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OTTAWA, ONTARIO, MAY 31, 2005

Present: THE HONOURABLE JUSTICE LUC MARTINEAU

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BETWEEN:

Stay Informed

CANADIAN PRIVATE COPYING

COLLECTIVE (CPCC)

Other Decisions

- Federal Court of Appeal
Tax Court of Canada
Supreme Court of Canada
Office of the Commissioner for Federal Judicial Affairs

Applicant

and

COMPUTER WAREHOUSE OUTLET INC.

Respondent

REASONS FOR ORDER AND ORDER

[1] This is an application brought under the summary proceedings provision in subsection 34(4) of the Copyright Act, R.S.C., 1985, c. C-42 (the Act) and pursuant to paragraph 300(b) of the Federal Court Rules, 1998, SOR/98-106, in respect of unpaid levies arising from the private copying tariffs certified under Part VIII of the Act (the Tariffs).

Legislative and regulatory scheme

[2] In Canada, eligible authors, performers and makers of sound recording are entitled to receive payment for the private copying of their musical works, performances and sound recordings. Part VIII of the Act came into force on March 19, 1998. Before that time, the unauthorized reproduction of musical works performances or sound recordings (Recorded Music) for private use constituted an infringement of the exclusive reproduction rights of copyright holders (Rightsholders). However, it was impossible for Rightsholders to enforce their exclusive reproduction rights by preventing private copying or licensing this activity. In enacting Part VIII of the Act, Parliament created a private copying scheme to address the problem. The relevant provisions of the Act are found in the annex.

[3] Part VIII provides that the copying of Recorded Music for private use does not constitute copyright infringement, thereby providing a statutory exception to Rightsholders' exclusive reproduction rights (section 80 of the Act). At the same time, it entitles Rightsholders to receive equitable remuneration or account of the private copying of Recorded Music (section 81 of the Act). Manufacturers and importers of blank audio recording media which are sold or disposed of in Canada and ordinarily used for the private copying of Recorded Music must pay levies to a collecting body, designated by the Copyright Board of

Canada (the Board), which then distributes the levies to eligible Rightsholders (section 82 of the Act). Moreover, the collecting body can, in default of their payment, recover the unpaid levies in a court of competent jurisdiction (subsection 88(1) of the Act).

[4] The applicant, Canadian Private Copying Collective (CPCC), a non-profit corporation established under the laws of Canada, is the collecting body designated under paragraph 83(8)(d) of the Act to collect and distribute the private copying levies payable by the manufacturers and importers of blank audio recording media to eligible authors, performers and makers of sound recordings.

[5] The Act authorizes the applicant to file proposed tariffs with the Board for the profit of Rightsholders (subsection 83(1) of the Act). The Board, after considering the proposed tariff and any objection to it (subsection 83(7) of the Act), certifies the Tariffs it determines to be fair and equitable (subsection 83(9) of the Act). In certifying the tariffs, the Board establishes the manner of determining the levies and the terms and conditions related to the levies it considers appropriate (paragraph 83(8)(a) of the Act). The tariffs proposed by the applicant and the tariffs certified by the Board receive formal publication in the *Canada Gazette* (subsections 83(6) and 83(10) of the Act).

[6] Since December 1999, the Board has certified four tariffs determining the blank audio recording media which are subject to levies, the amounts of those levies and the terms and conditions applicable to the payment of the levies (the Tariffs). The manufacturers and importers of blank audio recording media have an obligation under the Act and the Tariffs to furnish a report of their sales or disposition in Canada (paragraph 82(1)(b) and subsection 83(8) of the Act; section 8 of the Tariffs). The Tariffs also provide that manufacturers and importers shall keep and preserve records from which the applicant can readily ascertain, through an audit of the reporting company's records, the amounts payable and the information required under the Tariffs (section 9 of the Tariffs). The Tariffs also require manufacturers and importers to pay interest on overdue amounts owed to the applicant (section 12 of the Tariffs).

The Evidence

[7] The applicant has submitted as evidence the affidavits of Laurie Gelbloom, Corinne Wolfe Betz and Ivor Gottschalk.

[8] Laurie Gelbloom is the general counsel for the applicant. She is familiar with the private copying tariffs decisions certified by the Board since 1999 (hereinafter collectively referred to as the Tariffs) (Exhibits 1 to 5 of her affidavit). According to Laurie Gelbloom:

(a) In May 2003, the applicant became aware that the respondent, Computer Warehouse Outlet Inc., might be importing and selling blank audio recording media without reporting these activities to the applicant. Accordingly, the applicant wrote to the respondent informing it that as an importer or manufacturer of blank audio recording media, the respondent was required by the Act and the Tariffs to file reports and pay levies to the applicant (Exhibit 6 of her affidavit).

(b) On or about June 20, 2003, the applicant received a letter from the law firm of Goodman & Carr LLP advising that it had been retained by the respondent and would reply to the applicant's May 29 demand letter once it had received instructions (Exhibit 7 of her affidavit). When no response followed, the applicant instructed its attorneys to send a second letter requesting the respondent to furnish the outstanding reports and pay whatever levies were owed to the applicant (Exhibit 8 of her affidavit).

(c) On or about January 15, 2004, the respondent sent two reports directly to the applicant detailing its imports and sales of blank audio recording media; however, the applicant advised the respondent that the reports had not been filled out in accordance with the tariff provisions and asked that they be corrected and submitted again (Exhibit 9 of her affidavit).

(d) On or about January 29, 2004, the respondent's attorneys submitted six reports relating to the respondent's sales of blank audio recording media for the bi-monthly reporting periods from March 1, 2002 to April 30, 2003. No report was filed for the two month accounting period from July 1, 2002 to August 31, 2002 (Exhibit 10 of her affidavit). These reports established that during the reported period the respondent had imported and sold 380, 400 blank CDs. According to Laurie Gelbloom, since each blank CD carries a \$0.21 levy pursuant to the Tariffs in force during the periods in question, the respondent therefore owes \$79,884 in private copying levies to the applicant.

(e) On February 12, 2004, the applicant informed the respondent that it wished to proceed with an audit of the company's books and records in order to verify the information provided in the reports (Exhibit 11 of her affidavit).

(f) On February 13, 2004 and again on February 16, 2004, the applicant advised the respondent of the types of records and information that were required by the applicant's auditors for the effective exercise of

the applicant's right to audit (Exhibits 12 & 13 of her affidavit).

(g) On February 26, 2004, the applicant was advised by Goodman & Carr LLP that it no longer represented the respondent (Exhibit 14 of her affidavit).

