



## CISPE comments on the Digital Fitness Check

The second von der Leyen Commission rightfully identified Europe's ongoing competitiveness problem as the most urgent issue to tackle and named simplification as one of the main tools to tackle it with. We at CISPE agree that if Europe wants a stronger digital economy, it must remove unnecessary regulatory burden, especially where obligations do not deliver clear public value. Our contribution below is aimed to highlight two specific areas where we believe the Commission has the opportunity to remove a significant compliance burden without compromising on Europe's values and digital objectives.

### **Issue 1: Excessive and unnecessary reporting obligations for hosting providers in the Digital Services Act (DSA)**

The DSA is an important and necessary instrument. Where platforms directly host user-generated content, such as with social networks, video-sharing platforms and similar services, robust transparency and accountability is needed to prevent the dissemination of illegal content. We at CISPE fully support this objective.

The problem arises when obligations designed for consumer-facing content platforms are automatically applied also to B2B cloud infrastructure service providers (CISPs). Cloud infrastructure providers deliver compute, storage and network resources to business customers and do not operate user-facing services, nor design or control customer applications. Thus, they do not have visibility into the content processed within the resources (e.g. virtual machines, containers or encrypted storage) they make available to their customers. Technically and legally, they are not in a position to conduct granular content moderation. Instead, their interventions, where required, are limited to infrastructure-level measures such as suspending an entire account or resource. This is explained via easy-to-understand animation in [our video explaining our issues with the CSAM Regulation](#).

Consequently, requiring CISPs to report on 'content moderation activities' that they cannot actually perform creates a mismatch between law and technical reality. In unmanaged environments, providers cannot remove a single file or post without deleting the entire service instance. As such, imposing transparency reporting obligations on them regarding these activities is pointless, confusing and risks occupying already limited compliance personnel time that (especially for small and medium-sized companies) is already very limited and could be much better used elsewhere. Even worse, these reports do not improve or provide valuable insight, just floods national regulators with data that is of little use to them – making it doubly wasteful.

The Commission's ongoing Digital Fitness Check offers an opportunity to correct this. We suggest that the transparency reporting under the DSA should be further clarified and granularised to reflect the diversity of intermediary services. Consumer-facing cloud storage services that directly host user-uploaded content for individuals may warrant platform-style reporting of 'content moderation'. B2B cloud infrastructure services do not. Instead, for

infrastructure providers, reporting should be limited to actually useful metrics, such as the number of reports and takedown requests received – that were wrongfully addressed to the CISP instead of the actual data controller – as well as a general description of best practices and tools used to help customers dealing with illegal content, for example.

We stand ready to work constructively with the Commission to explain the operational realities of cloud infrastructure and to provide drafting suggestions that ensure proportionality, legal certainty and effective transparency.

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## **Issue 2: Unjustified copyright levies undermining cloud uptake and causing bureaucratic drag**

A few weeks ago, the Italian Ministry of Culture officially signed a law that extends the charging of private copying levies to cloud services, basically sabotaging the country's own cloud uptake and digitalisation targets and creating a huge unnecessary legal and financial burden on both cloud providers and their customers. The anachronistic idea of these levies is kept alive by the 2001 InfoSoc Directive, which we believe the Commission must revise to avoid compromising Europe's digitalisation and competitiveness objectives.

Below we outline a short overview of what private copying levies are, why they are completely outdated, and why the Commission should get rid of them altogether – or at least forbid their extension to cloud providers.

### *A) Background: A Brief History of Private Copying Levies*

In the 20th century, the consumption of media was very different than it is today. Citizens often bought creative content (mainly films and music, but also books, magazines and photographs etc.), and then frequently made copies using recordable media such as cassette tapes and CD-ROMs, to give to family and friends. Similarly, films and music were recorded from TV and radio broadcast to be replayed and copied until worn out. Clearly this impacted the incomes and the rights of content owners, as their material be could consumed an arbitrary amount of times for a single purchase. However, making such 'private copying' illegal was clearly unenforceable, and therefore policymakers needed to look for alternative solutions.

