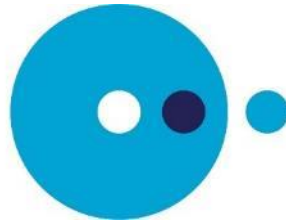


de Thuiskopie



# PRIVATE COPYING The Netherlands



Hester Wijminga  
managing Director



# Contents

- Decree 2018 – 2020
- Revenues
- “Copydan” copies
- Professional Use Smartphones
- Challenges and court cases



## Decree 2018-2020

- CD/DVD tariffs abandoned (analogue earlier)
- Wearables with internal storage and USB sticks
  - More copying on smart phones and settopboxes -> increased levies
  - Cloud storage: personal lockers
    - uplift on tariffs used for cloud copying
- Inflation correction 5%
- Expected revenue: 30.6 million: stabilized because of definition copies to be remunerated changed.



# Levies 2015-2017 and 2018-2020

<i>Devices</i>	<b>2015-2017</b>	<b>2018 - 2020</b>
Blank cdr/dvdr	€ 0.02	-
Desktop/PC/notebook/server/mediacenter	€ 3.50	€ 2.60
Tablet	€ 3.50	€ 2.60
Smartphone/Phone with MP3 function	€ 3.50	€ 4.70
Portable audio/video player	€ 1.40	€ 1.20
Settopbox wit hard disk / HDD Recorder	€ 3.50	€ 3.80
E-reader	€ 0.70	€ 0.80
External HDD/SSD	€ 0.70	€ 0.60
USB-stick	-	€ 0.60
Wearables with storage capacity	-	€ 1.20



## “Copydan” copies

65. Accordingly, with regard to the effect on fair compensation of the fact that the rightholder has consented to the use of files containing protected works, the Court has held that where a Member State has decided, pursuant to Article 5(2) of Directive 2001/29, to exclude, from the material scope of that provision, any right for rightholders to authorise reproduction of their works for private use, any authorising act a rightholder may adopt will be devoid of legal effects under the law of that State. Consequently, such an act has no effect on the harm caused to rightholders due to the introduction of the measure depriving them of that right and cannot, therefore, have any bearing on the fair compensation owed, whether it is provided for on a compulsory or an optional basis, under the relevant provision of that directive (see judgment in *VG Wort and Others*, C-457/11 to C-460/11, EU:C:2013:426, paragraph 37).

66 Since, in circumstances such as those set out in paragraph 65 above, such authorisation is devoid of legal effects, it cannot, of itself, give rise to an obligation to pay remuneration of any kind in respect of the reproduction, for private use, by the user of the files concerned to the rightholder who authorised such use.



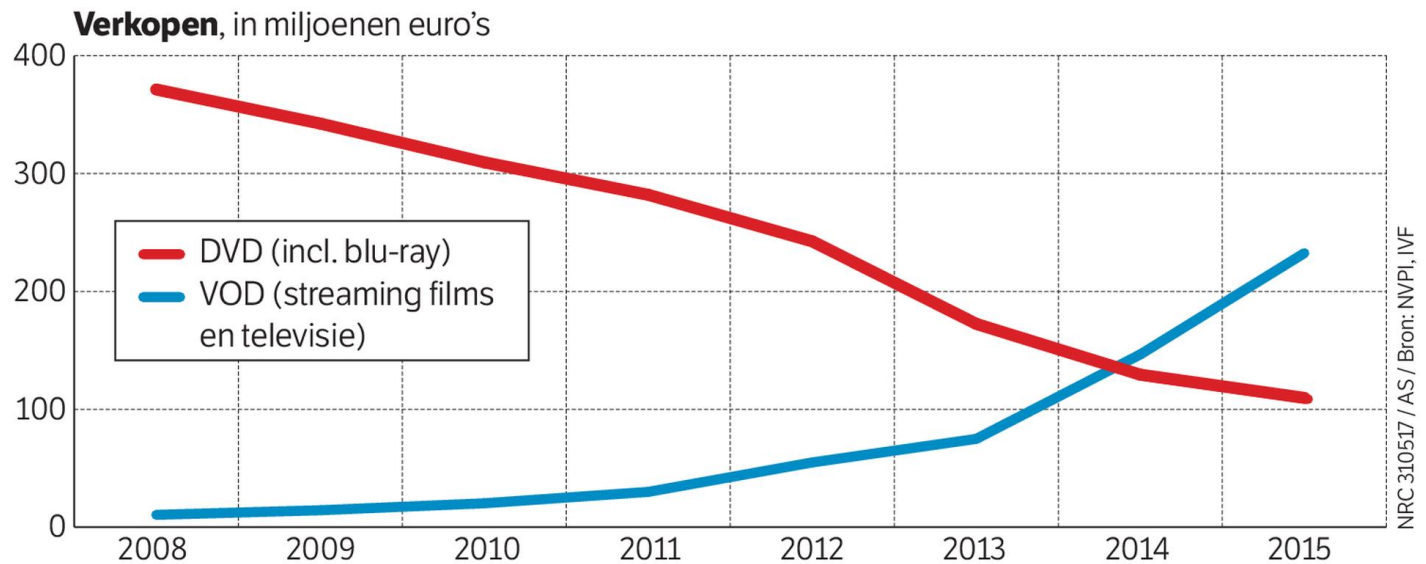
# Source of Copies made – yes or no within scope of Private Copying Regulations

