

Mr. Romano Prodi  
President of the European Commission  
European Commission  
B-1049 Brussels  
Belgium

April 9, 2003

Dear Mr President,

### Copyright Levies on Digital Media and Hardware

IFRRO is an international non-governmental organisation the purpose of which is to facilitate collective management of reproduction rights in copyrighted works on a world-wide basis. This takes place through the co-operation of national Reproduction Rights Organisations (usually called RROs) which are established by authors and publishers representatives. Our membership includes 40 such organisations world-wide, including 16 in the European Union, as well as national and international associations of authors and publishers.

We have followed with great concern the views expressed by the IT-sector and noted that a coalition of manufacturers and importers of telecommunications equipment has recently written to you urging you to put "the levy issue" on the top of the European agenda.

We appreciate the balanced answer given by you to these companies with your letter of February 17<sup>th</sup> 2003. However the published opinion of the industry and the latest statements of Commission representatives at the recently held Digital Rights Management workshop in Brussels (March 25, 2003) continue to concern us. That is why we believe it to be appropriate and necessary that we should briefly put the other side of the argument to you on behalf of the organisations and their members which we represent.

RRO's have been empowered by the relevant authors and publishers in their country and if necessary by foreign right holders through reciprocal agreements with sisterorganisations throughout the world, to manage their rights in the field of reproduction of their works.

The copyright laws of six EU Member States<sup>1</sup>, and of seven of the Candidate Countries<sup>2</sup>, provide for legal licences for reprography. Thereby limited copying of copyright protected works is permitted for private and other internal uses without the authorisation of the rights holders, but against payment of remuneration by the manufacturers and importers of copying machines. The RROs in these countries manage these legal licences, collect the fees and pay the remuneration to the authors and publishers they represent. Although it is normal usage in copyright circles to refer to "levies" and "levy systems", it must be clearly understood that this remuneration represents copyright royalties and not taxes.

Levies were first introduced in 1965 in Germany as the solution to the problem of audio and audio-visual private copying. Today levies on recording machines and/or blank tapes exist in 12 EU Member States<sup>3</sup>. In

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<sup>1</sup> Austria, Belgium, Germany, Greece, Spain, Portugal

<sup>2</sup> Bulgaria, Czech Republic, Hungary, Poland, Romania, Slovakia, Slovenia

<sup>3</sup> Austria, Belgium, Denmark, Finland, France, Germany, Greece, Italy, the Netherlands, Spain, Sweden, Portugal

the United States of America, a similar "rough justice" system has also been introduced in the field of audio recording<sup>4</sup>. Thus, the levies are the only viable solution for private copying in today's situation. In the UK, Ireland and Luxembourg, where they have not been introduced, no alternative solution has been found. Consequently, copyright holders get no remuneration for the mass use of their works.

As a result of the feasibility of the audio and audio visual levies, many countries introduced reprographic levies on copying machines and-or the operators of such machines. Again, these systems have worked well and they enable users to make legally copies of extracts from copyrighted works within reasonable limits for private and/or internal purposes for a modest flat fee. Valuable content is thus for example easily available for students in their studies.

The Copyright Directive of 2001 acknowledged that such levy systems involve no distortion of the internal market. For much of the copying they cover, especially in the private sphere, they remain the only way of ensuring that the copyright holders--authors and publishers---receive fair compensation for the copying of their works, which takes place on a massive scale in all countries.

As regards reprography, for the foreseeable future the vast bulk of the copied material will continue to be from a paper original i.e. in analogue format, in contrast to audio and audio-visual copying. It is technically impossible to control such analogue copying with any digital rights management (DRM) systems. We want to point out that Article 6 (4) of the Directive provides that Member States must ensure that the rights holders enable users to benefit from an exception in respect of copying on paper or similar medium as provided in Article 5 (2) a, but do not have to do so if they provide an exception for private copying on any medium as provided by Article 5 (2) b.

The focus of current debate is on how to control use of copyrighted works in the digital environment. Many governments have taken the view that levy systems provide a good solution to this problem. Evidence of that can be found in the fact that the different solutions found in many EU members States include levy systems that provide for financial compensations for use of copyrighted works in the digital environment. We would also like to underline that these systems have proven their added value for both users and right holders.

We understand that industry has claimed that DRM systems provide a better solution and that levy systems have no role to play in the digital environment. We fully agree that DRM systems have great potential. However, the present reality is that such systems are only in their infancy and represent a very partial solution. Experience shows that it takes time to develop DRM systems which are at the same time reliable, user friendly, secure user privacy and involve reasonable costs. Until it is possible to monitor and charge for each use of copyrighted material, the levy systems are the best solution. When DRM systems are widely and commonly accepted and used, the scope of this solution will automatically diminish.

For areas where it is not possible or practicable to employ DRM systems, the only alternative to the levy system is free use, which is manifestly unfair and damaging to the rights holders, and contrary to the recently adopted Copyright Directive.

The main interested parties are the rights holders on the one hand, and users on the other. Therefore we want to emphasize that what is at stake is how copyright holders can receive fair remuneration for the use of their works where legislation permits uses without authorisation. User representatives in many countries

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<sup>4</sup> Audio Home Recording Act of 1992

support existing levy systems because of the advantages they bring, and favour their extension to the digital environment.

We ask you cordially to pay attention to these points when considering any action in response to the industry initiative.

It goes without saying that both our secretariat in Brussels as well as our members will remain at your entire disposal for any supplementary information you may need.

Yours sincerely  
International Federation of Reproduction Rights Organisations

André F. Beemsterboer  
President