(h) On March 5, 2004, the applicant reluctantly agreed to the respondent's condition that the applicant conduct a limited-scope audit at the personal residence of Ernesto Falbo rather than a full audit at the respondent's premises (Exhibits 15, 16 and 17 of her affidavit).

(i) On March 16, 2004, as agreed between the parties, the applicant's auditor, Ivor Gottschalk, visited the personal residence of Ernesto Falbo in order to conduct the audit.

(j) On April 14, 2004, the applicant advised the respondent that according to the auditor's report, it had imported and sold 18,000 blank CDs in addition to those previously reported to the applicant and that, as a result, the respondent owed levies totalling \$83,664 to the applicant, which sum is increased to \$87,769.07 when unpaid interest of \$4,105.07 (accrued to May 31, 2004) is added to the capital amount.

(k) The respondent has not paid the applicant the levies and interest it owed in accordance with the Tariffs.

[9] According to Corinne Wolfe Betz, an enforcement associate for the applicant, Ernesto Falbo admitted to her that the respondent had imported and sold approximately 300,000 blank CDs during the period of the Tariffs since 1999. Furthermore, she says that she sent Ernesto Falbo a number of blank reporting forms to be completed.

[10] According to Ivor Gottschalk, president and owner of Gottschalk Forensic Accounting & Valuator Inc., he visited the house of Ernesto Falbo to conduct an audit of the respondent's records for the applicant. On this matter, he says that he did examine the supplier invoices of purchases made by the respondent and its banking documents. However, he did not examine the respondent's accounting records and financial statements, which are usually consulted to assess the completeness of the banking and supplier documents. In his report, he indicated that the respondent sold 30,000 blank CDs for the period of May 1 2002 to June 30, 2002 rather than 12,000 blank CDs that the respondent originally reported to the applicant. Ivor Gottschalk alleges that Ernesto Falbo acknowledged the omission to add these 18,000 blank CDs and explained that it was the result of a clerical error.

[11] The respondent, who is now representing herself (even though she is an Ontario corporation with its registered head office at 1140 Sheppard Ave. West, Unit 9, Toronto, Ontario, M3K 2A2), has not filed any materials or evidence with respect to this application.

The merit of the present application

[12] Generally speaking, the applicant can seek an order of the Federal Court (the Court) to enforce provisions of the Tariffs given that pursuant to subsection 66.7(2) of the Act, the Tariffs may be made an order of the Court. Furthermore, section 37 of the Act stipulates that the Court has concurrent jurisdiction with provincial courts to hear and determine all proceedings, other than the prosecution of offences under section 42 and 43 of the Act, for the enforcement of a provision of this Act or of the civil remedies provided by this Act. According to subparagraph 34(4)(c)(i) of the Act, proceedings taken in respect of a tariff certified by the Board under Part VIII of the Act may be commenced or proceeded with by way of application.

[13] It is clear from the evidence on record that the respondent is an importer and seller of blank audio recording media in Canada. Therefore, according to the relevant provisions of the Act and the Tariffs the respondent was required to file reports and pay levies to the applicant. However, the respondent did not pay any levy to the applicant.

[14] According to the reports filed by the respondent in January 2004, the respondent declared having imported and disposed of 380,400 CDs during the period of March 1, 2002 to April 30, 2003. However, the audit conducted by the applicant's auditor revealed that the respondent omitted to declare 18,000 CDs from the said reports. The respondent acknowledged the omission to the applicant's auditor. Consequently, the respondent imported and disposed of a total of 398,400 CDs during the period of March 1, 2002 to April 30 2003. The 398,400 CDs imported and disposed of by the respondent were all "CD-R".

[15] Since all the imports and sales or dispositions admitted to by the respondent occurred in 2002 and 2003, the rate of levies and other applicable provisions can be found in the *Private Copying Tariff, 2001-2002* and *Private Copying Tariff, 2003-2004*.

[16] Section 3 of the *Private Copying Tariff, 2001-2002* and *Private Copying Tariff, 2003-2004*

provides for a levy rate of 21 ¢ for each CD-R imported and sold or disposed of in Canada. Therefore, the total amount of levies owed by the respondent to the applicant is \$83,664.00 (398,400 x 21 ¢).

[17] Moreover, Section 12 of the *Private Copying Tariff, 2001-2002* and *Private Copying Tariff, 2003-2004* provides for the payment of interest on overdue levies. Since the respondent has not paid any of the levies owed to the applicant, it also owes interest in the amount of \$4,105.07 to the applicant accrued to May 31, 2004.

[18] Moreover, the respondent has forced the applicant to request the intervention of this Court to order the respondent to comply with its obligations under Part VIII of the Act and the Tariffs. Therefore, the applicant is also entitled to obtain an order directing the respondent to comply with the reporting requirements and with the payment and reporting calendar set out in the Tariffs, for as long as the respondent remains a manufacturer or importer subject to the provisions of Part VIII of the Act and the Tariffs.

[19] Finally, in the exercise of the Court's discretion, I have determined that costs should be awarded to the applicant according to the top-end of Column V of the table to Tariff B. This decision is based on the fact that the respondent is clearly liable for the payment of levies and has failed to submit any evidence contesting the veracity of the above. Further, the conduct of the respondent (who was previously represented by counsel and initially opposed the application) unnecessarily lengthened the duration of the proceeding and forced the applicant to go into considerable efforts and disbursements to recover the relatively small amounts of levies and interest mentioned above. Lastly, the applicant put forward offers of settlement prior to commencing the present proceeding.

ORDER

THIS COURT ORDERS that the application be allowed. Consequently, the respondent shall:

- (a) Pay to the applicant, pursuant to the applicable copying tariffs, unpaid levies in the sum of \$83,664;
- (b) Pay to the applicant, pursuant to the applicable copying tariffs, outstanding interest in the sum of \$4,105.07 accrued to May 31, 2004, plus any additional interest that has accrued since that date;
- (c) Comply with the reporting requirements and with the payment and reporting calendar set out in the applicable copying tariffs, for as long as the respondent remains a manufacturer or importer subject to the provisions of Part VIII of the Act and the tariffs certified thereunder; and
- (d) Pay the costs of this application to the applicant calculated according to the top-end of Column V of the table to Tariff B.

"Luc Martineau"

Judge

ANNEX

Relevant provisions of the *Copyright Act*, R.S.C. 1985, c. C-42, as amended.

34. (1) Where copyright has been infringed, the owner of the copyright is, subject to this Act, entitled to all remedies by way of injunction, damages, accounts, delivery up and otherwise that are or may be conferred by law for the infringement of a right.

