

EU4IP

Strengthening Intellectual Property
Rights in Moldova and Ukraine



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Compensation for private copying

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Discretion of the Member States in respect of private copying levies – indications from jurisprudence of the CJEU

Not absolute (C-433/20 *AustroMechana v Strato*) – objectives of every European private copying levies system:

- provisions allow and ensure **the development and operation of new technologies** and safeguarding a **safe balance** between the rights and interests of rightholders and of users of protected works;
- consistency with the principle of **technological neutrality** (**not to favour** the use of one technology to the detriment of another);
- **preventing** copyright protection in the European Union **from becoming outdated** as a result of technological developments;
- obligation to **achieve** a result **the effective recovery of the fair compensation for the harm suffered by the holders of the exclusive right of reproduction** owing to the reproduction of protected works by end users who reside on the territory of that State.



Examples of rates and recent developments in the percentage-based levies systems in EU Member States

Greece, Lithuania,
Slovakia and Slovenia,
up to 6% respectively
for private copying

Poland up to 3 %
(approximately 1 – 2%)

including technological
developments –
introduction of levies for
smartphones, tablets in
countries such as Estonia
(2021), Latvia (2021),
Belgium (2021) and
Denmark (2022).

Estonia and Latvia -
multiple growth of
collection generated
therefrom in 2021, in
comparison with the
previous years
(respectively 99,92% and
56,19%)



Examples of rates for smartphones and tablets in the selected EU Member States

Hungary

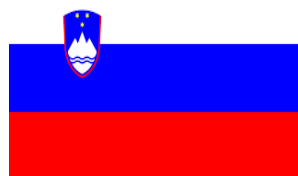
Rates for smartphones:

319 - 4,788 HUF depending
on the type and size of the
equipments' memory

Rates for tablets:

532 - 4,788 HUF depending
on the type and size of the
equipments' memory

100 HUF is 0,25 euro



Slovenia

Smartphones and tablets:-
depending on the prize 4,77 -
14,55 EUR



Slovakia

Smartphones:
0,7 % of the sale prize or
import value

Tablets:
0,1%-0,6% of the sale
prize or import value

E-readers:
3% of the sale prize or
import value



Latvia

Smartphones:
1,5 EUR

Tablets: 2, 85
EUR



Lithuania

Smartphones: od
0,43 do 11,58 EUR
depending on the
type of equipment

Tablets: 4,34 EUR

Other issues requiring amendments or in-depth consideration

unclear criteria to set the compensation due - "statistical value" and "production price"

should be the selling price of the equipment or devices at hand (always higher than the production price) or its import value

legal provisions guaranteeing the CMOs **effective access to information** and enforcement of the compensation

the secondary regulations or agreements between the entities involved in the collection of compensation contain provisions on how to **split the revenues** for certain categories of rightsholders

the compensation for levies should be administered mandatorily (under statutory solutions) or voluntarily by **one body from the users' perspective** (e.g., designated CMO, entity created by the CMOs entitled to collect levies or CMOs acting jointly under their agreement)



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