Copyright Levies: barriers to trade and innovation
Analysis under EC Competition Law

Javier Ramirez
Legal Director, Hewlett-Packard Europe
Professor, Instituto de Empresa (IE) Law School
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Agenda

Part 1: What are copyright levies?
- EU Legal Framework

Part 2: What are the main issues?
- Copyright levies as barriers to trade and innovation

Part 3 – Legal Assessment
- Free Circulation of Goods
- EC Competition Law
What are copyright levies?

• “Rough justice” national systems intended to compensate IP right-holders for (genuine) private copying based on the premise that an act of private copying cannot be licensed for practical purposes by the relevant right-holders.
  - Fee on products/media which are suitable/intended for (private) copying
  - Sound, audio-visual, literacy (including images)
  - To be paid by national manufacturers/importers (indirect compensation)
  - To collection societies (acting for authors, artists and producers/publishers)
  - Rates (and products) fixed by Government, by Collective Societies or others
  - Some sales may be exempted

• Originates in Germany (Copyright Act 1965) but has spread across EU:
  - Austria (1980), Finland (1984), France (1985), Netherlands (1990), Spain (1992), Denmark (1992), Italy (1992), Belgium (1994), ….

• Distribution to right-holders varies per country (and collecting societies):
  - Management fees / Social and Cultural Funds
  - Distribution to members, non-members and other collecting societies (reciprocity agreements)

EU Legal Framework - Directive 29/2001

• Art. 5.2.b: Private copying exception
  - reproductions on any medium,
  - by a natural person,
  - for private use and for ends that are neither directly or indirectly commercial,
  - on condition rightholders receive “fair compensation”,
  - which takes into account the application or non-application of TPMs

• Recital 35: Criteria when determining fair compensation
  - Harm to the right-holders (resulting strictly from private copying) – Recital 38
  - Payments received in some other form (for instance, as part of a license fee, so that no specific or separate payment may be due)
  - Degree of use of technological protection measures (“TPMs”)
  - No obligation for payment in those situations where the prejudice to the rightholder would be minimal (“de minimis” rule)
EU Legal Framework - Directive 29/2001

**Part 1**

### Additional provisions
- Reprography exception: article 5.2.a
  - Reproduction on paper or similar medium; and
  - By photographic technique or process with similar effects
- TPMs protected against circumvention: article 6
- Three-steps test: article 5.5
- Transposition deadline: December 22, 2002

### International obligations
- Art. 9.1 TRIPs Agreement
- Art. 9 Berne Convention
- Art. 10 WCT
- Art. 16 WPPT
- Art. 15 Rome Convention (1961)

Contracting parties may provide for (private use) exceptions to exclusive reproduction right, but do not require for compensation.

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### What’s the magnitude of levies system(s)?

*In principle, a total of over 6% of all intra-EU imports and exports, amounting in total to over €100 billion, are goods which actually or potentially attract a levy.*


#### Sound and Audiovisual Levies (reported by Collecting Societies)

<table>
<thead>
<tr>
<th>Country</th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
</tr>
</thead>
<tbody>
<tr>
<td>Austria</td>
<td>17.627</td>
<td>15.946</td>
<td>16.413</td>
</tr>
<tr>
<td>Belgium</td>
<td>21.458</td>
<td>19.084</td>
<td>19.574</td>
</tr>
<tr>
<td>Czech Republic</td>
<td>2.286</td>
<td>2.73</td>
<td>3.386</td>
</tr>
<tr>
<td>Denmark</td>
<td>6.300</td>
<td>5.000</td>
<td>4.715</td>
</tr>
<tr>
<td>Finland</td>
<td>11.575</td>
<td>11.617</td>
<td>15.515</td>
</tr>
<tr>
<td>France</td>
<td>155.320</td>
<td>156.005</td>
<td>163.680</td>
</tr>
<tr>
<td>Germany</td>
<td>153.723</td>
<td>156.094</td>
<td>n/a</td>
</tr>
<tr>
<td>Hungary</td>
<td>9.762</td>
<td>12.489</td>
<td>11.540</td>
</tr>
<tr>
<td>Italy</td>
<td>72.791</td>
<td>70.922</td>
<td>70.556</td>
</tr>
<tr>
<td>Latvia</td>
<td>0.503</td>
<td>0.600</td>
<td>0.812</td>
</tr>
<tr>
<td>Lithuania</td>
<td>0.249</td>
<td>0.128</td>
<td>0.064</td>
</tr>
<tr>
<td>Netherlands</td>
<td>26.807</td>
<td>25.723</td>
<td>19.600</td>
</tr>
<tr>
<td>Poland</td>
<td>3.637</td>
<td>5.094</td>
<td>4.291</td>
</tr>
<tr>
<td>Slovakia</td>
<td>0.611</td>
<td>0.683</td>
<td>0.904</td>
</tr>
<tr>
<td>Spain</td>
<td>58.701</td>
<td>55.656</td>
<td>40.727</td>
</tr>
<tr>
<td>Sweden</td>
<td>15.484</td>
<td>18.873</td>
<td>20.583</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td>557.034</td>
<td>557.642</td>
<td>395.182</td>
</tr>
</tbody>
</table>

(Source: GESAC, EC Consultation on Levies - April 08)

#### Collectable levies + Disputed levies forecast (reported by ICT industry- Nathan Associates)

<table>
<thead>
<tr>
<th>Year</th>
<th>Collectable Levies</th>
<th>Disputed Levies</th>
</tr>
</thead>
<tbody>
<tr>
<td>2001</td>
<td>124.243</td>
<td>11.111</td>
</tr>
<tr>
<td>2002</td>
<td>130.824</td>
<td>11.111</td>
</tr>
<tr>
<td>2003</td>
<td>133.468</td>
<td>11.111</td>
</tr>
<tr>
<td>2004</td>
<td>135.170</td>
<td>11.111</td>
</tr>
<tr>
<td>2005</td>
<td>136.846</td>
<td>11.111</td>
</tr>
<tr>
<td>2006</td>
<td>138.512</td>
<td>11.111</td>
</tr>
<tr>
<td>2007</td>
<td>140.170</td>
<td>11.111</td>
</tr>
<tr>
<td>2008</td>
<td>141.834</td>
<td>11.111</td>
</tr>
<tr>
<td>2009</td>
<td>143.498</td>
<td>11.111</td>
</tr>
</tbody>
</table>

