Formal Objection

To the Statement of Proposed Levies to Be Collected for the Sale, in Canada, of Blank Audio Recording Media (File: Private Copying 2003-2004)

Revision 1.0

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1. Declaration

I intend to participate actively to the process leading to the certification of the private copying tariff. Consequently, this constitutes my formal objection to the proposed statement filed by CPCC.

I have read the information set out in the Board's notice published in the Canada Gazette on March 9, 2002 with CPCC's proposed statement. I understand the duties that I undertake as an objector and intend to abide by them.

I will not be participating in the pre-hearing of May 23, 2002 at 10:00AM.

2. Background

I have expertise in the area of these proceedings and interest in these proceedings for several different reasons:

1. I am a consumer of the goods on which this proposal intends to levy
2. I am a businessman in the business of using the goods on which this levy is intended, for uses different from the reason for the levy.
3. I have been a participant and in fact a driver of the recent technical revolution in general and the Internet revolution in particular, both in Canada and in the rest of the world.
4. I have in the past been a technician working in the music recording industry.
5. I am working in the technology industry in the design and creation of products which use some or all of the items this proposal intends to levy upon.
6. I have in the past been an owner and manager of a retail stereo store, including the sale of recordings and playback hardware.
7. I have in the past been the manager of a retail computer store, and have sold all manner of computer equipment, supplies, and systems.
8. I have two teenage sons, both very computer literate, both into music, both with ability to purchase music or download and copy it (neither financially nor technically limited).

My opinions should be given weight in relation to the amount of time I have spent in and around the technology (computer and Internet) industry and my knowledge and acknowledged expertise in these areas. I have been actively in the computer industry for in excess of 25 years, and actively in the Internet industry since 1983, being co-owner of the first Canadian ISP (Wimsey Information Services) from 1991 until it was sold in 1995, and involved continuously at an ownership and managerial level since then in one or more Internet businesses. I am currently an owner and director of a business which designs and implements computer systems for the portable computer and embedded computer industry.

3. Overview of Objections

My objections to the proposed levy amounts and to their application to various recordable media fall into two different categories:

1 - Objection to the application of the levy on specific media

2 - Objection to the amount of the levy on specific media

It is my intention to show that the media which this proposal discusses are used more in the "playing" of music than in the "copying" of music, and that the Act recognizes this fact, and that as such they should either not be subject to a levy, or should be subject to a levy amount which is significantly less than proposed.

It is my intention to show that re-recordable media should not be included in the levy.

It is my intention to show that levy amounts proposed are excessive in any case.

It is my intention to show that proposed levy amounts will adversely affect both the proposed recipients of the levy and the Canadian economy.

It is my intention to show that the application of the proposed levy, if upheld in regards to recordable media built into MP3 players, should be done either with a ceiling on a per Gigabyte basis, or with a flat levy per MP3 player regardless of the category or size of medium, and that accessory items which might be used in such players should not be levied.

It is my intention to show that the levy amounts should take into consideration the quantity of recordable media purchased at any given time as opposed to being a flat amount per unit regardless of quantity.

It is my intention to show that CPCC's calculation methods are flawed, regardless of whether the basic levy rationale is upheld.

It is my intention to show that CPCC's calculation of the total levy amount which should be collected is indefensible and far in excess of anything justifiable, regardless of the method of collecting the levy.

4. Specific Objections

4.1 Levied media are used more in "playing" than in "copying"

Blank recording media of all types (with the possible exception of CD-R-audio) are used in the playing of music, and the copying of music is incidental to this process and should not be counted as "copying" under the act or in calculating the amount of a levy.

CD-R audio disks are specifically designed to allow the copy of commercially available music CDs in whole, with no format conversion.

All other media that are the subject of this proposal are designed to copy digital data primarily, and in their use, the music consumer is facilitating and performing the act of "playing" music, not "copying" it.

4.1.1 Reasoning

The Act {80(1)} makes the act of copying insignificant, and recognizes that in the light of today's technology there can be no distinction between the copying that takes place within computer systems and networks in the passing of music over the Internet and the copying of music for the facilitation of playing that music when and where the customer wants. It is technically feasible (and in fact available) for a music consumer to request the playing of a series of songs via the Internet, pick the network signals up via wireless connection, and listen to it while jogging or driving.

Besides the act of copying to CD or Flash or whatever "blank audio medium", there is no difference in the result (playing of the consumer's list of music, when they want it, where they want it) if the consumer takes the time to download (or rip) the music to MP3 format and copies it to a disk for their MP3 player.

This in effect makes it necessary to base the amount of the total levy on the equivalent to consumers listening to radio regardless of the fact that copying is involved. See also section 4.3.1.1

4.2 Re-recordable media should not be levied:

Re-recordable media as detailed in the proposal include: CD-RW, CD-RW Audio, removable electronic memory (RAM) card, removable Flash RAM card, removable mini-hard disk.

4.2.1 Reasoning

There are several reasons why re-recordable media should not be included in the levy media:

- Re-recordable media are part of the process of playing music, not storing it long-term. See sections 4.1 and 4.3.1.1
- Re-recordable media are the primary medium used in the process of "private study" in the determination of what music an individual likes and is willing to purchase (or copy "permanently" in lieu of purchase as allowed under the Act.)
    - Private study is treated separately from private copying in the Act regardless of whether or not there should be a levy on media used in private copying, so an allowance for this must be applied in any calculations.

- In any case, since private study involves the repeated overwriting of copies, the total number of copies CPCC is trying to collect a levy for is flawed greatly.

4.3 Levy on media should be less than proposed:

The premises on which CPCC bases their calculations on the use of the various media are flawed, out of date, and speculative. In addition, if the amounts proposed are confirmed, the result will be less than expected total levy amounts for the recipients due to purchase resistance and alternative purchasing ability of the Canadian public, and this will impact the Canadian technology business sector adversely. In fact, the levy on storage media for and in portable MP3 players can only be characterized as punitive, not compensatory.

