

What its private copying?

An exception to the reproduction right

Private copying was born from copyright law adapting to the evolution of creative works' consumption. It is a modern tool, capable of adapting to current and future practices.

When the EU harmonised the list of possible exceptions to copyright in the EU 2001/29 Copyright Directive, it included the private copying exception - which already existed in many EU countries - on the condition that rightholders receive fair compensation. No harmonisation of any element of the compensation is provided by EU law (except some guidance in recital 35), so Member States continued to develop their own compensation systems. Almost all Member States which apply the private copying exception have introduced a system of levies on copying devices and media.

As an exception to copyright, it deprives rightholders of their right to authorise these copies. Therefore, any proposal to reintroduce private copies in the licensing system would necessitate deletion of the exception so that rightholders would be empowered to deliver authorisations. However, the SAA is not of the opinion that such a move would be beneficial to audiovisual authors and consumers (see below). The SAA supports the levy system for private copies.

- › Art 5(2)(b) of the EU 2001/29 Copyright Directive states that "Member States may provide for exceptions or limitations to the reproduction right provided for in Article 2 in the following cases: (...) (b) in respect of reproductions on any medium made by a natural person for private use and for ends that are neither directly nor indirectly commercial, on condition that the rightholders receive fair compensation which takes account of the application or non-application of technological measures referred to in Article 6 to the work or subject-matter concerned;"
- › The **VG Wort CJEU ruling (C-457/11 to C-460/11)** clarified that the fact that rightholders' have expressly or implicitly authorised the reproduction of their protected work or other subject-matter and the possibility of applying technical protection measures (TPMs) have no bearing on the fair compensation owed.