



GSME response to the European Commission Stakeholder Consultation on Fair Compensation for Acts of Private Copying

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GSM Europe (GSME) welcomes the opportunity to comment on the Commission's Stakeholder Consultation on Fair Compensation for Acts of Private Copying. GSME represents the interests of 147 mobile network operators. Our members are increasingly important distributors of digital content, through a variety of channels and commercial offers.

GSME recognises the importance of rights holders to be properly compensated for their activities, but believes that the systems of copyright levies as operated in a number of Member States are indiscriminate in their impact on customers, outdated as methods of remunerating content providers and not suited to the modern digital environment. Levies were a solution introduced for a perceived problem with analogue media, but digital media allows substantially greater control over content, and this should not be ignored in favour of blanket taxes on the sale of equipment in the form of levies. This is particularly the case with mobile, as operators continue to work proactively with content rights holders in order to develop innovative, flexible services, which increase the range of offers of legal content to consumers.

Mobile operators are rolling out innovative offers for consumers to access content, which rely on Digital Rights Management (DRM) systems including advertising supported and subscription mechanisms in co-operation with rights holders. The DRM systems are being developed to offer a high level of protection to rights holders against unauthorised distribution of their copyright-protected content, and to enable providers to offer controlled rights of access. These systems, which are now provided in a growing number of handsets, prevent unlicensed copying of copyright protected content and allow customers to consume on demand the content they download. Under this system, customers are paying for the type of content they want to consume, and the revenue can be attributed precisely to the appropriate rights holder.

Alongside this, many rights holders are deciding for a DRM-free model, selling content in a different manner and with appropriate price structures. Another option is to buy content with a certain number of copies already "*bought*" included, protected by DRMs. To impose payment through a levy is indiscriminate in its impact, is not transparent to consumers, and risks causing a backlash against innovations – as these effectively require repeated payment - intended to grow the content market.

Imposition of levies on new equipment purchased by customers should also not be seen as an answer to the perceived problem of piracy – this is being dealt with in other work currently undertaken by the Commission, most notably the consultation and future Recommendation on content online, to which GSME has contributed.

In the specific case of mobile devices GSME believes that policy makers should be conscious of the increasing capabilities of mobile phones and that, for European



customers, entry-level devices in use by low income consumers are now typically capable of making end user content and transferring these between devices.

The storage capacity of phones is used by many consumers for storing their own content as well as for documents and other files – the spread of camera phones, for example, has led to strong growth in taking photographs and in the creation of self-made film clips, which are stored on the phone's memory.

This highlights the way in which mobile phones allow a variety of content to be stored on them, and that to treat them as mere song players is to miss the reality that mobile phones offer many services, only a limited proportion of which could be defined as personal copying in terms of imposing levies¹. It would be particularly detrimental for social inclusion in Europe if, in practice, levies restrict access to new, more capable mobile devices.

Conclusion

GSME continues in its position of resisting a wider application of indiscriminate copyright levies. Levies were developed to address the problem of lack of oversight in making analogue copies. In the digital environment, technological advances have meant a broadening in what can be used as storage, what that storage is used for and how to protect stored content. GSME would welcome support for more transparent, technical protection measures which empowers users to decide on what basis they access content, and allow rights holders corresponding compensation.

The mobile industry is at the vanguard in working with rights holders to allow consumers access to content in a reasonable and fair way, and which creates a real link between the rights holder and their remuneration. Rights holders also have a role to play in the new digital market, and innovative technical solutions as those used in mobile should be a strong incentive for them to propose new models for consumption.

The Commission may consider as a first positive step to insert additional minimum consumer transparency obligations into the way levies are imposed in certain EU Member States in the EU. This would help consumers and rights holders see clearly how levies are calculated, imposed and distributed in Member States (the Commission's own paper highlights the current discrepancies). This could help consumers and rights holders to better choose between products, and also help to develop competition in the market.

The Commission may also wish to consider how any EU wide levy would be collected, for example, by the importer, manufacturer or distributor. There is a danger that an EU wide levy could lead to criminal activity developing, such as we have seen with carousel fraud which developed from the collection of VAT across Member States.

¹ *"Mobile phones increasingly incorporate digital cameras, MP3 players, camcorders, voice recorders and other devices."* (Consultation, p14)