



**Joint Creators and Performers Statement
regarding CJEU proceedings on the Spanish private copying
compensation system – Case C-470/14**



Brussels, 8 January 2015

Dear Minister,

We, the undersigned European organisations, which voice and make visible the concerns of millions of professional authors and performers who make a living in the creative and cultural sectors, are writing to you with regard to the proceedings of the Court of Justice of the European Union (CJEU) on the Spanish law on private copying introduced in 2012 – Case C-470/14.

The referred Spanish law not only reduced the level of compensation due to right holders for private copies dramatically (from €115m in 2011 to €5m in 2013), but it is also in clear contradiction with the EU law (Article 5.2.b of Directive 2001/29/EC) and with the CJEU’s rulings.

The current referral to the CJEU asks, whether

- a state-budget compensation system that does not guarantee that the compensation is paid by those individuals who make the private copies conforms with EU law
- setting the compensation based on such a state-budget system according to the limits of the annual budget of the state is in compliance with the Directive 2001/29/EC, in case the answer to the first question is affirmative.

The CJEU has repeatedly underlined that compensation needs to be linked to the actual private copying made by the private individuals under the exception provided by the copyright law¹. According to the CJEU, charging this amount to the manufacturers of the devices that allow individuals to make private copying is the most efficient way to implement this obligation. As the referred Spanish law breaks the link between the actual private copies made and the persons who are supposed to pay the “fair compensation” based on a decree that entered into force in January 1, 2012 under tax law regime (and not copyright law that is part of the private law), it manifestly contradicts with the EU law.

Rights holders should be fairly compensated for the private copies made of their works under the EU law. Indeed private copying remuneration is an essential part of the income collected for authors and performers. Private copying remuneration represents on average 5% of European authors’ earnings and more than 15% of the total amount collected by collective rights management organisations for performers. A myriad of devices, e.g. PC,

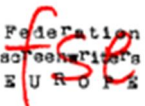
¹ *Padawan* Case C-467/08 paragraph 45, *Opus* Case C-462/09 paragraph 26, *ACI Adam* C-435/12 paragraph 51



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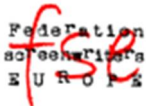




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smartphones, tablets, that can hold music, films, books, news and magazines, and works of visual arts are available on the market and the sales of these devices are exploding. Copying music, films, books, news and magazines or works of visual arts has become more prevalent than ever before, which allows the business of the manufacturers and importers of those devices to grow exponentially.

Despite the abolishment of the levy based system in Spain through the referred Spanish law in 2012, the prices of devices that were subject to a levy payment have not been reduced, and in some cases they have even increased. While the Spanish and all European creators significantly suffer from such a change, the Spanish and European consumers are not better off either, since they still pay the same amount for the same devices. Moreover, in the long term, consumers will be worse off, since the loss threatens the creators' ability to continue producing creative works and deprives the cultural sector of the funding possibilities for the organisation of cultural festivals and the development of new and young artists.

On the other hand, the importers and manufacturers of recording media/devices, almost all of which are non-EU companies, strongly resist to complying with EU law as they seek further profitable margins by challenging this exception at the expense of European consumers and creators.

On behalf of the millions of authors and performers we represent, we hereby kindly ask you to intervene in this proceeding of the CJEU to carefully establish that:

- Fair compensation through remuneration schemes is crucial for the private copy exception: In the countries where the exception for private copying is provided, this exceptions should be accompanied by a remuneration to fairly compensate the harm based on the actual private copying made by private individuals
- State-funded regime breaks the causal link between the private copying and the compensation: Shifting the responsibility to the state-budget to which all citizens indiscriminately contributes does not comply with the requirement of EU copyright law and creates an unjustified burden on all citizens regardless of whether they have used any device for private copying purpose. Private copying remuneration should be paid by the manufacturers and importers of the devices and services that allow private copying
- The Spanish state-funded regime is not providing "fair compensation" as required by the EU copyright law, since the amount set by the Spanish government within the annual budget limits is in no way at the level of what can reasonably be considered fair compensation. Annual budget limits cannot and should not be part of a private law relation between the individual who make private copies and the rightholders that deserve fair compensation for such copies.



