

SONT Decree on Private Copying Levies 2018 – 2020

The Stichting Onderhandeligen Thuiskopievergoeding (SONT) has decreed the new private copying levies for the Netherlands, which will be in force from 1 January 2018 to 31 December 2020. New developments in the use of home copying media and devices give rise to adjustment of the private copying levies. Furthermore, new jurisprudence, both in the Netherlands and the European Union, was taken into account. A correction for inflation has also been applied.

The SONT decree on private copying levies results from negotiations between representatives of rightsholders and of manufacturers and distributors of the media and devices concerned. The SONT monitors developments in consumer use of media and devices (“voorwerpen”) that are suitable for making copies of copyright protected works for private use. For this purpose, the SONT commissions a yearly consumer survey, as carried out by Kantar Public. New technological developments, marketing of new devices and changes in consumer behaviour will be reflected as quickly as possible in the survey. Developments in consumer use, in jurisprudence in the Netherlands and the EU, and in the sales of relevant devices have led the SONT to adjust the level of private copying levies as from 1 January, 2018.

Private copying levies as from 1 January 2018

Consumer use of blank CD-r and DVD-r has decreased significantly in recent years, and is expected to decrease even further in the near future. Therefore, the SONT has decided that levying on these devices should be discontinued as from 1 January, 2018.

The increased use of smartphones for making private copies has led to a rise in the levy on this device, while the levies on pc’s, laptops and tablets are lowered. Levies on set-top boxes, e-readers and external HDD will be slightly higher, those on portable audio and video players a bit lower. As from 2018, levies on a number of new devices will be introduced. The study by Kantar shows that wearables with storage capacity, like smartwatches and fitness trackers, are increasingly used to make private copies, mostly of music files. In addition, the survey reports substantial storage of copyright protected works on USB-sticks. Finally, the new external SSD (Solid State Disk) levy will fall under the same category as external HDD.

Table: Private Copying Levies and Devices 2018-2020

Devices/media	Levy 2015-2017	Levy 2018-2020
PC / laptop / notebook / server / mediacenter	€ 3.50	€ 2.60
Tablet	€ 3.50	€ 2.60
Smartphone / telephone with mp3-player	€ 3.50	€ 4.70
Portable audio / video player	€ 1.40	€ 1.20
Set-top box with hard disc / HDD-recorder	€ 3.50	€ 3.80
E-reader	€ 0.70	€ 0.80
External Hard Disc Drive (HDD) and Solid State Disc (SSD)	€ 0.70	€ 0.60
USB-stick	-	€ 0.60
Wearables with storage capacity	-	€ 1.20

The levies on CD-r en DVD-r are ceased as from the start of 2018.

Cloud storage

The Kantar-survey reports that private copies are increasingly stored in the cloud (personal lockers), which has led the SONT to introduce a minor levy on cloud storage. Because cloud storage takes place when using other devices, the levy has been incorporated in the levies on the devices that are mainly used for this purpose: PC/laptop, tablet and smartphone. Although, in the end, the copy is stored on a server belonging to the cloud service, the devices mentioned provide consumers access to the cloud and are used to make the copies. This procedure for levying is in accordance with the recent Copydan-ruling by the European Court of Justice, which implies that private copying levies can also apply to copies of protected works made by a natural person by or with the aid of a device (e.g. server) which belongs to a third party.

Background

According to Dutch law, it is permitted to make copies of copyright protected works for personal practice, study or use. To compensate for this lawful exception, a fair compensation is to be paid to the authors and other rightsholders of these works: the private copying levy. The level of the levies is related to the harm inflicted as a consequence of the private copying exception.

About the SONT

The Stichting Onderhandeligen Thuiskopievergoeding (SONT) has been assigned by the Dutch Minister of Justice, on the basis of Article 16e Dutch Copyright Act and Article 10, sub a, Neighbouring Rights Act, to establish the level of the private copying levies of Article 16c Dutch Copyright Act.

The SONT is presided by an independent chair, who is assisted by independent advisors. In the SONT board, rightsholders and manufacturers/distributors are equally represented. For the first time in the 26 year history of the SONT, the board established the new levies by majority decision. In the past, a majority vote was never reached, in which case the chair would take a decision in accordance with the statutes.

In recent years, SONT decrees have been confirmed by Ministerial rulings, but under the present circumstances the Minister of Justice believes there is no reason to continue that procedure. The most pressing judicial questions have now been answered by the European Court of Justice. The SONT takes this as a sign that the current levy system has broad acceptance. The SONT has chosen for a system which is moderate from the perspective of the height of the levies in comparison to prices of devices and media, and also from the perspective of total levy revenues per capita compared with those in other European countries.

The SONT decree will be in force in the coming three years. However, interim adjustments can be necessary as a consequence of technological or other developments.