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CPCC Disappointed with Federal Court of Appeal Decision

(Toronto) - The Federal Court of Appeal yesterday overturned the decision of the Copyright Board of Canada to hear evidence for a private copying levy on digital audio recorders for the years 2008 and 2009. The Canadian Private Copying Collective (CPCC), the organization that proposed the levies, has expressed disappointment with the appeal court's decision that the Copyright Board lacks the legal authority to approve such a tariff.

"The private copying levy is a fair deal for consumers, creators and rights holders alike," stated David Basskin, speaking on behalf of the CPCC. "When Parliament introduced the private copying provisions of the Copyright Act in 1997, it recognized that the copies people make of recorded music have value and that rights holders should receive some compensation for this use of their work. In drafting the legislation, the government also recognized that the media Canadians use to make these private copies would change over time, which is why the definition of blank audio recording media is neutral and there is a procedure to have the rates and types of media reviewed periodically by the Copyright Board."

Mr. Basskin further stated, "The CPCC sought a levy on iPods and other MP3 players because they are used extensively for the purpose of copying recorded music and because the vast majority of the copying is not authorized. In the absence of a levy, no one who is involved in the creation of the music receives any remuneration when their music is copied without their approval. The CPCC is understandably disappointed with the Federal Court of Appeal's decision and will be considering its options."

There is strong evidence to indicate that Canadians support compensating rights holders for private copies made onto digital audio recorders. A June 2006 survey conducted by Environics Research Group found that 75% of Canadians supported a levy on digital audio recorders. In a December 14, 2004 decision, even the Federal Court of Appeal stated that a levy on digital audio recorders is "desirable" and that "[t]he evidence establishes that these recorders allow for extensive private copying by individuals. Their use can potentially inflict on rightsholders harm beyond any "blank audio recording medium" as this phrase has been understood to date."

The purpose of the private copying provisions in the Copyright Act is to take a common-place infringing activity that is uncontrollable, and legitimize it by means of an exemption. In exchange, the blank audio recording media used to make the private copies is subject to a levy in order to provide some compensation to the rights holders for this use of their work. This amounts to a win-win situation for both consumers and music rights holders. Not allowing these provisions to apply to digital audio recorders is not only a great loss for both groups, but is a step backwards for Canada as it does not reflect the rapidly changing digital environment. Countries such as France, Spain, and Germany have all put levies in place on digital audio recorders in recent years.

The CPCC is the non-profit agency charged with collecting and distributing private copying royalties. Established in 1999, the CPCC is a collective of collectives that represent songwriters, composers, music publishers, recording artists, musicians and record companies.

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