

## REQUEST TO TESTIFY --- SUMMARY OF TESTIMONY

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### TEMPORARY BUFFER-MEMORY COPIES FOR AUTHORIZED STREAMING SHOULD BE EXPLICITLY PLACED OUTSIDE THE COPYRIGHT OWNER'S MONOPOLY POWERS AND RIGHT TO DEMAND COMPENSATION

1. Evanescent buffer copies in buffer-memory are technically required for the transmission and playback of streams of music on the internet, both during transmission through the internet infrastructure and also at the ultimate destination, the user's personal computer.
2. The copies are not permanent; they bring no value to consumers and consumers will not pay for them. They are mere technical necessities, no different from the buffer copies made by terrestrial CD players, e-book readers, and other electronic players of digital material, as well as by the transmission through the internet infrastructure of online downloads. No copyright owner would dream of trying to collect extra fees for any of these uses.
3. If put to the test, these buffer-memory copies would undoubtedly be deemed a fair use, as mere incidental copies in the exercise of licensed rights of public performance that bear economic benefits to user and copyright owner alike. The same result should apply to fair use. However, the status of buffer-memory copies is currently not explicitly stated in the Copyright Act, and there is no rational basis to force myplay and similarly situated internet service providers to incur the burdens of litigation to establish this principle.
4. This clarification should exempt buffer-memory copies for all authorized transmissions and playback -- not just those that are licensed. This is necessary to embrace fair use which is of great importance to consumers, and integral to the myplay locker service -- *perhaps uniquely among current popular websites*.
5. Absent such clarification, myplay and similarly situated internet service providers would continue to be exposed to threats from owners of copyright, and their representatives, who take the position that those who stream audio files must pay not only public performance fees, but also for evanescent buffer-memory copies as if they were the equivalent of permanent downloads.
6. Myplay has studied customer usage patterns and the economic benefits that can be derived from that usage, and there is no rational business model that allows for payments for mere buffer-memory copies. If an obligation to make such payments were imposed, copyright owners would quickly suffer because legal use and proper compensation to owners would be greatly discouraged.
7. Copyright law should avoid obstructions to commerce and consumer enjoyment that seem to issue from the most trivial of technicalities. This is particularly advisable when clarifications of the law will have virtually no effect on a copyright owner's reasonable and just expectations for compensation. Copyright owners are entitled to -- and should be paid-- fees for public performance, but not for the buffer-memory copies that technically facilitate transmission and playback.

