

Changes in applying storage media levy 2/16/21

The Cabinet of Ministers' Rule No. 321 of 10 May 2005, *The Amount, Collection, Refund, Allocation and Payment of the Levy on Blank Storage Media and Devices Usable for Reproduction*, has been amended with effect from 14 April 2021. This article explores the goals and implications of the amendments.

The obligation to protect copyright holders' financial rights arises from the Constitution, with their scope being prescribed by the Copyright Act, which defines the author's entitlement to a financial benefit from any use made of their work.

The Copyright Act¹ permits an individual, without the author's consent, to reproduce works included in a lawfully obtained film or recording or other protected form of work and visual works (including by digital means) in a single copy for private use without any direct or indirect commercial purpose. No other person may be involved in making such a copy. The authors are entitled to a fair fee for such a copy being made in the form of a storage media levy ("SML").

So this provision allows a private person to duly reproduce copyrighted material without the author's consent, while entitling the copyright holder to a fair fee. Making copies for private needs means not only storing audios and videos but also taking pictures of books, photos or paintings for private needs.

SML on reproduction for private use is payable by persons that manufacture devices capable of being used for such reproduction as well as blank storage media, and by persons that import them into Latvia.² The Cabinet of Ministers prescribes the amount of SML due as well as procedures for collecting, refunding, paying and allocating SML between the authors, performers and producers of recordings and films. SML is a one-off payment that essentially represents how someone buying a device with a recording function pays the authors, performers, producers, actors and film producers for permission to copy their works for private needs. SML is included in the price of a device. SML is neither a tax nor a duty and it does not go to the government but is allocated to the authors through the Copyright and Communication Consulting Agency / Latvian Association of Authors ("AKKA/LAA").

On 10 May 2005 the Cabinet of Ministers issued Rule No. 321 mandated by the Copyright Act. The range of storage media and devices attracting SML remained unchanged until 2012, when the range was widened after the Constitutional Court issued a ruling, and it has now been widened again to reflect the information technology advances that have substantially changed the way copyrighted material is used.

The amendments make SML applicable to smartphones and internal/external hard drives but exempts CD and DVD matrices. SML is payable at the following rates:

Item	Amount
Blank storage media	
USB flash memory	6% of the price of the first disposal in Latvia excluding VAT
External hard drives	4% of the price of the first disposal in Latvia excluding VAT
All types of internal hard drives, including HDD and SSD	EUR 2.85 per unit
Devices usable for reproduction	
All types of personal computers, including laptops and tablets	EUR 2.85 per unit
Smartphones	EUR 1.5 per unit
According to the Ministry of Culture, smartphones are covered by author remuneration rules in 21 member states. Latvia lists only five devices or storage media that are subject to SML, compared to 18 devices in	

Estonia and 32 in Lithuania. And Latvia has adopted a considerably lower levy.

It is important to note that SML is not due if devices and blank storage media are imported for use in professional activity in broadcasting organisations or imported wholesale for the commercial reproduction of works, or imported by individuals for non-commercial purposes. Any SML paid will be refunded if the devices and blank storage media are removed from Latvia unused.

SML is collected, allocated and paid by AKKA/LAA, the single collective management organisation holding a licence from the Ministry of Culture. AKKA/LAA also holds control rights under Rule No. 321. AKKA/LAA maintains a register of manufacturers of blank storage media and reproduction devices, including traders that assemble computers in Latvia and traders that bring blank storage media or reproduction devices into Latvia, stating their name and registered office. This information has monthly updates and is available to the public.

At the end of each month but no later than the 15th day of the following month, the manufacturer or the importer is liable to file an application with AKKA/LAA stating the type, number and combined nomenclature code of blank storage media and reproduction devices manufactured or imported, the price of their first disposal in Latvia, the country from which they arrived, and details of the manufacturer or the professional user. Any storage media and devices that are exported also need reporting. Based on the information provided in the application, AKKA/LAA calculates the amount of SML due and issues an invoice to the manufacturer or the importer payable within 15 days. If they miss the deadline for filing an application or paying an invoice, SML becomes payable at a double rate.

AKKA/LAA also maintains a list of persons entered on the register of professional users. So the manufacturers and sellers of smartphones and internal/external hard drives should bear in mind that they are now liable to pay SML, the charge for USB flash memory has risen from 4% to 6%, but CD and DVD matrices are exempt.

¹ Section 34(1) of the Copyright Act

² Section 34(2) of the Copyright Act