

Cost reduction: Say goodbye to the private copying levy

Abolition of the levy on private copying

Following years of judicial disputes and heated social controversy surrounding (i) which devices, equipment and materials should be subject to the payment of the private copying levy and (ii) for what amounts, Spain's People's Party government (*Partido Popular* or "**PP**") decided in December to say "this has gone too far" and, through *Royal Decree-Law 20/2011, of 30 December, on urgent budgetary, tax and financial measures to remedy the public deficit* ("**Royal Decree-Law 20/2011**"), has chosen to abolish the so-called "private copying levy" or –as it is referred to in the Spanish Copyright Act (*Ley de Propiedad Intelectual* or "**LPI**")– "*equitable remuneration for private copying*".

Entry into force of the legislative reform

According to Final Provision Number Twenty-Three of Royal Decree-Law 20/2011, the abolition of the levy became effective on **1 January 2012** and is not retroactive.

Effects of the abolition of the private copying levy

Following the abolition of the private copying levy, as of 1 January 2012 there is no longer any legal obligation for the manufacturers, importers and distributors of equipment, devices and materials and others individuals mentioned in Article 25.4 LPI to pay the collecting entities any amount whatsoever as a private copying levy.

However, the immediate entry into force of Royal Decree-Law 20/2011 may give rise to transitional situations, governed partly by the old regulation of Article 25 LPI and partly by the new Royal Decree-Law 20/2011, in which:

- a) The obligation to pay the private copying levy will still exist **after 1 January 2012**; and
- b) The failure to fulfil this obligation –even involuntarily– could give rise to the initiation of legal proceedings.

In particular, we refer to **those cases in which the obligation to pay the private copying levy arose, according to Article 25.12 LPI, prior to 1 January 2012**, despite the fact that the issue of invoices and/or the payment of the purchase price of the devices, equipment and/or materials occurred **after 1 January 2012**.

Therefore, it will be fundamental to determine on a case-by-case basis, depending on the details of each specific case, if ownership of the devices, equipment and/or materials was transferred before or after 1 January 2012, since in the former case the levy payment obligation would exist, whereas in the latter case it would not.

Future implementing regulations of the new payment regime for copyright rights-holders

The abolition of the regime on the private copying levy set forth in the former Article 25 LPI by Royal Decree-Law 20/2011 consequently entails repealing, as from 1 January 2012, the regime on settlement returns, withholdings and payments by the so-called "secondary parties" to whom this law applied and the rest of the administrative obligations regarding the payment and invoicing of the private copying levy.

All of these issues, as set out in Additional Provision Ten of Royal Decree-Law 20/2011, will be governed by regulations which will establish the procedure for paying those who are to receive the equitable remuneration for private copying.

This notwithstanding, and subject to the corresponding regulations which will implement this Royal Decree-Law, it is important to note that those who were obliged until now to pay the private copying levy are no longer required to do so, as the private copying levy will now be charged against the General State Budgets.

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

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