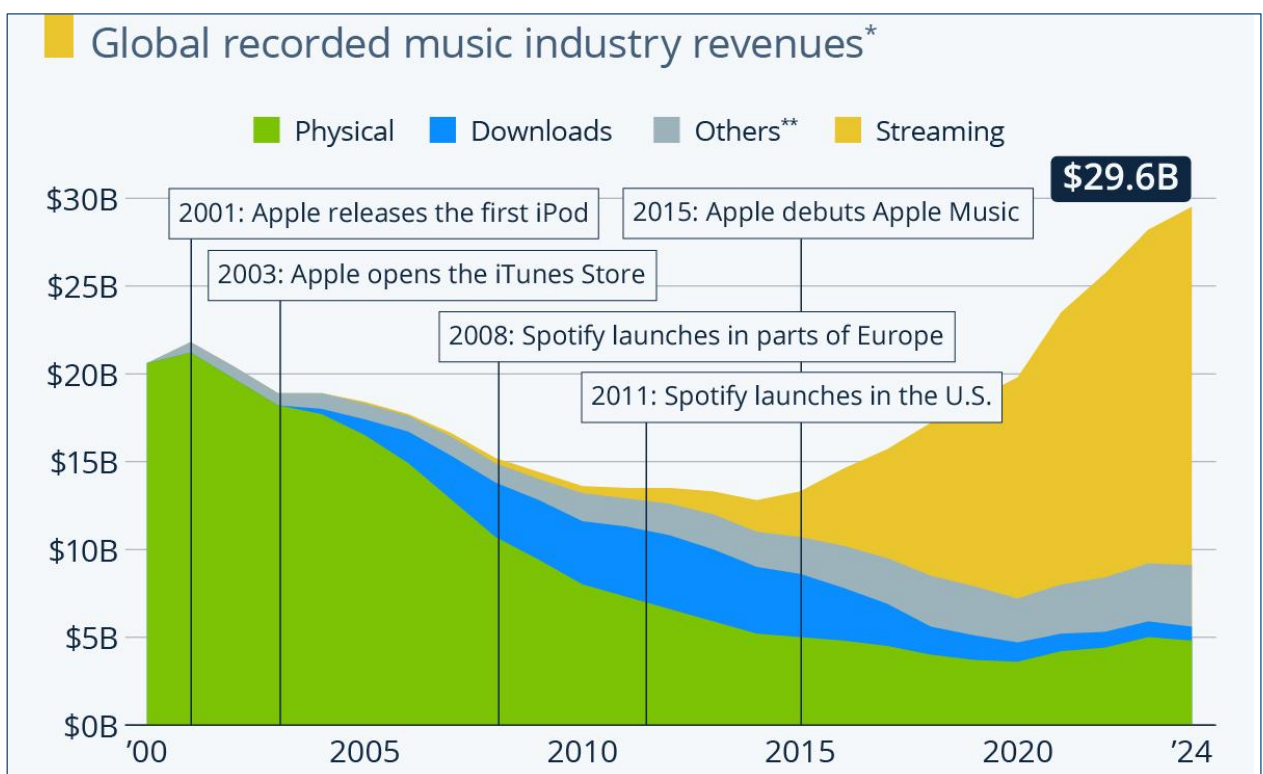
In the end, they arrived to a sort of compensation system – called 'private copying levies' or simply 'copyright levies' – that was introduced in almost all EU member states. The levy was (and is) charged as a surplus cost on blank storage (cassette tapes, CDs, DVDs) as well as other devices such as printers, smartphones, laptops, etc., with the assumption that these will inevitably be used to make private copies of copyrighted content. Incomes are then re-distributed among artists and rights holders.

Unfortunately, such levies were never really effective, as they necessitate a large bureaucratic corps to manage the collection, fair distribution, etc. Nonetheless, until the

rise of the internet, it was generally regarded as a reasonably effective solution to a difficult problem.

However, this has all changed in the past few decades. Today, most creative content is streamed via platforms such as Netflix and Spotify, where consumption numbers are easily quantifiable and therefore rightsholders (creators, promoters labels etc.) can be compensated per stream. Subsequently, the act of making private copies is quickly disappearing - not only because streaming makes copying redundant, but also because making such copies is (in the large majority of cases) technically impossible due to modern Digital Rights Management technologies.

