

Copyright Board
Canada



Commission du droit d'auteur
Canada

Date 2002-12-19

Citation FILE: Private Copying 2003

Regime Copying for Private Use
Copyright Act, subsection 66.51

Members Mr. Justice John H. Gomery
Mr. Stephen J. Callary
Mrs. Sylvie Charron
Ms. Brigitte Doucet

Interim tariff of levies to be collected by CPCC, in 2003, on the sale of blank audio recording media, in Canada, in respect of the reproduction for private use of musical works embodied in sound recordings, of performer's performances of such works and of sound recordings in which such works and performances are embodied

Reasons for decision

At the request of the Canadian Private Copying Collective (CPCC), the Board adopts as the interim tariff of levies to be collected by CPCC on the sale of blank audio recording media, in Canada, in respect of the reproduction for private use of musical works embodied in sound recordings, of performer's performances of such works and of sound recordings in which such works and performances are embodied, for the one year period starting January 1, 2003, the text attached to this interim decision.

The interim tariff is identical to the tariff the Board certified on December 16, 2002 for the years 2001 and 2002 and as modified by the Board's decision of April 9, 2002, in all but two respects. First, a new section has been added to the tariff, providing that it will remain in force until the relevant final Private Copying tariff for the years 2003 and 2004 is certified, unless this interim tariff is modified at some point in time. Second, the title of the tariff as well as the numbering of the various sections have been modified.

Both CSMA and the Retailers have asked that the interim tariff provide for a transition period between the date of the final decision and the date the certified tariff becomes effective. The Board considers that this is not an issue for this interim tariff but rather a question to be determined in the final tariff. No transition period will therefore be provided in this interim tariff.

The Retailers also submitted that there should be no reference to the CPCC's current zero-rating

scheme in the interim tariff. The Board does not agree. This interim tariff should be, and indeed is in substance identical to the Private Copying Tariff 2001-2002. Reference to the zero-rating scheme is part of the notes but not of the tariff, and is useful for understanding the current tariff; it is just as useful for this interim tariff.



Claude Majeau
Secretary General

INTERIM TARIFF OF LEVIES TO BE COLLECTED BY CPCC IN 2003 ON THE SALE OF BLANK AUDIO RECORDING MEDIA, IN CANADA, IN RESPECT OF THE REPRODUCTION FOR PRIVATE USE OF MUSICAL WORKS EMBODIED IN SOUND RECORDINGS, OF PERFORMER'S PERFORMANCES OF SUCH WORKS AND OF SOUND RECORDINGS IN WHICH SUCH WORKS AND PERFORMANCES ARE EMBODIED

Notes (these notes are not part of the tariff)

(1) Pursuant to Part VIII of the *Copyright Act*, every person who, for the purpose of trade, manufactures a blank audio recording medium in Canada or imports such a medium into Canada is liable to pay a levy on selling or otherwise disposing of that medium in Canada, unless the medium is destined for export or unless it is sold to a society, association or corporation that represents persons with a perceptual disability. This tariff sets the levy as well as the related terms and conditions. It also determines the collecting body to whom the levy is paid and how that body will share the levy among collective societies representing eligible rights owners.

(2) CPCC waives the levy on sales to certain persons or organizations. These include religious organizations, broadcasters, law enforcement agencies, courts, tribunals, court reporters, provincial ministers of education and members of the Association of Universities and Colleges of Canada, music and advertising industries. This waiver applies to all blank audio media except CD-Rs and CD-RWs. Those interested in finding out more about the terms and conditions of the zero-rating scheme may contact CPCC at the address indicated in subsection 14(1) of this statement or may consult CPCC's Web site at: www.cpcc.ca.

Short title

1. This tariff may be cited as the *Interim Private Copying Tariff, 2003*.

Term

2. This tariff will remain in force until the relevant final tariff of levies to be collected by CPCC in 2003-2004 on the sale of blank audio recording media, in Canada, in respect of the

reproduction for private use of musical works embodied in sound recordings, of performer's performances of such works and of sound recordings in which such works and performances are embodied, is certified, unless this interim tariff is modified at some point in time.

Definitions

3. In this tariff,

“accounting period” means the first two months of a calendar year, and each subsequent period of two months”; (*période comptable*)

“Act” means the *Copyright Act*; (*Loi*)

“blank audio recording medium” means

- a. a recording medium, regardless of its material form, onto which a sound recording may be reproduced, that is of a kind ordinarily used by individual consumers for that purpose and on which no sounds have ever been fixed, including
 - i. audio cassettes ($\frac{1}{8}$ inch tape) of 40 minutes or more in length;
 - ii. recordable compact discs (CD-R, CD-RW, CD-R Audio, CD-RW Audio);
 - iii. MiniDiscs; and
- b. any medium prescribed by regulations pursuant to sections 79 and 87 of the *Act*;¹ (*support audio vierge*)

“CPCC” means the Canadian Private Copying Collective; (*SCPCP*)

“importer” means a person who, for the purpose of trade, imports a blank audio recording medium in Canada; (*importateur*)

“manufacturer” means a person who, for the purpose of trade, manufactures a blank audio recording medium in Canada, and includes a person who assembles such a medium; (*fabricant*)

“semester” means from January to June or from July to December. (*semestre*)

SUBSTANTIVE PROVISIONS

Levy

4. (1) Subject to subsection (2), the levy shall be

- a. 29¢ for each audio cassette of 40 minutes or more in length;
- b. 21¢ for each CD-R or CD-RW;
- c. 77¢ for each CD-R Audio, CD-RW Audio or MiniDisc.

