

# Remuneration Systems for Private Copying in Europe

**WILLEM WANROOIJ,**  
Buma-Stemra  
Amsterdam, the Netherlands

I thank the organizers of this ALAI congress for inviting me to participate in the panel this morning. It is a great pleasure to say a few things about the home copying remuneration systems in Europe.

It brings the past back for me.

I was involved in the introduction of the private copying legislation in the Netherlands, in 1990. Also, between 1991 and 1994, I was the first managing director of Stichting de Thuiskopie, the home copying collecting society in Holland.

Stichting de Thuiskopie – I challenge you to pronounce that name in a proper manner – in 1992 set up a system of exchange of information between European home copying collecting societies. The societies began to meet on a regular basis, to discuss legislative, operational and other practical matters.

Also, Stichting de Thuiskopie composed a survey reflecting the legislation and practice in the participating countries. The survey was regularly updated and has developed into a valuable source of information.

Last June, the 14<sup>th</sup> revision of the survey has been distributed amongst the home copying collecting societies.

Indeed, the survey is an internal document in the first place, it is a guide for the partaking organizations. But Stichting de Thuiskopie has allowed me to use the survey as the basis for my presentation this morning.

It will help me to draw for the benefit of our debate a rough and global picture of similarities and differences in the European private copying landscape.

My paper is about practical details in the first place, and less about legal issues. I trust that my fellow panelists will go deeper into the legal matters.

Stichting de Thuiskopie's operational activities are restricted to audio and video. So is my contribution this morning.

The countries covered by the study: Austria, Belgium, The Czech Rep., Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Italy, The Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, and Switzerland.

There are, however, a few more countries in Europe that apply a private copying remuneration system. Here I rely on a study by the Australian Copyright Council, that was published in September 2001: Belarus, Bulgaria, Estonia, Latvia, Moldova, Romania, Russia and Ukraine.

It is clear that private copying compensations very much are part of the European copyright civilization, so to say. In that respect it is remarkable that the European lawmakers failed to establish a specific harmonized regime in the Union. I remember two attempts in the early '90s. The drafts ended in the shredder.

Of course, a certain degree of harmonization is achieved in the Infosoc directive. The directive however unifies the framework for the private copying exemption, rather than creating a true harmonization of principles and procedures.

Such harmonization today is more necessary than ever. With the advent of digital copying the differences between the national systems in Europe become more significant. That makes, in my view, the concept as a whole more vulnerable, and that is not in the interest of authors, performers and other rightholders.

#### **Timeline of the introduction of remuneration:**

Germany I.: 1964, Austria: 1980, Norway: 1981, Sweden: 1982, Hungary: 1983, Iceland: 1984, Finland: 1984, Germany II.: 1985, France: 1985, Portugal: 1985, Spain: 1987, Netherlands: 1990, Switzerland: 1992, Italy: 1992, Denmark: 1992, Greece: 1993, Belgium: 1994, Poland: 1994, Slovenia: 1995, Slovakia: 1997, Czech Republic: 2000

I've included a timeline to give you an idea of the pace of the proliferation of the private copying remuneration over the years. The years on the timeline are the years wherein the remuneration was introduced in the law. In some cases, it took many years before the collection became operational. Portugal is, I believe, a good example of a long maturing process.

A few observations:

- Germany I – first remuneration in Europe (hardware)
- In Sweden – first system introduced in 1982, abolished in the early '90s and reintroduced in 1999
- Norway – a real levy system.

I try to avoid the word levy. It has a too strong association with taxes. The private copying payment is not a tax, it is a royalty.

The Norwegian taxation was abolished in December 2000, and replaced by a subsidy-like system. But discussions are going on, and a remuneration system is one of the options.

- Germany II – media royalty

**Single system:** Austria, Denmark, Finland, France, Hungary, Netherlands, Sweden, Switzerland

**Dual system:** Belgium, Czech Republic, Germany, Greece, Iceland, Italy, Poland, Portugal, Slovakia, Slovenia, Spain

In Europe, we can distinguish between single and dual systems – also called the *two-shoulders system*. In single systems, the remuneration is only claimed for one type of object. In practice, this always applies to media, such as blank tapes, recordable CDs or flash memory cards.

In a dual system, the remuneration applies both to media and recording equipment, such as tape-recorders, video-recorders, CD-writers and the like.

Who pays? In all systems in the Stichting de Thuiskopie's European Survey, the royalties are being paid by the manufacturers or the importers, and because the European importer not always is the national importer, some laws also include the intra-community acquirer.

In the digital domain, the distinction between media and hardware is blurring. It is interesting to see in what cases legislators qualify objects as media, or as hardware.

**Determination of remuneration rates:**

**legislator:** Belgium, Czech Republic, Denmark, Finland, Germany, Greece, Hungary, Iceland, Italy, Poland, Portugal, Slovenia, Slovakia, Spain, Sweden, Switzerland

**negotiations:** Austria, France, Netherlands

Before collecting the remunerations, tariffs need to be set.

In most countries of the survey, the royalty rates are being determined either by the legislator, or by a minister or other governmental authority.

This chart shows that the remuneration level is negotiated directly between rightowners and the other interested parties only in Austria, France, and the Netherlands.

There is no system where collecting societies set the rates, as a few recently published reports want us to believe.

In France and the Netherlands, special commissions are designated by the legislator to do the job.

<b>Remuneration rates – analog</b>		
<b>range – audio media</b>		
€ 0,02	----- (€ 0,192) -----	€ 0,45
<b>range – video media</b>		
€ 0,02	----- (€ 0,236) -----	€ 0,45

On what, and how much is levied? Quickly some information about the analogue domain, split up in this chart for audio and video media. Traditional media and equipment. Tape, and cassette- or video-recorders.

