

# C: C & C

## Copyright: Control and Compensation

(Text of power-point presentation)

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### Copyright at the crossroad

- *Control* through an exclusive right enhanced by DRMs  
Copyright remains a right for the rightholder to prohibit “copying”
- *Compensation* through a remuneration right  
Copyright becomes a system by which users get the right to copy without limitation

### The question on the interface between DRMs and levies

- How should levies (*fair* compensation) take into account DRMs (allowing a *full* compensation guaranteed by the technical power to control)?  
You cannot have “the euros and the small cents” at the same time (“the licensing fees and the levies”)

### Views from the two sides of the Atlantic

- EU:  
“Double payment” issue (interface between DRMs and levies)  
Critics: “Too much to pay”  
Theoretical copyright issue: towards a right to remuneration?
- US (and EU):  
“Lock up” issue (interface between DRMs and exception)  
Opponents: “Too much control”  
Theoretical copyright issue: towards an access right?

### Reflection on justice

- *Levies*: “rough justice to authors” in the analog world
- *DRMs*: “better justice for authors” in the digital world
- *Levies* + *DRMs*: “injustice towards users”  
Either they pay twice  
Or they pay for something that they do not get (copy protection)

### **Limitations re private copying/levies**

- Private copying:  
Limitation of the “three-step test” (Art. 5(5))
- Levies:  
Availability of DRMs (Rec. 35) rather than use (otherwise: incentive not to apply DRMs)  
Need to prove prejudice (Rec. 35.) before the levy is imposed  
When prejudice is minimal: no payment  
Consideration of the existence of compensation in another form (e.g. license fee)  
No fair compensation for piracy

### **Levies and implementation of the InfoSoc Directive**

- Belgium draft:  
Existing levy system (recording equipment + media), but future: exclusion of multi-functional devices (PCs, PDAs, etc.) and limitation to media (as more “dedicated;” still to be defined)
- Luxembourg draft:  
No levy so far, but possibility of implementing decree with an alternative form of compensation (extensive regulatory system for a small country; contrary to tradition in Luxembourg; DRMs will replace fixed levies in the long run, etc.)

### **Can you have a fair compensation for illicit copies?**

- Attractive solution for some politicians and some IP owners/intermediaries
- But:  
General principle of law: “You cannot benefit from fraudulent/tortuous acts” (*Fraus omnia corrumpit*)

### **Conclusions**

- Levies for private copying, not for pirated copies
- If fair remuneration compensates for piracy, then we are leaving the copyright field  
Allocation of collected sums to cultural funds already suggests that levies are (partly) outside copyright  
If levies compensate for the piracy losses, voices will then call for a public redistribution system
- Copyright should remain a tool for compensating *and controlling* uses.