(2) In any proceedings for an infringement of a moral right of an author, the court may grant to the author or to the person who holds the moral rights by virtue of subsection 14.2(2) or (3), as the case may be, all remedies by way of injunction, damages, accounts, delivery up and otherwise that are or may be conferred by law for the infringement of a right.

34. (1) En cas de violation d'un droit d'auteur, le titulaire du droit est admis, sous réserve des autres dispositions de la présente loi, à exercer tous les recours -- en vue notamment d'une injonction, de dommages-intérêts, d'une reddition de compte ou d'une remise -- que la loi accorde ou peut accorder pour la violation d'un droit.

(2) Le tribunal, saisi d'un recours en violation des droits moraux, peut accorder à l'auteur ou au titulaire des droits moraux visé au paragraphe 14.2(2) ou (3), selon le cas, les réparations qu'il pourrait accorder, par voie d'injonction, de dommages-intérêts, de reddition de compte, de remise ou autrement, et que la loi prévoit ou peut prévoir pour la violation d'un droit.

(3) The costs of all parties in any proceedings in respect of the infringement of a right conferred by this Act shall be in the discretion of the court.

(4) The following proceedings may be commenced or proceeded with by way of application or action and shall, in the case of an application, be heard and determined without delay and in a summary way:

(a) proceedings for infringement of copyright or moral rights;

(b) proceedings taken under section 44.1, 44.2 or 44.4; and

(c) proceedings taken in respect of

(i) a tariff certified by the Board under Part VII or VIII, or

(ii) agreements referred to in section 70.12.

(5) The rules of practice and procedure, in civil matters, of the court in which proceedings are commenced by way of application apply to those proceedings, but where those rules do not provide for the proceedings to be heard and determined without delay and in a summary way, the court may give such directions as it considers necessary in order to so provide.

(6) The court in which proceedings are instituted by way of application may, where it considers it appropriate, direct that the proceeding be proceeded with as an action.

(7) In this section, "application" means a proceeding that is commenced other than by way of a writ or statement of claim.

37. The Federal Court has concurrent jurisdiction with provincial courts to hear and determine all proceedings, other than the prosecution of offences under section 42 and 43, for the enforcement of a provision of this Act or of the civil remedies provided by this Act.

42. (1) Every person who knowingly

(a) makes for sale or rental an infringing copy of a work or other subject-matter in which copyright subsists,

(b) sells or rents out, or by way of trade exposes or offers for sale or rental, an infringing copy of a work or other subject-matter in which copyright subsists,

(c) distributes infringing copies of a work or other subject-matter in which copyright subsists, either for the purpose of trade or to such an extent as to affect prejudicially the owner of the copyright,

(d) by way of trade exhibits in public an infringing copy of a work or other subject-matter in which copyright subsists, or

(3) Les frais de toutes les parties à des procédures relatives à la violation d'un droit prévu par la présente loi sont à la discrétion du tribunal.

(4) Les procédures suivantes peuvent être engagées ou continuées par une requête ou une action :

a) les procédures pour violation du droit d'auteur ou des droits moraux;

b) les procédures visées aux articles 44.1, 44.2 ou 44.4;

c) les procédures relatives aux tarifs homologués par la Commission en vertu des parties VII et VIII ou aux ententes visées à l'article 70.12.

Le tribunal statue sur les requêtes sans délai et suivant une procédure sommaire.

(5) Les requêtes visées au paragraphe (4) sont, en matière civile, régies par les règles de procédure et de pratique du tribunal saisi des requêtes si ces règles ne prévoient pas que les requêtes doivent être jugées sans délai et suivant une procédure sommaire. Le tribunal peut, dans chaque cas, donner les instructions qu'il estime indiquées à cet effet.

(6) Le tribunal devant lequel les procédures sont engagées par requête peut, s'il l'estime indiqué, ordonner que la requête soit instruite comme s'il s'agissait d'une action.

(7) Au présent article, « requête » s'entend d'une procédure engagée autrement que par un bref ou une déclaration.

37. La Cour fédérale, concurremment avec les tribunaux provinciaux, connaît de toute procédure liée à l'application de la présente loi, à l'exclusion des poursuites visées aux articles 42 et 43.

42. (1) Commet une infraction quiconque, sciemment :

a) se livre, en vue de la vente ou de la location, à la contrefaçon d'une oeuvre ou d'un autre objet du droit d'auteur protégés;

b) en vend ou en loue, ou commercialement en met ou en offre en vente ou en location un exemplaire contrefait;

c) en met en circulation des exemplaires contrefaits, soit dans un but commercial, soit de façon à porter préjudice au titulaire du droit d'auteur;

d) en expose commercialement en public un exemplaire contrefait;

e) en importe pour la vente ou la location, au Canada, un exemplaire contrefait.

(e) imports for sale or rental into Canada any infringing copy of a work or other subject-matter in which copyright subsists

(f) on summary conviction, to a fine not exceeding twenty-five thousand dollars or to imprisonment for a term not exceeding six months or to both, or

(g) on conviction on indictment, to a fine not exceeding one million dollars or to imprisonment for a term not exceeding five years or to both.

(2) Every person who knowingly

(a) makes or possesses any plate that is specifically designed or adapted for the purpose of making infringing copies of any work or other subject-matter in which copyright subsists, or

(b) for private profit causes to be performed in public, without the consent of the owner of the copyright, any work or other subject-matter in which copyright subsists

(c) on summary conviction, to a fine not exceeding twenty-five thousand dollars or to imprisonment for a term not exceeding six months or to both, or

(d) on conviction on indictment, to a fine not exceeding one million dollars or to imprisonment for a term not exceeding five years or to both.

(3) The court before which any proceedings under this section are taken may, on conviction, order that all copies of the work or other subject-matter that appear to it to be infringing copies, or all plates in the possession of the offender predominantly used for making infringing copies, be destroyed or delivered up to the owner of the copyright or otherwise dealt with as the court may think fit.

(4) Proceedings by summary conviction in respect of an offence under this section may be instituted at any time within, but not later than, two years after the time when the offence was committed.

(5) No person may be prosecuted under this section for importing a book or dealing with an imported book in the manner described in section 27.1.

43. (1) Any person who, without the written consent of the owner of the copyright or of the legal representative of the owner, knowingly performs or causes to be performed in public and for private profit the whole or any part, constituting an infringement, of any dramatic or operatic work or musical composition in which copyright subsists in Canada is guilty of an offence and liable on summary conviction to a fine not exceeding two hundred and fifty dollars and, in the case of a second or subsequent offence, either to that fine or to imprisonment for a term not exceeding two months or to both.