	2016 and beyond	2015 and earlier		2016 and beyond	2015 and earlier
<b>Paid:</b>			<b>Friends/acquaintances:</b>		
Originals physically bought	Yes	Yes	Trough social media	Yes	Yes
Bought Online	Yes	No	Copy was given	No	No
download from paid stream	Yes	No	Borrowed Originals	Yes	Yes
Digitalized collection	Yes	Yes	Other/not specified	No	No
Original given	Yes	Yes	<b>Other:</b>		
<b>Unpaid downloads:</b>			Originals user generated	No	No
podcast/vodcast	Yes	Yes	Rented Originals	Yes	Yes
YouTube	Yes	Yes	Copy from Television/Radio	Yes	Yes
Other (with consent)	Yes	Yes	From appstore1	No	No
Collection free of rights	No	No	Source unknown	No	No
Torrent site etc.	No	No			
download unpaid stream	Yes	Yes			
Other/not specified	Yes	Yes			

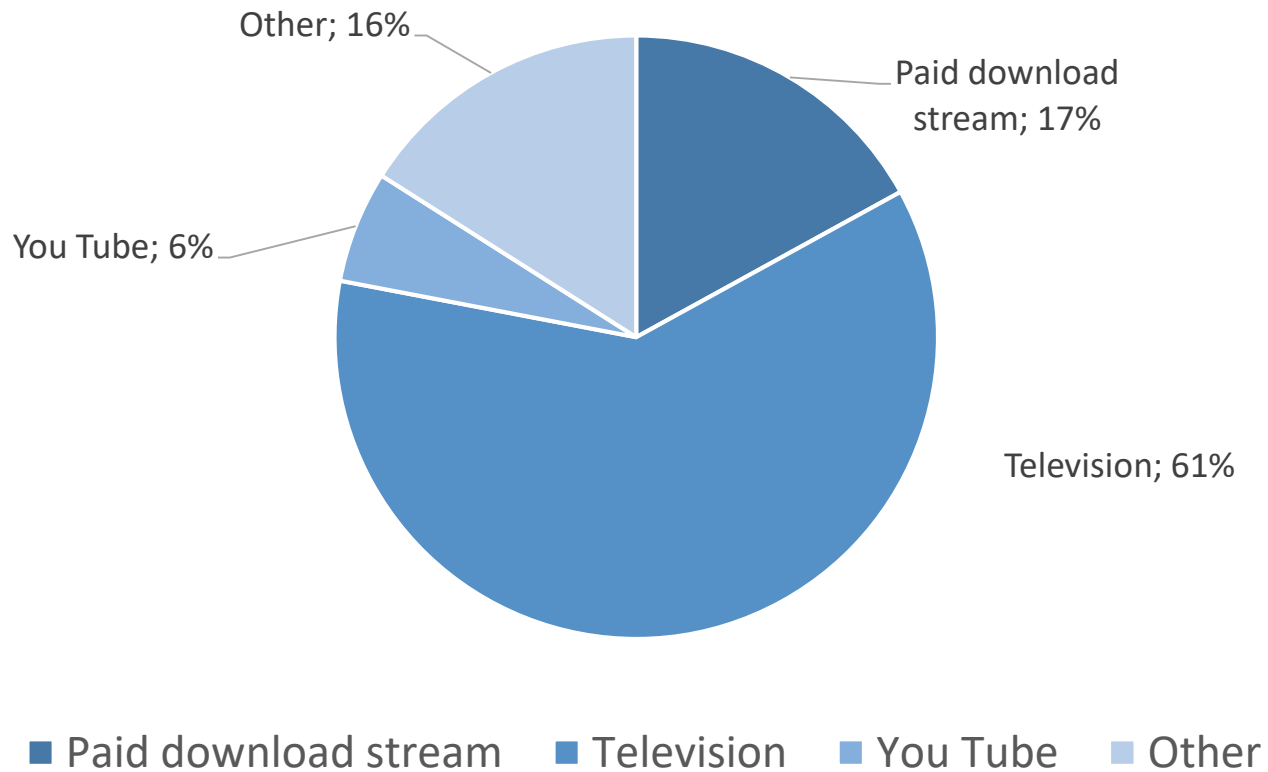
# Market survey

Source of copies changing:

