

# PRIVATE COPYING: UPDATE ON THE SITUATION IN SPAIN

## *BIEM PRIVATE COPYING FORUM*

*Cristina Perpiñá-Robert Navarro*

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# BACKGROUND- STATE BUDGET SCHEME

2011-2016

- **Royal Decree Law 20/2011:** abolishes levy system. Fair compensation is to be financed through **General State Budget**.
- **Royal Decree 1657/2012:** Implements 2011 provision:
  - PROCEDURE
  - LIMITATION: Annual amount- within budgetary limits
- **2014:** Spanish Supreme Court reference for **preliminary ruling** to European Court of Justice (**Case C-470/14 EGEDA**)

## 2011-2016

- **Law 21/2014, November 4<sup>th</sup>, amends the Spanish Copyright Law:**
  - (1) Consolidates State Budget financing of remuneration. (*art. 25.1 § 2*).**
  - (2) New SCOPE of private copy exception (*art. 31.2 & 25,1 § 2*)**
- **Purpose:** necessary **link** between compensation and harm: **need to reduce the scope of the exception in order to justify the reduction of the annual compensation**

# ECJ RULING JUNE 9, 2016/ C-470/14 EGEDA

## Spanish law is inconsistent with Art. 5(2)(b) of the Infosoc Directive:

Article 5(2)(b) of Directive 2001/29/EC (...) must be interpreted as **precluding a scheme** for fair compensation for private copying **which, like the one at issue** in the main proceedings, **is financed from the General State Budget in such a way that it is not possible to ensure that the cost of that compensation is borne by the users of private copies**

Since Spanish system is financed from the General State budget (by all taxpayers, including legal persons (§39), and no exemptions nor reimbursements are included in the procedure, such a scheme “**is not such as to guarantee that the cost of that compensation is ultimately borne solely by the users of private copies**”, and therefore the Spanish scheme is incompatible with Article 5(2)(b) of the InfoSoc Directive (§41-42).

# IMPACT OF THE LEVY ELIMINATION

*No reduction in the prices– consumers have not benefitted from the Spanish system*

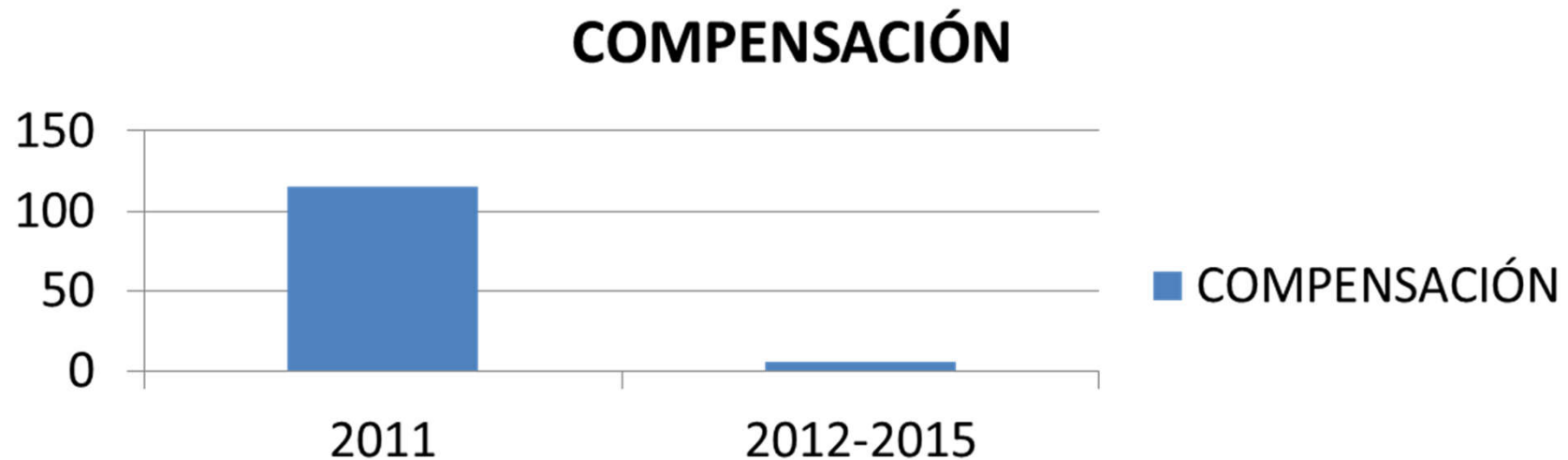
EQUIPO O SOPORTE	2º trimestre 2011	3er trimestre 2011	2º trimestre 2012	3er trimestre 2012
CD-R	0,24€	0,25€	0,31€	0,29€
DVD	0,29€	0,24€	0,34€	0,32€
Mp3	39,00€	38,00€	37,00€	36,00€
Mp4	64,00€	62,00€	62,00€	67,00€
Discos duros	106,00€	103,00€	134,00€	131,00€