4.3.1 Reasoning

4.3.1.1 Flawed Premises

- CPCC contends that every single act of copying should be compensated for by the proceeds of the levy.
  This fails for many reasons:
  - CPCC makes no distinction in their calculations between illegal copying and private copying, and calculates the levy based on the total of the two, which is at direct odds with the Act. The Act section {81} deals only with compensation "in respect of" the acts allowed by section {80}, i.e. private copying – which is not illegal under section {80}. CPCC is not authorized by the Act to collect a levy in respect of illegal copying or in fact any other section of the Act, including use for private study for example.
  - The act of copying with today's technology is part of the act of playing music in every digital medium.
    - In a CD player, bits are read from the original (purchased) medium, copied to the internal storage of the processor, checked for accuracy, copied to the output device, and converted to analog signals where they drive an amplifier and eventually a speaker. The amount "in transit" may only be a few bits at a time, but they add up to a whole copy over the period of the play.
    - In the process of listening to a piece of music via a radio, the music might have been copied from the original CD to a hard disk where it is queued for play by a computer. The bits are copied from the hard disk, to the computer where they are mixed with signals from advertising and announcers, and copied via digital means through computer network hardware on their way to the transmitter (and the cable head-end and satellite head-end) where they are finally turned into analog, amplified and sent via radio wave to the traditional receiver. In this case there is a whole copy of the work stored, as well as bits in transit – this time a few more as the "latency" involved may be a few milliseconds from hard disk to transmitter.
    - The latest "DAB" Digital Audio Broadcast moves the transition from digital to analog out to the final stage of the customer's receiver, and adds

another computer in the receiver where the bits are again copied at least once. Here the amount of bits "in transit" or copied can amount to several tens of milliseconds as the latency increases from original to the point of conversion to audio.

    - The Internet "webcaster" takes the stream of bits from the original (or copy as in the case of the radio above) and sends them out through the routers and switches of the Internet. In this case, the latency can be on the order of seconds from original to the time when the web browser's audio hardware creates sound.
    - In each of the above cases, there is copying involved, and the amount of time in the process from "original" to sound heard by the customer increases to seconds.

- The Act specifies {80(1)} that "the act of reproducing all or any substantial part of (music) onto an audio recording medium for the private use of the person who makes the copy <u>does not constitute an infringement</u> of the copyright in the musical work…"
    - This means to me that in the case of private copying, it is <u>not</u> the act of copying which incurs a requirement to pay a fee or royalty.
    - This recognizes that the act of (private) copying is such a part of today's technological environment that it cannot be considered criminal, and in fact is insignificant in the realm of compensation for copyright.
    - This means that CPCC's contention that every act of (private) copying must be compensated for via the levy is flawed and out of step with reality.
- The Act specifies {81(1)} that (eligible recipients) "…have a right to receive remuneration from manufacturers and importers of blank audio recording media <u>in respect of</u> the reproduction for private use of…"
    - This section does not stipulate that the remuneration be on a copy for copy basis as CPCC contends.
    - This section does not stipulate that the amount of the levy be fixed on a per unit basis
    - Taken in conjunction, sections {80} and {81} appear to remove the fact of copies and the count of copies from the calculation of remuneration and allow the Board flexibility enough that it may deal with the objections raised in other parts of this document with regard to levy based on any or all of:
        - Sales quantity
        - Packaging/intended use
        - Free market value of music in the sales and delivery environment of today and tomorrow

    - Per item (as opposed to storage unit) levy based on package or intended use.
    - Any other method of establishing a levy amount which compensates copyright holders "in respect of" the use of their music by private individuals without respect of the now legal fact that the individual may make copies in any number for any purpose to do with their private use. See section 4.3.1.1 regarding the fact that copying is part of the playing of music in today's technology environment.
    - The Act {81} effectively means the compensation should be in amount similar to that which would be paid (has been paid in the past) by private individuals for purchase of the right to listen to music when and where they want to, as opposed to when a radio station plays it or a performer performs it. It completely discounts the fact that a copy must be made for this to happen.

- CPCC (in their "Fact Sheet") contends that it is the recording of music which drives the sale of audio media in general and MP3 players in particular.
  This fails for several reasons (and is moot in light of section {80} in any case):
  - CD-R media is used far more for digital software and data other than music recording. Same for CD-RW, DVD-R, DVD-RW, Flash, Micro-hard disk, and RAM cards. These are not "audio" media, they are digital media. Only one of their uses has anything to do with the recording of audio.
  - While MP3 players in specific may be manufactured due to the ability to copy music, it is the music industry itself which has failed to put in place a reasonable facility to sell music in a format which is compatible with use in such devices thus requiring users to copy from other formats in order to listen at the time and place of their choosing without (for example) having to carry large numbers of CDs and a changer.
  - MP3 players are little different from a radio in their use by consumers to listen to music – and if anything, should be levied in similar amount – based upon the amount of time an average listener uses them and their expected lifetime.
  - MP3 players are little different from a wireless streaming Internet radio in their ability to be programmed to deliver the consumer's choice of music "play list" or "compilation" and should, if anything, be levied in similar amount to such webcasters.
  - If this were so, then the use of radios to listen to music should be levied in some fashion. The fact is that the music industry levies at the sending end, in an amount which works out to a few dollars per year per listener.
- CPCC contends that the availability of music via Internet download, and the availability of technology to easily copy commercial CDs is the main or only reason that revenue from sale of commercial music CDs, tapes, etc. has fallen in recent years. A music industry executive has been quoted as saying the reason has been that "...the music sucks."

- CPCC makes the assumption that all of large digital storage media can be used for the storage of music without limit. This assumption fails on several counts:
    - 1 - there is a finite limit to the amount of music available to record (large, but finite)
    - 2 - there is a finite limit to the amount of music any individual can listen to in a lifetime.
    - 3 - there is a finite limit to the amount of music an average individual will listen to more than enough to decide they don't like it (private study)
    - 4 - there is a finite limit to the amount of music an average individual can or will organize, regardless of the size of the medium.
    - 5 - individual music preferences over the long term are relatively static (we like to hear the same songs relatively frequently).
- CPCC makes the assumption that individuals copying all of a music CD want all of it. The music industry has engaged in what can only be called "tied selling" in that they have effectively stopped selling "singles" and now primarily produce albums with more than 2 songs on them. In my experience with my children, their peers, and my own purchasing history and habits, this causes purchase resistance due to lowered recognition of benefit. "I pay $20 for a CD and only like one song on it, forget it!" Reality is that many copies of CDs are only made so that the individual can later create a compilation of the music they want without the multitude of tracks they don't want.
- CPCC makes the assumption that use of MP3 is primarily for copying music not already owned by individuals as opposed to conversion to make otherwise legitimately owned music work with their equipment (i.e. MP3 player instead of CD player) or creation of a preferred compilation (minus the unwanted tracks) as part of the process of playing already owned music.
- CPCC proposes to collect a levy on some items which is far in excess of the amounts stipulated in other areas of the Copyright Act for uses which are wider ranging (e.g. $100/year for community broadcast system vs. multi-hundreds of dollars on hardware which may have a useful life of only a small number of years and is only for the use of one person)
- CPCC makes the assumption that downloading of music gives identical quality to copying from commercial CD. In personal study of this, I have noted that a large percentage of files downloaded are either short-recorded (a phenomenon of some "ripping" software) or stuttered, or double banded (two recordings of the same song in one file) or badly encoded. In addition, the availability of "what I want, when I want it" is nowhere near what a typical consumer might expect, leading to my observation of frustration and disenchantment with the whole process of downloading. This coupled with the invasive marketing techniques of some of the current crop of music/file sharing systems must be taken into consideration when estimating such copying. Note that this does not address the fact of netcasting (use of the Internet as a broadcast/narrowcast medium) for which the music industry is already compensated by royalty charged on the netcaster. Netcasting however does not normally consist of whole albums.

