



The Association of
Learned & Professional
Society Publishers

Plenary 3

PLS Platinum Sponsor session: The disruptive consequences for all publishers of HP's victory against Reprobel in the European Court of Justice and reasons to be optimistic

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Legislative disruption for publishers?

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- **Economic context**

- **Levies explained**

- What are they?
- When do they apply?
- Value to publishers

- **HP and Reprobel**

- **Vogel and VG Wort**

- **Role of the European Commission**

- **National approaches**

- Germany
- Belgium

- **Other European developments**

- Education
- TDM



Economic importance of copyright in the EU: jobs

	Direct employees	Indirect employees	%
Copyright intensive industries	11.6m	3.6m	7.1
All IPR intensive industries	60m	22.2m	38.1
Total EU jobs	216m		100

Source: IPR Intensive Industries and Economic Performance in the EU published by the European Patent Office and the EU IPO, 2016



Economic importance of copyright in the EU: value

	Value (€)	%
Copyright Intensive industries	915m	6.8
All IPR intensive industries	5,664m	42.3
Total EU	13,388m	100

IPR Intensive Industries and Economic Performance in the EU published by the European Patent Office and the EU IPO, 2016



Why we need to talk about levies

- Levies provide a valuable source of revenue for publishers and other rightholders
- Introduced in the analogue age as far back as 1985 in some countries
- Administered by RROs and primary business of many European RROs
- Recent court decisions have put publishers' share in jeopardy and threaten collective licensing



What are levies?

- Levies are a means of compensating rightholders for the use of their content
- Usually apply under a copyright exception where direct licensing may not be practical
- Payable by
 - copying device manufacturers or importers of those devices ('equipment levy') and / or
 - Large scale users such as copy shops, businesses ('operator levy' based on levels of copying)



What devices attract a levy?

Photocopiers

Scanners

Faxes

Printers

Multifunctional machines (i.e. those combining any of the above)

DVD or CD burners

Personal computers

Paper used for photocopying copyright protected works

DVD-R

CD



Economic value of levies?

- In 2015 total levies collected: **€635m**
- Of which 91% (€582m) were collected from countries within the EU
- Collections per capita:
 - Worldwide: €0.58
 - EU Member States: €1.42
- Average ‘social and cultural’ deductions: 10%



Economic value of levies in EU (top 10)

	Collections €	Per capita collections € (ranking)	Social & Cultural deduction
France	226m	3.38 (1)	25%
Italy	130m	2.13 (4)	10%
Germany	100m	1.24 (7)	0%
The Netherlands	28m	1.67 (6)	0%
Belgium	25m	2.21 (3)	0%
Hungary	22m	2.24 (2)	10%
Finland	11m	2.01 (5)	0%
Sweden	10m	1.05 (9)	0%
Austria	10m	1.17 (8)	50%
Denmark	3.8m	0.67 (10)	33%

International survey on Text & Image Copyright Levies published by Stichting de Thiuskopie and WIPO, 2016



European exceptions and levies

- EU Copyright Directive 2001
- Optional exceptions to reproduction right
 - To make paper copies (excluding of sheet music) and
 - For natural persons to make copies in any medium for private use / non-commercial purposesOn condition rightholders receive fair compensation
- Subject to the Berne 3-step test



Who benefits from the reproduction right?

- Authors
- Performers
- Record producers
- Film producers and
- Broadcasters



Hewlett-Packard and Reprobel 2015

- Could the exceptions under the 2001 Directive preclude national legislation from allocating part of the fair compensation for rightholders to publishers where publishers are under no obligation to ensure that the authors benefit from some of the compensation ‘of which they have been deprived’?
- Yes as publishers, not being ‘rightholders’, do not suffer harm for the purpose of the exceptions.



Vogel and VG Wort 2016

- German Federal Court followed the Reprobel ruling in a case concerning German legislation and the distribution rules of VG Wort.
- Retrospective effect: VG Wort was forced to start reclaiming levies paid to German publishers since 2012.
- This had a knock on effect for GEMA handling collective rights for composers and music publishers in Germany.



Consequences

- Distributions frozen – domestic and overseas
- Publishers faced the prospect of loosing out on revenues worth some €275m.
- Damage to author-publisher relations.
- Potential damage to European RROs and collective licensing.
- Wider implications for publishers if not considered rightholders under EU law



Role of the European Commission

- President Juncker stated he wanted ‘journalists, publishers and authors to be paid fairly for their work...whether published via a copying machine...’
- European Commission introduced an enabling provision in the DSM Copyright Directive in 2016: allowing Member States to provide that publishers to whom an author had transferred or licensed a right had a sufficient basis on which to claim a share of compensation for uses of a work made under an exception (Article 12).



National approaches - Germany

- German law was changed in December 2016 to allow a CMO administering rights for different types of rightholders to distribute income in fixed shares to all those rightholders.
- A new internal Distribution Plan for CMO members was agreed and monies were released to overseas RROs.
- This is seen as only a temporary solution and Article 12 remains crucial.



National approaches - Belgium

- The original HP v Reprobel case was resumed in the Court of Appeal, Brussels.
- Noting that the publishers' right to remuneration under Belgian law is not classed as a copyright, the Court considered the remuneration provided under the law for publishers was for their investment in producing the original publications and was therefore broader than and separate from that of fair compensation provided for authors.



Issues

- Article 12: Estonian Presidency considering extending to public lending right
- TDM (Article 3)
- Education (article 4)
- Use of out of commerce works by cultural institutions (article 7)
- Press publishers right (article 11)
- Use of protected works by platforms (article 13)



DSM Copyright Directive Progress

- One year on
- Parliamentary committee votes on opinion reports:
CULT, ITRE, IMCO, LIBE
now JURI (new rapporteur – Axel Voss)
- Council led by Presidency (Estonia)
- Likely to take another year before being passed
- Impact on UK with Brexit



Thank you

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