- Paid download from stream (Spotify, Netflix etc)
- You tube



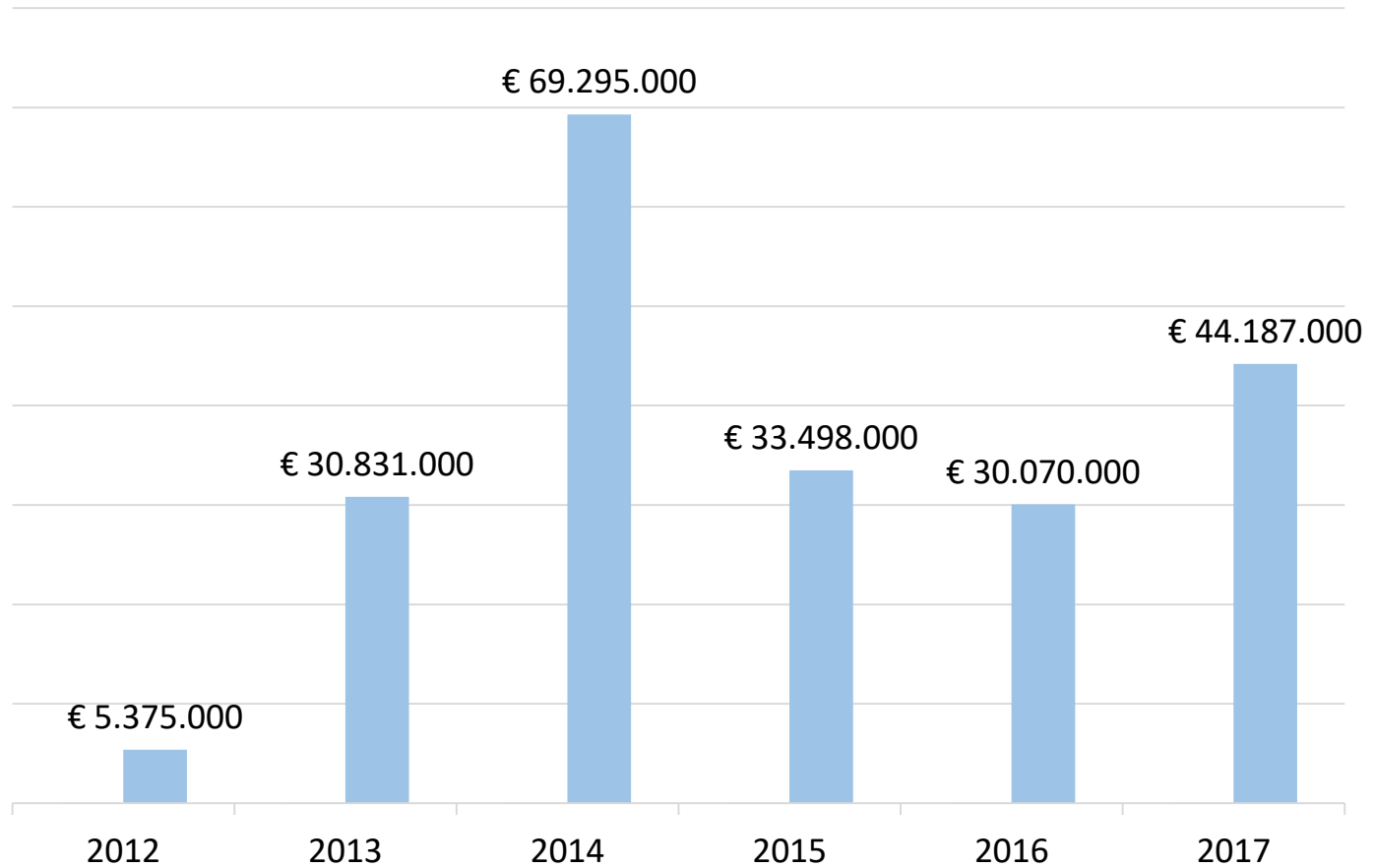
# Audiovisual copies legal source



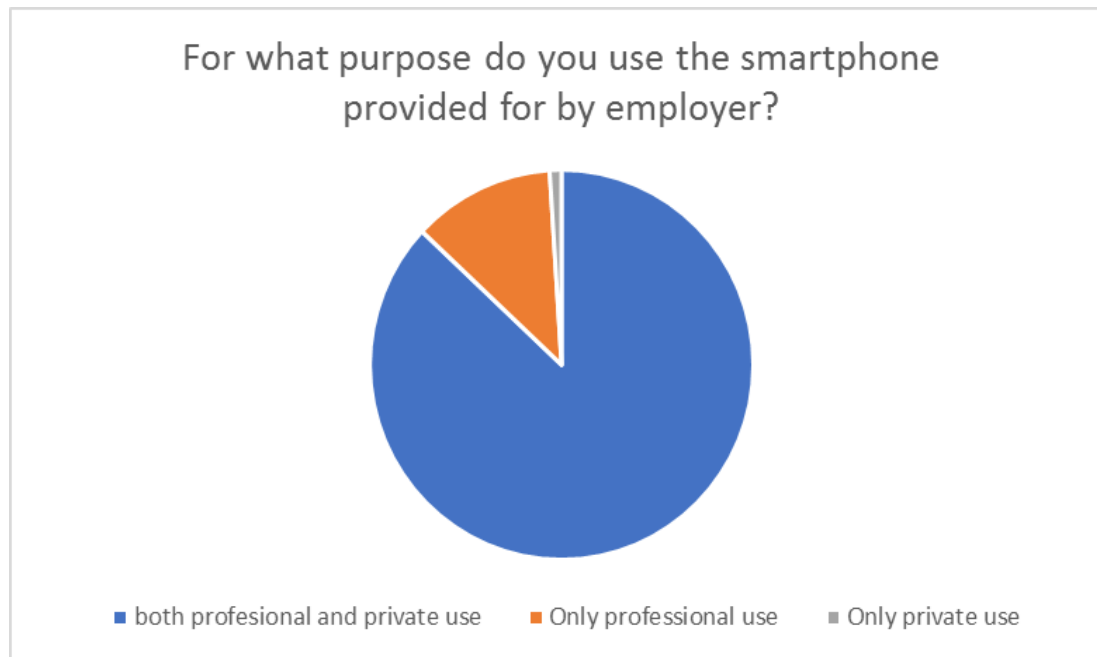




# Revenues Netherlands



# Professional use smartphones



Smartphones additional proof based on separate study:

Provide ThuisKopie with a copy of the user agreement or user regulation, showing that private use within the meaning of Section 16(c) of the Copyright Act is not permitted.



