

STUDY ABOUT THE EFFECTS OF IMPLEMENTATION OF PROVISIONS REGULATING REPRODUCTION OF WORKS FOR PERSONAL USE

SUMMARY

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This study was commissioned by the European Committee under the Government of Republic of Lithuania in the framework of the Negotiations with the EU, co-ordination of participation of Lithuania in EU institutions and socio-economic EU related impact assessment programme. This study was also co-financed by the Danish local pre-accession assistance programme.

Executing agents of this study (names, institutions, functions during this study):

1. Dr. Mindaugas Degutis, TNS-Gallup Lithuania, Ltd. (formerly SIC market research) – fieldwork of the sociological survey, statistical analysis of the gathered data; project coordination.
2. Mr. Vidas Korsakas, Baltic Economics and Management Institute – economical analysis.
3. Dr. Vytautas Mizaras, Vilnius University, Law faculty –legal and administrative analysis.
4. Dr. Mindaugas Kiškis, Lithuanian University of Law -- legal and administrative analysis.
5. Mrs. Edita Ivanauskienė, Ministry of Culture, Copyright Department – informational assistance to experts.

Other stakeholders that separately contributed financial resources:

1. Ministry of Culture.
2. Lithuanian agency for defence of author's rights.
3. Association of IT companies "Infobalt".

The study was conducted in June July and September November 2003.

The problem that the study targeted:

At the moment in Lithuania there is an ongoing intense public debate on possible impact of implementation of provisions governing the reproduction of protected audio, audio-visual and multimedia works for personal use on remuneration of authors as well as business and consumer behaviour. While institutions representing the interests of authors are defending restrictions on unpaid reproduction, while associations of ICT equipment manufacturers (e.g. association "Infobalt") are trying to limit the scope of restrictions in order to free certain

SIC is a part of TNS - Europe's No.1 market information group. TNS currently employs over 9000 professionals in more than 50 countries. In 2001, TNS achieved a sales turnover of 1.0 billion EURO.

SIC, together with its media research arm, generated a sales turnover of 2.2 m. EURO in 2002. The Company completed 164,000 interviews, 160 focus groups, and over 800 mystery shopping assignments. Currently, SIC employs 75 permanent professional staff and more than 150 professional interviewers throughout Lithuania.

objects from additional tax burden. These provisions are described in 20th article of the newly amended Lithuanian law on Copyright and related rights. These amendments fully transpose directive 2001/29/EB of European Parliament and Council on Copyright and related laws in an information society.

The controversial Article 20^t of this law allows reproduction of named works for personal use only if authors, performers and producers of named works are compensated. The mechanisms of such compensation were to be laid out in the Resolution of the Lithuanian Government.

The very principle of such compensation is completely new; the consequences and impact of its implementation unclear and under researched. Therefore, a deeper analysis was needed in order to propose consensual and effective implementation mechanisms of the mentioned provisions.

Goals of the survey:

- A. To examine the economic, social, legal and administrative effects of implementation of 20th article of the Lithuanian Copyright and related rights law.
- B. To provide the Government with recommendations about how to implement Article 20.

Conclusions of the survey:

During the implementation of the study Lithuanian government decided, that provisions (mentioned in third and sixth parts of 20th article of Lithuanian Copyright and related rights law) governing reproduction of works and objects of related rights for personal use will be effective from January 1, 2004.

The law foresees that in a case of reproduction of audiovisual work or work recorded in a phonogram, the author of the work or holder of rights together with performers and manufacturers of audiovisual works and phonograms or their assignees have the right to receive a remuneration which is estimated in percents from wholesale prices of medium for reproduction of named works for personal use (except exported medium, medium for professional records and for needs of people with hearing or sight disabilities). Manufacturers and importers of analogue and/or digital audio should pay this remuneration or audio-visual medium except the cases when such medium is brought in (in a travellers luggage) for personal use only.

1. Sociological part of the study showed that:
 - a. The majority of respondents (inhabitants of Lithuania aged 15-74) know that the government safeguards rights of authors, performers and manufacturers of musical, audio, audiovisual and visual works.