- CPCC contends that all media used to record music by individuals is used for the act of copying music under part VIII, section 80 of the act ***and that this is significant***. This skews their statistics on which they base the percentage of all such media sold in the calculation of the levy per unit.

  This fails on several bases:

  - The act specifically makes personal copying insignificant. The act of private copying is no longer a concern of the copyright holder. (This means that the levy must consider reasons other than the quantity of blank copy media sold in their calculations of “lost revenue” and in fact should completely ignore the number of copies made in any calculation)
  - Regardless of the above, re-recordable media is used solely in the act of playing music, not in the long-term copying of it. This includes the creation of selected compilations, and the conversion of available media to forms not commercially available in the process of playing music.
  - large quantities of recording is done for private study (which does not merit compensation under section {81}), in order to determine if a work is worth purchasing or otherwise recording for the long term.
  - some recording is done in the context of creation of compilations of preferred music separate from the unwanted music the industry forces the consumer to purchase. In a full-size stereo, with a CD changer of sufficient capacity, this is done via programming. It is unreasonable to expect the consumer to carry such a device with them in lieu of a portable device *and the act recognizes this by the fact that it makes copying insignificant!*
  - some recording is done to preserve quality of original recordings so that the purchased music may be enjoyed longer. While CPCC contends that this “backup” recording is illegal, it must be noted that in the context of other digital copyright items (i.e. computer programs) it is deemed reasonable. In any case, even this copying is “legal” in light of section {80} and therefore insignificant in the calculation of any levy amount.
  - some recording is done in the context of preserving already purchased music from a medium no longer widely supported (phonograph for instance) necessitated by the fact that the music industry has not (yet) re-released older recordings on new formats. Again, CPCC contends that this is illegal, however there are sections of the act which condone this and this also reflects on the music industry’s “buggy-whip” mentality towards technological advancement – and should be discounted in any levy calculation. Again, this is covered by section {80} and therefore of no consequence in calculation of the levy.

- CPCC contends that people who have access to the ability to copy from friends or the Internet tend not to purchase, or tend to purchase less commercial CDs.

  - My observation of my sons and their peers contradicts this and supports the contention that much of the copying is done due to perception of low value for dollar spent on much of the music of today, "... the music sucks" - a product of the mass marketing tactics of the music industry as it has become in recent

years. This has direct (negative) bearing on what the total amount of “lost revenue” might be when calculating the levy amounts.

    - I note that my sons appreciate the music of the 50s, 60s, and 70s more than they do the music of today. In situations where an album is largely enjoyed, I see these youth purchasing and coveting the commercial product.
    - I also have observed the behavior of purchasing a second copy of a commercial product when the first was damaged, despite the offer of a copy by a friend.

- CPCC implies by the flat, per unit levy amounts in their proposal that the purchaser of a large quantity of CD-R disks will have the same percentage likelihood of using this large quantity for copying music as the purchaser of a small quantity. This is at direct odds with my observation in three cases.
    - my children - I purchased a bulk-pack of 50 CD-Rs for each of them at Christmas 3 years ago. Neither have used more than about 15-20, and many of those were used to backup their computer files, not to copy music.
    - my own use of CD-Rs. I purchased myself a 50 CD-R pack at the same time as my children. Since then I have purchased over 200 more in 100 lots, all to backup computer files which have nothing to do with music.
    - the local photo lab. Their use of CD-R disks has bloomed from a few dozen a month 2 years ago to thousands a week now. None of them have music put on them.
    - I also understand that another objector to this levy is in the business of producing quantities of information CDs from blank CD-Rs including custom printing of labels on them, etc. and that their use is in the tens of thousands - again, none with music on them.
    - I note that there is no legislative basis for a “one size fits all” levy.
    - Regardless of any other considerations, this one aspect of the levy proposal creates problems to industry and consumers of the proposed media for other uses (than music copying) far in excess of reasonability and should be taken into consideration when ruling on the reasonability and efficacy of this proposal.

4.3.2 Out of Date Premises

- The percentage of CD-R disks used for data backup, photo-cd creation, and industrial software and information delivery is far higher than CPCC allows. These uses are rising rapidly.
- The expected use of DVD-R and DVD-RW for data, photo, information distribution and backup (as well as their original video use) will rise rapidly as the drive costs fall.
    - Their wide use as music storage media is not expected to happen within the term of this levy proposal due to the high penetration of normal CD writers and the complete lack of portable audio (“Walkman” style) players for DVD-type disks in the foreseeable future.
- Predicted sizes of micro-hard disk drives (and other re-recordable storage media) are smaller than expected over the lifetime of the proposal.

- Current micro-hard drives are available in 5 and 10 Gigabyte sizes
- Prototype micro-hard drives are now showing in 100 Gigabyte sizes
- Technology in the hard drive sector has followed a pattern of dropping small drives in favour of larger ones in order to keep ahead of the price/performance curve far enough for the manufacturer (of the hard drive) to make money.
- Systems using 3 ½" hard drive technology are no longer available with drives smaller than 15 to 30 Gigabytes and this level is climbing monthly. Micro-hard drives will follow the same pattern closely as the same manufacturers, technology changes and economics drive both sizes.
- The same pattern is being followed by Flash and RAM in add-on card format as included in this levy proposal
- This, coupled with the high per-Gigabyte levy proposed, will lead to unrealistic retail prices for both add-on memory modules and MP3 players with them built in.

