



Copyright levy: amendments applicable as of 1 July 2023

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29 March 2023 saw the publication in the Official State Gazette of [Royal Decree 209/2023 of 28 March 2023](#) (hereinafter “RD 209/2023”), thus **completing the regulatory implementation of the fair compensation for private copying (the so-called “copyright levy”, also known as “copyright tax”)** -provided for in article 25 of the Revised Intellectual Property Law (RIPL)-, approved by Royal Legislative Decree 1/1996 of 12 April 1996. This new Royal Decree is set to enter into force on **1 July 2023**.

The “copyright levy” -as defined in article 25 of the RIPL- serves as fair compensation for private copying, paid at a flat rate for each of the methods of reproduction of works circulated in the form of (i) books or publications, deemed by regulation to be equivalent, and (ii) phonograms, videograms and (iii) other sound, visual or audiovisual media, by means of non-typographical devices, exclusively for private (i.e. not professional or business) use, and for ends that are neither directly nor indirectly commercial.

This compensation is intended to adequately compensate the damage caused to creditors as a result of reproductions made under the private copying exception, and it shall be determined for each means of reproduction on the basis of the equipment, devices and media appropriate to create such reproduction, which were manufactured on Spanish territory or acquired elsewhere with a view to their commercial distribution or their use in that territory.

1. Background

Although the “copyright levy” is not new to Spanish law, a brief recap of the legislative amendments that it has undergone since it was first introduced should be provided in order to put its current status into context.

✓ Background - original version

The original article 25 of the Intellectual Property Law (Official State Gazette of 22/04/1996) included the so-called “**right to remuneration for private copying**” and provided a list of equipment and the applicable prices.

This text underwent a series of amendments, primarily by means of Law 5/1998 of 6 March 1998 and Law 1/2000 of 7 January 2000.

✓ Initial version (2008)

At EU-level, [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 society¹ was adopted in 2001.

This Directive harmonised the main rights conferred on authors and the holders of related rights (the reproduction right, the right of communication to the public and the distribution right) and, to a lesser extent, the exceptions and limitations to which those rights were subject. It also harmonised the protection of technological measures and rights-management information, penalties and remedies.

The need to incorporate the aforementioned Directive into Spanish law gave rise to the adoption of [Law 23/2006 of 7 July 2006](#), which reformed the regime provided for in article 25 of the RIPL by establishing “**fair compensation for private copying**”. Article 25.6 provided that the list of equipment and prices must be approved by the Ministries of Culture and of Industry, Tourism and Trade.

This list was finally approved by means of [Order PRE/1743/2008 of 18 June 2008](#), which set out a list of the equipment, devices and media on which fair compensation for private copying must be paid, the amounts applicable to each medium and the relevant breakdown by method of reproduction.

The first “version” of fair compensation for private copying, known at the time as the “copyright tax”, was thus implemented in 2008.

¹ Directive 2001/29/EC was subsequently amended on a number of occasions: (i) by [Directive \(EU\) 2017/1564](#) on certain permitted uses of certain works and other subject matter protected by copyright and

related rights for the benefit of persons who are blind, visually impaired or otherwise print-disabled; and (ii) by [Directive \(EU\) 2019/790](#) on copyright and related rights in the Digital Single Market.

✓ **New scheme financed by the General State Budgets (2011)**

The 2008 scheme was abolished in December 2011 and replaced by a new scheme, adopted by means of [Royal Decree-Law 20/2011 of 30 December 2011](#), which would be financed by the General State Budgets (GSB).

In its judgment of 9 June 2016 (C-470/14), the CJEU ruled that financing such a scheme from the General State Budgets was incompatible with EU law since it was not possible to ensure that the cost of the relevant compensation was borne by the users of private copies.

This led the Spanish Supreme Court to annul [Royal Decree 1657/2012 of 7 December 2012](#), regulating the procedure for financing fair compensation for private copying from the General State Budgets (implementing Royal Decree-Law 20/2011), several months later.

✓ **Current scheme (2017)**

July 2017 saw the approval of [Royal Decree-Law 12/2017 of 3 July 2017](#) (RD-Law 12/2017), establishing a new system for the compensation provided for in article 25 of the Revised Intellectual Property Law (Royal Legislative Decree 1/1996 of 12 April 1996).

