

Before the
Copyright Board of Canada

FILE: Private Copying 2003-2004

STATEMENT OF CASE

of the

CANADIAN WIRELESS TELECOMMUNICATIONS ASSOCIATION

November 22, 2002

Introduction

1. This Statement provides an outline of the case of the Canadian Wireless Telecommunications Association (CWTA) in reference to the Private Copying levies to be collected for the years 2003 and 2004. In accordance with the Board's Directive on Procedure, this Statement sets out the arguments that CWTA will advance on the main issues concerning its objection to the proposed levies and the manner in which CWTA intends to support these arguments.

CWTA Position

2. Throughout this proceeding, CWTA has maintained the position that the description "MP3 player or similar device", as contained in the CPCC proposed tariff, is overly broad and may incorrectly capture the products of members of the Association.
3. CWTA members manufacture and/or import into Canada mobile wireless handheld devices that incorporate both non-removable and removable electronic memory as described in the proposed CPCC tariff. These are communications devices, not music-specific devices¹, but may share certain characteristics with "MP3 players" as described by CPCC.
4. As indicated in its preliminary statement of position, the CWTA strongly believes that wireless devices should not be subject to the private copying levy. Similarly, the CWTA believes the levy should not apply to removable media used in such devices.
5. CWTA submits that, to be consistent with the legislative intent of the levies, any extension of the current definition of "blank audio media" must be tightly constrained.
6. CPCC has published² a list of definitions for the blank audio media currently covered by tariff. Each definition clearly identifies the item in question. It is clear that each of these definitions identifies the media and not the device that retrieves information stored on the media. Despite more detailed

¹ CPCC Preliminary Statement of Position, p.5

² http://www.cpcc.ca/English/FAQ/media_def/media_def.html

explanations³ of CPCC's intent for the term "MP3 player", no clear definition has been put forward.

CPCC Position on Wireless Devices

7. The CPCC Statement of Case states at paragraph 39: "...that the tariff proposed by the CPCC is not applicable to devices such as cellular phones, Personal Digital Assistants (PDAs) or Notebooks, even if those devices may have non-removable flash or hard-drive storage memory that could be used as a secondary feature to copy and playback pre-recorded music." This position is explained further in Section 9.1 of CPCC 7. It states "The CPCC's proposal also refers exclusively to devices intended for use primarily to record and play music. This excludes from the levy CPCC has proposed on MP3 players all types of devices that have a primary purpose other than the recording and playing of compressed audio music files, including devices such as cellular phones, Personal Digital Assistants (PDAs), and Notebooks."
8. CWTA supports the position of CPCC that wireless devices have a primary purpose other than to record and play music and as such, agree with the CPCC that the tariff should not apply to wireless devices.

CWTA Evidence

9. As a result of CPCC's stated position on wireless devices, CWTA does not intend to present any evidence, or call witnesses. CWTA will be prepared to question the witnesses of CPCC (if necessary).

³ CPCC Statement of Case: Paragraph 8 states "compressed digital audio players, hereafter referred to as MP3 players"; Paragraphs 12 and 39 state "digital audio players that use compression software"; Paragraph 39 states "