

Comments on the Proposed Levies to be Collected for the Sale, in Canada, of Blank Audio Recording Media During the Years 2003 - 2004
written by John Boufford, I.S.P.
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BY ELECTRONIC MAIL

Claude Mareau
Secretary General
Copyright Board
56 Sparks Street
Suite 800
Ottawa, Ontario, K1A 0C9

Subject: Comments on the Proposed Levies to be Collected for the Sale, in Canada, of Blank Audio Recording Media During the Years 2003 - 2004
Supplement to the Canada Gazette, March 9, 2002

Dear Secretary General:

Thank you for an opportunity for the Canadian Information Processing Society (CIPS, pronounced KIPS with a hard "C" as in "Canadian") to comment on the [proposal to raise levies on blank audio recording media](#) as published in the Supplement to the Canada Gazette, March 9, 2002.

With approximately 8500 members, CIPS is Canada's largest association of IT professionals, representing the interests of IT professionals to industry and government. Through the volunteer efforts of its members, CIPS is involved in a number of initiatives relating to setting standards within the IT profession and providing assistance to Canadians. Our advocacy role is intended to reflect the public interest as well as that of our members.

Within our profession, blank digital recording media (primarily CD-R and CD-RW) are used:

- to back up data on small computer systems,
- to distribute programs, reports and other information products to clients,
- to distribute business information to potential clients, and
- for a large number of other purposes unrelated to recording copyrighted music.

Even in the home computer environment, the increased use of CD's can be attributed to a number of factors entirely unrelated to recording copyrighted music, some of which are identified below:

- the reduced price and increased availability of scanners which can be used to convert photo albums to digital format
- the reduced price and increased availability of digital cameras which produce large, digital files - which have to be stored somewhere
- the proliferation of CD-ROM drives on computers which makes it reasonable to share files of data and digital images via CD rather than diskette
- the ease-of-use of CD-R drives
- the growth of hard-drive capacity, making continued use of diskettes impractical for back-up.

CIPS believes the proposed increase in the levy is contrary to Canadian interests and unfair for the following reasons.

- According to the Canadian Private Copying Collective's own figures (reported in the Globe and Mail), of the 100 million blank CDs sold each year, only 44 million a year are likely to be used in home-recording. CIPS acknowledges that this is a problem for the recording industry but no more so than for the software industry who have found alternate ways to address the problem. We recognize that the Board will not entertain rejection of the

tariff as a whole. However the proposed tariffs do discourage the recording industry from development of alternate schemes to address the underlying problem.

- The proposed increase raises the levy on CD's to 281% of the current levy (proposed to move to 59 cents from the current 21 cents) while the proposed increase for audio-quality blank CD's brings the levy to 160% of current levels (proposed to move to \$1.23 from the current 77 cents). While the levy is certainly higher on audio quality media, it is patently unfair to raise the levy on predominately computer media by a greater percentage than that on similar audio media. CIPS' view is that the levy should be reduced on CD's that are not of audio quality, but in any case, the maximum increase on CD-R's and CD-RW's should not exceed the percentage increase on similar audio quality products.
- The proposed increases in tariffs far exceed inflation and the consumer price index.
- The levy will exceed the cost of the product. We believe that this will cause software developers to preferentially contract CD production with U.S.-based companies because the recorded CD's can be imported without levy. The levy also makes Canadian companies less competitive when bidding on recording work for American companies. In other words, the levy will favour U.S. companies over those in Canada.
- Increasingly, educational products are being produced in CD and multi-media format. As there is no provision to provide general levy dispensation for educational purposes, the proposed levy amounts to a tax on schools, children and mature students.
- The levy is not equitable in protecting copyright because "Only persons who own rights in sound records of musical works are entitled to share in the remuneration." Thus, these provisions benefit the multi-national recording industry but exclude equally-deserving holders of intellectual property rights for excluded products such as computer programs. CIPS is not in favour of levy sharing among the rights holders of currently excluded products as a means of combating software piracy, any more than we are in favour of paying a tax on media used for legitimate information technology purposes to subsidize another sector that cannot deal with its own copyright issues.
- The Board's position is that "The levy is payable on all media that qualify, without regard to end use. No purpose is served by asking that the tariff include a mechanism that would allow those who can prove that they use qualifying media for purposes other than reproducing musical works to be exempted from payment or to receive a refund." (Supplement to the Canada Gazette, March 9, 2002, at page 6). Clearly the view of the Board is that it is fair and equitable to tax those that do not use CD's for copying music.
- The tariff applies to a wide variety of media identified in the above-mentioned Supplement to the Canadian Gazette as well as "any medium prescribed by Regulations pursuant to sections 79 and 87 of the Act". CIPS is opposed to application of the levy to any computer equipment solely because it has a CD-writer or disk storage. Such a move would be a major blow for the working poor to obtain computer equipment for their families with a view to making their children computer literate and more employable in the information economy.

A recent poll of our members found that 93% of the respondents opposed the proposed tax.

In summary, CIPS position is:

- The proposed tariffs discourage the recording industry from developing alternate schemes to address the underlying problem of music piracy.
- CIPS is not in favour of levy sharing among the rights holders of currently excluded products as a means of combating software piracy, any more than we are in favour of paying a tax on media used for legitimate information technology purposes to subsidize another sector that cannot deal with its copyright issues.
- It is patently unfair to raise the levy on predominately computer media by a greater percentage than that on audio media. The levy on blank recording medium predominately used for information technology purposes should be reduced or remain at the current level. Failing that, the increase should be limited to the rate of inflation or the consumer price index.
- The imposition of the levy will favour U.S. companies over those in Canada and cause Canadian businesses to contract the production of CD-based products with U.S. firms who can produce the recorded CD's without the levy.
- The proposed levy amounts to a tax on schools, children and mature students.
- Imposition of the levy on computers that have the capability to write CD's, but that are not predominately intended to record music, would be a unreasonable interpretation of the Act, as well as imposition of an undue financial hardship on the working poor.

CIPS submits that there are compelling economic and public interest reasons for deferring any increase in levies on CD-R and CD-RW media at this time.

If you have any questions or comments about this submission, please contact John Boufford, I.S.P., Co-Chair, External Liaison Committee, at Boufford@cips.ca.

Respectfully,

L. Oliver, I.S.P.
President