(Source: CLRA, EC Consultation on Levies - April 06)

**NOTE:** Comparable data reported by Nathan Associates Inc. (*“Economic Impact Study Private Copying Levies on Digital Equipment and Media”*)

**Estimates:**
- Estimate Germany (~ €165M): ~ €560M
- Estimate Reprography (~30%EU): ~ €168M

**TOTAL = ~ €728M**
Part 1

Example: Some EU Financials for Deductions and Bilateral Agreements

<table>
<thead>
<tr>
<th>Country</th>
<th>Authors’ Society</th>
<th>Royalties</th>
<th>Management and Other Fees</th>
<th>Amount for Initial Cultural and/or Collective Management of Copyright and Neighboring Rights</th>
<th>Total Distribution</th>
<th>Off-Benefit (the G coworks)</th>
<th>Off-Watch (in Euro Terms)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Austria</td>
<td>AUSTRIAN-MUSICA*</td>
<td>1.45%</td>
<td>0.04%</td>
<td>2.717%</td>
<td>2.720</td>
<td>75.00%</td>
<td>23.1%</td>
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<tr>
<td>Belgium</td>
<td>SABAM</td>
<td>1.42%</td>
<td>0.02%</td>
<td>2.177%</td>
<td>2.177</td>
<td>75.00%</td>
<td>23.1%</td>
</tr>
<tr>
<td>Czech Republic</td>
<td>ČSA**</td>
<td>1.12%</td>
<td>0.17%</td>
<td>0.84%</td>
<td>0.84%</td>
<td>75.00%</td>
<td>23.1%</td>
</tr>
<tr>
<td>Denmark</td>
<td>KODA</td>
<td>1.17%</td>
<td>0.05%</td>
<td>0.84%</td>
<td>0.84%</td>
<td>75.00%</td>
<td>23.1%</td>
</tr>
<tr>
<td>Estonia</td>
<td>BIK</td>
<td>0.20%</td>
<td>0.00%</td>
<td>0.84%</td>
<td>0.84%</td>
<td>75.00%</td>
<td>23.1%</td>
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<tr>
<td>Finland</td>
<td>TRIGOS**</td>
<td>1.69%</td>
<td>0.00%</td>
<td>0.84%</td>
<td>0.84%</td>
<td>75.00%</td>
<td>23.1%</td>
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<tr>
<td>France</td>
<td>SAGEMUSIC</td>
<td>1.12%</td>
<td>0.17%</td>
<td>0.84%</td>
<td>0.84%</td>
<td>75.00%</td>
<td>23.1%</td>
</tr>
<tr>
<td>Germany</td>
<td>BGE</td>
<td>1.12%</td>
<td>0.17%</td>
<td>0.84%</td>
<td>0.84%</td>
<td>75.00%</td>
<td>23.1%</td>
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<tr>
<td>Greece</td>
<td>ASEP</td>
<td>0.85%</td>
<td>0.11%</td>
<td>0.84%</td>
<td>0.84%</td>
<td>75.00%</td>
<td>23.1%</td>
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<tr>
<td>Ireland</td>
<td>ARTSULG</td>
<td>0.50%</td>
<td>0.17%</td>
<td>0.84%</td>
<td>0.84%</td>
<td>75.00%</td>
<td>23.1%</td>
</tr>
<tr>
<td>Italy</td>
<td>SAGA</td>
<td>2.65%</td>
<td>0.17%</td>
<td>0.84%</td>
<td>0.84%</td>
<td>75.00%</td>
<td>23.1%</td>
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<tr>
<td>Latvia</td>
<td>APM</td>
<td>1.85%</td>
<td>0.17%</td>
<td>0.84%</td>
<td>0.84%</td>
<td>75.00%</td>
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<tr>
<td>Lithuania</td>
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<td>0.25%</td>
<td>0.17%</td>
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<td>0.84%</td>
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<td>23.1%</td>
</tr>
<tr>
<td>Luxembourg</td>
<td>No-Representance</td>
<td>No-Representance</td>
<td>No-Representance</td>
<td>No-Representance</td>
<td>No-Representance</td>
<td>No-Representance</td>
<td>No-Representance</td>
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<tr>
<td>Malta</td>
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<td>0.17%</td>
<td>0.84%</td>
<td>0.84%</td>
<td>75.00%</td>
<td>23.1%</td>
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<tr>
<td>The Netherlands</td>
<td>LIRLA-MUSICA</td>
<td>0.85%</td>
<td>0.17%</td>
<td>0.84%</td>
<td>0.84%</td>
<td>75.00%</td>
<td>23.1%</td>
</tr>
<tr>
<td>Portugal</td>
<td>SPA</td>
<td>0.85%</td>
<td>0.17%</td>
<td>0.84%</td>
<td>0.84%</td>
<td>75.00%</td>
<td>23.1%</td>
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<tr>
<td>Romania</td>
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<td>0.17%</td>
<td>0.84%</td>
<td>0.84%</td>
<td>75.00%</td>
<td>23.1%</td>
</tr>
<tr>
<td>Slovenia</td>
<td>LKA****</td>
<td>0.85%</td>
<td>0.17%</td>
<td>0.84%</td>
<td>0.84%</td>
<td>75.00%</td>
<td>23.1%</td>
</tr>
<tr>
<td>Spain</td>
<td>SAGA</td>
<td>2.65%</td>
<td>0.17%</td>
<td>0.84%</td>
<td>0.84%</td>
<td>75.00%</td>
<td>23.1%</td>
</tr>
<tr>
<td>Sweden</td>
<td>SIF</td>
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<td>0.17%</td>
<td>0.84%</td>
<td>0.84%</td>
<td>75.00%</td>
<td>23.1%</td>
</tr>
<tr>
<td>UK</td>
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<td>No-Representance</td>
<td>No-Representance</td>
<td>No-Representance</td>
<td>No-Representance</td>
<td>No-Representance</td>
<td>No-Representance</td>
</tr>
</tbody>
</table>

Note: partial information, including only some audio & video levies in Member States (not all collecting societies included; reprography levies not included)

Source: EC *“Stakeholder Consultation on Copyright Levies on a Converging World” (June 2006)

Part 2

What are the main issues that can affect trade?

