



Keeping the cloud free of private copying levies

Cloud services are important drivers of growth and competitiveness for the benefit of European businesses and consumers. Cloud computing is expected to create 400 000 new small and medium-sized enterprises (SMEs) in the European Union, to add nearly 1000 billion euros to EU GDP between 2015-2020 (contributing 1% to 4% to the growth rate), and to create of up to a million jobs in the EU¹. For consumers, cloud services delivers a host of useful day to day applications, new opportunities to share and store personal content, and new ways to consume creative content anytime, anywhere.

The signatories of this communication are concerned, however, that recent proposed policy developments would considerably undermine the potential of cloud computing for growth and innovation—as well as consumer welfare—in Europe through the application of levies to cloud services.

Cloud services refers to software and Internet technology which allows information to be provided to users as a service from any connected device. It covers a range of services which are difficult to encapsulate in single sweep: email, calendars, word processing and other productivity and collaborative tools; photo sharing and editing tools; online games including massive multiplayer online games; cloud lockers; and other cloud based productivity tools.

Asserting an outdated model over professional, private or User Generated Content (UGC): Imposing rules devised for an age of physical media and content exclusively produced for commercial distribution ignores the fact that the vast majority of content in the cloud is professional or created by users. Content such as emails, work documents or holiday photographs belongs to the user and does not need to be licenced or paid for. About eight in ten Europeans consumed UGC or have participated in a social

¹ See e.g. J.M. Barroso, 'Innovating in the digital era: putting Europe back on track', presentation to the European Council of 24-25 October 2013, available at http://ec.europa.eu/news/pdf/131024_en.pdf

network during the past 12 months; about three in ten uploaded a video or personal picture online; and nearly two in ten were editing or managing a blog or website. This is not content produced with a view to commercially asserting copyright. Yet levies on cloud would catch all this content, and mandate intrusive and highly misguided levies on personal content to the detriment of nearly all citizens and for the benefit of a small group.

A competitive drag on the European cloud, European innovation and growth:

Imposing levies on the cloud would be a drag on the competitiveness of the European cloud industry: European cloud service providers competing globally will face high administrative and cost burdens in their domestic markets. This in-built European burden will be a competitive disadvantage for European cloud companies seeking to expand and succeed in global markets. Existing levies have come at the cost of political gridlock, highly variable and unpredictable levels of levies, and a stream of lengthy and costly litigation, including cases before the European Court of Justice. Saddling cloud services with levies is the best way to ensure Europe cloud service providers enter the global market at an immediate competitive disadvantage.

Levies on cloud will raise prices for European consumers and businesses: A host of cloud-based services are currently provided to consumers and businesses at a highly competitive price, often for free. The application of levies will mean that European consumers and businesses will suffer by limiting the availability of cost and time saving technology. Further, European consumers have a legitimate expectation that content they create or purchase legally can be stored in the cloud and that they will not be charged multiple times.

Hampering the digital single market: The cloud and Internet services are global. Levies are applied by national collecting societies on a strictly territorial basis and are triggered each time a good crosses a border. Each time this occurs, levies add up, bringing multiple payments, administrative costs and associated procedures. This is fundamentally at odds with the vision of the EU single market and the global nature of cloud services. Charging levies on cloud services will undermine the digital single market in cloud services before its opportunities have even materialized. Yet a single market in digital services is key to driving cloud services forward in the EU. Only a digital single market can attract investment in early stage offerings from EU innovators.

Access anytime, anywhere, is the driver of growth in the creative industries: Much of the growth in the creative industries in the past decade (some 30 billion Euros) has been driven by digital technology. Consumers can access content anytime, anywhere, fueling consumption, which, in the creative sector, is up by 25%. Imposing levies on cloud services hurts the development of new revenue streams for rights holders. It leads to multiple payments for the same content as consumers would pay for content, pay a

device levy, and pay a levy to use content delivered over the cloud. As the UK or Ireland illustrate, there is no harm to rights holders in allowing consumers to make private copies of legal content. On the contrary, access to legal content anytime, anywhere, and the development of new services drives more revenue to rights holders.

The content industry is booming in Europe: 60% more books are being published in than in 1995, there has been a 40% increase in European film production since 1995; the games and television markets are growing strongly and the music industry reports a return to growth². This, coupled with the fact that countries without levies show greater cultural output and employment in the cultural sectors, shows that levies would be detrimental not only to the cloud, but also to the cultural industries themselves. In the UK, for example, Nesta estimates creative employment at around 2.5 million jobs³ whereas FranceCreative and Ernst & Young estimate the number in France at 1.2 million⁴

An imbalance between costs and benefits: While there is no demonstrated harm to rights holders from cloud services, the current application of levies to devices clearly shows the disproportionate market distortions and administrative costs involved with any levy system.

Shifting levies will not solve anything: moving levies to cloud services, to retailers or elsewhere can only make the problem worse. Digital and cloud services are driving the growth of revenue for content owners. Levies would merely reduce the creative and economic opportunity for creators. Rather, policy makers should provide the optimal conditions for creators to create, distribute and sell in order to provide a sustainable basis for the creative sector. Making cloud solutions more expensive would punish consumers, businesses, creators and innovators by reducing the take-up of new technologies and increasing cost.

² <http://www.techdirt.com/skyisrising2/>

³ http://www.nesta.org.uk/library/documents/Dynamic_mappingV12.pdf

⁴ http://www.francecreative.fr/wp-content/uploads/2013/11/Premier_panorama_economique_des_industries_culturelles_et_creatives_en_france_2013.pdf