

A Noncommercial Use Levy To Allow Free P2P File Sharing:

Between Digital Abandon
and
Digital Lock-up



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Copyright holders & artists should be paid.

But copyright/DRM means:

- (1) onerous enforcement costs of doubtful efficacy
- (2) impeding technological innovation
- (3) If successful, forgoing the benefits of file sharing.

P2P file sharing is a good thing!

“This is the art through
which a free culture is built.”

Noncommercial Use Levy



- Unhindered noncommercial P2P file sharing for most types of copyright-protected expression
- A levy on the sale of products and services the value of which is substantially enhanced by P2P file sharing
- Levy proceeds distributed to copyright holders in proportion to the amount works are downloaded and used
 - Measured by digital tracking and statistical sampling

Noncommercial Use Levy

- The uses of copyright protected works that would be immune from infringement
 - Both file transfers and streaming
 - Includes noncommercial **modifications**
 - So long as the underlying work is identified
 - Embraces fan fiction, remixes of popular songs, and other creative expression

Noncommercial Use Levy

- “most types of copyright-protected expression”
 - Not expression that has yet to be released to the public with copyright holder permission

Noncommercial Use Levy

- Privilege limited to **noncommercial** uses
 - “Noncommercial”: Not selling copies, access to, or advertising in connection with the copyright-protected work
- Commercial uses subject to traditional copyright law
- No copyright liability for commercial providers of P2P services

Noncommercial Use Levy

- Imposed on commercial providers of products and services the value of which is substantially enhanced by P2P file swapping
 - E.g., Internet access, KaZaA, personal computers, CD burners, MP3 players, blank CDs

How Much NUL?

- Negotiations under the shadow of mandatory arbitration
- Failing agreement, Copyright Office Tribunal sets “fair return” (as with most compulsory licenses today).
- For next 5 years: NUL would compensate copyright holders for their “adjusted net revenues **actually displaced** by P2P file sharing.”

“Fair Return”

- Unhindered P2P could create new sources of revenue for copyright holders.
 - Product placement
- Movie studios were thriving prior to DVDs.

Distribution of NUL Proceeds

- Inter-industry: How to allocate among rights holder categories? (e.g., film studios v. record studios)?
- Intra-industry: How to allocate among rights holders within each category?

Possible Criticisms

Insufficient Funds

Net Adjusted Revenues Displaced by P2P
(Billion Dollars)

Revenue Source	Hard Copy Retail	Revenue - Net Copy Distribution	Anticipated % Loss From P2P	Anticipated Loss From P2P
Record Sales	\$13.0	\$6.5	25%	\$1.625
Video Sales	\$12.3	\$6.15	7%	\$0.43
Video Rentals	\$10.0	\$5.0	7%	\$0.35
Pay-per-view	\$1.5	\$0.75	7%	\$0.0525
Computer Game Sales	\$1.4	\$0.7	7%	\$0.05
TOTAL	\$36.7	\$18.35	N/A	\$2.51

Annual Gross Sales in U.S. of Certain P2P-Related Items

Service or Product	Annual Sales (2002) (Billion Dollars)
Home Computers	\$19.6
Free Standing CD Burners	\$0.70
MP3 Players	\$0.35
Flash Memory	\$0.20
DVD Players	\$2.51
VCRs	\$2.09
Blank CD-Rs	\$0.43
Blank DVD-Rs	\$0.10
Broadband Internet Residential	\$8.12
Dial-up Internet Residential	\$12.86
TOTAL	\$46.52

Estimate of Average NUL Percentage

	Amount (Billion Dollars)
Required Compensation	\$2.51
College Students	(\$0.62)
Total NUL Amount	\$1.89
Average NUL	4.06%

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