## Consequences:

+8% in MP4, +16% CD-R, +33% DVD y +27% in Hard Drives

# IMPACT OF THE LEVY ELIMINATION

*Harm – compensation drops from 115 Million€  
(2011) to 5 Million € (2012-2015)*



## 2017-2018- RETURN TO LEVY SYSTEM

- **Spanish Supreme Court Ruling: 25 of OCTOBER 2016:** Declares that the Spanish compensation scheme is not compatible with EU Law. **Annuls State Budget remuneration scheme.**
- **Royal Decree 12/2017, July 3: amends articles 25 and 31 of Spanish Copyright Law**, restoring to a larger extent, the traditional private copy remuneration scheme, abolishing the State budget determined remuneration.
  - **In force since August 1, 2017- 1<sup>st</sup> Payments due from 4Q 2017**
  - **Provisional tariffs set.**
  - **Exemptions**
  - **Reimbursements**
  - **Single Digital One-Stop Window (*Ventanilla Única Digital*).**

## ROYAL DECREE 12/2017, JULY 3RD

### ○ PROVISIONAL TARIFFS (until July 2018)

CD RECORDERS	0,33
DVD RECORDERS AND COMBINED	1,86
CDs	0,08 – 1,10
DVDs	0,21 – 0,28
USB and other memory cards	0,24
EXTERNAL HDD	6,45
INTEGRATED HDD/PC	5,45
MP3/MP4/TABLETS	3,15
smartphones	1,10

**Definite tariffs** to be set by an Order of the Presidency Ministry, following the joint proposal of the Ministry of Culture and the Ministry of Energy, Tourism and Digital agenda, after joint negotiation process between CMPs and Industry. The new tariffs to be reviewed, anytime considering technological innovation and market evolution, but at least every **three years**.



## ROYAL DECREE 12/2017, JULY 3RD

### ○ EX ANTE EXEMPTIONS

- **Public sector entities**, as defined by the Public-Sector Contracts Law, Congress, Senate, General Council of the Judiciary, Court of Auditors, Ombudsman, legislative cameras of the Autonomous Regions, and analogue institutions. (Public certificate issued by relevant public entity required)
- **Natural or legal persons who are final consumers**, who justify the exclusively professional destination of the equipment and devices provided that said acquisitions are for purposes clearly unrelated to such private copying (certificate issued by the One Stop window required)
- **Professional copies** made by entities authorized to reproduce works in the course of their business (certificate issued by the One Stop window required).
- Copies made by natural persons for private use outside the territory of Spain as **travelers**.

## ROYAL DECREE 12/2017, JULY 3RD

### ○ REIMBURSEMENTS

- **Final consumers** who are not exempted, can request reimbursement of levies paid, when they can justify the **exclusively professional destination** of the equipment, device or material or in the case of intracommunity export or delivery
- Minimum 25€
- 1 year prescription period

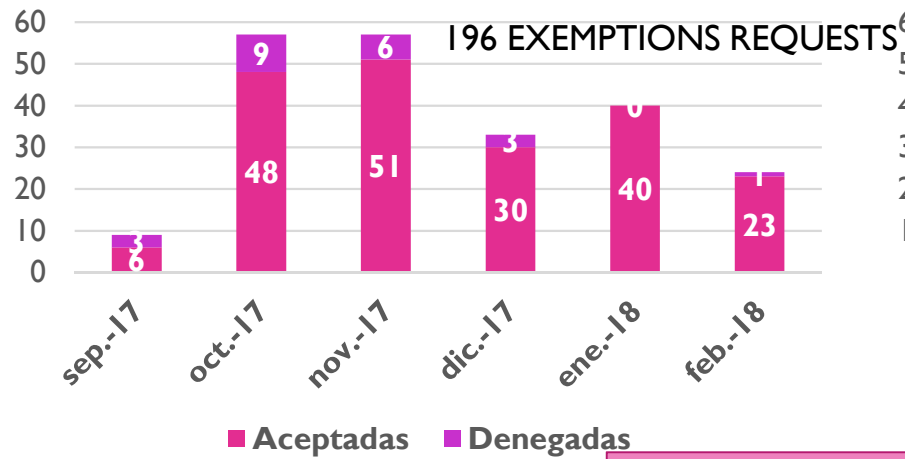
# Single Digital One-Stop Window (*Ventanilla Única Digital*)