This system, which entered into force on 1 August 2017 (i.e. in the third quarter of 2017), replaced the previous GSB-financed system governing fair compensation with a scheme based on the payment of a specific sum by the manufacturers, importers and distributors of reproduction equipment, devices and media.

The new system was in a first stage developed by [Royal Decree 1398/2018 of 23 December 2018](#), which set out, inter alia, the procedure for paying the compensation.

As a result, the entity (association) “Ventanilla Única Digital” was created (G-87301404, registered in the Spanish National Associations Register under number 608.378) by the intellectual property management organisations AGEDI, AIE, AISGE, CEDRO, DAMA, EGEDA, SEDA, SGAE and VEGAP.

This Association was created to comply with the provisions of paragraphs 9 and 10 of article 25 of the RIPL:

“9. Fair compensation shall be paid through collective management organisations pursuant to the procedure set in place for such purposes by royal decree, and it shall be for such organisations to provide debtors and jointly liable parties with a unified notice of the billings that they are required to pay.

10. Collective copyright management organisations shall participate in the formation, pursuant to the legislation in force, management and financing of a legal entity that shall discharge the following duties on their behalf:

- a) The management of payment exemptions and refunds.
- b) The receipt and subsequent issuance to the collective management organisations, on a regular basis, of lists of reproduction equipment, devices and media triggering the obligation to pay compensation, prepared by the debtors and, as the case may be, by the parties holding joint liability, in the context of the procedure for payment of the compensation determined by means of royal decree.
- c) The unified billings notice.”

However, as is now recognised in the preamble of the [Royal Decree 209/2023 of 28 March 2023](#), the previous regulatory development commencing back in 2018 had to be “completed” in order to comply with final provision one of RD-Law 12/2017 of 3 July 2017 ending, in turn, « with the **provisional** regime laid down in transitional provision two of the aforementioned Royal Decree-Law, the effects of which would apply ‘until the entry into force of the royal decree provided for in final provision one’».

Such transitional provision two of RD-Law 12/2017 set out the list of equipment and amounts applicable until the entry into force of the new Royal Decree 209/2023.

2. What new measures are ushered in by this new Royal Decree 209/2023?

The aim of this new Royal Decree 209/2023, as its title suggests, is to **permanently** establish (the system in force to date, provided for in RD-Law 12/2017, was provisional) the following aspects:

- (i) the list of reproduction equipment, devices and media on which fair compensation for private copying must be paid;
- (ii) the amounts applicable to each reproduction method; and
- (iii) the breakdown distribution between the different reproduction method provided for in article 25 of the RIPL.

Besides completing the process of implementing the obligation laid down in article 25 of the RIPL, the new legislation introduces a number of developments, such as:

- The specific inclusion of press publications, including newspapers and magazines in both digital and paper format, under **copyrighted works in respect of which** the compensation applies..
- The **list of equipment, devices and media referred to** in article 2 of Royal Decree 209/2023 and included as an Appendix provides **greater detail** and also introduces developments as regards **amount**. For example:
 - An effort is made to draw a distinction between the various devices (albeit, in some cases, more theoretical than in practice, with the exception of hard drives) on the basis of storage capacity.
 - Smartwatches have been included on the list.
 - The cost of tablets (up to a capacity of 64.01 GB) has increased, with a larger amount being allocated to computers and laptops, together with HDD hard drives of over 6.01 TB.

3. Practical aspects

Since its creation, the design and operation of this compensation has been controversial, raising various doubts about its applicability and the effective achievement of its intended purpose. Today, the evolution of technology and the changes in consumption habits, including access to this content via streaming, could lead to new debates on the matter. Nonetheless, the fact of the matter is that the legislation is in force, with the new list of equipment and prices set to apply as of 1 July 2023 (i.e. **from the third quarter of 2023**). Accordingly, the parties bound by such legislation must ensure that they have satisfied the formalities for correct payment of the compensation.

As part of its management duties, the "Ventanilla Única Digital" Association may carry out **checks** to identify cases where the information necessary for the relevant payment, as referred to in article 6 of Royal Decree 1398/2018 (list of units, equipment, devices and media), has not been reported:

"Debtors shall provide the legal entity, within a period of 30 calendar days of the end of each calendar quarter, with a list of the equipment, devices and media, including their technical features and capacity -to the extent relevant for determination of the amount of the applicable compensation-, triggering the obligation to pay compensation during the quarter concerned"

At KPMG we have a multidisciplinary team that can assist with the issues that will arise from the changes coming into force imminently.

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