As a demonstration of this fact, see below the graph from Statista<sup>1</sup> which shows the almost complete disappearance of physical media music consumption in the US:



Moreover, when it comes to all media, the graph below from Finland<sup>2</sup> shows that private copying has declined by 75% since 2013 –falling at a rate of more than 10% every year on average:

<sup>1</sup> <https://www.statista.com/chart/4713/global-recorded-music-industry-revenues/>

<sup>2</sup> <https://okm.fi/documents/1410845/3547395/Private+copying+survey+2024.pdf/02187faa-908b-df69-393a-9dc06161eebb/Private+copying+survey+2024.pdf?t=1725448534521>

## Private copying in 2012–2024

Figure 1. Total volume of private copying in 2012–2024, 15–79-year olds. Taloustutkimus 2024.



Given these trends, one would expect EU Member States to be actively discussing how to withdraw the levies, or at least lower them so that they align with the graph above. Unfortunately, this is not the case. Countries such as Italy and Germany are seriously considering not only to *raise* the amount of privacy copying levies paid on physical media – but also to *extend* them to currently not covered areas of the economy, such as cloud services.

Below you can find a series of arguments on why this proposed extension to the cloud is a misguided, legally concerning and economically dangerous idea.

### B) *The issues with a Private Copying Levy*

#### 1. Risk of double payments

Consumers arguably already compensate rightsholders via the devices they use (laptop, tablet, smartphone), and we have seen no study that would indicate that the levy they pay this way does not compensate for all the (ever-decreasing) private copying that they conduct. On the contrary, studies showing the rapid decline of private copying would indicate that the levy should be reduced, not raised and extended to new areas of the economy such as the cloud.

Thus, if the levy was to be extended to the provision of cloud services, it would inevitably lead to double payments. The cloud provider would have to pay a monthly fee for each customer, while each end user would pay it also for each device they use (PC, mobile), even though the InfoSoc Directive is clear may not impose levies on cloud services unless double compensation is avoided.<sup>3</sup> This makes a cloud PCL not only unjust, but likely illegal when applied to devices or services already covered by existing levies or licenses.

<sup>3</sup> See Recital (35): *In cases where rightholders have already received payment in some other form, for instance as part of a licence fee, no specific or separate payment may be due.*

## 2. Inefficiency costs to the European economy

However, the direct cost of the levy is small compared to the overall negative economic effects stemming from its implementation. Levies – especially copyright levies – create bureaucratic costs far exceeding revenues. A 2022 study by WKO (Austria) showed that a €2.50 levy on a smartphone generated €11 in compliance costs. In other words, for every €1 collected, €3.40 was simply lost. Such inefficiency directly contradicts Europe’s competitiveness and simplification goals. This level of waste is simply not acceptable and goes totally against to the competitiveness and simplification objectives of the EU, as per the Draghi and Letta reports. As the aforementioned WKO study concludes:

*"Insisting on the system that has been in place for over 40 years cannot solve the problem of sustainable artist financing. Amid the multitude of crises they face, companies need support and a reduction in bureaucracy."<sup>4</sup>*

## 3. Doing Injustice to Consumers

Consumers already bear excessive costs. DigitalEurope estimates<sup>5</sup> that in 2024, a typical German household paid almost €150 annually in copyright levies. No wonder that already in 2012, the European Consumer Organisation (BEUC) called for the ‘progressive phasing out’ of such levies, explaining that:

*The current system of copyright levies is highly detrimental to consumers who bear the costs, while it has failed to fairly compensate creators and rights holders for acts of private copying. At the same time, the lack of coherence in its application across the EU has resulted in considerable legal insecurity, leading to fragmentation of the Internal Market and thus affecting Europe’s competitiveness to the detriment of both business and consumers.<sup>6</sup>*

This is indefensible: consumers cannot make private copies of streaming content, yet are forced to subsidise outdated systems, while they already pay for streaming subscriptions (which compensate artists) and levies on their devices (phones, laptops, tablets).

## 4. A levy on businesses is illegal under European law

Charging a private copying levy on businesses is illegal under European law.<sup>7</sup> The InfoSoc Directive is clear that businesses should not be targeted in the first place, and an (effective) reimbursement mechanism must be in place if the former is impossible and as a last resort.