- b. Lithuanian society clearly positively regards the governmental efforts to safeguard mentioned rights – 85 percent agrees that illegal copying at home is harming authors, performers and manufacturers.
- c. Next to this, most inhabitants of Lithuania are admitting that if Government would prohibit copying for personal use at home that would not stop the population from doing this – 80.2 percent are in agreement with such statement.
- d. On the other hand, there aren't as many legal buyers of recordings: audio recordings are bought legally by around 40 percent (third of respondents buy their records from private unlicensed sources) and only around 20 percent are buying video recordings legally (still fewer illegally – 8 percent).
- e. More than a half (58 percent) of Lithuanian population borrows recordings and only 14 percent of respondents are clearly copying recordings at home. In both cases young (before 40 years of age) and people with low or middle income are active – these demographic markers show us the main group of consumers relevant to this survey.
- f. When asked what medium they use for copying at home for personal use, most often respondents admitted usage of CDs and/or hard disk drives¹ (around 40 percent in both cases, while in fact CD's are slightly more popular – 44 percent of respondents use them).

2. Economic analysis showed that:

- a. The most important group of products, which will be affected by implementation of mechanism of provisions, is hard disk drives (HDD's). Other groups of objects are composing only up to 20 percent of products eventually affected by the mentioned provisions.²
- b. As a result of implementation of the provisions, there will be a possibility to collect from 2.1 to 2.7 million Litas of taxes in favor of holders of relevant rights. In respect to manufacturing of video recordings and to use of medium for professional needs the end tax profit would constitute something around 2 to 2.5 million Litas.
- c. The mechanism for implementation of provisions would also undoubtedly cause increase in computing equipment prices. This will mean also fewer PC's at households and higher fees for

¹ Association "Infobalt" stated in its comments to the study that there is still lack in comparative statistical data on how much of HDD's that are sold in Lithuania are used for professional purposes (i.e. not for activities related to entertainment). The statistics presented by this study should be compared with the data on how much HDD's are sold for companies or institutions in contrast with numbers of HDD's sold to private persons/households. This comparison remains an obvious task for future studies in this field.

² Again, association "Infobalt" is noting that the main difference of HDD's from other blank media is that the absolute majority of them are basic and integral parts of PC's or other relevant IT equipment and are not designed as removable medium for sharing digital data. In that respect this singles HDD's out from other taxable objects in law under question.

Internet-services, as well as troubles for public education system, which is an important user of blank media for non-profit needs.³

- d. The start up cost for implementation of these provisions is estimated to cost from 50 to 100 thousand Litas. This is counted on the basis of a presumption, that implementation costs are twofold: initial system setup and annual maintenance costs. It is much easier to prognosis annual maintenance because it is dependent on human resources (from 1 full time person (approximately 36 thou. litas annually) to two full time positions (72 thou. litas annually) or any other combinations of half day employment). There are too many uncertainties for estimation of initial system setup costs because it depends on smoothness of act's ratification (changes, updates, specifications might be required), distribution of preparation costs, quantity of additional research or studies. We assume that this category costs should be in a range of 50-100 thou. Litas, but overstep is still possible.
- e. Annual recurrent costs of maintaining the compensation mechanism (the system for implementation of the provisions) should be considerably lower – sharing the tasks between various implementing institutions will further reduce them. These costs are estimated to be between 36 to 72 thousand Litas per year.

3. Legal/administrative analysis showed that:

- a. Lithuania transposed and is implementing requirements of the EU and international law on authorship and related rights. The adopted regulations fully transpose EU directive No 2001/29/EB.
- b. Lithuanian mechanism of compensation for application of authorship and related rights in copying for personal use is basically the same as in majority of EU countries, but the experts of this survey are proposing to further develop it.
- c. This mechanism corresponds fully to the basic principles of Lithuanian legal system: the proportionality principle is thus implemented, which means that the interests of consumers to use the results of intellectual work is satisfied, while holders of rights are compensated for lost income.
- d. The provision to tax HDD's is controversial (furthermore, HDD's will be taxed according to their value and not capacity):
 - i. This does not protect the consumers against double taxation (when not only the license to reproduce the work is taxed, but also the medium into which the copy of the work is recorded).

³ Association "Infobalt" is stressing in its comments that there are no clear evidence provided in this study that HDD's are only in minor part used for professional purposes, and that obviously the estimated 2.7 million Litas in taxes collected from HDD's (in contrast with estimated 560 thousand Litas in taxes from blank CD's) is more likely to be the reason for including HDD's in the list of taxed objects.

