Striking down the iPod tax

Canadians were suddenly freed last week from the grim prospect of a whopping $75 "iPod tax" on portable digital music players with 30 gigabytes or more of embedded storage space. The levy, approved by the Copyright Board of Canada in July, would have kicked in this year, raising the domestic price on high-end versions of Apple's iPod and its market rivals by around 30%. Retailers and manufacturers naturally moved fast to appeal the decision, and won big. The decision penned by Federal Court of Appeal Judge Karen Sharlow is just six brusque paragraphs in length, and required less than 24 hours to deliver.

It is not hard to understand why the court's action was so quick and vicious. In 2004, the same court tackled the complicated issue of whether the Copyright Board had the statutory power to impose taxes on iPod-type devices, with their embedded memory, in the same way it does with removable blank media like CD-ROMs. The Copyright Act gives the board power over "blank audio recording media." In a digital world, either possible interpretation of the phrase leads to paradox. The memory embedded in portable digital music players is no different, in principle, from a CD-ROM or a multipurpose flash-memory card. The only practical distinction is a blob of solder. It thus seems absurd to allow the Copyright Board to introduce a levy on "removable" media, but to block its right to introduce levies on "devices" that are essentially nothing but the same storage media with a built-in user interface.

But to the 2004 panel it seemed even more absurd to give the Copyright Board an unlimited license to tax all devices containing digital memory; on such a principle, the court noted, the board could go after manufacturers of PDAs, digital cameras, telephones or even heart-rate monitors. The court thus told the Copyright Board, in no uncertain terms, that it had to observe the distinction between "devices" and "media" and keep its hands off of iPods and the rest of the species. It is confusing that the board forgot this in 2007 and allowed its legal instrument, the Canadian Private...
Striking down the iPod tax

Copying Collective, to go ahead with another attempt at exactly the same type of levy. It almost appears to be an act of civil disobedience -- and a deliberate waste of the Federal Court of Appeal's time -- by a poorly managed agency that is a little too convinced of its own rectitude.

That is not to say that the new ruling is unambivalent good news for the consumer. We may all be thrilled to keep an extra $75 in our pockets the next time we buy a portable music player, but the levy would at least have had the benefit of assuring us a clear paid-up right to copy the music we own onto those players. As things stand, we users of iPods and the like are all, arguably, "copyright infringers" --even those of us who have been pious enough only to copy music that we bought legitimately on older media. It is for Parliament to resolve this technological quandary, preferably by explicit recognition of the reality that once you've bought a song, you should be able to take it with you to new platforms.

On the other hand, it is not likely to be long before most of the music sold by retail consists of digital files in MP3 format, or some other format anyhow. At that point, the Copyright Board's pre-sumption that all purchasers of media players intend to commit "infringement" will no longer be valid, if it ever was.

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