4.3.3 Speculative Premises

- CPCC speculates that any/all individuals with access to multi-gigabytes of storage can/will fill that storage to the limit with copied music. This is absurd for several reasons:
    - there is a finite limit to the amount of music available to record (large, but finite)
    - there is a finite limit to the amount of music any individual can/will listen to in a lifetime.
    - there is a finite limit to the amount of music an average individual will listen to more than enough to decide they don't like it (private study)
    - there is a finite limit to the amount of music an average individual can or will organize, regardless of the size of the medium.
    - individual music preferences over the long term are relatively static (we like to hear the same songs relatively frequently).
    - There is a physical and practical limit to how much music the average individual can or will store and organize
    - other than when "studying" to determine suitability to "purchase" (i.e. permanently record or not record over), the average consumer does not copy large quantities of music "just for the fun of it".

4.3.4 Unrealistic levy return expectations

- The proposed per Gigabyte levy on storage media (whether built-in or add-on) will in my opinion result in very low sales of these items through Canadian retail outlets.
    - The rise of Internet commerce and the effective fall of the barrier to purchase of such items from outside of Canada with fast, reliable delivery will mean that individuals will purchase these items (and many of the other items noted in this proposal) from the U.S.A. (and other countries) and import them for their own use as opposed to resale - thus denying CPCC the ability to levy on them.

- In light of the above, the manufacturers of the target products may be forced (by their authorized resellers) to create special "Canadian" versions of the various target products which subvert the levy in some fashion.
    - Such special versions will increase the cost to the consumer and will not benefit CPCC or the music industry.
    - Failing creation of such special “levy-proof” or “levy-reducing” versions, Canadian resellers will lose business to their out-of-country competitors and CPCC and the music industry will not benefit.
- All of these factors will affect the market for the levied products to the point where the total dollars raised by the levy will be less than initial estimates might indicate.
    - While this may be seen as of no concern to the Board, it should be noted that creating anti-competitive situations between Canada and other countries is not in the interests of anyone.

4.3.5 Punitive Large Storage Media Levy Amounts

- The proposed per Gigabyte levy on storage media built into MP3 players at manufacture will make the sale of these items in Canada impossible without use of some levy-subversion tactics by their manufacturer.
    - While current units may have only 5 to 10 Gigabytes (levy of $105.00 to $210.00), units are expected in the near future with far larger built-in storage. In fact, there may, within the time period of this levy proposal (to 2004) be a time when manufacturers <u>cannot</u> purchase micro-hard disks of less than 20 or more Gigabytes due to their being the only thing made by the drive manufacturers.
    - This trend follows the current one in 3.5" disk drives where it is almost impossible to find drives smaller than 20+ Gigabytes, and is upheld by the fact that drives in the 10s of Gigabytes in the micro-hard disk form factor are already in prototype and distribution.
- The proposed per Gigabyte levy on storage media purchased as accessory will make the sale of these items in Canada all but impossible without the use of some levy-subversion tactics by their manufacturer in similar fashion to that of such devices in manufactured MP3 players.
- I contend that the only effect of such a large (in relation to the otherwise normal retail cost of these items) levy is to punish the retailers and importers of these items, since the purchasers will in all likelihood simply order them from outside of Canada, thereby skipping the levy completely. None are currently manufactured in Canada to my knowledge.
    - I note that the prospective levy on some of the initial models with micro-hard disk drives is on the order of $100-$200 per unit today, and that with the expected technology advances over the life of this proposal, the levy might rise to multi-hundreds or thousands per unit due to the increase in base storage available from the drive manufacturers to the MP3 player manufacturers.
      Note also that since the levy is imposed at the import or manufacture level, it will be compounded by at least some markup as it passes through the distribution

hierarchy to retail. As a former retailer, I estimate that this will be at least 30% and might be as high as 400% with the amount most likely to be 200%. So a $100 levy turns into something between a $130 and a $400 increase in the price to the consumer.
Contrast this with the Copyright Act's stipulated royalties of $100 per year for broadcast rights for a community system as shown in Part VII 68.1(1)(C)(b). In this light, the potential levy amount on such devices, with an expected useful lifetime on the order of 3 years, is excessive and punitive.

- The fact that these levy amounts also adversely affect these items' use in other devices compounds the offence.
    - The rise in use of digital cameras with large-format CCD units of 3 to 10 Megapixels requires enormous storage if more than a small number of photos is to be taken before having to connect to some other storage unit.
    - The cost of digital cameras is falling to the point where a levy of the amount proposed will increase the cost of add-on storage beyond the cost of the camera. Again, if this happens, the consumer will simply purchase from outside the levy area – outside the country, again affecting the Canadian retail sector adversely, and not benefiting either CPCC or the music industry.

4.4 Levy calculation method is flawed

Calculation of levy amount should be based on criteria other than number of units of blank media made/imported or the imputed, speculated, polled, or known number of copies of music made by private individuals.

4.4.1 {80(1)} makes the act of private copying insignificant and in effect recognizes that it is part of the playing of music today

- CPCC, in the face of the act, proposes to base the amount of the levy directly on their idea of the percentage of media used for all music copying without regard to whether it is private, done in the process of playing, or illegal.
  This fails for several reasons, and is baldly self-serving – of CPCC, not the music copyright holders they purport to serve.
    - Without the levy, the act of copying becomes (has become even with the current levy) insignificant to the consumer. Section {80} of the act recognizes this implicitly. Consumers use copying as a tool of organization, not of malice or greed. It is in fact a part of the organization and conversion process involved in playing music and is directly comparable to the use of a CD changer to play only those music pieces the consumer wants, when they want them, in the order they want them.
    - CPCC makes the contention that such organization of "compilations" carries some value to the consumer for which the musicians should be compensated which flies in the face of two things:
        - Musicians receive a fixed amount per song regardless of the mix the publishing houses put them in

- The public can create their own mix regardless of paying the musicians through mechanical means using purchased CDs. CPCC does not seem inclined to want to levy such ability and would be laughed at if they tried.
- In fact, it is because of the "tied selling" practices (illegal in other selling arenas) of the music publishing industry that the consumer is forced to find ways to not play the songs they don't want to hear.