- ii. There is no provision for compensation-mechanism for cases when blank medium is legally used for purposes other than reproduction of protected works, except for professional users and certain groups of people with disabilities, who are compensated for this taxation.
- e. On the other hand, by prohibiting reproduction of works or related objects for personal use without permission of holders of rights there would be a deviation from the present Lithuanian legal system. As it is demonstrated by the results of sociological part of the survey, various media are used to make copies of works for personal use, including HDD's, thus, when compensating the harm done to holders of rights, the provisions in question target at least formally appropriate, though controversial in a broader economical context, objects for taxation.

Recommendations made by experts of the study:

4. Recommendations on amendments of Lithuanian Law on Copyright and related laws:

- a. Regarding elaboration of 20th article of this Law:
 - i. It is purposeful to reject the condition of single copy and replace it with limit for the number of copies with a special condition that a user may not make more copies than it is reasonably necessary for satisfaction of her/his personal needs.
 - ii. It is expedient to describe more clearly reasons for making a personal copy by retaining personal needs of the consumer and by abstaining from references to non-commercial purposes, because of the law clearly presumes the latter to be in the context of personal needs.
 - iii. It is reasonable to foresee a right for the Government or its authorized institution to establish additional exceptions for cases when an empty medium is not taxed (as it is in Finland, Sweden and Estonia – see full report of the study, part IV, points E and F)⁴.
- b. It is recommendable to change provisions enumerated in article 72, part 2 by establishing a principle of equal participation for holders and users of rights at the council of Copyright and related rights.
- c. It is recommended that the provisions mentioned in the article 259 of the Code on Administrative breaches of Law be changed by abandoning the participation of for collective administration societies in procedures of fining for breaching the law.
- d. It is recommended that the definition of the “copier” be clarified to foresee that the copies may be made only of legally published or publicly issued work.

⁴ It might be added that to the view of Association “Infobalt” the legislators should not follow the “bad examples in countries of European Community, where, in some cases, dominant societies for collective administration are trying to impose taxes on all IT equipment, thus breaching the rules of Competition”. Association “Infobalt” recommends narrowing the list of taxable objects in law under question to audio- / videotapes and CD's.

- e. Because of the fact that there is a growing number of companies providing self-service to copy films or phonograms for a fee, it is recommended to state that it is unlawful to draw other persons to the copy making or to use publicly available equipment in libraries or commercial spaces, or other public spaces for such actions.
 - f. Part three of 20th article of Law on Copyright and related rights that regulates the scope of remuneration foresees a tax of 6 percent from empty audio or video medium's wholesale price. In regard to the fact that the wholesale price in case of payment for a medium in process of being imported is not yet known, it is recommended to foresee that remuneration is paid when selling and/or otherwise conveying the medium into a possession. It is also reasonable to abandon the description "wholesale" because it burdens the procedure of administering the remuneration: in each case then a wholesale price should be defined.
 - g. It is recommendable to establish a fixed value of remuneration on the basis of duration of playing a record and not on the basis of its price. In that case the importers and manufacturers will not be interested in hiding the prices of empty media and there will be no need to change the Law if the prices on empty media would drop significantly.
5. Recommendations on elaboration of order of remuneration for reproduction of audiovisual works or phonograms for personal use:
- a. In regard to the fact that in some EU countries there is a possibility foreseen for an institution authorized by the government (for example, Ministry of Education and Science in Finland) to regulate additional exceptions on tax-free use of empty digital or analogue media, for example when they are used for educational or other relevant reasons unrelated to the right of reproduction of works for personal use, we suggest to foresee analogous measures in the Lithuanian Law as well.
 - b. Additional suggestions in regard to recipients of the remuneration should be submitted only when there will be a particular methodology of surveying the calculations of remuneration paid out to the subjects of the rights foreseen in 22nd clause of this order.
 - c. In the long-term perspective it is recommended to reconsider possibility to tax the reproduction-equipment.
 - d. It is recommended that the remuneration should be paid out not in the instance of customs execution of the products before their release into domestic circulation, but on the instance of their sale on Lithuanian markets.
 - e. For reasons of conformity between part three of 20th article of Law on Copyright and related rights and Resolution No. 1106 (clause 1) of the Lithuanian Government on order of payment and distribution of remuneration for reproduction of audiovisual works or phonograms for personal use, we recommend to exclude "transmitting organizations" from this clause.

- f. In order to reduce administrative costs, it is recommended to consider the question whether it is reasonable to distribute the tasks of collecting, distributing and paying the remuneration among different institutions of collective administration. It is to be considered whether these functions should be assigned to one single society for collective administration.

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