

Kluwer Copyright Blog

New copyright law in Lithuania: levy system expanded

Mindaugas Kiskis · Friday, February 3rd, 2012



On December 21, 2011 the Lithuanian Parliament adopted the overhaul of the levy system, along with other important amendments in the copyright law. While many countries in Europe are considering phase-out or replacement of blank media and equipment levy systems, Lithuania has significantly expanded it.

Historically copyright levies were introduced in Lithuania on January 1, 2004 and went on to apply on all blank tapes, CDs, DVDs and HDDs. This regime continued only until May 1, 2004, when Lithuania has joined the EU.

From May 1 2004 to March 2008 the levies were subject to heavy litigation between the main Lithuanian collecting society (LATGAA) and IT wholesalers (case LATGAA v. Trajektorija). The legal challenge argued that it is incorrect to levy media/equipment introduced from within the EU (ala ECJ Opus), and that only media/equipment designated for private copying shall be levied (ala ECJ Padawan). The case was won by the Lithuanian collecting society (LATGAA), although the victory was partial and poorly argued by the courts. Notably the courts did refuse to refer the case to the ECJ.

Separately by March 2008, HDDs, which were producing the bulk of collections from the levies, were dropped from the scope of the levies (through 19 September 2007 amendments) due to overwhelming demands of the IT industry.

As a result, from 1 October 2007 (coming into force of the 19 September 2007 amendments), Lithuanian copyright levies regime only cover blank tapes, CDs and DVDs. No equipment was levied in Lithuania up until now.

The new December 21, 2011 law (the levies part shall come into force as of March 1, 2012) extends the levies very significantly. It covers all media (tape, CD, DVD, Blue Ray, USB media, flash memory cards), reintroduces levies on HDDs, as well as introduces levies on all equipment, which has internal memory and playback/recording functions (MP3 players, media players, jukeboxes, TVs with recording function, tablets, etc.). Levies will also cover mobile phones and computers, as a separate objects, for levies.

On top of this, separate reprographic levies are imposed on all copiers and multifunction devices,

as well as copying services.

The tariffs for the new levies are complex – for disc media they are flat 6% of the wholesale price; for USB media, flash memory cards equipment they are fixed amounts from 0.3 EUR to 8 EUR on the wholesale price; for mobile phones, media players, jukeboxes, TVs with recording function – fixed amounts from 0.4 EUR to 12 EUR on the wholesale price; for tablets and PCs the flat rate of 6 EUR on the wholesale price is imposed regardless of internal memory capacity. Differentiation is based on the memory capacity. For copiers and multifunction devices they are percentages from 0,6% to 3% (higher for color equipment) on the wholesale price.

Payment duty for the copyright levies is imposed for the first seller of the media or equipment in Lithuania. There are no express provisions enabling businesses and other entities, which use media and equipment for other purposes than to reclaim the paid levies or to avoid paying them. Payment procedures are also left-out for administrative regulation.

Because of the above there are some doubts that the new legislation is in line with the ECJ Padawan rules. It must also be noted that Lithuania stepped up to levy personal computers and tablets, as well as multi-functional devices (printers including scanning and copying functions) despite the ECJ currently considering the appropriateness of such levies under the EU law.

Other important amendments

Other important amendments to the Lithuanian copyright law include revision of the exceptions for libraries and the disabled persons.

Digitization of works by the libraries and access to digital copies are comprehensively restricted in the new law. Digitizing and using the digital copies of the works is allowed in the libraries (as well as museums and archives) for non-commercial research and personal study purposes only as long as:

- 1) The digital copies of the work are accessible only internally, on the terminals located in the premises of the library;
- 2) the work is not publicly available for sale;
- 3) rights holders have not prohibited such use;
- 4) the simultaneous access to the digital copy, shall not exceed physical number of “hard copies” of this work held by the library.
- 5) effective technical protection measures, restricting copying, transfer or external access, shall be employed by the libraries.

All of the above conditions shall be fulfilled by the libraries in order to digitize the work and use of the digital copy.

With respect to the disabled persons, the rules were relaxed and clarified. Prior to the new amendments the rights of the disabled to access digital works over computer networks was a grey area. As a result of the new rules, it is now expressly allowed for the organizations of the disabled persons to make digital copies of the work and make them available over computer networks in audiobook and Braille formats, as well as adapted versions for persons with intellect and learning disabilities. Access control (rather than “effective technical protection measures”), restricting access only to the disabled persons, shall be employed by the organizations of the disabled, who want to engage in activities of making works available and accessible to the disabled.

New rules for libraries and disabled persons came into force as of January 10, 2012.

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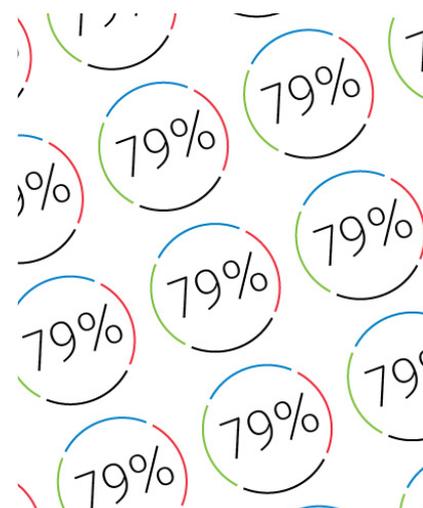
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