Copyright levies may be a valid tool to fairly compensate IP rightholders. However, the existing system is not aligned with Community law and needs (major) adjustments.

### Issue 1: Different systems with different parameters per Member State:

1.1) **Legal uncertainty** on applicability of levies

1.2) **Legal uncertainty** on levy applicable per device in multiple countries

### Issue 2: Disparate and Excessive levies, not corresponding to economic value of private copying, which incite market distortion and incentive gray market

### Issue 3: Administrative burdens: problems for levy classification (importation) and refund (exportation)

### Issue 4: Levy fees based on technical specifications acting as a barrier to innovation
### National approach to levies

<table>
<thead>
<tr>
<th>Member State</th>
<th>Levies</th>
<th>Member State</th>
<th>Levies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Austria</td>
<td>![Levies Icon]</td>
<td>Latvia</td>
<td>![Levies Icon]</td>
</tr>
<tr>
<td>Belgium</td>
<td>![Levies Icon]</td>
<td>Lithuania</td>
<td>![Levies Icon]</td>
</tr>
<tr>
<td>Bulgaria</td>
<td>![Levies Icon]</td>
<td>Luxembourg</td>
<td>No Levies</td>
</tr>
<tr>
<td>Cyprus</td>
<td>No Levies</td>
<td>Malta</td>
<td>No Levies</td>
</tr>
<tr>
<td>Czech Rep.</td>
<td>![Levies Icon]</td>
<td>Netherlands</td>
<td>![Levies Icon]</td>
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<tr>
<td>Denmark</td>
<td>![Levies Icon]</td>
<td>Poland</td>
<td>![Levies Icon]</td>
</tr>
<tr>
<td>Estonia</td>
<td>![Levies Icon]</td>
<td>Portugal</td>
<td>![Levies Icon]</td>
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<tr>
<td>Finland</td>
<td>![Levies Icon]</td>
<td>Romania</td>
<td>![Levies Icon]</td>
</tr>
<tr>
<td>France</td>
<td>![Levies Icon]</td>
<td>Slovakia</td>
<td>![Levies Icon]</td>
</tr>
<tr>
<td>Germany</td>
<td>![Levies Icon]</td>
<td>Slovenia</td>
<td>![Levies Icon]</td>
</tr>
<tr>
<td>Greece</td>
<td>![Levies Icon]</td>
<td>Spain</td>
<td>![Levies Icon]</td>
</tr>
<tr>
<td>Hungary</td>
<td>![Levies Icon]</td>
<td>Sweden</td>
<td>![Levies Icon]</td>
</tr>
<tr>
<td>Ireland</td>
<td>No Levies</td>
<td>United Kingdom</td>
<td>No levies</td>
</tr>
<tr>
<td>Italy</td>
<td>![Levies Icon]</td>
<td>![Levies Icon]</td>
<td>![Levies Icon]</td>
</tr>
</tbody>
</table>

### What’s an audio / video recording device intended / suitable for private copying?

- Cassette-deck
- VCR
- Dedicated CD/DVD burner
- Burner for Camera?
- CD/DVD Media? Audio/Video vs. DATA
- PC CD/DVD data burners?
- Memory cards?
- Multimedia mobile phone?
- PDA with integrated phone?
- Digital Camera?
- Digital Pictures Frame?
- What if devices include TPMs?
- What if devices are for business use?
Wide disparities on levies across Europe
Response from the Commission to MEP Question (17 Jan. 2008)

The current levy systems are, as we all know, both complex and controversial. Not alone are there huge differences in rates applying to the same or similar equipment used for private copying — there is no uniformity among Member States in setting levies for identical digital equipment. The result is a huge array of different levies imposed on the same products across Europe — with differences in levies of up to 1500% applied to identical products.

Assessment of “economic value” of private copying

- Levies not based on “harm” principles and “the minimis” rules, but on income expectations and bargaining power.

- Harm assessment, if any, does not take into account “genuine private copying” but usually:
  
  (i) “copies” (consideration of copying behaviors falling outside the scope of the exception); and
  
  (ii) assumptions of copying behaviours (suitability and potential maximum capacity of the device)

- Levies not based on assessment of “economic value” (harm) of private copying
  
  - Value of a private copy should be lower than the monopolistic price (IP royalties) that right-holders would perceive for each authorized reproduction of the original work
The notion of “fair compensation” has been introduced by Directive 2001/29 (hereafter “the Directive”) as a mean to compensate owners of copyright for acts that fall under the private copying exception.

(...)

According to the Commission’s initial analysis of the issue, only media and equipment that can be used, and are effectively used to a significant extent to produce genuine private copies can attract a levy.

It also believes that equipment that is used for commercial purposes (e.g. in companies, public administrations) should not attract a levy since this would clearly go beyond requirement to provide for the compensation for permitted acts (i.e. private copying) as laid down in the Directive.

**Price differences (Example: pricing at Bechtle website)**

**The Netherlands**

<table>
<thead>
<tr>
<th>Item</th>
<th>Quantity</th>
<th>Bechtle No.</th>
<th>Picture</th>
<th>Product name</th>
<th>Available. Price of item excluding VAT</th>
<th>Total price excluding VAT</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>1</td>
<td>50173-03</td>
<td></td>
<td>HP LaserJet M1522N MFP Version: Q3299A</td>
<td>€ 263,06</td>
<td>€ 265,00</td>
</tr>
</tbody>
</table>

Subtotal € 265,00

Flat rate delivery charge € 15,00

VAT (21.0%) € 2,52

Total amount € 283,52

**Belgium**

<table>
<thead>
<tr>
<th>Item</th>
<th>Quantity</th>
<th>Bechtle No.</th>
<th>Picture</th>
<th>Product name</th>
<th>Available. Price of item excluding VAT</th>
<th>Total price excluding VAT</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>1</td>
<td>50173-73</td>
<td></td>
<td>HP LaserJet M1522N W Version: Dutch (Belgium)</td>
<td>€ 268,00</td>
<td>€ 268,00</td>
</tr>
</tbody>
</table>