o Since the act of copying is no longer significant to the consumer, they do such things as creating several different "mixes" of the same music, throw away unwanted copies, do not care for the disks and destroy them in various ways, and in the case of re-writable media, record over them multiple times to get "the perfect mix"

o None of this copying bears any relation to the number of music selections an individual might purchase in other circumstances. What it does is lower the amount the consumer is willing to pay per copy, regardless of whether it is "legitimate" or not. The resistance of the market is such that the consumer, now offered the choice of not "purchasing" (through historic retail channels) the unwanted songs on a particular commercial CD will happily do so.

o This significantly impacts the "retail value" of the copying of a piece of music – from the CPCC's imputed value of $0.10 per song copy to something more on the line of the effective rate of "listening" to music via radio or possibly more appropriately, Internet streaming media (approximately US$0.0014 per song) or about 100th as much as CPCC proposes to use in their calculations. See Appendix A

4.4.2 Number of blank media used for other than legal private copying of music is significant and easily abstracted from most purchase for private copying.

o Illegal copying falls into two categories, wholesale and retail:

- Wholesale – done for profit and categorized by purchase of large amounts of blank media. This is illegal, and should not be counted in the calculation of a levy amount in compensation for "legal" copying. Adds to the purchase of such media in large quantities (i.e. cartons, not 1-100 retail packs)
- Retail – done by individuals unfamiliar with the exact wording of the act and categorized by purchase of blank media in retail quantities (i.e. 1-100 retail packs). Still illegal, and according to a strict reading of the act, should not be counted in calculation of the levy amount on blank media. ***The levy does not release the music industry from their ability or obligation to pursue and prosecute illegal copiers, nor does it give the CPCC the right to calculate the media levy by inclusion of the quantities of illegal copying in the numbers the levy should compensate for,*** regardless of whether or not the act section {80} means that the real amount of private copying is or should be the basis for which CPCC can claim compensation for the copyright holders.

- Industrial use of blank media (which is by definition not for "private copying") is done using quantities purchased in packaging not intended for retail sales. Since these quantities are not for retail sales, it is easy for the levy to treat these purchases differently from those done at retail.
- In light of the fact CPCC is using the fact that a general purpose computer (iPOD) is advertised as a MP3 player to categorize it strictly as only a MP3 player for purposes of the levy, I contend that if the advertised end use of a blank data recordable medium is not audio recording, then the levy does not apply to it, and in particular, it is possible to determine that any particular blank recordable digital medium **is not** blank recordable audio media when it is sold to a business whose sole purpose in its purchase is the re-manufacture of the product into a non-audio product. This particularly applies to digital media which is sold to industrial users whose primary business is the creation of non-music digital recordings. This means that media which is manufactured and sold for the exclusive use of re-manufacturers in the business of creating non-music digital products is not or should not be subject to the levy.
- The proposal to levy on MP3 players as a finished assembly (which contains but is not completely constituted as a blank medium suitable for copying music) brings forth the principle that a blank recording medium may be treated differently depending upon how it is packaged – which leads to the concept of dealing with "cartons" of media differently from retail packages of what otherwise might be deemed the same media.
- The proposal to levy at non-discounted (for compensation or recognition of potential multi-purpose/non-music use) rate a demonstrably general purpose computer (iPOD for example) based solely on the fact that it is advertised as a MP3 player opens the door to differentiating other levied materials by the categorization of their advertised abilities or characteristics. Thus, a blank CD-R which is advertised as a data CD-R with no reference to the fact that it might also be used to record digital music may/should be classified as recordable media other than audio recordable media for purposes of whether it falls under the Act and therefore the levy.

4.4.3 Amount calculated using the proposed method and values is out of line with reality and other royalty amounts and calculations (showing that copying is not the issue)

The proposed (and currently in effect) method of calculating the media levy when applied to reasonable quantities, even just for individual use (industrial use compounds the problem), of any of the various media in particular and all of the media in total will add up to an amount which is out of line with the amount an average consumer might pay for similar access to copyright music via other means completely equivalent to the use of copying in the process of accessing/playing music.

- {68.1(1)(C)(b)} stipulates a $100 per year royalty for a community broadcast – i.e. many people listening to music all year long in a controlled, limited environment.

- The U.S. music industry has set a royalty rate for streaming Internet music at a rate (noted as being double the effective rate for more traditional broadcast methods) at US$0.0014 (approx. CDN$0.0022) per song or about US$245.45 (approx. CDN$387.00) per year at 24 hours per day, 365.25 days per year if 3 minute songs are average.
- The expected average lifetime of a MP3 player is less than 5 years. During this time, it is likely to be used an average of less than 8 hours per day (more likely closer to 2-4 hours/day.) This roughly equates to between $32.00 and $125.00 per year (2x365.25x60/3 vs. 8x365.25x60/3) at 3 minutes per song and $0.0022 per song as if it were used for reception of an Internet media stream.

4.4.4 Levy amount must be based on free market amount the consumer is willing to pay

In the distant past, before the invention of writing music down, the musician made money (was compensated by one means or another) for performance only.

Since the invention of recording of any type (writing, analog, digital), all payment for anything other than personal performance is in effect a "residual" for such performance. Consumers will pay a proportion of their disposable money for performance or residual in lieu of performance. The proportion they will spend is relatively fixed, so the consumer will enjoy more or less performances total based on how much each costs – rather than deciding how many they want and simply "finding" the money. This is free market at its basest.

Because of the limitations of the free market, the amount of money paid for musical performance is relatively fixed, regardless of the method of their performance or residual in lieu of personal performance.

Any recorded medium is in lieu of personal performance and has a perceived value less than that of personal performance.

The purchase of a music CD is done to allow the purchaser the ability to listen to the performance when and where they want to. It has no other significance in the market of the copyright holder. With very few exceptions, individuals do not purchase or copy musical works and not listen to them. Only because the copyright holder cannot perform any and everywhere at once is there a need for other means of performance, and regardless of the quality, there is no recording that matches an original performance. With today's technology, the fact is that an individual may have a performance anywhere and any time of a choice of music without having to purchase a retail copy of the music. The Copyright act now recognizes that the act of copying for private use (i.e. facilitating listening) "…does not constitute an infringement of the copyright in the musical work…" and in fact is part of the process of playing the work. In this light, any digital copy held by a private individual for the purpose of playing the piece is simply a part of the chain of playing the work, part of the playing process, not a "copy" which must be tracked **because it does not infringe!**

So how do we determine the free market amount the levy should collect "in respect of" all this copying?