(2) Any person who makes or causes to be made

Le contrevenant encourt, sur déclaration de culpabilité par procédure sommaire, une amende maximale de vingt-cinq mille dollars et un emprisonnement maximal de six mois, ou l'une de ces peines, ou, sur déclaration de culpabilité par voie de mise en accusation, une amende maximale d'un million de dollars et un emprisonnement maximal de cinq ans, ou l'une de ces peines.

(2) Commet une infraction quiconque, sciemment :

a) confectionne ou possède une planche conçue ou adaptée précisément pour la contrefaçon d'une oeuvre ou de tout autre objet du droit d'auteur protégés;

b) fait, dans un but de profit, exécuter ou représenter publiquement une oeuvre ou un autre objet du droit d'auteur protégés sans le consentement du titulaire du droit d'auteur.

Le contrevenant encourt, sur déclaration de culpabilité par procédure sommaire, une amende maximale de vingt-cinq mille dollars et un emprisonnement maximal de six mois, ou l'une de ces peines, ou, sur déclaration de culpabilité par voie de mise en accusation, une amende maximale d'un million de dollars et un emprisonnement maximal de cinq ans, ou l'une de ces peines.

(3) Le tribunal devant lequel sont portées de telles poursuites peut, en cas de condamnation, ordonner que tous les exemplaires de l'oeuvre ou d'un autre objet du droit d'auteur ou toutes les planches en la possession du contrefacteur, qu'il estime être des exemplaires contrefaits ou des planches ayant servi principalement à la fabrication d'exemplaires contrefaits, soient détruits ou remis entre les mains du titulaire du droit d'auteur, ou qu'il en soit autrement disposé au gré du tribunal.

(4) Les procédures pour déclaration de culpabilité par procédure sommaire visant une infraction prévue au présent article se prescrivent par deux ans à compter de sa perpétration.

(5) Des poursuites criminelles ne peuvent être engagées en vertu du présent article relativement à l'importation de livres ou à l'accomplissement des actes relatifs à cette importation dans les conditions visées à l'article 27.1.

43. (1) Quiconque, sans le consentement écrit du titulaire du droit d'auteur ou de son représentant légal, sciemment, exécute ou représente, ou fait exécuter ou représenter, en public et dans un but de lucre personnel, et de manière à constituer une exécution ou représentation illicite, la totalité ou une partie d'une oeuvre dramatique, d'un opéra ou d'une composition musicale sur laquelle un droit d'auteur existe au Canada, est coupable d'une infraction et encourt, sur déclaration de culpabilité par procédure sommaire, une amende maximale de deux cent cinquante dollars; la récidive est punie de la même amende et d'un emprisonnement maximal de deux mois, ou de l'une de ces peines.

any change in or suppression of the title, or the name of the author, of any dramatic or operatic work or musical composition in which copyright subsists in Canada, or who makes or causes to be made any change in the work or composition itself without the written consent of the author or of his legal representative, in order that the work or composition may be performed in whole or in part in public for private profit, is guilty of an offence and liable on summary conviction to a fine not exceeding five hundred dollars and, in the case of a second or subsequent offence, either to that fine or to imprisonment for a term not exceeding four months or to both.

66.7 (1) The Board has, with respect to the attendance, swearing and examination of witnesses, the production and inspection of documents, the enforcement of its decisions and other matters necessary or proper for the due exercise of its jurisdiction, all such powers, rights and privileges as are vested in a superior court of record.

(2) Any decision of the Board may, for the purposes of its enforcement, be made an order of the Federal Court or of any superior court and is enforceable in the same manner as an order thereof.

(3) To make a decision of the Board an order of a court, the usual practice and procedure of the court in such matters may be followed or a certified copy of the decision may be filed with the registrar of the court and thereupon the decision becomes an order of the court.

(4) Where a decision of the Board that has been made an order of a court is varied by a subsequent decision of the Board, the order of the court shall be deemed to have been varied accordingly and the subsequent decision may, in the same manner, be made an order of the court.

79. In this Part,

"audio recording medium" « support audio »

"audio recording medium" means a recording medium, regardless of its material form, onto which a sound recording may be reproduced and that is of a kind ordinarily used by individual consumers for that purpose, excluding any prescribed kind of recording medium;

"blank audio recording medium" « support audio vierge »

"blank audio recording medium" means

(a) an audio recording medium onto which no sounds have ever been fixed, and

(b) any other prescribed audio recording medium;

"collecting body" « organisme de perception »

"collecting body" means the collective society, or other society, association or corporation, that is designated as the collecting body under

(2) Quiconque modifie ou fait modifier, retranche ou fait retrancher, le titre ou le nom de l'auteur d'une oeuvre dramatique, d'un opéra ou d'une composition musicale sur laquelle un droit d'auteur existe au Canada, ou opère ou fait opérer dans une telle oeuvre, sans le consentement écrit de l'auteur ou de son représentant légal, un changement, afin que la totalité ou une partie de cette oeuvre puisse être exécutée ou représentée en public, dans un but de lucre personnel, est coupable d'une infraction et encourt, sur déclaration de culpabilité par procédure sommaire, une amende maximale de cinq cents dollars; la récidive est punie de la même amende et d'un emprisonnement maximal de quatre mois, ou de l'une de ces peines.

66.7 (1) La Commission a, pour la comparution, la prestation de serments, l'assignation et l'interrogatoire des témoins, ainsi que pour la production d'éléments de preuve, l'exécution de ses décisions et toutes autres questions relevant de sa compétence, les attributions d'une cour supérieure d'archives.

(2) Les décisions de la Commission peuvent, en vue de leur exécution, être assimilées à des actes de la Cour fédérale ou de toute cour supérieure; le cas échéant, leur exécution s'effectue selon les mêmes modalités.

(3) L'assimilation se fait selon la pratique et la procédure suivies par le tribunal saisi ou par la production au greffe du tribunal d'une copie certifiée conforme de la décision. La décision devient dès lors un acte du tribunal.

(4) Les décisions qui modifient les décisions déjà assimilées à des actes d'un tribunal sont réputées modifier ceux-ci et peuvent, selon les mêmes modalités, faire l'objet d'une assimilation.

79. Les définitions qui suivent s'appliquent à la présente partie.

« artiste-interprète admissible » "eligible performer"

« artiste-interprète admissible » Artiste-interprète dont la prestation d'une oeuvre musicale, qu'elle ait eu lieu avant ou après l'entrée en vigueur de la présente partie :

a) soit est protégée par le droit d'auteur au Canada et a été fixée pour la première fois au moyen d'un enregistrement sonore alors que l'artiste-interprète était un citoyen canadien ou un résident permanent au sens du paragraphe 2(1) de la Loi sur l'immigration et la protection des réfugiés;

b) soit a été fixée pour la première fois au moyen d'un enregistrement sonore alors que l'artiste-interprète était sujet, citoyen ou résident permanent d'un pays visé par la déclaration publiée en vertu de l'article 85.

