

Kluwer Copyright Blog

Private Copying Levy for Social Purposes - Draft Changes in Poland and Compatibility with EU Law - Part I

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The Polish Ministry of Culture has announced draft changes to the Polish copyright law on the collection and division of the private copying levy (also known as the blank media tax or levy). The [draft law](#) on the rights of professional artists announced by the Polish Ministry of Culture will significantly change how the private copying levy system has been functioning in Poland so far.



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In Part I of this set of posts, I describe draft changes to the Polish copyright law on the collection and division of the private copying levy. Part II looks at the compliance of the draft changes with EU law. The proposed legal regulations mean that the payment of the “fair compensation” resulting from the collection of the private copying levy will be made independently of the “reproduction” of works for personal use. Persons classified as “professional artists”, who will become beneficiaries of a significant part of the private copying levy collected from the market, will not be able to identify themselves as right-holders in the light of Article 2 of Directive 2001/29 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 on the “reproduction” of works and other related rights for personal use.

Legal arrangements concerning a system of fees compensating creators, holders of related rights and their successors for permitted personal uses based on the provisions of Article 5(2)(b) of Directive 2001/29 have functioned unchanged in Polish law since 1994. Their legal basis is Articles 20 and 201 of the Polish Copyright Law, combined with secondary legislation.

The main theme for the changes to the current system is the desire to increase income in this area and social support for poorer artists. The explanatory memorandum accompanying the bill indicates that revenues from the private copying levy in Poland have declined year on year and in 2020 amounted to only 1.7 million Euro. By

contrast, in Germany, for example, they amounted to 330 million Euro. The bill provides for an amendment to the Polish Act on Copyright and Related Rights and an increase to the rate of the private copying levy. Under the new rules, rates should not exceed 4% of the price of equipment that facilitates reproduction of protected works or other related rights for personal use. What is also very important is the extension of the list of devices on which the levy will be charged. The explanatory memorandum states that the existing list, created in 1994, does not correspond to current realities and should be extended. In accordance with the proposed provisions, the private copying levy is to be imposed on the following items when entering the domestic market:

1. electronic devices capable of recording or multiplying by any technique, in whole or in part, for personal use, audio, audiovisual works, works expressed in words, graphic signs, works of photographic or artistic character, as well as the subject matter of related rights;
2. blank carriers capable of recording or multiplying by any technique, in whole or in part, for personal use, works and the subject matter of related rights using the equipment referred to in point 1;
3. electronic devices (excluding the equipment referred to in point 1) capable of recording or reproducing by photographic technique or other process having a similar effect, in whole or in part, for personal use works expressed in words, by at least two out of the following functions: copying, scanning or printing;
4. blank carriers capable of recording or reproducing by any technique, in whole or in part, for personal use, the works referred to in point 3 with the exception of the carriers referred to in point 2.

A real novelty is the abandonment of the existing solution according to which the private copying levy is collected from obliged entities by Collective Management Organizations (hereinafter the CMOs). According to the new proposal, the private copying levy is to be collected in future by tax offices. The money collected from the market will be donated by tax offices to:

- a) a new “Polish Chamber of Artists”; and
- b) entitled CMOs in a proportion determined by the provisions of the Act.

In the event of the operation of several eligible CMOs, the levy will be subdivided on the basis of an agreement between these organisations. If CMOs fail to conclude an agreement on the distribution of levies or terminate the agreement, the levy will be transferred in accordance with the conditions laid down by the Minister of Culture.

As the above indicates, the project involves the creation of a “Polish Chamber of Artists,” whose aim would be to distribute almost half of the money collected from the market via the levy to the least profitable artists. This draft bill does not use the term “author”, as the copyright law does, but creates a new concept, previously unknown to the Polish law, that of so-called “professional artists.” Financial support for the least profitable professional artists is provided in the form of, among others, payment of their social and health insurance contributions by the “Polish Chamber of Artists,” social support and the financing of scholarships for outstanding artists. Expenditure

for these purposes is to be covered in full by funds from the private copying levy. While these goals are admirable, one big question looms: are the proposed changes compatible with EU copyright law? [Part II](#) explores this question.

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