The consumer has shown a willingness to pay relatively significant amounts for an individual personal performance of some musicians, but on average really won't pay very much:

- They don't obviously pay anything but a bit of their time (listening to advertising) for live performance via radio or TV but in fact pay something on the order of a few 10s of dollars per year in increased costs of the goods they purchase via the royalties and fees paid by radio/TV stations.
- They listen to live performance which might be included in the cost of their drink (bar), or dinner (restaurant), or meals at a rest home, etc. Again, minimal per performance each.
- A top rock band might command $100 per seat for a live performance during which they and their side bands might play in excess of 20 pieces, or about $5.00 per live performance piece.
- A restaurant might pay as little as a few drinks to a band for playing a piece or a set to an audience of hundreds, or on the order of $0.01 per person per live performance piece. Street performers might not even get this amount.

The amount paid to musicians for live performance has a very large range with few at the top end and many at the lower end.

Generously, on average, the consumer might pay $0.10-$0.20 for live performance per person per music piece. Note that not all of this is sent as royalty to the musician/copyright holder, in fact only a small fraction is returned as royalty.

An individual will purchase an album recording with several songs which they may play several hundred times in the life of the recording. At $20 per album, with 15 songs, this shows a willingness to pay something on the order of between $0.005 and $0.01 per performance of which the original musician might get 1/20th (remember, $0.10/selection as stated by CPCC) or between $0.00025 and $0.0005.

The ratio between residual and live is something on the order of 1/1000 which puts the amount a free market individual will willingly pay the musician for playback of a recorded performance at between $0.0010 and $0.0020 (average live performance fee divided by 1000) which compares closely with the amount an individual seems willing to pay for the average play of an album song from a purchased CD. We have arrived at similar answers from two different directions (and have the amount imputed by U.S. royalty of streaming Internet feed as well) to conclude that the free market value of the playing of a piece of recorded music is worth on the close order of $0.001 to $0.002 to the average consumer.

Any levy which results in costing consumers more than this free market amount is punitive rather than compensatory.

4.4.5 Levy must be comparable to royalties which might be incurred in other listening circumstances.

This should be self evident. If the levy skews the playing field significantly (which this proposal is likely to do) then the private individual will avoid it and do something completely different. The free market will rule – there is no option because there is no control. The result will be that some other music listening technology will rise in rank, and in the mean time the other data technologies which might have used the levied media will go in different and not necessarily good directions.

4.4.6 Levy should not be punitive in any way

(note: I am not an economist, however the following falls from my work in various financial capacities.)
Any levy amount which is in excess of what an average consumer will willing pay flies in the face of market economics in that, as a levy, it is constituted to compensate for purchase of music which under other circumstances would normally be purchased – such purchase which otherwise only takes place by a "willing" consumer. The question must be asked "would a consumer purchase (even incrementally over time) the equivalent value of music which the levy purports to compensate for". If the answer cannot be "yes", then the amount of the levy is punitive, not compensatory.

- A levy of $210 on a 10 Gigabyte micro-hard disk containing MP3 player implies a consumer would purchase (at the CPCC's stated rate of $0.10 per song) 2100 songs or 140 albums (if the consumer liked every single song on all albums, a concept which is patently false) at an average price of $20 or $2800.00 worth of albums over the lifetime (3-5 years) of the MP3 player.
  In fact, at the rate of 2-3 "wanted" songs on each album, the real cost of getting 2100 songs the customer likes would be more on the order of $10,500.00 to $21,000.00. The chances of the "average" consumer spending what amounts to double to triple their net disposable income for three years running solely on music is laughable.
  In effect, this means that the rate at which the consumer <u>would</u> purchase music in this quantity must put the total outlay more in line with the actual amounts currently (or within recent history) spent by the average consumer prior to the concept of the levy and legal copying.
  If this amount (for example) were $300.00 per year (or 60 albums per year per person at $20 each) then the amount per song applied for in the levy must be scaled to match this outlay, i.e. 1/10th or 1/20th the amount it currently seems to imply. Note that this is 5 albums per month and in my estimate is high for an average (more likely closer to 1 album per month or less based on my observation of purchasing habits over my history in and around the music retail industry.)
- To restate the above. In the market of the past (prior to available consumer copying technology), when the only source of CD albums (or tapes) was the retail store, a customer would willingly pay out $x per year on such music. In the technological market of today, the consumer would not willingly pay more for any amount of music than they would for the amount of music they purchased in the past (adjusted for inflation but similar in any case). This sets the market price for such music, not the historic sales price. The music industry must take this into consideration when imputing a price per copy.
  The parallel is drawn to ancient history when the cost of copying sheet music was large in relation to the cost of copying such music after the invention of the printing press. The cost per copy of sheet music went down because the free market drove it down. In the case of the calculation of the levy, the imputed free market price for music of the form now technologically available to the consumer must be used rather than the price prior to the technological change. There is no market justification for musicians to earn orders of magnitude more today than

they earned yesterday, just because the technology for making copies has changed, and in fact, no matter what the price, the musician will not earn more since the consumer will not pay, regardless of how the collection is attempted. A willing consumer would not pay significantly different amounts than they have in the past, regardless of what they get in return.

- Anything more than the consumer would willingly pay in total for similar goods in a free market (i.e. where the musician completely controls the copying acts and offers the copies for sale in a free market) must be construed as punitive, not compensatory.

4.4.7 Levy should not adversely impact the use of levied media for other purposes given today's free market.

Any levy on multi-purpose blank media must be of a nature and amount that it does not adversely impact the use of the levied media for other purposes which constitute significant proportions of its use. Again, this is a "free market" argument. The value to the consumer of the media to copy music and therefore the music copy itself is degraded compared to the value prior to the technological and market changes. The Internet and "next-day" trans-border shipping has created a free market which is larger than the jurisdiction of the Copyright board or CPCC.