« auteur admissible » "eligible author"

subsection 83(8);

"eligible author" « auteur admissible »

"eligible author" means an author of a musical work, whether created before or after the coming into force of this Part, that is embodied in a sound recording, whether made before or after the coming into force of this Part, if copyright subsists in Canada in that musical work;

"eligible maker" « producteur admissible »

"eligible maker" means a maker of a sound recording that embodies a musical work, whether the first fixation of the sound recording occurred before or after the coming into force of this Part, if

(a) both the following two conditions are met:

(i) the maker, at the date of that first fixation, if a corporation, had its headquarters in Canada or, if a natural person, was a Canadian citizen or permanent resident within the meaning of subsection 2(1) of the Immigration and Refugee Protection Act, and

(ii) copyright subsists in Canada in the sound recording, or

(b) the maker, at the date of that first fixation, if a corporation, had its headquarters in a country referred to in a statement published under section 85 or, if a natural person, was a citizen, subject or permanent resident of such a country;

"eligible performer" « artiste-interprète admissible »

"eligible performer" means the performer of a performer's performance of a musical work, whether it took place before or after the coming into force of this Part, if the performer's performance is embodied in a sound recording and

(a) both the following two conditions are met:

(i) the performer was, at the date of the first fixation of the sound recording, a Canadian citizen or permanent resident within the meaning of subsection 2(1) of the Immigration and Refugee Protection Act, and

(ii) copyright subsists in Canada in the performer's performance, or

(b) the performer was, at the date of the first fixation of the sound recording, a citizen, subject or permanent resident of a country referred to in a statement published under section 85;

"prescribed" Version anglaise seulement

"prescribed" means prescribed by regulations

« auteur admissible » Auteur d'une oeuvre musicale fixée au moyen d'un enregistrement sonore et protégée par le droit d'auteur au Canada, que l'oeuvre ou l'enregistrement sonore ait été respectivement créée ou confectionnée avant ou après l'entrée en vigueur de la présente partie.

« organisme de perception » "collecting body"

« organisme de perception » Société de gestion ou autre société, association ou personne morale désignée aux termes du paragraphe 83(8).

« producteur admissible » "eligible maker"

« producteur admissible » Le producteur de l'enregistrement sonore d'une oeuvre musicale, que la première fixation ait eu lieu avant ou après l'entrée en vigueur de la présente partie :

a) soit si l'enregistrement sonore est protégé par le droit d'auteur au Canada et qu'à la date de la première fixation, le producteur était un citoyen canadien ou un résident permanent au sens du paragraphe 2(1) de la Loi sur l'immigration et la protection des réfugiés ou, s'il s'agit d'une personne morale, avait son siège social au Canada;

b) soit si le producteur était, à la date de la première fixation, sujet, citoyen ou résident permanent d'un pays visé dans la déclaration publiée en vertu de l'article 85 ou, s'il s'agit d'une personne morale, avait son siège social dans un tel pays.

« support audio » "audio recording medium"

« support audio » Tout support audio habituellement utilisé par les consommateurs pour reproduire des enregistrements sonores, à l'exception toutefois de ceux exclus par règlement.

« support audio vierge » "blank audio recording medium"

« support audio vierge » Tout support audio sur lequel aucun son n'a encore été fixé et tout autre support audio précisé par règlement.

made under this Part.

80. (1) Subject to subsection (2), the act of reproducing all or any substantial part of

(a) a musical work embodied in a sound recording,

(b) a performer's performance of a musical work embodied in a sound recording, or

(c) a sound recording in which a musical work, or a performer's performance of a musical work, is embodied

onto an audio recording medium for the private use of the person who makes the copy does not constitute an infringement of the copyright in the musical work, the performer's performance or the sound recording.

(2) Subsection (1) does not apply if the act described in that subsection is done for the purpose of doing any of the following in relation to any of the things referred to in paragraphs (1)(a) to (c):

(a) selling or renting out, or by way of trade exposing or offering for sale or rental;

(b) distributing, whether or not for the purpose of trade;

(c) communicating to the public by telecommunication; or

(d) performing, or causing to be performed, in public.

81. (1) Subject to and in accordance with this Part, eligible authors, eligible performers and eligible makers have a right to receive remuneration from manufacturers and importers of blank audio recording media in respect of the reproduction for private use of

(a) a musical work embodied in a sound recording;

(b) a performer's performance of a musical work embodied in a sound recording; or

(c) a sound recording in which a musical work, or a performer's performance of a musical work, is embodied.

(2) Subsections 13(4) to (7) apply, with such modifications as the circumstances require, in respect of the rights conferred by subsection (1) on eligible authors, performers and makers.

82. (1) Every person who, for the purpose of trade, manufactures a blank audio recording medium in Canada or imports a blank audio recording medium into Canada

(a) is liable, subject to subsection (2) and section 86, to pay a levy to the collecting body on selling or otherwise disposing of those blank audio recording media in Canada; and

(b) shall, in accordance with subsection 83(8),

80. (1) Sous réserve du paragraphe (2), ne constitue pas une violation du droit d'auteur protégeant tant l'enregistrement sonore que l'oeuvre musicale ou la prestation d'une oeuvre musicale qui le constituent, le fait de reproduire pour usage privé l'intégralité ou toute partie importante de cet enregistrement sonore, de cette oeuvre ou de cette prestation sur un support audio.

(2) Le paragraphe (1) ne s'applique pas à la reproduction de l'intégralité ou de toute partie importante d'un enregistrement sonore, ou de l'oeuvre musicale ou de la prestation d'une oeuvre musicale qui le constituent, sur un support audio pour les usages suivants :

a) vente ou location, ou exposition commerciale;

b) distribution dans un but commercial ou non;

c) communication au public par télécommunication;

d) exécution ou représentation en public.

81. (1) Conformément à la présente partie et sous réserve de ses autres dispositions, les auteurs, artistes-interprètes et producteurs admissibles ont droit, pour la copie à usage privé d'enregistrements sonores ou d'oeuvres musicales ou de prestations d'oeuvres musicales qui les constituent, à une rémunération versée par le fabricant ou l'importateur de supports audio vierges.

Application des paragraphes 13(4) à (7)

(2) Les paragraphes 13(4) à (7) s'appliquent, avec les adaptations nécessaires, au droit conféré par le paragraphe (1) à l'auteur, à l'artiste-interprète et au producteur admissibles.