2    | 1        | RECUP       |         | RECUPEL      | € 9,04                                | € 9,04                   |

3    | 1        | REM0        |         | REM00EL      | € 179,55                              | € 179,55                 |

Subtotal € 347,59

Flat rate delivery charge € 10,00

VAT (21.0%) € 73,22

Total amount € 430,82

169%
Part 2 – Issue 2 (Disparate and Excessive Levies)

**Levy as an incentive to Gray Market (max. 3% levies)**

- Within an internal market shipping cost becomes the key commercial argument for intra community trade.
- Levies higher than 3% start to incent arbitrage and attract free riders from no/low levy countries to ship into high levy countries – without complying to local rules.
- Barriers to gray market are weak:
  1. Self-reporting obligation
  2. Liability only on 1st tiers (with country exceptions)
  3. “hit and run” companies

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**Part 2 – Issue 2 (Disparate and Excessive Levies)**

**Gray market in Europe**

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**Cost structure of Mail Order [% of end-user price]**

<table>
<thead>
<tr>
<th>Component</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Order mgmt./overhead</td>
<td>1</td>
</tr>
<tr>
<td>Delivery</td>
<td>3</td>
</tr>
<tr>
<td>Telesales (O/I)</td>
<td>2.9</td>
</tr>
<tr>
<td>Field sales</td>
<td>0.3</td>
</tr>
<tr>
<td>Marketing incl. CRM</td>
<td>5</td>
</tr>
<tr>
<td>Warehouse</td>
<td>3</td>
</tr>
</tbody>
</table>

Source: Final tier interviews, Roland Berger

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**Leaves collected versus collectable levies in 2006 for MP3 Players**

**Leaves collected versus collectable levies in 2006 for DVD R/RW**

Source: EICTA (April 2008)
Part 2 – Issue 3 (Admin Burden)

Example (imports): wide disparities on levies classification for multifunctional printers (MFPs)

- No levies on MFPs in 15 Member States
- Levy based only on copying speed in 2 Member States (Belgium, Slovenia) → … and how copying speed is measured?
- Germany (08-10): Flat levy for inkjet and speed-based levy for laser MFPs
- Levy defined as a % of import/sale price in 6 Member States (0.5% - 5.26%): Austria, Bulgaria, Greece, Poland, Romania, Slovakia
- Other approaches:
  - Czech Rep.: Fix levy for products in a range of prices
  - Hungary: combination of speed + a 2% price maximum cap
  - Spain: weight criteria (17 kg) + standard copying speed above 17 kg

Levies as barriers to export

<table>
<thead>
<tr>
<th>Country</th>
<th>Levy</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Belgium II</td>
<td>13.06</td>
<td>Draft Mode Black</td>
</tr>
<tr>
<td>Germany</td>
<td>12.00</td>
<td>(2006-2010)</td>
</tr>
<tr>
<td>Germany (Igualado)</td>
<td>102.29</td>
<td>(before 2007)</td>
</tr>
<tr>
<td>Austria</td>
<td>7.95</td>
<td></td>
</tr>
<tr>
<td>Italy</td>
<td>3.92</td>
<td></td>
</tr>
<tr>
<td>Greece</td>
<td>2.92</td>
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<tr>
<td>Ireland</td>
<td>2.71</td>
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<td>Bulgaria</td>
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<td>Hungary</td>
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<tr>
<td>Czech Rep.</td>
<td>0.92</td>
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<td>Poland</td>
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<td>Romania</td>
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<td>Cyprus</td>
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<td>Sweden</td>
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<tr>
<td>UK</td>
<td>0.80</td>
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</tbody>
</table>

Double-Payments

Notes:
1. Resistance from some collecting societies to reimburse 2nd tier resellers upon exportation (directly or indirectly)
2. Export refund scheme not available in various Member States
Levies as barriers to multi-country e-commerce platforms?

- Application of levies based on country of destination? GESAC’s proposal

(EC Consultation on Levies – April 2008)
http://ec.europa.eu/internal_market/copyright/levy_reform/index_en.htm

Opus GmbH Case (The Netherlands)
- Court of Justice in The Hague (July 12, 2007)
- Court of First Instance of The Hague (Sept. 16, 2005)

Rue de Commerce Case (France)
- Cour de Cassation (Nov. 27, 2008)
- Cour D’Appel de Paris (March 22, 2007)
- Tribunal de Commerce de Bobigny (Sept 15, 2005)

ZPU vs. Luxemburg e-retailer
- LG State Court Köln (January 2008)

Impossibility of e-commerce platforms to deal with multi-country levies administration (levy classification, price factoring, declaration, payment, audit, …)

Part 2 – Issue 3 (Admin Burden) + Legal Uncertainty

Impact of copyright levies on product innovation

- While schemes in several Member States are migrating to flat-fee levies (i.e. 3.4€ per MP3/MP4 player) or a % price based levy (i.e. 2% import price), schemes based on technical product specs may hinder availability of innovative products:
  - Higher storage capacity may drive higher levies
  - Higher copying speeds may drive higher levies
  - Presence of an specific functionality may attract levies

- Some products are not available in the EU market because potential copyright levies made them unviable from a commercial perspective.
- Some capabilities of certain products may be capped by manufacturers to attract lower levies and make them commercially viable (in the country or EU).
- Copyright levies detract major funding from R&D activities.
Part 2 – Issue 4 (barrier to innovation) + a factor of competitiveness

Example: PC-connected MFP
(product re-design specific for German market - July 08)

<table>
<thead>
<tr>
<th>Levies on</th>
<th>1-12 ppm</th>
<th>13-35 ppm</th>
</tr>
</thead>
<tbody>
<tr>
<td>Color Inkjet All-in-Ones (impacted)</td>
<td>€76.70</td>
<td>€102.26</td>
</tr>
<tr>
<td>Scanner levy (impacted in the past) (PC-connected copying color AIOs)</td>
<td>€10.23 (x7.5 times)</td>
<td>€31.96 (x3 times)</td>
</tr>
</tbody>
</table>

