

Copyright Board
Canada



Commission du droit d'auteur
Canada

Date 2005-12-21

Citation FILE: Private Copying 2006

Regime Copying for Private Use
Copyright Act, subsection 66.51

Members Mr. Stephen J. Callary
Mrs. Sylvie Charron
Ms. Brigitte Doucet

Interim Tariff of levies to be collected by CPCC in 2006 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 performance are embodied

Reasons for decision

The Canadian Private Copying Collective (CPCC) has filed with the Board proposed tariffs for private copying in 2005 and 2006. Some persons and associations continue to object to these proposals.

On December 14, 2004, the Board issued an interim decision extending indefinitely the application of the *Private Copying Tariff, 2003-2004*. When that decision was issued, the Board only had before it a proposed tariff for 2005. CPCC has expressed its concern that someone might challenge the Board's power to issue an interim decision that would apply for a longer period of time than the effective period contemplated in the main application. For that reason, CPCC has asked, pursuant to section 66.51 of the *Copyright Act*, that the Board issue for 2006 a further interim decision that would be identical in all but one respect. CPCC asks that any reference to non-removable memory permanently embedded in a digital audio recorder be deleted, since the Federal Court of Appeal ruled in December 2004 that such a device could not be subject to a levy: *Canadian Private Copying Collective v. Canadian Storage Media Alliance (C.A.)*, [2005] F.C.R. 654. No one has objected to CPCC's request.

The Board grants CPCC's application and extends for 2006, on an interim basis, the application of the *Private Copying Tariff, 2003-2004*, except for the definition of "digital audio recorder", paragraph (a)(iv) of the definition of "blank audio recording medium" and paragraph 3(1)(d), which are deleted. This tariff (see text attached) will remain in force, unless modified, until the

final tariff is certified for the period commencing January 1, 2005.

This decision replaces the interim decision of December 14, 2004, to the extent that it would otherwise remain applicable.

A handwritten signature in black ink that reads "Claude Majeau". The signature is written in a cursive style with a large initial 'C'.

Claude Majeau
Secretary General

**INTERIM TARIFF OF LEVIES TO BE COLLECTED BY CPCC IN 2006 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**

Note to readers (this note is not part of the tariff)

This tariff does not modify any of the levy rates for media that were already subject to the private copying tariff. It omits all references to non-removable memory that is permanently embedded in a digital audio recorder, since the Federal Court of Appeal has ruled that such devices cannot be subject to a levy.

Short title

1. This tariff may be cited as the *Interim Private Copying Tariff, 2006*.

Definitions

2. 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*)

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

“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*)

I. SUBSTANTIVE PROVISIONS

Levy

3. (1) Subject to subsection (2), the levy rates 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.

(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

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

Apportionment of Levy

5. 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

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

II. ADMINISTRATIVE PROVISIONS

Payments

7. (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

8. 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

9. (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

10. (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 8(d) shall not be considered confidential information.

Adjustments

11. 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

12. Any amount not received by the due date shall bear interest from that date until the date the amount is received. Interest shall be calculated daily at a rate equal to one per cent above the Bank Rate effective on the last day of the previous month (as published by the Bank of Canada). Interest shall not compound.

Addresses for Notices, etc.

13. (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 or 1-800-892-7235, Facsimile (416) 486-3064, 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

14. (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.