82. (1) Quiconque fabrique au Canada ou y importe des supports audio vierges à des fins commerciales est tenu :

a) sous réserve du paragraphe (2) et de l'article 86, de payer à l'organisme de perception une redevance sur la vente ou toute autre forme d'aliénation de ces supports au Canada;

b) d'établir, conformément au paragraphe 83(8), des états de compte relatifs aux activités visées à

keep statements of account of the activities referred to in paragraph (a), as well as of exports of those blank audio recording media, and shall furnish those statements to the collecting body.

(2) No levy is payable where it is a term of the sale or other disposition of the blank audio recording medium that the medium is to be exported from Canada, and it is exported from Canada.

83. (1) Subject to subsection (14), each collective society may file with the Board a proposed tariff for the benefit of those eligible authors, eligible performers and eligible makers who, by assignment, grant of licence, appointment of the society as their agent or otherwise, authorize it to act on their behalf for that purpose, but no person other than a collective society may file any such tariff.

(2) Without limiting the generality of what may be included in a proposed tariff, the tariff may include a suggestion as to whom the Board should designate under paragraph (8)(d) as the collecting body.

(3) Proposed tariffs must be in both official languages and must be filed on or before the March 31 immediately before the date when the approved tariffs cease to be effective.

(4) A collective society in respect of which no proposed tariff has been certified pursuant to paragraph (8)(c) shall file its proposed tariff on or before the March 31 immediately before its proposed effective date.

(5) A proposed tariff must provide that the levies are to be effective for periods of one or more calendar years.

(6) As soon as practicable after the receipt of a proposed tariff filed pursuant to subsection (1), the Board shall publish it in the Canada Gazette and shall give notice that, within sixty days after the publication of the tariff, any person may file written objections to the tariff with the Board.

(7) The Board shall, as soon as practicable, consider a proposed tariff and any objections thereto referred to in subsection (6) or raised by the Board, and

(a) send to the collective society concerned a copy of the objections so as to permit it to reply; and

(b) send to the persons who filed the objections a copy of any reply thereto.

(8) On the conclusion of its consideration of the proposed tariff, the Board shall

(a) establish, in accordance with subsection (9),

(i) the manner of determining the levies, and

(ii) such terms and conditions related to those levies as the Board considers appropriate, including, without limiting the generality of the foregoing, the form, content and frequency of the

l'alinéa a) et aux activités d'exportation de ces supports, et de les communiquer à l'organisme de perception.

(2) Aucune redevance n'est toutefois payable sur les supports audio vierges lorsque leur exportation est une condition de vente ou autre forme d'aliénation et qu'ils sont effectivement exportés.

83. (1) Sous réserve du paragraphe (14), seules les sociétés de gestion agissant au nom des auteurs, artistes-interprètes et producteurs admissibles qui les ont habilités à cette fin par voie de cession, licence, mandat ou autrement peuvent déposer auprès de la Commission un projet de tarif des redevances à percevoir.

(2) Le projet de tarif peut notamment proposer un organisme de perception en vue de la désignation prévue à l'alinéa (8)d).

(3) Il est à déposer, dans les deux langues officielles, au plus tard le 31 mars précédant la cessation d'effet du tarif homologué.

(4) Lorsqu'elle n'est pas régie par un tarif homologué au titre de l'alinéa (8)c), la société de gestion doit déposer son projet de tarif auprès de la Commission au plus tard le 31 mars précédant la date prévue pour sa prise d'effet.

(5) Le projet de tarif prévoit des périodes d'effet d'une ou de plusieurs années civiles.

(6) Dès que possible, la Commission le fait publier dans la Gazette du Canada et donne un avis indiquant que quiconque peut y faire opposition en déposant auprès d'elle une déclaration en ce sens dans les soixante jours suivant la publication.

(7) Elle procède dans les meilleurs délais à l'examen du projet de tarif et, le cas échéant, des oppositions; elle peut également faire opposition au projet. Elle communique à la société de gestion en cause copie des oppositions et aux opposants les réponses éventuelles de celle-ci.

(8) Au terme de son examen, la Commission :

a) établit conformément au paragraphe (9) :

(i) la formule tarifaire qui permet de déterminer les redevances,

(ii) à son appréciation, les modalités afférentes à celles-ci, notamment en ce qui concerne leurs dates de versement, la forme, la teneur et la

statements of account mentioned in subsection 82(1), measures for the protection of confidential information contained in those statements, and the times at which the levies are payable,
(b) vary the tariff accordingly,

(c) certify the tariff as the approved tariff, whereupon that tariff becomes for the purposes of this Part the approved tariff, and

(d) designate as the collecting body the collective society or other society, association or corporation that, in the Board's opinion, will best fulfil the objects of sections 82, 84 and 86,

but the Board is not obligated to exercise its power under paragraph (d) if it has previously done so, and a designation under that paragraph remains in effect until the Board makes another designation, which it may do at any time whatsoever, on application.

(9) In exercising its power under paragraph (8) (a), the Board shall satisfy itself that the levies are fair and equitable, having regard to any prescribed criteria.

(10) The Board shall publish the approved tariffs in the Canada Gazette as soon as practicable and shall send a copy of each approved tariff, together with the reasons for the Board's decision, to the collecting body, to each collective society that filed a proposed tariff, and to any person who filed an objection.

(11) An eligible author, eligible performer or eligible maker who does not authorize a collective society to file a proposed tariff under subsection (1) is entitled, in relation to

(a) a musical work,

(b) a performer's performance of a musical work, or

(c) a sound recording in which a musical work, or a performer's performance of a musical work, is embodied,

as the case may be, to be paid by the collective society that is designated by the Board, of the Board's own motion or on application, the remuneration referred to in section 81 if such remuneration is payable during a period when an approved tariff that is applicable to that kind of work, performer's performance or sound recording is effective, subject to the same conditions as those to which a person who has so authorized that collective society is subject.

(12) The entitlement referred to in subsection (11) is the only remedy of the eligible author, eligible performer or eligible maker referred to in that subsection in respect of the reproducing of sound recordings for private use.

(13) The Board may, for the purposes of subsections (11) and (12),

(a) require a collective society to file with the Board information relating to payments of

fréquence des états de compte visés au paragraphe 82(1) et les mesures de protection des renseignements confidentiels qui y figurent;

b) modifie le projet de tarif en conséquence;

c) le certifie, celui-ci devenant dès lors le tarif homologué pour la société de gestion en cause;

d) désigne, à titre d'organisme de perception, la société de gestion ou autre société, association ou personne morale la mieux en mesure, à son avis, de s'acquitter des responsabilités ou fonctions découlant des articles 82, 84 et 86.