Yours sincerely,



AEPO-ARTIS – AEPO-ARTIS represents 35 European performers’ collective management organisations from 26 countries, 23 of which are established in the Member States of the European Union. The other countries represented are Norway, Serbia and Switzerland. The number of performers represented by the 35 member organisations can be estimated between 400,000 and 500,000. For more information: www.aepo-artis.org



ECA – Founded in 1995 the European Council of Artists represents the joint bodies of artists’ associations in 28 European nation states and autonomous territories. ECA is an interdisciplinary and democratic forum with clear representative structures and works for the interests of the professional artists in Europe – visual authors (writers, composers etc) and performers from all disciplines – and for cooperation between them. The purpose of ECA is to help professional artists influence European strategies concerning European artists/creators, particularly their social and economic situation. For more information: www.eca.dk



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EFJ – The European Federation of Journalists gathers 58 journalists’ unions and associations in Europe representing 320,000 journalists in thirty nine countries. The EFJ supports its affiliates to foster trade unions and to maintain or create environments in which quality, journalistic independence, pluralism, public service values and decent work in the media exist.

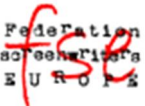


EVA – EVA represents 24 European collective management organisations for fine arts, photography, illustration, design and other visual works for close to 100,000 authors. They manage for authors primary uses, the resale right and they collect and distribute remuneration rights. For more information: www.evartists.org

Fédération Européenne des Artistes de l'Audiovisuel
Federation of European Film Directors



EWC – Founded in 1977 in Germany and newly constituted in 2006 in Belgium, the European Writers’ Council is the federation of 50 national and transnational organisations of professional writers and literary translators in all genres in 34 countries including the EU as well as Belarus, Iceland, Norway, Switzerland, Turkey and Montenegro. EWC’s members represent 433,000 individual creators, including more than 150,000 authors in the text-sector.



FERA – Founded in 1980, the Federation of European Film Directors represents 37 directors’ associations from 29 countries. FERA speaks for approximately 20,000 European screen directors, who work in all formats and genres, promoting and defending their cultural, creative and economic interests both at the European and at the national level. www.filmdirectors.eu



EuroFIA – The European group of the International Federation of Actors represents performers’ trade unions, guilds and associations in most of the EU and the EEA. It voices the professional concerns and interests of actors (in film, television, radio, theatre

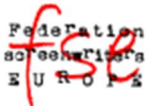




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and live performance), broadcast professionals, dancers, singers, variety and circus artists and others, with the exception of musicians and visual artists. For more information: <http://fia-actors.com>

FIM – The International Federation of Musicians (FIM) is the international NGO representing musicians' trade unions, guilds and associations globally, with members in about 70 countries covering all regions of the world. In the European Union, FIM counts 26 member unions in 21 EU Member States.

FSE – The Federation of Screenwriters in Europe (FSE) is the voice in Europe for more than 6,000 professional screenwriters working mainly in the film and television industry. It is a federation of currently 25 associations, guilds and unions of screenwriters in 20 countries.

GESAC – Founded in 1990, the European Grouping of Societies of Authors and Composers (GESAC) represents 34 of the main copyright management societies (authors 'societies) in the European Union, Iceland, Norway and Switzerland, administering the rights and remuneration of more than 1 million authors, composers and writers in a variety of sectors (music, audiovisual, literary and visual and graphic arts) and music publishers. More information www.authorsocieties.eu

SAA – The Society of Audiovisual Authors (SAA) is the grouping of European collective management organisations representing audiovisual authors. Its members (25 societies in 18 countries) manage the authors' rights of over 120,000 film, television and multimedia screenwriters and directors. More information www.saa-authors.eu Follow us on Twitter @saabrussels

UNI Global Union – Media Entertainment & Arts (UNI MEI) – represents 170 national unions & guilds affiliating more than 375,000 creators, technicians and other workers in the media, entertainment and arts worldwide. More information at www.uniglobalunion.org/mei