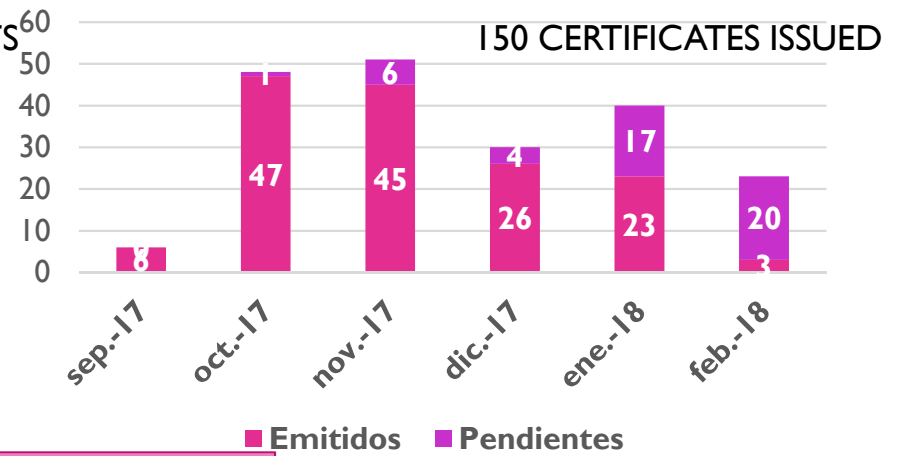
- **Created by all Spanish CMOs (Private association)**
- **Purpose:**
  - **Processing of levy exemptions (incl. issuance of certificates) and reimbursements**
  - **Determination and delivery to all CMOs of the periodical list of equipment and devices subject to PC**
  - **Unified invoicing on behalf of all CMOs**
  - **Control and audit of acquisitions by Debtors and effective compliance control re. certificates**
  - **Client service**



## EXEMPTIONS



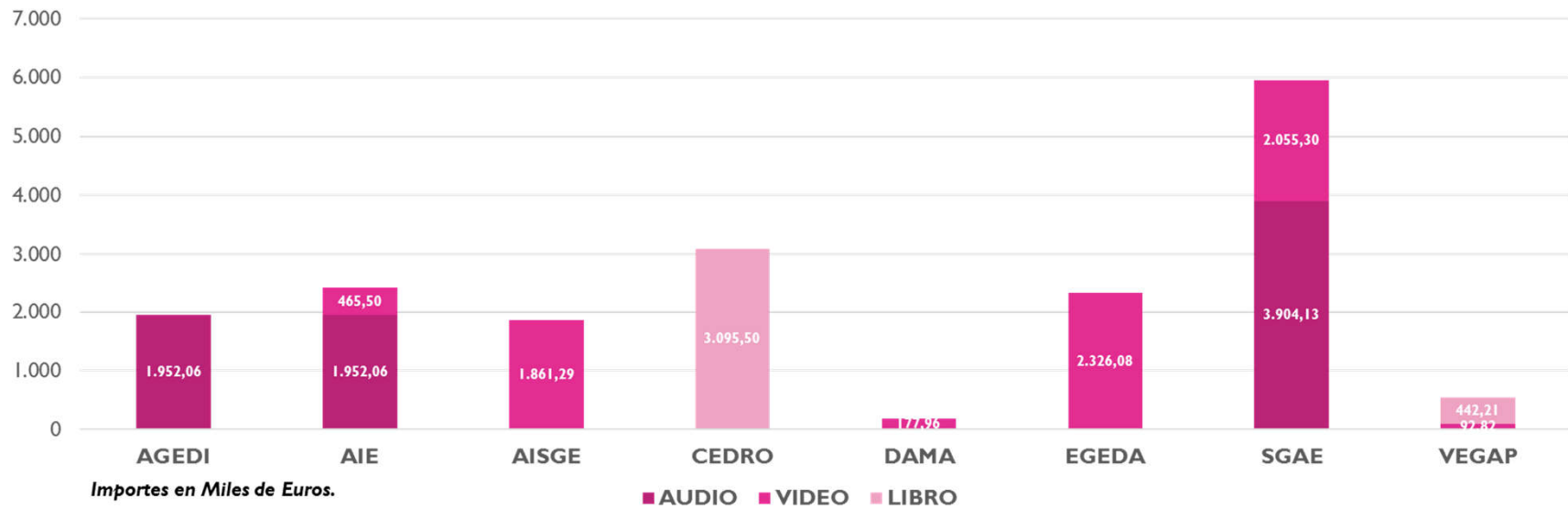
## CERTIFICATES



**ECONOMIC VALUE OF  
EXEMPTIONS AND  
REIMBURSEMENTS  
554.139,63 €**



# PRIVATE COPYING INVOICES Q3 / Q4 BY CMO



THANK YOU!!

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