV programs. Surveys of copying practices have identified the extent to which various TV channels are used as a source for copying, which of 12 separate program categories are copied most, and the incidence of copying for programs from different countries.

Via our distribution of cable TV remuneration, we have for many years been using databases and calculation systems for all programs on Sweden's five major TV channels. We also maintain databases of those who are involved in these programs.

Before the calculation is performed, each type of program is assigned a particular value according to how much it has been copied and the number of programs of that type that are available for copying.

Each person's contribution is indicated by a value based on its importance to the programme.

The shares attributable to authors and performers outside Sweden are also calculated, but here we seek partners among our counterpart organizations outside Sweden to execute the actual payments.

This centralized system of individual distribution has many advantages.

For example:

- The fact that the source material – i.e., the information on the programs put out by the TV channels and on those involved – is processed in one place creates major financial gains. In Sweden, this has been totally decisive in making it possible for any payment to be made at all, in view of the fact that the

blank tape levy is so low. The cost of distribution to individuals is a little under 8 % of the amount distributed.

- Another benefit is to reduce potential organizational conflicts to a minimum. It is enough for the member organization to agree on what share should be allocated to, for example, the literary contribution to a certain type of program. Then it makes no difference which organization – the Writers' Union or the Union of Journalists – the author is or is not affiliated to. The payment is personal.
- The short route between collection and distribution makes it more visible at the political level that the remuneration actually goes all the way down to the individual artist. This proves the legitimacy of the system and assures its political acceptance.
- Our system of distribution does not push the efforts of the member organizations themselves into the background and does not obscure, to individual authors and performers, the fact that it is the work of the collectively organized professional associations that is responsible for our successes. There must not be any competition between the umbrella organization and its members, and there are many ways of avoiding this while at the same time ensuring that copyright holders receive their fair compensation effectively and at low cost.