You see the range of the tariffs. On average, the video tariff is about 22% higher than the audio rate.

<b>Remuneration rates – analog</b>		
<b>range – audio media</b>		
€ 0,02	----- (€ 0,192) -----	€ 0,45
<b>range – video media</b>		
€ 0,02	----- (€ 0,236) -----	€ 0,45
<b>range – audio equipment</b>		
€ 0,53	----- (+/- 2 to 6% of retail price) -----	€ 1,28
<b>range – video equipment</b>		
€ 0,66	----- (+/- 2 to 6% of retail price) -----	€ 9,21

Much more interesting is it to see where, and in what cases the remuneration systems have been extended to the digital domain. **You heard yesterday that that is a sensitive issue.**

The following charts illustrate that more and more digital objects are being included.

My analysis of the data in the survey of Stichting the Thuiskopie rather is about the digital objects than about rates. The order of the charts that will follow is from digital objects where payment of a remuneration is most common, to objects where payment is not yet widespread.

**Remunerations in the digital domain – audio CD-R(W)**

Austria, Belgium, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Italy, Netherlands, Poland, Slovakia, Slovenia, Spain, Switzerland

The audio CD recordable or rewritable is the most widespread digital object in the existing remuneration systems (*16 of the 20 Survey countries*).

**Remunerations in the digital domain – traditional: minidisk, DCC, DAT**

Austria, Belgium, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Italy, Netherlands, Poland, Switzerland

Minidisc, DCC, DAT etc.: (*14/20*)

**Remunerations in the digital domain – DVD–/+ R(W)**

Austria<sup>\*</sup>, Czech Republic, Denmark, Finland<sup>\*</sup>, France<sup>\*</sup>, Germany<sup>\*</sup>, Greece (?), Hungary, Italy<sup>\*</sup>, Netherlands, Poland, Slovakia, Slovenia, Spain, Switzerland

\* + remuneration data DVD

(*14/20*)

**Remunerations in the digital domain – CD-R(W) “data”**

Austria, Belgium, Czech Republic, Denmark, Finland, France, Germany, Hungary, Italy, Netherlands, Poland, Slovakia, Switzerland

(13/20)

**Remunerations in the digital domain – flash memory cards**

Austria, Denmark, Finland, France, Germany, Hungary, Italy, Poland, Spain, Sweden

Quite a few countries (10/20) have introduced remunerations for what is known as flash memory cards. Flash cards come in many flavours, such as:

Microdrive (MD)

SmartMedia (SM)

Memory Stick (MS)

MagicGate (MG)

MultiMedia Card (MMC)

Secure Digital (SD)

PC Card Hard Drive

ATA Flash Card

xD Picture Card (xD)

**Remunerations in the digital domain – mp3 players and other Internet audio devices**

Austria, Czech Republic, Finland, France\*, Germany, Hungary, Iceland (?), Italy, Poland (?), Spain, Sweden

\* Also hard-discs when integrated in digital audiovisual device

(9/20). An interesting question arises from this chart: we have seen that Austria, Finland and France for instance have a single system (so, only media), the Czech Republic a dual system – media and hardware. The mp3-player in the

Austrian, Finnish, and ad French systems is a player with an integrated memory that enables storage of music.

In the Czech case one should see the mp3-player as hardware. The memory is not built in the player.

The principle that once an audiovisual or multimedia device has a storage component on board, a home copying royalty is payable, is also visible in the French application of a royalty when the recording component is not solid state memory, but a hard disk or other mechanical storage device.

### **Remunerations in the digital domain – CD/DVD-writers**

Czech Republic \*, Germany \* \*\*, Greece (?), Iceland (?), Italy \* \*\*

\* CD \* \* DVD

I must admit that the survey of Stichting de Thuiskopie is not very clear when CD- or DVD-recorders are involved. There may be other countries in the survey that have introduced a royalty on this hardware.

The extension of home taping royalties to the digital domain meets resistance from industries and several in the scientific world alike. One of the arguments is that in particular digital objects serve many other purposes than private copying. Indeed, we heard clamorous objections against a royalty on Data CD-recordables and rewritables. Data CDs were for data, and only in exceptional cases for music and video.

In Holland, a professional market research company measures twice a year how consumers use recording media. The research is under the control of both rightowners and the importers and manufacturers. Well, a general trend is that only very few of the so-called Data CDs are used to store data, 70% are being used to copy music, games and commercial pictures and video. I suspect that the same is happening or will happen with most other digital recording objects.

### **Determination of distribution schemes**

**legislator:** Belgium, Czech Republic, France, Greece, Hungary, Italy, Poland, Portugal, Slovenia, Spain, Switzerland

**negotiations:** Austria, Denmark, Finland, Germany, Iceland, Netherlands, Slovakia, Sweden

Let's turn to the distribution of the royalties. Quickly a few facts, taken from the survey of Stichting de Thuiskopie.

[It should be observed here that in a few countries new organizations have been set up, specifically designated with the private copying tasks. Sometimes the job is carried out by traditional societies on behalf of the new home copying collecting society.

In a majority of countries, however, collection and distribution has been integrated in the existing infrastructure. That is to say that often the musical rights collecting societies are responsible for the work to be done.]

The way rightowners should share the private copying remunerations often is a matter for the legislator, or the government.

How much? Approximately 290 M euro in 2002 total collection in the Survey countries.

To whom? The beneficiaries are, roughly speaking, authors, performers and producers.

Deductions for social and cultural aims:

0%	7 countries
0-15%	5 countries
15-35%	6 countries
>35%	2 countries

The importance of the home-copying remuneration for the income of creators and performers is clearly reflected in the following:

of audio revenues, 70,1% is distributed to creators and performers

of video revenues, 65,2% is distributed to creators and performers.