



**LIETUVOS RESPUBLIKOS KULTŪROS MINISTERIJA**  
**MINISTRY OF CULTURE OF THE REPUBLIC OF LITHUANIA**

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**CONCLUSIONS**  
**OF THE REGIONAL CONSULTATION**  
**ON PRIVATE COPYING**  
**IN LITHUANIA, LATVIA AND ESTONIA**

22 November, 2010

On 11 November 2010 consultation on private copying, attended by Lithuanian, Latvian and Estonian competent authorities, was held in the Ministry of Culture of the Republic of Lithuania. Regional consultation was aimed at discussing emerging issues of legal regulation and practical implementation of compensation for the acts of private copying in Baltic states. Following conclusions have been drawn:

- (1) Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (hereinafter - Directive) provides Member States with the possibility to limit reproduction right of copyright and related rights holders under the condition that rightholders receive fair compensation for such uses. This has recently been made clear by the Court of Justice of the European Union in the Judgment of 21 October 2010 in Case C-467/08 (Padawan) that Member States which decide to introduce the private copying exception into their national law are required to provide for the payment of "fair compensation" to rightholders.
- (2) Lithuania, Latvia and Estonia in their national legislations all provide for mentioned private copying exceptions as well as for some sort of compensations for them. However the sums of compensations paid to rightholders in Lithuania, Latvia and Estonia are far behind the average collections of such compensation in the rest of EU.
- (3) The main reason for such statistics is named to be the current list of blank tapes and reproduction equipment that private copying levies are imposed on. The list in all the discussing parties is named to be out-dated and out-of-use. Currently the compensation depends on the levies collected for audio/video cassettes, CDs, DVDs, some other unpopular blank tapes and some reproduction equipment, meanwhile mostly used digital reproduction equipment remains levy-free.
- (4) Discussing parties have raised their concerns that in their case when compensation does not reflect the actual habits of private users in their acts of private copying, it could not be considered *fair compensation*, as required by the Directive. Therefore there is a possibility that undesirable negative consequences (sanctions) might be expected if rightholders initiated legal actions against the mentioned states in respect of the breach of Directive.

(5) In order to ensure proper implementation of the Directive and follow recent judgment of the Court of Justice, authorities responsible for copyright and related rights in Lithuania, Latvia and Estonia have initiated revisions of private copying compensation schemes: in all of them – in Lithuania, Latvia and Estonia – draft amendments of current legislation have been registered or are in process. Legislation concerning fair compensation for private copying is proposed to be amended by imposing the levy on modern reproduction media:

	Audio, video cassettes, CDs, DVDs	Memory cards	USB	External HDD & SSD	Integrated HDD & SSD	CD, DVD players with memory	Recording media (no memory)	MP3, MP4, HD media and other players with memory	TV with memory	Mobile phone with memory
<b>In draft amendments</b>										
<b>Estonia</b>	+	-	-	-	-	+	+	+	+	+
<b>Latvia</b>	+	+	+	neg.*	neg.*	+	+	+	neg.*	neg.*
<b>Lithuania</b>	+	+	+	+	+	+	-	+	+	+
<b>Currently</b>										
<b>Estonia</b>	+	-	-	-	-	-	+	-	-	-
<b>Latvia</b>	+	-	-	-	-	+	+	+	-	-
<b>Lithuania</b>	+	-	-	-	-	-	-	-	-	-

\* In Latvia negotiation on indicated media is in process. Negotiation coordinated by the Ministry of Culture.

(6) It is obvious that all discussing countries are moving in the same direction while seeking to ensure proper implementation of the Directive: in all of them private copying schemes are proposed to be amended by updating the list of levied media in the way that compensation would be made dependent on reproduction habits of private users. It is proposed that private copying levies would be imposed on that reproduction media, which is proven to be most popular among private users for their acts of private copying. Surveys that have been carried out in different counties, showed no significant difference in users' habits, therefore the tendencies and directions of regulations of private copying in those countries are also very similar.

(7) In the regional consultation on private copying it was clarified and made obvious by competent authorities of Lithuania, Latvia and Estonia that Baltic states are following EU direction and have chosen the same solutions for private copying compensation. That is in the benefit of IT businesses in this region, because with that similar regulation that is being proposed in Lithuania, Latvia and Estonia, no threat for differentiation of marketing conditions and market distortion arises.

Minister of Culture

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