Inkjet MFP Levy
- (2008-2010): 12€ (settled since Dec. 08)

Keystone Control Panel
1. Select Start PC Copy

USB Connected Computer
2. Copy Application automatically starts on computer and begins the scan
3. The scan finishes and the image is sent to the printer

Each €1 Charged in Copyright Levies Imposes a €2 Cost on the European Economy Through Lost Sales and Competitiveness

Source: Nathan Associates (May 2006)

- Impact on consumers and producers (in 2005):
  - 1 € collected triggers 2 € extra costs:
    - Impact on consumers: 1.2 bn €
    - Impact on producers: 747 m €

61.63%
38.37%

NB: Based on levies currently applied in 2005. Claimed but disputed levies in 2005 amounted to an additional €2.3 billion

http://www.bsa.org/eupolicy/press/newsreleases/pressrelease16may2006nathanstudyclra.cfm
## Part 3

### Legal Assessment of Copyright Levies

| 1. Some Thoughts on Free Circulation of Goods (Articles 28-30 ECT) |
| 2. Some Thoughts under Article 81 ECT |
| 3. Some Thoughts under Article 82 ECT |
| 4. Some Thoughts under Article 86 ECT |

### Part 3

### Single Market and Copyright Levies (1)

- Directive 29/2001: main goal to ensure a proper functioning of the internal market (see Recitals 1 and 31, *inter alia*).
- Implementation of “fair compensation” must be compatible with the EC Treaty.
- Prohibition of measures having an equivalent effect to quantitative restrictions on imports and exports.
  - Power of collecting societies to require an additional payment upon importation in another Member State?: **No** - GEMA case (C-55 and 57/80)
  - Consent from right-holders for levies paid in another Member State by virtue of bilateral agreements?
  - Note that ICT devices do not incorporate IP works or subject matters (sound recordings, …)
  - Heavy administrative and financial burdens on (intra-community) imports and exports of ICT devices subject to levies in import / export countries
Part 3

Single Market and Copyright Levies (2)

• Art. 30 ECT permits restrictions on grounds of the protection of industrial and commercial property, but copyright levies (for private copying / reprography):
  ➢ Do not fall within the “specific subject matter” of copyright:
    ✓ There is not commercial exploitation of the “compensation” in the form of licenses?
    ✓ Right holders retain the right to exploit their reproduction right commercially;
    ✓ Directive provides for “fair compensation” but is neutral on the form of compensation (do not require to be provided in the form of levies);
    ✓ Directive acknowledges that in several cases no compensation is due;
    ✓ International copyright agreements acknowledge the exception, but not the compensation (different to “equitable remuneration” concept);
    ✓ Levies not (directly) paid by those “copying” + income used also for social and cultural purposes;
    ✓ There is not a “right to make private copies” (but an optional exception)
  ➢ Fail the tests of (i) Necessity, (ii) Proportionality, and (iii) Non-Discrimination
• Art. 30 is a derogation from fundamental EC principles to be interpreted narrowly (e.g. Case C-362/88, para. 19)

Part 3

Application of EC Competition Law

• Art. 30 cannot restrict the application of EC Competition Law (Consten and Grundig, Joined Cases 56 and 58/64 [1966], ECR 299)
  ➢ Distinction between the “existence” and the “exercise” of rights
    Deutsche Grammophon case (C-78/70) [application of competition rules]

Some key variables for EC Competition Law Assessment

| (1) | What’s the role of collecting societies to define what products are subject to levies and what fees have to be paid (and what criteria are followed for this definition)? |
| (2) | What is the scope of the private copying exception? (relevant copying to calculate “economic value”) |
| (3) | What categories of sales are expressly excluded from levies and how these exceptions are implemented? (business users, …) |
| (4) | How levies are collected and distributed (including cross-national distribution) among right-holders? |
| (5) | Are collecting societies authorized (by law or by-laws) to deduct any % of the collected amount for cultural and collective purposes? |

➢ Relevant Market: national market of collective management of IP rights related to compensation for private copying?
Part 3

Potential assessment under Article 81

• **Territorial allocation?**: “Network effect” of bilateral agreements / concerted practices between collecting societies (or an association’s decision) leading to:
  1. an allocation of national markets (market partitioning effect);
  2. the impossibility of negotiating a unique EU-wide / multi-country copyright levy with the most efficient collecting society(ies); and
  3. the charging of higher levies in respect of the same act in different Member States.
   [see EC decision COMP/C2/38.698 – CISAC]

• **Price-fixing?**: Different collecting societies representing different right-holders (e.g. authors, artists and producers of sound works) negotiating together and agreeing on the levy fee to be applied, precluding individual negotiations with each category of right-holders (authors / artists / producers) separately.
  - Information exchange network between collecting societies (European-wide)

• **Other?**: discriminatory treatment, joint litigation on “disputable devices”, agreements to apply levies on sales to professional end-users; (...)?

Exemption under Article 81.3?
(e.g. IFPI Simulcasting decision case COMP/C2/38.014)

Part 3

Potential assessment under Article 82

QUESTION: Is Article 82 ECT applicable when the collecting society has autonomy to (i) request either statutory levies or lower levies unilaterally determined, (ii) freely interpret the criteria to assign the levy to the device (for example, methodology to calculate relevant copying speeds), or (iii) widely interpret what a “recording device” subject to levies is?

- Competition rules apply in case legal framework does not preclude collecting societies from engaging on autonomous conduct.

EC decision - COMP/38.784 (Wanadoo vs Telefónica):

“(666) In this respect, the Court of Justice and the Court of First Instance have consistently held that competition rules may apply where sector specific legislation does not preclude the undertakings it governs from engaging in autonomous conduct that prevents, restricts or distort competition 715.”

Part 3
Potential assessment under Article 82

- **Abusive pricing?** levies not related to “economic value”, higher than levies charged by other collecting societies for objectively comparable behavior.
  - What’s the economic value of a “private copy”?
  - What’s the amount of private copying with each device?
  - Application of private copying levies on sales to business users, where economic value of “private copying” is theoretically zero?
  - Are there “double payments”?
  - Reference to tech specs that are non-relevant

- **Discriminatory pricing?** collecting societies treating like situations in an unlike manner or unlike situations in a like manner, without objective justification
  - Discrimination as between importers
  - Discrimination as between product types (same functionality with different levies; different functionalities with same levy)

- **Others?** retroactive claims on devices already sold; impossibility to make effective levies exemptions / refunds; seeking approval of unfair legal framework; (...)

