APPLE COMPUTER POSITION ON E-WASTE EXPORTS MAY BE OUT OF COMPLIANCE WITH INTERNATIONAL LAW

In a letter dated March 13, 2007 in response to the 2007 shareholder resolution of As You Sow (AYS), Apple Computers stated their electronic waste export policy as follows:

Based on the most recent audits of Apple’s U.S. recycling, no hazardous waste from these programs is shipped outside North America. All recovered materials are processed domestically, with the exception of some commodity materials that can be recycled for future use. Plastics recovered by these programs are not being used for fuel in smelting. The Company’s recycling policies prohibit it.

The above statement raises some serious concerns as to whether or not Apple Computers understands applicable international law and whether they are in compliance with it.

We fear that the first sentence in the Apple statement that states that no hazardous waste from Apple programs moves outside of North America, may very well be true only with respect to the US definitions of hazardous waste. The US however, not being a party to the Basel Convention has failed to adopt the international definitions which the rest of the world applies and therefore must apply whenever the US is engaged in trade with any of the 169 Basel Convention Parties. The US government has de-listed many wastes from being considered solid or hazardous waste when they are recycled, allowing these wastes to be exported under US law without following the strictures of the Basel Convention and/or the Basel Ban Amendment. However, regardless of the legality of US law, these exports violate the laws of importing and transit countries that are Basel Parties. These Basel Convention/Basel Ban Amendment requirements include:

- Disallowing trade in hazardous wastes between Parties and non-Parties (e.g. the US) unless this is done through a special bilateral or multilateral agreement that itself is largely similar to the requirements of the Basel Convention itself as stipulated in Article 11 of the Convention.
- Disallowing trade in hazardous wastes without the prior notification and consent of the recipient and transit countries.
- The Basel Ban Amendment is not strictly yet legally binding but this is a decision of the Basel Convention which now has been ratified by 63 countries and is already implemented by the 27 member states of the European Union. This amendment forbids all export for any reason from OECD member states, European Union member states and Liechtenstein to any other countries.
We are concerned that Apple is exporting Basel Convention defined hazardous e-waste and may in fact be ignoring the above three obligations despite the fact that at least one of the countries involved in the trade is required to abide by these requirements. This is tantamount to aiding and abetting illegal trafficking of wastes.

Apple’s second sentence seems to support our fear when it states that “commodity materials that can be recycled for future use” are exported. Under international definitions found in the Basel Convention which govern waste trade, “commodity materials that can be recycled” are in fact defined as “waste” and are strictly controlled if they are hazardous under the Basel definitions. As the statement does not say only non-hazardous commodity materials that can be recycled” are exported, we fear that under international law the two first sentences of the Apple statement are in contradiction and in fact Basel defined hazardous waste is being exported for recycling outside of the controls mandated by the Basel Convention.

If this is the case, then Apple’s policies violate international law and place the waste recipient country in breach of its Basel obligations. Apple’s policies would then be contributing to what is defined as “illegal traffic” under the Convention which is a criminal offense.

Apple must provide more transparency on this matter in order to understand better whether they are indeed out of compliance with international law. What needs to be known is whether or not any of the following Basel Convention hazardous e-waste is being exported to developing countries for any reason:

- circuit boards, or devices containing circuit boards,
- cathode ray tubes, or glass or cullet from cathode ray tubes
- mercury phosphor bearing lamps (found inside flat screens and laptops)
- lead, mercury, or cadmium containing batteries
- equipment containing the above

Again, while the US government may consider these non-wastes or “commodities”, the Basel Convention defines any material destined for final disposal or recycling as waste and thus subject to its strict controls.

Apple must first provide clarity on precisely where each of the materials listed above is going, and second amend their policies if these trade destinations are not compliant with the Basel Convention.

An easy way for Apple to do this in North America, would be for Apple to agree to only use recyclers that have joined the Basel Action Network/Computer TakeBack Campaign E-Stewards as recyclers for Apple’s e-waste. These recyclers have agreed to uphold the most rigorous social and environmental criteria for electronic waste disposition. These recyclers can be found listed at: [http://www.ban.org/pledge1.html](http://www.ban.org/pledge1.html) A commitment in writing from Apple that they will only use these E-Stewards for their used electronic equipment disposal would send a strong signal to the entire world that Apple is ready to step up and become fully responsible for its waste.

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