

## Tape Levy?

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Copyrights and patents were created in recognition of what is now called intellectual property. Without the protection of copyrights and patents the only way to protect an invention or creative work from being stolen (copied) by a competitor was to keep it as a trade secret. While this works moderately well for commercial products, it is a disaster for creative works. The only way Shakespeare and Vivaldi, for example, managed to get paid for performances of their work was by not publishing most of them. For a composer or playwright, not publishing meant merely the sacrifice of publishing royalties, but for a novelist this was not an option. Without the protection of copyright the recording and film industries could not exist as they do today. Patents allow competitors to openly discuss their trade secrets, often making further improvements.

The birth of the broadcasting industry extended copyright in a new direction. The broadcasters used copyrighted works, but because of the amount that they might broadcast in a day it was impractical to negotiate directly with the publishers and what is known as blanket licensing developed between broadcasters and authors, composers and publishers. Blanket licensing is an essentially voluntary (respective of property rights) arrangement between all parties involved. Technology has not stood still. New technology allows inexpensive high quality photocopies, while home taping allows near perfect duplication of recorded material. While photocopying does not yet seem to have had a major effect on the printing industry, a blank 90-minute cassette of good quality can be had for about the price of a 7-inch single containing less than 10 minutes of music. A similar situation prevails with videotapes, which is compounded by the fact that they are commonly rented to the public (record rental is now illegal in the US).

## Subsidizing Creativity?

The recording industries have offered a solution: they want a levy placed on blank tape which would be used to pay "royalties" to copyright holders. In theory the royalties will be distributed among performers, songwriters, publishers, film studios and record companies, with the amount going to any one member of these groups being based on sales and airplay. While the exact plan isn't clear yet, what is clear is that, however it is done, large record companies and film studios will be getting a substantial cut. They claim that they will use the extra money to commission more creative works (i.e. expand their business) and that this will be in the interest of the consumer. I question whether this will be so because (particularly in the record industry) small companies begin a disproportionate number of new projects and handle a disproportionate number of eclectic projects, and there is no reason to believe that whatever they get from the royalty will make much of a difference to them. Accordingly, when you ask the proprietors of small independent labels what they think of the royalty, their response isn't very enthusiastic. Similarly, while big stars flock to testify in favour, the artists who have yet to reach the top 40 rarely think much of the proposal. Whatever means of distribution is chosen there is no accurate way of knowing what is taped, just as there is no way of knowing whether a tape is being purchased to tape recordings or any of the other things it might be used for, such as making home videos, taking dictation, or in a telephone answering machine.

Another problem that will arise is evasion. Something insignificant and public domain may be duplicated on high quality tape and, because there isn't a royalty on it, it can sell for less than a similar blank tape.

## Alternatives

When we look at the recording industry as a whole, and take account of the extreme variability of return to which it is subject, there is no evidence that profits are either

unusually high or low. This in no way excuses any of the violations of property rights which are occurring, but the solution proposed would seem to be more oppressive, or at best no more just, than the present situation. If the stimulation of more creative works is part of the royalty's goal, this could be better accomplished by using the levy money to subsidize recording and manufacture instead of distributing the royalty. For obvious reasons this alternative would encourage inefficiency, as there would be tremendous incentive to export the (now lower in price) US recordings (the increased protectionist measures resulting would only give small labels more difficulty in making their products available overseas). If the subsidy made recording time cheap enough, artists would spend much more time in the studio without producing much (i.e. practising in the studio), and low pressing costs would encourage much higher initial pressings, resulting in considerable waste if the recording didn't sell. The fact that the industry is not pursuing a far more promising alternative proposition nearly as vigorously shows that their real goal is a subsidy rather than the equity they are screaming for.

There has been a small amount of work done (largely by CBS to give credit where it is due) on an anti-recording circuit which would prevent encoded material from being recorded. At its present development the system leaves much to be desired, but if Congress were to announce that it intended to make such devices mandatory after a certain date, we should expect to see numerous firms becoming heavily involved with this avenue of research in hopes of capturing the patent licence fees. Another alternative would be to simply place an excise tax on blank tape, not use it for any subsidy but use it instead to reduce the budget deficit; the desirability of this hinges of course on the desirability of altering the consumer's budget line between blank and pre-recorded tapes, and your views as to whether deficit finance or present taxation is worse.

## **Free Life**