- Any amount of levy which causes any amount of damage to any industry as a side-effect must be construed as not "free market" based.
- The free market, if given the choice between purchasing CD-Rs for backup media for computers and getting as part of the bundle a number of songs through a Canadian source, or purchasing identical media without the bundled music from some other source but having to pay shipping and wait for delivery would not likely pay more than a very small extra amount (probably more than the amount of shipping given the convenience of immediate delivery, but not much more) for the Canadian goods.
- Likewise, the free market for add-on storage for a digital camera or PDA might pay a small amount more for the convenience of purchasing locally and getting immediate delivery compared to purchasing from non-levied sources, but would work at getting around any levy which the consumer deemed excessive, regardless of whether it went "to a good cause" (i.e. the music industry).
- The fact that a Canadian re-manufacturer of digitally distributed media on blank media subject to the levy might be denied a contract to produce product due to a disparity in the cost of their base media (and thus their final per copy price) compared to a foreign company in the same business (U.S. for example) must also be taken into consideration.
  The problem is that they are not in a free market since there is no way to avoid the levy if their product requires it and they are neither an importer nor a primary manufacturer.
  The Canadian manufacturer might (in an otherwise free market) purchase their media with a small surcharge compared to that in other jurisdictions, however more than that small surcharge will cause the re-manufacturers' prices to be out of line with the market and their customers to go elsewhere for product;

decreasing the total levy collected due to lower volumes sold, and incidentally adversely affecting the Canadian economy.
The end purchaser of the re-manufactured product will exercise their free market prerogative by purchasing from non-levied sources.

All of these points show that the free market will not support the amount per copy that the CPCC imputes, thereby showing that there is not a free market, and that the levies are punitive, not compensatory.

4.4.8 Levy should not cause the purchasing public to bypass the levied items

Regardless of the arguments for the levy, or whether its imputed amount should be one thing or another, if the levy amount on any medium is such that the average consumer will actively look for methods to circumvent the levy, thereby obviating the expected results of compensating the copyright holders, then the levy amount is too high. It is not in the interests of anybody to create a situation where the levy is completely ineffective in its primary purpose, or where more and more rigorous or bureaucratic hoops must be jumped through to collect what the CPCC thinks the musicians are due. The musicians are due only what the free market will pay them, not one penny more, regardless of the method of collection.

4.4.9 Levy should be taken in conjunction with other new technologies' royalty methods and amounts and should reflect the move to revenue from other areas besides CD sales.

- CPCC in their "Fact sheet" note that the current levy takes into consideration a reduction to offset the increase in "authorized" copying from such sources as Internet distribution, etc.
- It is my contention that with the previously noted royalty figure for streaming Internet music feed being double that of radio, the amount of the levy attributable to Internet copied music must be set to 0% other than that done via "file sharing" software.

4.4.10 Levy should be comparable to that imposed in other, similar jurisdictions (US)

- The technological and economic environment in which this levy exists includes jurisdictions outside the control of the Board or CPCC. Regardless of whether a levy is imposed on all transactions everywhere or not (contrary to the fact that today, there is no levy on items exported in either US or Canada), if there is a large disparity between jurisdictions the market allows consumers to bypass the local jurisdiction in favour of purchase for import (i.e. with no levy to CPCC) thus again obviating the levy.
- Even if the levy is enforceable on all purchased media, at the stated rate within Canada, the fact that the levy amount is radically different from that of other jurisdictions which also adhere to the concept of the levy will result (when amounts are distributed to other jurisdictions as expected eventually) in Canadian consumers paying foreign copyright holders out of proportion to what foreign consumers might pay Canadian copyright holders in return.

4.4.11 Regardless of all above, section {81} implies a difference

CPCC has structured their levy calculations as if there were no free market, and as if section {80} did not remove the concept of coping (for private use) from the realm of copyright infringement. They insist that the total number of copies made has something to do with the total amount of the levy when in fact it no longer has anything to do with the total amount of the levy.

Only the free market value of the access to listening to music which copying facilitates has any bearing on the amount of the levy. In effect, the removal of private copying from significance in infringement of copyright makes all such copying equivalent to the process of "performing" in the same light as listening to a radio is equivalent to performing and incurs a royalty in relation to other royalties for residuals on original performances.

In addition, the sections {80} and {81} together make it abundantly clear that "illegal copying" is not covered by section {81} for compensation "in respect of" since it only covers private copying which by the act is now legal. CPCC may not include illegal copying quantities in its calculations, even if the Board rules that they may calculate the levy on "total copies" since this must in fact be read as "total copies for private use as defined in section {80}".

CPCC must also be cautioned not to characterize the levy as compensation for "illegal" copying as they have done in print and interview, since the act clearly distinguishes and makes private copying legal and CPCC is not authorized to collect the levy "in respect of" illegal copying.

This means that CPCC may not count copying, either wholesale or retail, which is illegal in their calculations of compensation if the Board rules that they may in fact "count copies" at all.

5. General Comments

I am not in favour of subsidizing an industry, especially one which has shown complete lack of ability or incentive to change with the times.

I believe that artists will continue to make music, regardless of whether publishers and record companies sell CDs. I also believe that artists will find a way to earn a living through their music.

I don't believe that just because a publishing industry has been around for the past 100 years that it has a right to exist forever. I don't see many buggy-whip manufacturers around, nor do I see any group of them lobbying the government for a levy on every automobile made or piece of road laid. On the other hand, the Teamsters are still with us - they have simply embraced the new technology and now drive Kenworths instead of drays.

Artists are already using the Internet to market and sell their product. Others are returning to the stage and making their money that way, using the Internet as a marketing tool.

The whole CPCC premise is that copying an artist's music is worth a particular amount, based upon the retail price of a CD, calculated against the average number of songs on the CD and such. In fact, the artist's work is only worth what the purchasing public will pay for it - and the purchasing public has voted with its dollars that a large part of the works on sale at the local record store are not worth what the retailers/publishers want for them. They (CPCC) would have us believe that the public in general don't want to buy music at all - that instead, they only want it free. This is far from the truth. The truth is that the general public don't want their music bundled (at higher cost) with music they don't want and in a format they can't use when and where they like given the technologies of today.

There may have been a case for the creation of the levy when it was originally enshrined in law. There may at that time have been a case for the amounts of the levy to date.

The fact is that technology has not stood still in the short time of the levy's life, nor will it stand still even in the life of this levy proposal.

The same can be said of the market for the products of the artists this levy purports to compensate for "lost revenues".

The same also can be said of the consumer market in general – that it has evolved within the lifetime of this levy, and that it continues to evolve. The marketplace is no longer the store on the corner, the store in the local mall, or even the store in the nearest large city. It is the store on the Internet, and that store can be a world away – the consumer doesn't care and in many cases doesn't know.

The musician of the mid 20th century with a recording contract to a major music publisher could expect to receive a few cents per album sold – maybe as much as a dollar.

The musician of the 21st century may not have a recording contract except to their wholly owned personal company, and may get a few hundredths or even thousandths of a cent every time their music is played. The publishing houses may be replaced by webcasters. The pre-recorded CD will have gone the way of the dodo, and all the music in the world to date may be stored in a cube about 3" on a side.