Part 3
Potential assessment under Article 86

- Collecting societies as undertakings granted with special or exclusive rights?
  - EC Communication on Management of Copyright: review under Article 86 where a collecting society is constituted as a legal monopoly or granted special rights under national law (paragraph 3.5.1).
  - Concerted practice to limit establishment of other societies?

- Measures facilitating infringement of Articles 12, 28-29, 81-82 ECT
  - GT-Link A/S v DSB (Case C-242/95)

- Social / cultural funds:
  - Discrimination per nationality?
  - Effects on competition among collecting societies?

| Source: EC' Stakeholder Consultation “Fair Compensation for Acts of Private Copying” (February 2008) |
A vision: Levies in the Single Market

• A “one-stop shop” scheme where:
  - Copyright levies are negotiated and agreed with most-efficient collecting societies that redistribute levies to other societies (bilateral agreements).
  - Levies paid only once; no levy-reassessment once devices are put into circulation in the Internal Market and moved from country to country.
  - “Fair compensation” based on economic value of relevant genuine private copying for the concerned devices.
  - Single fee may result of a combination of each relevant country particularities (~ Simulcasting decision) or a uniform multi-country levy rate (~ Cannes Agreement decision).
  - “Fair compensation” does not become a factor of distortion in the common market.

• Additional alternatives to be considered, including refinement of current levy system (e.g. levy collection at retail level with no levies on professional sales; no double payment for “licensed copies”; ...), or different compensation schemes (e.g. State funds like in Norway).

javier.ramirez2@hp.com
**BACK-UP SLIDES:**

- Spain: example of reporting, payment and distribution functioning
- Example: example of magnitude of disputed levies
- Prejudicial questions on copyright levies referred to the ECJ
- Legends and notes to slide 9
- Calculation of economic value of private copying
- Size of gray market (levies unpaid) for recordable media in Europe
- Example of continuous developments / changes on national levies
- Some courts decisions on application of levies on online cross-border sales
- Example: impact of assigning conventional photocopiers levies + draft copying speed for calculation of consumer inkjet MFPs levies (Germany – 2007)
- Nathan Associates Study - Economic Impact of Copyright Levies (May 2006)
- Recitals 1 and 31 Directive 29/2001
- Reference to some ECJ judgments concerning copyright and Internal Market
- Example of Bilateral Agreements on Reprography
- Example: EC Competition Law (GT-Link A/S v DSB (Case C-242/95).

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**Part 1**

**An example: Spain**

- Importation of 10,000 DVD burners for integration by PC manufacturers
  - Levies liability upon shipment to PC-makers or resellers (10,000 units x 3.4€ = 34,000€)
- Obligation to invoice levies to buyers
- Obligation to report levies quarterly to (national) collecting societies
- Obligation to pay within one month after reporting period.
- Exemption for subsequent shipments to other Member States?
- Distribution:
  - 20% deduction (10 % social funding and 10% cultural funding)
  - management fee (~10-13%)
  - members / non-members / other collecting societies (bilateral agreements)
Part 1

An example: Germany (collected vs. disputed levies)

Collective societies’ income from copyright levies

Collected and Claimed book-related copyright levies in Germany vs. levies and other legal license incomes worldwide (2003, in million €)

Paid vs. Disputed levies in Germany (1999-2005)

PC, printers, multifunctional machines, photocopiers, faxes, scanners.

Increased levy rates, increased levied product range, high disputed levy amounts: barrier to European innovation


Part 1 & 2 - Legal Framework and Excessive Levies

Reference for a preliminary ruling from the Audiencia Provincial de Barcelona (Spain) lodged on 31 October 2008 — Sociedad General de Autores y Editores de España (SGAE) v Padawan, S.L. and Entidad de Gestión de Derechos de los Productores Audiovisuales (EGEDA), intervener

(Case C-467/08)

(2009/C 19/21)

Questions referred

1. Does the concept of ‘fair compensation’ in Article 5(2)(b) of Directive 2001/29 (1) entail harmonisation, irrespective of the Member States’ right to choose the system of collection which they deem appropriate for the purposes of giving effect to the right to fair compensation of intellectual property rightholders affected by the adoption of the private copying exception or limitation?

2. Regardless of the system used by each Member State to calculate fair compensation, must that system ensure a fair balance between the persons affected, the intellectual property rightholders affected by the private copying exception, to whom the compensation is owed, on the one hand, and the persons directly or indirectly liable to pay the compensation, on the other, and is that balance determined by the reason for the fair compensation, which is to mitigate the harm arising from the private copying exception?

3. Where a Member State opts for a system of charging or levying in respect of digital reproduction equipment, devices and media, in accordance with the aim pursued by Article 5(2)(b) of Directive 2001/29 and the context of that provision, must that charge (the fair compensation for private copying) necessarily be linked to the presumed use of those equipment and media for making reproductions covered by the private copying exception, with the result that the application of the charge would be justified where it may be presumed that the digital reproduction equipment, devices and media are to be used for private copying, but not otherwise?

4. If a Member State adopts a private copying ‘levy’ system, is the indiscriminate application of that ‘levy’ to undertakings and professional persons who clearly purchase digital reproduction devices and media for purposes other than private copying compatible with the concept of ‘fair compensation’?

5. Might the system adopted by the Spanish State of applying the private copying levy indiscriminately to all digital reproduction equipment, devices and media infringe Directive 2001/29, in so far as there is insufficient correlation between the fair compensation and the limitation of the private copying right justifying it, because to a large extent it is applied to different situations in which the limitation of rights justifying the compensation does not exist?
Part 2 – Issue 1 (Legal Uncertainty)

Legends to Slide 9

Sound and audiovisual levies on recordable media (including in some cases storage media / memory integrated in recorders, such as TV hard-disc recorders)

Additional sound and audiovisual levies on hardware operated with recordable media

Book related levies (under reprography / private copying)

Note: Countries may additionally distinguish between “intended” vs. “suitable” devices, single-purpose vs. multi-purpose devices, analogue vs. digital; etc, and no national system is identical to another one.