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<sup>4</sup> Our own translation. Source (Page 3): <https://www.wko.at/oe/handel/maschinen-technologie/speichermedienverguetung-broschuere.pdf>

<sup>5</sup> <https://cdn.digitaleurope.org/uploads/2024/11/The-case-for-copyright-levies-reform-Nov-2024-compressed.pdf> (page 5)

<sup>6</sup> <https://www.beuc.eu/sites/default/files/publications/2012-00380-01-e.pdf> (page 6)

<sup>7</sup> As confirmed in the CJEU’s Padawan ruling, C-467/08: ‘the indiscriminate application of the private copying levy, in particular with respect to digital reproduction equipment, devices and media not made available to private users and clearly reserved for uses other than private copying, is incompatible with Directive 2001/29.’ Source: <https://curia.europa.eu/juris/document/document.jsf?text=&docid=83635>

In spite of this, most Member States' copyright levy mechanisms don't even try to create an ex ante business exception, and instead have 'reimbursement' mechanisms – even though the law is clear that these should only be used as a 'last resort' and despite ample available evidence that businesses are simply unable to claim reimbursements for the levies they are wrongly charged.

*C) Why a copyright levy on cloud services is an own goal against Europe's ambitions*

Cloud infrastructure is central to Europe's digitalisation and its AI ambitions. We therefore regard the extension of copyright levies to the cloud as a huge step back for Europe's otherwise ambitious modernisation agenda, that would undo a lot of the good work the European Commission and national governments has so far done in this respect.

Cloud infrastructure is essential for Europe's digital and AI strategies. The Digital Decade Policy Programme recognises the cloud as the backbone of European innovation, efficiency, and competitiveness, and therefore made one of its objectives *'ensuring that the Union has a competitive, secure and sustainable data cloud infrastructure in place, with high security and privacy standards and complying with the Union data protection rules'*

There is also no AI without the cloud. The Commission's recent AI Continent Strategy makes clear that *'access to innovative and affordable cloud services is vital for EU competitiveness'*, adding that in order to *'adequately serve the AI and general computing needs of businesses and public administrations across the entire EU, and to ensure competitiveness and sovereignty, it is essential for the EU to increase its current cloud and data centre capacity'*.<sup>8</sup>

If only one Member State starts applying copyright levies to cloud services (as Italy is planning to do very soon), it may produce a snowball effect for other European countries to follow suit. This risks completely undermining Europe's cloud and AI ambitions and jeopardising much of the progress the EU has done in digitalisation in the past 5 years. The result would be a blow to Europe's digital ambitions and an own goal against our cloud and AI objectives.

*D) Conclusions: Why Extend When Private Copying Is Disappearing?*

Private copying and the use of physical media have all but vanished in the age of licensed streaming platforms. Levies designed for cassette tapes and CDs no longer reflect today's digital reality.

Services such as Spotify and Netflix have replaced private copying with licensed access to content. Consumers no longer own films or music – they subscribe to platforms that give them temporary access. This is not a 'reproduction' covered by the private copy exception but an act of communication, for which artists and creators are already contractually compensated through agreements with rightsholders.

Moreover, consumers cannot make copies for private use even if they wanted to, due to Digital Rights Management (DRM) and similar protections. Data from Statista confirms this shift: physical music consumption in the US has virtually disappeared, having been replaced by streaming.

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<sup>8</sup> | Continent Action Plan COM(2025)165: <https://digital-strategy.ec.europa.eu/en/library/ai-continent-action-plan> , page 9



The extension of private copying levies to cloud services is an outdated idea trying to adapt to a world that has already moved on. It would harm consumers, businesses, as well as Europe's competitiveness. Rather than clinging to obsolete tools, the Commission and Member States should come together to design sustainable and future-proof models for remunerating artists.

Consequently, CISPE urges the European Commission to revise the InfoSoc Directive, and replace the concept of private copying levies charged on storage (whether hard drives or cloud), with a modern and future-proof model for the remuneration of artists in the digital age that does not undermine the continent's digitalisation targets.

We are keen to working with the Commission to achieve this.