

# Private copying levy: the new system for fair compensation and its immediate implications for distributors of digital equipment, devices and media

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*Published on 4 July 2017, Royal Decree-Act 12/2017 of 3 July<sup>1</sup> lays the foundations of the new system for fair compensation for private copying, known in Spain as the “canon” (levy), which alters the wording of article 25 of the Copyright Act 1996 (the “RDL”).*

## 1. What is the levy?

Article 25 of the Copyright Act 1996 stated, in its original wording, that reproductions exclusively for private use (“private copying”), by means of non-typographical apparatus or technical instruments, of phonograms, videograms or other audio, visual or audiovisual media, will give rise to fair compensation payable to the rightholders, aimed at providing compensation for the royalties unearned by reason of said private copying. That is, all manufacturers or first importers of copying-enabled devices had to pay fair compensation (the levy) to collecting societies. This amount was obviously passed on by the manufacturers/distributors to the end consumer in the price of the device.

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<sup>1</sup> Real Decreto-ley 12/2017, de 3 de julio, por el que se modifica el texto refundido de la Ley de Propiedad Intelectual, aprobado por el Real Decreto Legislativo 1/1996, de 12 de abril, en cuanto al sistema de compensación equitativa por copia privada.

In 2011, the levy system provided in article 25 was abolished by Royal Decree-Act 20/2011<sup>2</sup>, so that the levy, instead of being paid by the manufacturers/importers (and ultimately by the consumer), was charged to the Spanish Government Budget.

However, recent European and national court rulings interpreting Directive 2001/29/EC<sup>3</sup> held that said regulation was inconsistent with the Directive, whereby the Spanish Government was required to revert to the original system (with some changes), that is, to the payment by the manufacturers/first importers, which it has done through the recent Royal Decree-Act 12/2017.

## **2. When does the new system come into force?**

The entry into force of the RDL is 1 August 2017. However, during the first year, the transitional system will be applied, as regulated in the second transitory provision (summarized below). During that first year, an Implementing Regulation must be adopted specifying in a definitive manner the procedure to be followed in order to pay, settle or, if necessary, reimburse the compensation. In addition, in that first year a Ministerial Order must also be adopted, which will include the final levy tariffs (revisable every 3 years) that will be applied to the storage devices. Until then, the tariffs applied are those that appear in the second transitory provision, taken from the bygone Ministerial Order before the repeal of this system.

## **3. Who collects the levy?**

According to the RDL's single additional provision, collecting societies have 3 months from 1 August to incorporate a legal person in order to perform the necessary intermediation.

## **4. Who should pay the levy and which devices are levied?**

The manufacturers in Spain of reproduction equipment, appliances and media identified in the second transitory provision of the RDL, provided they act as commercial distributors, as well as the purchasers of the same outside the Spanish territory for commercial distribution or use therein, will be considered obligors of the levy,.

From the entry into force of the RDL and until the entry into force of the regulations that will set the final tariffs, the amount of the levy payable varies between 0.08 euros and 5.45 euros per unit, depending on the equipment, appliances and media concerned.

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<sup>2</sup> *Real Decreto-ley 20/2011, de 30 de diciembre, de medidas urgentes en materia presupuestaria, tributaria y financiera para la corrección del déficit público.*

<sup>3</sup> *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.*

## 5. Immediate steps to follow

As of 1 August, the stock that is sold must be levied, except for that sold to the public administration (once the definitive system is established, there could be more exemptions, such as those natural or legal persons who prove that the purchased device will be given a professional and non-personal use).

The obligors are required to report the units subject to levy within 30 days after the end of the calendar quarter. Therefore, strictly speaking, we could say that the obligation to report units subject to the levy should be fulfilled for the first time during the month of October 2017 (30 days after the end of the third calendar quarter of 2017). According to the RDL, the legal person should have been incorporated before the end of October. However, if by that time the intermediary legal person has not been incorporated, we understand that the obligation to report would be deferred to the time of incorporation.

As we said, while the Regulations and the Ministerial Order are adopted during the first year of validity of this new system, a transitional system is applied. The fact that the intermediary legal person has not been incorporated, as we shall see, does not affect the obligation to comply.

## 6. Transitional system, in particular

The following is a summary of the procedure provided in the second transitory provision, which allows us to see in practice how the RDL will be implemented, at least during the first year:

- RDL will come into force on 1 August. From that date onwards, the obligation to pass on and pay the fair compensation by the obligors (distributors of devices in Spain, both as manufacturers and as purchasers outside the Spanish territory for distribution in Spain).
- In October 2017, the obligors must provide the intermediary legal person (if it has already been incorporated) with a list of:
  - Units, capacity and technical features of reproduction equipment, appliances and media in respect of which the obligation to pay compensation arose during the previous quarter. According to sub-article 6 of the new article 25 of the Copyright Act, the obligation to pay the compensation arises with the transfer of ownership (sale) in Spain of the equipment, appliance or medium.
  - The quantities of equipment, appliances and media intended for distribution outside Spanish territory.

- The quantities of equipment, appliances and media excepted by virtue of the provisions of article 25(7)(a), i.e. those purchased by the public sector. The invoice date and number, and the name of the exempted purchaser, must be reported for each exempted delivery.
- Upon receipt of this quarterly information, the intermediary legal person will forward the same to the collecting societies, who will issue an invoice consistent with the information provided.

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