¹ There was no such medium at the time of certifying the tariff.

(2) Pursuant to subsections 82(2) and 86(1) of the *Act*, no levy is payable

- i. in respect of a sale or other disposition of a medium that is to be exported from Canada and is so exported, or
- ii. on a medium that is sold or otherwise disposed of to a society, association or corporation that represents persons with a perceptual disability.

Collecting Body

5. CPCC is the collecting body designated pursuant to paragraph 83(8)(d) of the *Act*.

Apportionment of Levy

6. CPCC shall distribute the amounts it collects, less its operating costs, as follows:

- a. 66 per cent, to be shared between the Society of Composers, Authors and Music Publishers of Canada (SOCAN), the Canadian Mechanical Reproduction Rights Agency (CMRRA) and the Society for Reproduction Rights of Authors, Composers and Publishers in Canada (SODRAC), on account of eligible authors;
- b. 18.9 per cent, to be shared between the Neighbouring Rights Collective of Canada (NRCC) and the *Société de gestion des droits des artistes-musiciens* (SOGEDAM) on account of eligible performers;
- c. 15.1 per cent to the Neighbouring Rights Collective of Canada (NRCC) on account of eligible makers.

Taxes

7. All amounts payable under this tariff are exclusive of any federal, provincial or other governmental taxes or levies of any kind.

ADMINISTRATIVE PROVISIONS

Payments

8. (1) Subject to subsection (2), the levy for a blank audio recording medium sold or otherwise disposed of in any given accounting period shall be due no later than the last day of the month following that accounting period.

(2) Any manufacturer or importer who paid less than \$2,000 in the previous semester may opt to make payments every semester after having so notified CPCC. The payment is then due on the last day of the month following that semester.

Reporting Requirements

9. Every manufacturer or importer shall provide to CPCC the following information with each payment:

- a. its name, that is,
 - i. the name of a corporation and a mention of its jurisdiction of incorporation,
 - ii. the name of the proprietor of an individual proprietorship, or
 - iii. the names of the principal officers of all manufacturers or importers, together with any trade name (other than the above) under which it carries on business;
- b. the address of its principal place of business;
- c. its address, telephone number, telecopier number and e-mail address for the purposes of notice;
- d. the number of units of each type of blank audio recording medium on account of which the payment is being made. The “type of blank audio recording medium” refers to the type, brand name and recording capacity of the blank audio recording medium, as well as to any other characteristics according to which the entity filing the report sells the medium or identifies it in its inventory;
- e. the number of each type of blank audio recording medium exported or sold or otherwise disposed of to a society, association or corporation that represents persons with a perceptual disability.

Accounts and Records

10. (1) Every manufacturer or importer shall keep and preserve for a period of six years, records from which CPCC can readily ascertain the amounts payable and the information required under this tariff.

(2) CPCC may audit these records at any time on reasonable notice and during normal business hours.

(3) If an audit discloses that the amounts due to CPCC have been understated by more than ten per cent in any accounting period or semester, as the case may be, the manufacturer or importer shall pay the reasonable costs of audit within 30 days of the demand for such payment.

Confidentiality

11. (1) Subject to subsections (2) to (5), CPCC shall treat in confidence information received from a manufacturer or importer pursuant to this tariff, unless the manufacturer or importer consents in writing to the information being treated otherwise.

(2) CPCC may share information referred to in subsection (1)

- i. with the Copyright Board;
- ii. in connection with proceedings before the Copyright Board;
- iii. to the extent required to effect the distribution of royalties, with the collective societies represented by CPCC, once aggregated to prevent the disclosure of information dealing with a specific manufacturer or importer; or
- iv. if ordered by law or by a court of law.

(3) A collective society represented by CPCC may share information obtained pursuant to subsection (2)

- i. with the Copyright Board;
- ii. in connection with proceedings before the Copyright Board;
- iii. to the extent required to effect the distribution of royalties, with its claimants; or
- iv. if ordered by law or by a court of law.

(4) Subsection (1) does not apply to information that is publicly available, or to information obtained from someone other than the manufacturer or importer, who is not under an apparent duty of confidentiality to the manufacturer or importer.

(5) Notwithstanding the foregoing, the corporate name of a manufacturer or importer, the trade name under which it carries on business and the types of blank audio recording media reported by it pursuant to paragraph 9(d) shall not be considered confidential information.

Adjustments

12. Adjustments in the amount owed by a manufacturer or importer (including excess payments), as a result of the discovery of an error or otherwise, shall be made on the date the next payment is due.

Interest on Late Payments

13. Any amount not received by the due date shall bear interest calculated monthly on the last day of each month, at the Bank Rate effective on that day (as published by the Bank of Canada) plus one percent. Interest shall not compound.

Addresses for Notices, etc.

14. (1) Anything that a manufacturer or importer sends to CPCC shall be sent to 150 Eglinton Avenue East, Suite 403, Toronto, Ontario M4P 1E8, Telephone (416) 486-6832, Facsimile (416) 485-4373, or to any other address of which the manufacturer or importer has been notified.

(2) Anything that CPCC sends to a manufacturer or importer shall be sent to the last address of which CPCC has been notified.

Delivery of Notices and Payments

15. (1) A notice may be delivered by hand, by postage paid mail or by telecopier. Payments shall be delivered by hand or by postage paid mail.

(2) A notice or payment mailed in Canada shall be presumed to have been received three business days after the day it was mailed.

(3) A notice sent by telecopier shall be presumed to have been received on the day it is transmitted.