Between now and then, the CPCC has a mandate to somehow bridge the revenue gap caused by the collapse of the retail method of distributing musical performance. In moving

from compensation for retail sales to compensation for private playing, the musicians will end up getting about the same amount of money from the public somehow. The media levy is one method, but it is not the only one, nor should it be a yoke on the shoulders of innovation in the search for replacements for the paradigms of the past.

It is not about the copying, it is about the change in playing technology. The change in the act which recognized the Canadian ability to copy music as part of their use of it simply recognized a fact of life as something that could not and should not be criminal. This is the same as recognizing that going over 15 miles per hour and not having a man walking in front of you while driving a car on a freeway should also not be criminal. Technology changes the rules of the game, and nothing can be done about it but to adapt.

In providing for a levy, the Canadian government saw fit to provide the music industry a way of lessening the impact of their adaptation process, in a somewhat similar fashion to how society might have provided some assistance to the man who used to walk in front of the car with a bell.

The point is that there is no expectation that such an assistance should either continue forever, or get in the way of the march of progress. That would be somewhat akin to requiring all owners of cars to pay a person for the whole time they drove the car, regardless of whether the law required that person to walk in front of their car anymore.

The CPCC has a vested interest in continuing and enlarging the levy and what it is applied to. This does not necessarily coincide with the interests of the music industry. Again, as the “referee” in this process, the board must consider the interests of the holders of the copyright separately from those of CPCC, and in light of other areas of the act and other methods already available and being used to compensate artists for use of their works.

This levy proposal is not about compensating the musicians and artists, it is about increasing the amount of revenue that flows through CPCC.

The amounts of the levies proposed impinge upon the purchasing habits of the general public to the point where it will affect other revenue streams currently coming to the artists for which this levy purports to serve. “I’ve paid the fine, I’m going to do the crime” – so will become a self-fulfilling prophecy. This does not mitigate the argument about whether in fact the media is for “copying” as opposed to “playing”.

If it is the music that sells MP3 players, then why are they not going after a levy on radios, cd players, and the like? Because if it was not for these and other replay devices, there would be no pre-recorded music industry and the artists would have to make their money solely by playing music and selling sheet music paper. The MP3 player in all guises creates a market for selling music in pure digital form. The CD-R, DVD-R, hard disk, RAM, and all other technology have simply become part of the method of playing music.

Making a copy is no longer the meter by which the music industry can measure the worth of their wares.

I hear music via the air. Does this mean that CPCC has the right to levy the air?

I can store all of the music ever recorded in a beam of energy bounced between the earth and the moon. Does this give CPCC the right to levy every microwave oven? Or the electricity which I might use to power the beam?

6. Conclusions

There is empiric evidence that suggests the claimed tie between the rise of the Internet and digital copying capability, and the fall in revenue from sales of commercial music are not as closely tied as the music industry claims. This goes directly to the calculation of levy total contribution.

There is no legislative basis for calculating the levy based upon capacity.

There is no legislative basis for calculating the total levy amount based on any calculation of the total number of copies (legal or illegal) of music which are made.

There is no legislative basis for not providing for a schedule of levy based upon the number of units purchased at one time.

There is a continuum of technologically requiring "copying" in the process of playing music, from a few bits at a time, all the way to full copies of works for non-archival periods of time measured in hours, days, weeks. This continuum suggests strongly that the act of "copying" noted in the act {80(1)} is no longer significant in the determination of compensation due to musicians and copyright holders and is in fact upheld by the wording of this section explicitly.

The imposition of a media levy on any medium with no ceiling imposes a far greater cost than is reasonable based on amounts stipulated for similar use in other sections of the act.

The imposition of a media levy on re-recordable media is not justified in any case.

If a levy is confirmed on re-recordable media, the amount of proposed levy is far in excess of that justified in general, and on large media in particular.

If a levy is confirmed on re-recordable media manufactured into MP3 players, the amount of this levy should be based on a per-player basis, not on a per unit-storage (Megabyte/Gigabyte) basis.

If a levy is confirmed on re-recordable media (memory cards/micro-hard disks) sold as accessory, it should be based on a per card unit, not on a per unit-storage basis.

If a levy is confirmed on blank CD-R, DVD-R, and tape, it should be in the form of a schedule taking into consideration quantity purchased in one transaction and whether the units are packaged and/or intended for retail sale as blank audio media (as opposed to bulk/case-lot purchase for re-manufacture and eventual sale to final customer in non-blank form.) Similarly if a levy is confirmed on re-recordable CD-RW and DVD-RW media.

If the proposed amounts of levy are confirmed, the Canadian music industry will not have any incentive to change their obviously flawed product and marketing procedures. Evidence is available that if the industry embraces some form of single-song sales facility, and stops tied selling of inferior quality music, the purchasing public will buy their music. In fact, the levy amounts currently in effect are high enough that there may already be little or no incentive for the industry to change its ways; and change it must if it is to survive at all.

As the "referee" in this process, the Copyright board must exercise its common sense in ruling that CPCC has not made a legitimate case for any substantial calculated increase in the total amount of levy that should be collected over the period of this proposal, over what would have otherwise been paid by willing consumers in a free market environment.

The individual levy amount on any levied item need not be consistent with the imputed “lost revenue” of the potential for copying music onto that particular medium. Instead, the total amount of levy collected over all classes and categories of levied items must simply add up to the total free market amount that the purchasing public would willingly pay for the music they listen to which has otherwise not been subject to the payment of a royalty via other means. The levy is simply the method of collecting this amount, nothing more.

7. Suggestions

That the levy on blank music recording media in general be subject to a schedule such that large quantities purchased at one time be subject to a ceiling, and that the per unit levy for small quantities be adjusted if necessary to compensate for this. (Example: levy on single unit packages be $0.21, levy on bundles of 10, 25, 50, 100 at $2.00, $4.00, $5.00, $6.00 respectively, quantities sold without retail packaging in case-lot quantities or higher at $0.05 per unit or even $0.00) This addresses the concerns of industries which purchase blank media in quantity for re-manufacture (i.e. recording) for such purposes as creation of retail photo-cd, software duplication, information dissemination, etc.

That the levy on re-recordable media be $0.00 per unit.

That, if a levy on built-in micro-hard disk (or any other large format) media is confirmed, it be levied as a per-physical-unit levy on each MP3 player regardless of storage method or size, and that the levy be a maximum of on the order of $100.00 per unit.