La Commission n'est pas tenue de faire une désignation en vertu de l'alinéa d) si une telle désignation a déjà été faite. Celle-ci demeure en vigueur jusqu'à ce que la Commission procède à une nouvelle désignation, ce qu'elle peut faire sur demande en tout temps.

(9) Pour l'exercice de l'attribution prévue à l'alinéa (8)a), la Commission doit s'assurer que les redevances sont justes et équitables compte tenu, le cas échéant, des critères réglementaires.

(10) Elle publie dès que possible dans la Gazette du Canada les tarifs homologués; elle en envoie copie, accompagnée des motifs de sa décision, à l'organisme de perception, à chaque société de gestion ayant déposé un projet de tarif et à toutes les personnes ayant déposé une opposition.

(11) Les auteurs, artistes-interprètes et producteurs admissibles qui ne sont pas représentés par une société de gestion peuvent, aux mêmes conditions que ceux qui le sont, réclamer la rémunération visée à l'article 81 auprès de la société de gestion désignée par la Commission, d'office ou sur demande, si pendant la période où une telle rémunération est payable, un tarif homologué s'applique à leur type d'oeuvre musicale, de prestation d'une oeuvre musicale ou d'enregistrement sonore constitué d'une oeuvre musicale ou d'une prestation d'une oeuvre musicale, selon le cas.

(12) Le recours visé au paragraphe (11) est le seul dont disposent les auteurs, artistes-interprètes et producteurs admissibles en question en ce qui concerne la reproduction d'enregistrements sonores pour usage privé.

(13) Pour l'application des paragraphes (11) et (12), la Commission peut :

a) exiger des sociétés de gestion le dépôt de tout renseignement relatif au versement des

moneys received by the society pursuant to section 84 to the persons who have authorized it to file a tariff under subsection (1); and

(b) by regulation, establish the periods, which shall not be less than twelve months, beginning when the applicable approved tariff ceases to be effective, within which the entitlement referred to in subsection (11) must be exercised.

(14) Where all the collective societies that intend to file a proposed tariff authorize a particular person or body to file a single proposed tariff on their behalf, that person or body may do so, and in that case this section applies, with such modifications as the circumstances require, in respect of that proposed tariff.

84. As soon as practicable after receiving the levies paid to it, the collecting body shall distribute the levies to the collective societies representing eligible authors, eligible performers and eligible makers, in the proportions fixed by the Board.

85. (1) Where the Minister is of the opinion that another country grants or has undertaken to grant to performers and makers of sound recordings that are Canadian citizens or permanent residents within the meaning of subsection 2(1) of the Immigration and Refugee Protection Act or, if corporations, have their headquarters in Canada, as the case may be, whether by treaty, convention, agreement or law, benefits substantially equivalent to those conferred by this Part, the Minister may, by a statement published in the Canada Gazette,

(a) grant the benefits conferred by this Part to performers or makers of sound recordings that are citizens, subjects or permanent residents of or, if corporations, have their headquarters in that country; and

a) accorder les avantages conférés par la présente partie aux artistes-interprètes et producteurs d'enregistrements sonores sujets, citoyens ou résidents permanents de ce pays ou, s'il s'agit de personnes morales, ayant leur siège social dans ce pays;(b) declare that that country shall, as regards those benefits, be treated as if it were a country to which this Part extends.

(2) Where the Minister is of the opinion that another country neither grants nor has undertaken to grant to performers or makers of sound recordings that are Canadian citizens or permanent residents within the meaning of subsection 2(1) of the Immigration and Refugee Protection Act or, if corporations, have their headquarters in Canada, as the case may be, whether by treaty, convention, agreement or law, benefits substantially equivalent to those conferred by this Part, the Minister may, by a statement published in the Canada Gazette,

(a) grant the benefits conferred by this Part to performers or makers of sound recordings that are citizens, subjects or permanent residents of or, if corporations, have their headquarters in that country, as the case may be, to the extent that that country grants those benefits to performers or makers of sound recordings that are Canadian

redevances qu'elles reçoivent en vertu de l'article 84 aux personnes visées au paragraphe (1);

b) fixer par règlement des périodes d'au moins douze mois, commençant à la date de cessation d'effet du tarif homologué, pendant lesquelles la rémunération visée au paragraphe (11) peut être réclamée.

(14) Une personne ou un organisme peut, lorsque toutes les sociétés de gestion voulant déposer un projet de tarif l'y autorisent, déposer le projet pour le compte de celles-ci; les dispositions du présent article s'appliquent alors, avec les adaptations nécessaires, à ce projet de tarif.

84. Le plus tôt possible après avoir reçu les redevances, l'organisme de perception les répartit entre les sociétés de gestion représentant les auteurs admissibles, les artistes-interprètes admissibles et les producteurs admissibles selon la proportion fixée par la Commission.

85. (1) Lorsqu'il est d'avis qu'un autre pays accorde ou s'est engagé à accorder, par traité, convention, contrat ou loi, aux artistes-interprètes et aux producteurs d'enregistrements sonores qui sont des citoyens canadiens ou des résidents permanents au sens du paragraphe 2(1) de la Loi sur l'immigration et la protection des réfugiés ou, s'il s'agit de personnes morales, ayant leur siège social au Canada, essentiellement les mêmes avantages que ceux conférés par la présente partie, le ministre peut, en publiant une déclaration dans la Gazette du Canada, à la fois :

b) énoncer que ce pays est traité, à l'égard de ces avantages, comme s'il était un pays visé par l'application de la présente partie.

(2) Lorsqu'il est d'avis qu'un autre pays n'accorde pas ni ne s'est engagé à accorder, par traité, convention, contrat ou loi, aux artistes-interprètes ou aux producteurs d'enregistrements sonores qui sont des citoyens canadiens ou des résidents permanents au sens du paragraphe 2(1) de la Loi sur l'immigration et la protection des réfugiés ou, s'il s'agit de personnes morales, ayant leur siège social au Canada, essentiellement les mêmes avantages que ceux conférés par la présente partie, le ministre peut, en publiant une déclaration dans la Gazette du Canada, à la fois :

a) accorder les avantages conférés par la présente partie aux artistes-interprètes ou aux producteurs d'enregistrements sonores sujets, citoyens ou résidents permanents de ce pays ou, s'il s'agit de personnes morales, ayant leur siège social dans ce pays, dans la mesure où ces avantages y sont accordés aux artistes-interprètes ou aux producteurs d'enregistrements sonores qui sont des citoyens canadiens ou de tels résidents permanents ou, s'il s'agit de personnes morales, ayant leur siège social au Canada;

citizens or permanent residents within the meaning of subsection 2(1) of the Immigration and Refugee Protection Act or, if corporations, have their headquarters in Canada; and

(b) declare that that country shall, as regards those benefits, be treated as if it were a country to which this Part extends.