Part 2 – Issue 2 (Excessive Levies)

Which proxy should be used in determining the value of a private copy?

- Private copying is an exception to the exclusive right. Therefore the value of a private copy should be lower than the monopolistic price (IP royalties) that right-holders perceive for each authorized reproduction of an original work.

Cfr. Copyright Board Canada, levy decisions on audio recording media: http://www.cb-cda.qc.ca/decisions/copying-e.html

“In the Board’s view, if there were a free market for private copies, the price paid for the underlying intellectual property would be much lower than royalties paid for top-line recordings. It is not reasonable to assume that consumers would pay as much for the underlying rights in a private copy of a CD they already own; on this point, the Board agrees with Professor Brander. It is also not reasonable to assume that there is a one-to-one correlation between lost sales and private copying activity. Economic theory tells us that faced with such market conditions, rights owners would lower their prices in order to maximize their revenues.”
Which proxy should be used in determining the value of a private copy?

"Private Copying, Appropriability, and Optimal Copying Royalties"

By: Stanley Besen, Sheila Nataraj Kirby
http://wwwcgi.rand.org/pubs/reports/R3546/

Under a broader definition, harm occurs if the new use reduces profits below the level they would have reached had the producer been able to exploit the market served without authorization. Thus, even where producer profits do not decline, unrestricted copying may still be thought of as causing harm. This is because, if the law permits royalties to be imposed, producers may be able to benefit from copying. These charges would, of course, be less than the price that is charged for originals. Alternatively, producers could benefit if a royalty were imposed on the copying medium with the proceeds being paid to producers.

This is both because copies may be imperfect substitutes for originals and because there are costs associated with making copies.

Gray market in Europe

Growth of legitimate and illegitimate trade in blank media (Source: RIAE)

Levies as barriers to multi-country e-commerce platforms?

- **Rue de Commerce Case (France)**
  - **First Instance:** Commercial behavior of UK and German defendants in their intent to sell products to French consumers over Internet without paying levies do not qualify as unfair competition, but not informing consumers about their potential obligation to pay those levies do qualify.
  - **Appeal:**
    - Copyright levies differences among Member States create price differences across EU.
    - Internet retailer is not the importer and therefore not liable to French levies.
    - No unfair competition exists even when the lack of payment of levies has an impact on consumer choice.
  - **Supreme Court:**
    - Consumers are theoretically liable for levy payment on online imports.
    - Foreign online merchants must disclose that levies are not included in the price.

- **Opus GmbH Case (The Netherlands)**
  - Parties with residence in different Member States can agree where the products are delivered and who should take care of transportation (and be legally deemed as “importer” subject to payment of levies).
  - Consumers who can be seen as importers are not obliged to pay levies under Dutch law.
  - Even in case Opus GmbH had been in charge of transportation, it would be the “exporter” and not the “importer” (the meaning of import – shipping over and within the borders – shows that the importer is in the country of import).
Part 2 – Issue 4 (barrier to innovation) + a factor of competitiveness

Example: impact of assigning conventional photocopiers levies + draft copying speed for calculation of consumer inkjet MFPs levies

Levy claimed on best-sellers HP models with average Dealer Net Price between 45€ - 96€ in Germany in 2007

Economic Impact Study
Private Copying Levies on Digital Equipment and Media

Direct Effects on Consumers and Producers and Indirect Effects on Sales of Online Music and Ringtones

Figure 3
Direct Effects on Consumers and Producers from France’s Levy on MP3 Players

\[ \text{Price} \]

\[ \text{Supply of MP3 players with a €10 levy} \]

\[ \text{Supply of MP3 players without the levy} \]

\[ \text{Demand for MP3 players} \]

\[ 5,380,000 \rightarrow 6,334,000 \]

\[ \text{Quantity increases 874,000 units when levy is removed} \]

\[ \text{A = Amount of levy collected when levy was imposed} \]

\[ \text{B = Increase in the welfare of consumers upon levy removal} \]

\[ \text{C = Gain in producers revenue upon levy removal} \]

- Direct economic effect of levies is higher than the amount of levies collected
- Impact of levies is higher when the elasticity of demand is higher
Part 3

Single Market and Copyright Levies (1)

• Directive 29/2001/EC

(1) The Treaty provides for the establishment of an internal market and the institution of a system ensuring that competition in the internal market is not distorted. Harmonisation of the laws of the Member States on copyright and related rights contributes to the achievement of these objectives. (…)

(31) A fair balance of rights and interests between the different categories of rightholders, as well as between the different categories of rightholders and users of protected subject-matter must be safeguarded. The existing exceptions and limitations to the rights as set out by the Member States have to be reassessed in the light of the new electronic environment. Existing differences in the exceptions and limitations to certain restricted acts have direct negative effects on the functioning of the internal market of copyright and related rights. Such differences could well become more pronounced in view of the further development of transborder exploitation of works and cross-border activities. In order to ensure the proper functioning of the internal market, such exceptions and limitations should be defined more harmoniously. The degree of their harmonisation should be based on their impact on the smooth functioning of the internal market.

Part 3

Single Market and Copyright Levies (2)

• Dassonville (Case 8/74 [1974] ECR 837, para.5)

“5. All trading rules enacted by Member States which are capable of hindering, directly or indirectly, actually or potentially, intra-Community trade are to be considered as measures having an equivalent effect to quantitative restrictions.”

