

Remarks between the presentations

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Thank you, Margo very much. I will pick up where Stefan Martin would otherwise be picking up. Private copying is a term of art. It is a legal conclusion meaning that the copying is permissible. Permissible either, on account of an exception, with the result that there is no compensation to the author, and the use is therefore completely free, or, on account of a limitation accompanied by some form of remuneration, for example implemented by the levy schemes already referred to (to which I will also shortly refer, and which will also be the subject of further and probably heated debate in the course of this Congress).

Margo also alluded to the varying justifications for private copying. These also appear in Stefan Martin's report. He points out that private copying exceptions were initially tolerated as a marginal practice lacking significant economic impact. With the advent of technology, that tolerance became resignation in the face of the impossibility of preventing copying in a constantly evolving technological context. The rough justice solution of a levy system therefore emerged: if you can't stop the copying, then at least some form of approximate payment should be arranged for it.

Respect for privacy and individual autonomy furnished a further justification for private copying offered by some of the national reports of which Stefan Martin took account. (One might, however, query to what extent private copying is still about privacy in light of modern means individuals use to make and communicate copies.) Stefan Martin's report also addresses the question whether a copy has to be made from a copy that the copyist already owns. In fact, most countries do not require that the source of the copy has already belonged to the copyist. Most countries' laws also appear to be rather ambiguous as to whether the source of the copy even has to have been lawfully made itself. Recent developments, notably in Germany, however, suggest that, with the pressure of the digital environment, there is a move toward requiring that the source-copy for a permissible private copy be itself legitimately made.

With respect to the legal nature of the private copying schemes that most countries have in place in some form or other, they are statutory license schemes where the copying is permissible and remuneration is set by statutory or by administrative regulation, or in some cases by negotiation among the interested

parties. The subject matter of the levies ranges, depending on the national law, from levies that cover all copyrighted works with some exceptions, to very specific forms of levies, most notably in the area of phonograms and videograms. For some countries, there are levies only on phonograms and videograms and not on other kinds of copyrighted works.

What is the levy levied on? In most countries, it is levied on the blank copying material, on the “*support vierge*”, on blank tapes or blank diskettes; and in some countries, it is also levied on the copying equipment. I would refer you to the charts in Stefan Martin’s for more details on what is the object of the levy.

How much is levied? Here, there is a considerable range in the price of the surcharge. I note for example that, with respect to recordable DVDs, the price ranges from 1.01 euros per unit in Hungary to 0.21 euros per minute for a recordable DVD in France.

How much has been collected under these regimes? Actually, quite a lot of money has been generated as a result of the levies, which may have something to do with the heated nature of the debate. For example, in 2001, more than 95 million euros were collected in France and more than 60.5 million euros were collected in Germany.

Who gets the money? In most countries, it is divided among the authors and the performers and often, although not always, the producers. The actual allocation differs country by country and I would again refer you to the charts in Stefan’s report. There is an additional beneficiary of the allocation of moneys collected under these levies in some but not all countries, and that is a cultural fund. The cultural fund withholding ranges from 20% in Spain to 50% of the video collection in Finland.

I will conclude by making a few possibly provocative remarks. The popularity of levies may have something to do with their use or diversion to cultural funds in some countries. I note that the withholding is on all funds collected regardless of the nationality of the works copied. But of course, the culture that is benefited is the national culture of the withholding country. So there is a certain amount of cross-subsidization going on without always a return to the (foreign) authors whose works are actually being copied. And there may be some correspondence between the significance of the cultural withholding and the amount of money that would otherwise be an outflow from the collecting country to the non-national authors whose works are being copied and collected for.

So, I could have said it more bluntly, but I will leave it open for the discussion period and now I will turn to Antoine Latreille for further elaboration of legislative measures in the context of digital private copying.