(3) Any provision of this Act that the Minister specifies in a statement referred to in subsection (1) or (2)

(a) applies in respect of performers or makers of sound recordings covered by that statement, as if they were citizens of or, if corporations, had their headquarters in Canada; and

(b) applies in respect of a country covered by that statement, as if that country were Canada.

(4) Subject to any exceptions that the Minister may specify in a statement referred to in subsection (1) or (2), the other provisions of this Act also apply in the way described in subsection (3).

86. (1) No levy is payable under this Part where the manufacturer or importer of a blank audio recording medium sells or otherwise disposes of it to a society, association or corporation that represents persons with a perceptual disability.

(2) Where a society, association or corporation referred to in subsection (1)

(a) purchases a blank audio recording medium in Canada from a person other than the manufacturer or importer, and

(b) provides the collecting body with proof of that purchase, on or before June 30 in the calendar year following the calendar year in which the purchase was made,

the collecting body is liable to pay forthwith to the society, association or corporation an amount equal to the amount of the levy paid in respect of the blank audio recording medium purchased.

(3) If regulations made under paragraph 87(a) provide for the registration of societies, associations or corporations that represent persons with a perceptual disability, subsections (1) and (2) shall be read as referring to societies, associations or corporations that are so registered.

87. The Governor in Council may make regulations

(a) respecting the exemptions and refunds provided for in section 86, including, without limiting the generality of the foregoing,

(i) regulations respecting procedures governing those exemptions and refunds,

(ii) regulations respecting applications for those exemptions and refunds, and

b) énoncer que ce pays est traité, à l'égard de ces avantages, comme s'il était un pays visé par l'application de la présente partie.

(3) Les dispositions de la présente loi que le ministre précise dans la déclaration s'appliquent :

a) aux artistes-interprètes ou producteurs d'enregistrements sonores visés par cette déclaration comme s'ils étaient citoyens du Canada ou, s'il s'agit de personnes morales, avaient leur siège social au Canada;

b) au pays visé par la déclaration, comme s'il s'agissait du Canada.

(4) Les autres dispositions de la présente loi s'appliquent de la manière prévue au paragraphe (3), sous réserve des exceptions que le ministre peut prévoir dans la déclaration.

86. (1) La vente ou toute autre forme d'aliénation d'un support audio vierge au profit d'une société, association ou personne morale qui représente les personnes ayant une déficience perceptuelle ne donne pas lieu à redevance.

(2) Toute société, association ou personne morale visée au paragraphe (1) qui achète au Canada un support audio vierge à une personne autre que le fabricant ou l'importateur a droit, sur preuve d'achat produite au plus tard le 30 juin de l'année civile qui suit celle de l'achat, au remboursement sans délai par l'organisme de perception d'une somme égale au montant de la redevance payée.

(3) Si les règlements pris en vertu de l'alinéa 87a) prévoient l'inscription des sociétés, associations ou personnes morales qui représentent des personnes ayant une déficience perceptuelle, les paragraphes (1) et (2) ne s'appliquent qu'aux sociétés, associations ou personnes morales inscrites conformément à ces règlements.

87. Le gouverneur en conseil peut, par règlement :

a) régir les exemptions et les remboursements prévus à l'article 86, notamment en ce qui concerne :

(i) la procédure relative à ces exemptions ou remboursements,

(ii) les demandes d'exemption ou de remboursement,

(iii) regulations for the registration of societies, associations or corporations that represent persons with a perceptual disability;

(b) prescribing anything that by this Part is to be prescribed; and

(c) generally for carrying out the purposes and provisions of this Part.

88. (1) Without prejudice to any other remedies available to it, the collecting body may, for the period specified in an approved tariff, collect the levies due to it under the tariff and, in default of their payment, recover them in a court of competent jurisdiction. (2) The court may order a person who fails to pay any levy due under this Part to pay an amount not exceeding five times the amount of the levy to the collecting body. The collecting body must distribute the payment in the manner set out in section 84.

(3) Where any obligation imposed by this Part is not complied with, the collecting body may, in addition to any other remedy available, apply to a court of competent jurisdiction for an order directing compliance with that obligation.

(4) Before making an order under subsection (2), the court must take into account

(a) whether the person who failed to pay the levy acted in good faith or bad faith;

(b) the conduct of the parties before and during the proceedings; and

(c) the need to deter persons from failing to pay levies.

(iii) l'inscription des sociétés, associations ou personnes morales qui représentent les personnes ayant une déficience perceptuelle;

b) prendre toute mesure d'ordre réglementaire prévue par la présente partie;

c) prendre toute autre mesure d'application de la présente partie.

88. (1) L'organisme de perception peut, pour la période mentionnée au tarif homologué, percevoir les redevances qui y figurent et, indépendamment de tout autre recours, le cas échéant, en poursuivre le recouvrement en justice.

(2) En cas de non-paiement des redevances prévues par la présente partie, le tribunal compétent peut condamner le défaillant à payer à l'organisme de perception jusqu'au quintuple du montant de ces redevances et ce dernier les répartit conformément à l'article 84.

(3) L'organisme de perception peut, en sus de tout autre recours possible, demander à un tribunal compétent de rendre une ordonnance obligeant une personne à se conformer aux exigences de la présente partie.

(4) Lorsqu'il rend une décision relativement au paragraphe (2), le tribunal tient compte notamment des facteurs suivants :

a) la bonne ou mauvaise foi du défaillant;

b) le comportement des parties avant l'instance et au cours de celle-ci;

c) la nécessité de créer un effet dissuasif en ce qui touche le non-paiement des redevances.

FEDERAL COURT

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: T-1193-04

STYLE OF CAUSE: CANADIAN PRIVATE COPYING COLLECTIVE (CPCC) v. COMPUTER WAREHOUSE OUTLET INC.

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: MAY 26, 2005

REASONS FOR ORDER

AND ORDER: THE HONOURABLE MR. JUSTICE MARTINEAU

DATED: MAY 31, 2005

APPEARANCES:

LOUIS GRATTON

FOR THE APPLICANT

SOLICITORS OF RECORD:

OGILVY RENAULT, S.E.N.C.

FOR THE APPLICANT

MONTRÉAL, QUEBEC

Modified: 2006-11-01

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