## Hot topics

- Discussions on mandatory visibility of levies on invoices
- Discussion on car audio systems with hard drive
- Copydan – verdict: change in definition of leviabile private copy : challenged
- Discussions on cloud – NVPR: payment by providers and not on device ?



# Court cases

- Court cases:
  - HP/Dell/Imation/FIAR Supreme Court
    - Professional use smartphones
    - Flawed harm calculation
      - Lost sales
      - International benchmark
      - collected sum without illegal source must be lower
      - Professional use



# Court cases

## ○ Court cases: Imation

- Supreme Court ruling of 6 October 2017: In the Dutch system of private copying compensation (also) the person liable for payment (importer) can be entitled to claim repayment of overpaid private copying levies, irrespective of the basis on which the claim is based.
- → Refund to importer because of professional use even if consumer paid (before Padawan)

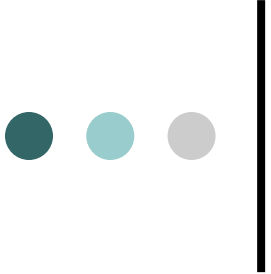


# Distribution

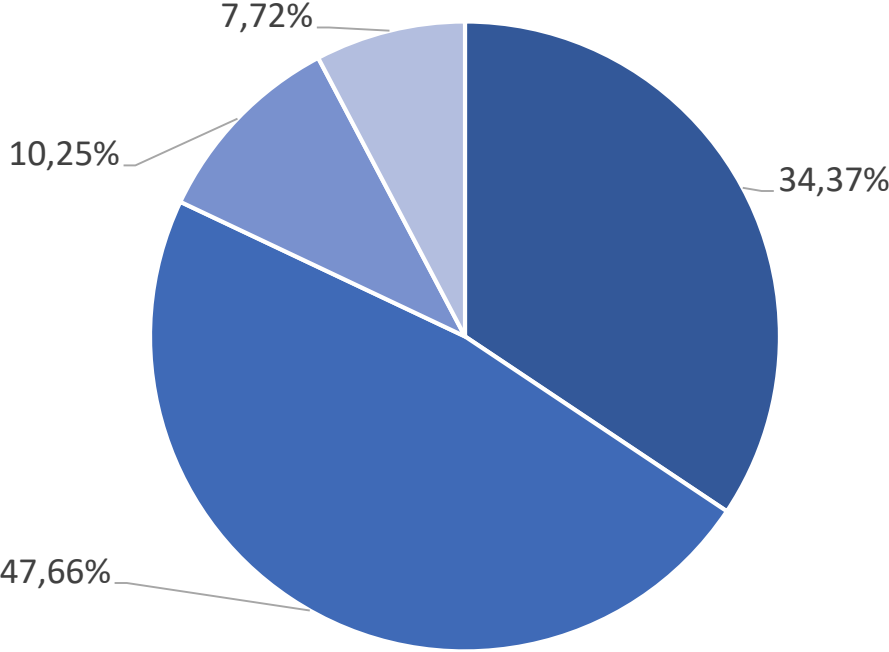
1<sup>st</sup> step: total of collected funds towards audio, audio-visual, art or written works

2<sup>nd</sup> step: divided between authors, performers, producers, publishers organisations

- Changes in source of copies must be translated into distribution toward individual rightsholders → research on Vod downloading



# Main distribution key



■ Audio ■ Video ■ Written works ■ Visual Works



## Sub distribution keys

- **Audio**: authors, performers and producers
- **Audio Visual**: authors (directors, screenwriters, music authors, and literary authors), producers and performing artists (actors, dancers).
- **Written Works**: Authors, publishers (Reprobel fix?)
- **Visual Arts**: Photographers, visual artists, illustrators, designers





# More information

International Survey on Private Copying  
Law & Practice

[www.thuiskopie.nl](http://www.thuiskopie.nl)

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