• Musik-Vertrieb Membran v GEMA (Cases 55 and 57/80 [1981] ECR 147)

“14 The argument put to the Court by the Belgian and Italian Governments that in the absence of harmonization in this sector the principle of the territoriality of copyright law always prevails over the principle of freedom of movement of goods within the common market cannot be accepted. Indeed, the essential purpose of the Treaty, which is to unite national markets into a single market, could not be attained if, under the various legal systems of the Member States, nationals of those Member States were able to partition the market and bring about arbitrary discrimination or disguised restrictions on trade between Member States. (…)

18. It should be observed next that no provision of national legislation may permit an undertaking which is responsible for the management of copyrights and has a monopoly on the territory of a Member State by virtue of that management to charge a levy on products imported from another Member State where they were put into circulation by or with the consent of the copyright owner and thereby cause the Common Market to be partitioned. Such a practice would amount to allowing a private undertaking to impose a charge on the importation of sound recordings which are already in free circulation in the Common Market on account of their crossing a frontier; it would therefore have the effect of entrenching the isolation of national markets which the Treaty seeks to abolish.”
Part 3

Single Market and Copyright Levies (3)

• Deutsche Grammophon v. Metro (Case 78/70 [1971] ECR 487)

“11. Amongst the prohibitions or restrictions on the free movement of goods which it conceives Article [30] refers to industrial and commercial property. On the assumption that those provisions may be relevant to a right related to copyright, it is nevertheless clear from that article that, although the Treaty does not affect the existence of rights recognized by the legislation of a Member State with regard to industrial and commercial property, the exercise of such rights may nevertheless fall within the prohibitions laid down by the Treaty. Although it permits prohibitions or restrictions on the free movement of products, which are justified for the purposes of protecting industrial and commercial property, Article [30] only admits derogation from that freedom to the extent to which they are justified for the purpose safeguarding rights which constitute the specific subject matter of such property.”

• Industrial and commercial property: “includes the protection conferred by copyright, especially when exploited commercially in the form of licenses capable of affecting distribution in the various Member States of goods incorporating the protected literary or artistic work.” (Musik-Vertrieb Membran v. GEMA (Cases 55 and 57/80 [1981] ECR 147, paragraph 9).

• Specific subject matter: “the right to exploit commercially the marketing of the protected product, particularly in the form of licenses granted in return for the payment of royalties” (Phil Collins and others; Joined cases C-92/92 and C-326/92 [1993] ECR I-5145, paragraph 20).

Part 3

Example - Network of Bilateral Agreements for Reprographic related Rights

Right-holders represented by other collecting societies (Germany, Austria, Belgium, …) consent to the Spanish fees (or even a lower amount after deductions) as “fair compensation” for copies of their works made in Spain.

http://www.ifro.org
Example - Network of Bilateral Agreements for Reprographic related Rights

http://www.ifrro.org

SAMPLE – Bilateral Agreement Type A and Type B

“1.- LICENCE/AUTHORITY TO COLLECT
On behalf of the rightsholders it represents, Society A hereby grants to Society B the non-exclusive right to enter into licensing agreements with users and to collect fees for the reprographic reproduction in Territory B of the rights, works and publications as described in Schedule A to this Agreement on the same basis and on the same conditions as Society B licenses and collects fees for reprographic reproduction of the rights, works and publications of the rightsholders it represents. (...)”

- Bilateral Agreement TYPE A: Implies transfer of funds between collecting societies
- Bilateral Agreement TYPE B: Implies retention of funds by each collecting society

SAMPLE – Bilateral Agreement Type B

“8. FUNDS
Each RRO agrees that:
1. Fees collected by Society B for reprographic reproduction of works and publications as set out in Clause 1 of this agreement will be retained by Society B.
2. Fees collected by Society A for reprographic reproduction of works and publication as set out in Clause 2 of this agreement will be retained by Society A.”

EC Competition Law (1)

• GT-Link A/S v DSB (Case C-242/95. [1997], ECR I-4449)

“33 The Court has previously had occasion to rule that any measure adopted by a Member State which maintains in force a statutory provision that creates a situation in which a public undertaking cannot avoid infringing Article [82] of the Treaty is incompatible with the rules of the Treaty (see, to that effect, Case C-41/90 Höfner and Elser [1991] ECR I-1979, paragraph 27).

34 In particular, a Member State infringes the prohibitions laid down in Article [86(1)] and Article [82] of the Treaty if, by adopting rules governing the port duties to be paid for the use of ports belonging to a public undertaking, it induces that undertaking to abuse the dominant position it occupies within the common market or a substantial part of it (see, to that effect, Case C-18/93 Corsica Ferries [1994] ECR I-1783, paragraph 43). (...)"

38 Second, it should be noted that, according to Article [82(a) and (c)], an abuse of a dominant position may consist of directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions or applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage.

39 The Court has ruled that ‘unfair prices’, for the purposes of Article [82(a)], means prices which are excessive because they have no reasonable relation to the economic value of the service supplied (see, to that effect, United Brands, paragraph 250). (...)”
(...)  

45 The Court has already held that abusive practices which, like those at issue in the main proceedings, affect undertakings providing transport by sea between two Member States, may affect trade between Member States (Corsica Ferries, paragraph 44).

46 In the light of those considerations, the reply to the sixth and eighth questions must be that where a public undertaking which owns and operates a commercial port occupies a dominant position in a substantial part of the common market, it is contrary to Article [86(1)] in conjunction with Article [82] of the Treaty for that undertaking to levy port duties of an unreasonable amount pursuant to regulations adopted by the Member State to which it is answerable or for it to exempt from payment of those duties its own ferry services and, reciprocally, some of its trading partners’ ferry services, in so far as such exemptions entail the application of dissimilar conditions to equivalent services. It is for the national court to determine whether, having regard to the level of the duties and the economic value of the services supplied, the amount of duty is actually unfair. It is also for the national court to determine whether exempting its own ferry services, and reciprocally those of some of its trading partners, from payment of duties in fact amounts to the application of dissimilar conditions to equivalent services.”

FURTHER READINGS:

- EC Internal Market: Stakeholders Consultations on Copyright Levies (2006 and 2008) and Member States Consultation (2004)  
  http://ec.europa.eu/internal_market/copyright/levy_reform/index_en.htm


  http://www.eicta.org/index.php?id=885

  http://www.bsa.org/eupolicy/press/newsreleases/pressrelease16may2006nathanstudyclra.cfm

- “No Place Like Home for Making a Copy: Private Copying in European Copyright Law and Consumer Law” By Natali Helberger & P. Bernt Hugenholtz (2007) – See additional reports  
  http://www.ivir.nl/staff/hugenholtz.html

  http://www.gesac.org