CISPE Comments regarding the targeted initiative for a better copyright environment for European creativity and innovation

About CISPE

CISPE (Cloud Infrastructure Services Providers in Europe) is the European association of cloud infrastructure providers. We represent around sixty companies (the large majority of which are European SMEs) that supply the foundational storage, compute and network services on which Europe's digital economy and its AI ambitions are built.

We welcome the fact that cloud services providers are expressly named in this Call for Evidence among the stakeholders in the copyright value chain that the Commission invites to respond, and we hereby take the opportunity to do so.

Introduction

CISPE fully supports the Commission's ambition to deliver '*a better copyright environment for European creativity and innovation'*, enhance the resilience and competitiveness of Europe's creative and cultural sectors, and to facilitate research and innovation amid rapid technological change. We also agree with the need for a targeted intervention, instead of a large scale revision of Europe's copyright rules at large.

However, we disagree with the idea that the target of the revision should be predominantly the 2019 Copyright Directive, but not – comparatively ancient – 2001 InfoSoc Directive. Indeed, the Commission already admits in the Call for Evidence that certain aspects of the latter also need to be reviewed (specifically regarding research exception). In short, an initiative justified by innovation, competitiveness and simplification cannot credibly leave untouched the most fragmented, administratively burdensome and economically distorting feature of the EU copyright acquis for the digital sector – namely the private copying levy system, and in particular the growing pressure to extend it to cloud computing services.

Although the Call for Evidence is silent on private copying levies, we implore the Commission to reconsider this and to use this initiative to bring the levy framework into line with the digital, AI and simplification goals the initiative itself invokes. Europe's competitiveness and digitalisation ambitions depend on this.

Why private copying levies must be tackled

During this mandate, Commission's guiding principles are those of competitiveness and simplification, as laid down in the the Competitiveness Compass of January 2025, as well as the Draghi and Letta reports. The programme is backed by hard commitments – e.g. to cut recurring administrative costs by €37.5 billion over this mandate, to reduce the regulatory burden on businesses by at least 25% and on SMEs by at least 35%, and to make roughly half of the proposals in the 2026 Work Programme simplification measures.

When it comes to the copyright acquis, there is no more lower hanging fruit for simplification than the issue of private copying levies. Not only are they nationally fragmented and extremely burdensome to administer, with the emergence of streaming they have become obsolete and disconnected from how Europeans consume content. Therefore, if the purpose of this initiative is a copyright framework fit for innovation and a lighter regulatory load, the levy system must be part of the conversation.

How the copyright levy threatens Europe's Cloud and AI ambitions

Just this month, the European Commission published the Cloud and AI Development Act with the intention to '[unlocking the potential of Europe's cloud and AI capacity]'. However, while the Commission is hard at work to try and create a thriving European cloud and AI ecosystem, many Member States risk undoing most of this work by extending the reach of copyright levies to the cloud.

This is not a hypothetical concern. In March 2022 the Court of Justice held, in *Austro-Mechana v Strato*, that the private copying exception can be extended to reproductions made in cloud storage (provided the total levy across the devices and media involved in a single act of private copying does not exceed the harm to rightholders). This means that now twenty-seven Member States are free to enact diverging rules, and some (such as Italy and Austria) have already done so. For small European cloud providers, this is a major concern for two reasons. First of all, at national level, it is a serious financial and administrative expense that many will not be able to absorb. Even more concerning, for any successful national provider trying to scale across borders, a patchwork of different national levy rules is a huge obstacle to said scaling.

Indeed, the Commission itself makes this point in the Call for Evidence:

> *A single set of EU rules would ensure there is no fragmentation in the market, thereby reducing compliance costs for providers operating in more than one Member State.*

This reasoning applies with full force to private copying levies and the cloud – therefore, the Commission must ensure that it is part of the discussion.

Why the Commission must tackle the issue

Below, you can find a detailed list of arguments regarding why the revision of the private copying rules of the InfoSoc Directive must be part of the upcoming targeted measure.

- **Copyright levies tax the backbone of AI and digitalisation.** The Call for Evidence is mostly concerned with generative AI, and there is no generative AI without cloud infrastructure. Charging levies on cloud services taxes the very layer on which Europe's AI competitiveness rests - and it falls hardest on European cloud SMEs while favouring the largest non-EU providers who are best placed to absorb or structure around the costs.
- **It multiplies administrative burden rather than reducing it.** The Austrian Federal Economic Chamber found that collecting a €2.50 smartphone levy costs around €11 per transaction - roughly €3.40 lost to bureaucracy for every €1 that reaches creators. This is the textbook inefficiency the simplification agenda exists to remove.
- **It leads to double and triple payment.** Consumers already pay levies on the devices they use to access content and pay licence fees through their streaming subscriptions. A separate cloud levy would charge a third time for the same activity, which neither the InfoSoc Directive's own logic[1] nor the over-compensation limit set by the Court of Justice permits.
- **It charges for copying that has largely stopped.** Licensed streaming has displaced private copying; survey evidence shows private copying down to below a third of its 2012 level and

[1] Recital 35 of Directive 2001/29/EC: 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.

still falling by around 8% a year, and consumers cannot even make private copies of streamed content because of digital rights management protections. A levy designed for cassettes and CDs is therefore being stretched to encompass a service that is rarely used for private copying at all.

- **It is unlawful to charge for business users, but the safety net does not work.** In theory, levies cannot be applied indiscriminately to equipment clearly reserved for uses other than private copying, so any kind of business use requires an ex-ante exclusion. However, most Member State 'solve' this issue via reimbursement mechanisms that are demonstrably ineffective. Cloud is overwhelmingly a business tool, so a cloud levy without ex-ante business exclusion should be seen as unlawful in both principle and practice.
- **It hits consumers and the Single Market.** In some Member States, an average four-person household already pays over €140 a year in levies – and a cloud extension would obviously push this even higher. Accordingly, as long ago as 2012, the European consumer organisation BEUC called for the progressive phasing out of levies, citing both the cost to consumers and the fragmentation of the Internal Market.

Conclusion

The Commission is, in its own words, decided to propose a targeted revision of the copyright framework in order to make Europe more competitive. Consequently, not touching its single most burdensome and fragmenting element out would be missing a historic opportunity. We therefore are asking for the expansion of the scope of this targeted revision to also include private copying levies to ensure that this initiative actually succeeds in fostering innovation and simplification.

We are ready to work together with both the Commission and rightsholders in order to find a satisfactory and forward-looking solution that allows Europe's creative and cloud sectors to both continue to thrive.