

**FINAL**

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**WORLD SEMICONDUCTOR COUNCIL (WSC)**

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WSC paper on The Dangers of Copyright Levies in a Digital Environment

**Overview**

Copyright levies are currently in use in a number of countries to compensate rights holders for non-commercial private copying of their works using analog technologies, such as tape recordings. Where used, levies are imposed on equipment, and/or recording media. These levies are generally collected by national “collecting societies,” independent groups representing domestic rights holders. The levy-setting process differs from country to country. In some countries, collecting societies unilaterally set the amount of the levy on each technology, in others levies are determined through negotiation or government decree. The methodology for determining the amount of the levy is not always clear. In several countries, there are numerous collecting societies, each with the ability to assess levies on a technology, resulting in some products subject to multiple levies. The collecting societies increasingly use the rise of piracy, in lieu of the original private copying rationale, to justify the levy system (even though levies are in place to compensate only for legal private copying, not piracy).

When extended to digital technologies such as personal computers and to blank digital media such as flash memory cards, levies create a significant new barrier to trade in these goods. Increasing levies become a disproportionate share of the price, meaning that any manufacturer cost savings cannot be passed along to consumers.

**Flaws in the Levy System**

The World Semiconductor Council strongly supports copyright protection and compensation that is fair to copyright holders, consumers, and other stakeholders. However, levy systems lack balance, oversight, and are inefficient. The first levy systems were introduced in the 1960s on analogue devices because levies were deemed to be the only practical method for ensuring rightholder compensation for the use of their works. Levies were, also in the analogue world, recognized as an imprecise and ‘rough justice’ compensation system. They force consumers, individuals, and businesses who do not copy, to pay as much for technology as those who engage in copying. In fact, a majority of technology products are sold to businesses or government, where by definition it is inappropriate to apply levies, yet the levy is applied to all technology products. On the distribution side, levies quite clearly cannot make a direct link between the copying of specific works and compensation to the owners to these exact works. However, these imperfections were accepted in the absence of any workable alternative. Further, no compensation is due at all for the vast quantities of internet-based content which is downloaded and copied with the implied or express consent or the content providers who made it available on the web in the first place, and therefore fall outside the scope of any private copying levy regime.

### **Role of Digital Rights Management (DRMs) & Technical Protection Measures (TPMs)**

However, the advent and introduction of technologies known as digital rights management (DRM) and technical protection measures (TPM) have changed this situation. In the digital environment, these technologies allow rightholders to publish their content in protected formats, whether online or via packaged media. Content published using these technologies can only be accessed and used by paying users. These technologies allow content owners to specify whether they wish to allow copying, and in what quantities: one, two, or several copies – and charge the user accordingly. In this way, DRM and TPM give the rightholder the ability to obtain full compensation for all uses, including private copying. Online services using these technologies have been deployed in large numbers for distribution of video, audio and written content. The most popular packaged format, DVD-V, allows no copying at all, and new packaged formats, such as DVD-A and SACD are gaining popularity. Successful development and implementation of DRM and TPM is best achieved through voluntary industry cooperation, between technology companies, consumer electronics manufacturers and content providers; not through government mandated solutions.

In summary, in the digital environment, the advent and introduction of these technology solutions are obviating the need for extra compensation in the form of levies. In its recent Copyright Directive, the EU has foreseen the adaptation and gradual phase-out of levies systems as technical protection measures are made available and used. Yet, the trend is towards ever-increasing levy rates imposed on a broadening range of equipment and media – in parallel with increasing use of DRM and TPM.

### **Economic Impact**

Levies can be assessed on components like CD burners/drives, memory cards, and flash memory, but also on a finished product such as a personal computer. In Germany, the authors' collecting society originally proposed a €30 levy on PCs, which was opposed by Bitkom, the German IT industry association. The levy was recently settled in an arbitration court at €12 per PC. One semiconductor firm estimated that a €10 levy in 2001, followed by a €30 levy in subsequent years would reduce the total available PC market by as much as 4% and lead to lost revenue in \$300 million by 2005 in France and Germany alone.

In a sector with consistently declining prices and increasing storage parameters, levies become a larger proportion of the end-user price. Levies not only cancel out manufacturer cost savings, but often even increase the selling price to the end-customer. In some European countries, levies will account for a larger percentage of the sales price than the value-added tax.<sup>1</sup>

In addition to levies on multiple components, several collecting societies within a country may assess levies on the same item, creating a multiplicative effect. For example, the authors society, music society, and audio-visual society could each request a separate levy on any given product.

The net effect is an increase in the costs of both dedicated and multipurpose digital equipment and media to consumers, businesses, government organizations, schools and universities. This will most certainly have a negative impact on policy goals such as accelerating the digital economy or 'the information society'. Non-infringing uses and users of equipment (teleworking, eGovernment, eHealth and eLearning are examples) will be penalized, to the detriment of competitiveness.

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<sup>1</sup> European Information, Communications, and Consumer Electronics Technology Associations (EICTA)

**Geographic Scope**

Levies are in force in Canada on analog media and CDs, with proposed legislation to extend levies to electronic memory cards, flash memory, hard drives, and recordable DVDs. Fifteen Central European and European countries assess levies on blank media, and nine of which also apply levies to digital equipment. Mexico has legislation pending on implementing a levy system. In Australia, rights holders groups are advocating a 3-10% levy on blank CDs and DVDs.

**Recommendations**

The WSC believes that governments/authorities should not allow levies to be collected on digital equipment and blank digital recording media. In addition, members of the WSC encourage our governments/authorities to ensure language opposing levies is included into new trade agreements and utilize WTO mechanisms (such as working groups on e-commerce and ITA) to address levies as a barrier to trade. We would also encourage governments to ensure proper accountability and transparency of levy schemes, in order that the public maybe made aware of where levies are paid, what amounts are paid and what they are supposed to compensate for.