

December 17, 1999

What is the Copyright Board?

The Copyright Board is an economic regulatory body empowered to establish, either mandatorily or at the request of an interested party, the royalties to be paid for the use of works protected by copyright, when the administration of these rights is entrusted to a collective society. The Board also supervises agreements signed between users and collective societies and can issue licences when the copyright owners cannot be located.

What is "Private Copying"?

On March 19, 1998, Part VIII of the *Copyright Act* dealing with private copying came into force. Until that time, copying any sound recording for almost any purpose infringed copyright, although, in practice, the prohibition was largely unenforceable. The amendment to the *Act* legalized copying of sound recordings of musical works onto audio recording media for the private use of the person who makes the copy (referred to as "private copying"). In addition, the amendment made provision for the imposition of a levy on blank audio recording media to compensate authors, performers and makers who own copyright in eligible sound recordings being copied for private use. The Copyright Board's decision issued today sets a levy for this purpose.

When did the proceeding take place?

The Copyright Board conducted an exhaustive proceeding, including 17 days of public hearings in August and September 1999, to examine and assess the levies proposed for the benefit of eligible authors, performers and makers, collectively represented by the CPCC. Numerous other participants were involved in the proceeding, including the major manufacturers and importers of audio recording media represented by the Canadian Storage Media Alliance (CSMA), and a coalition of smaller suppliers of recording media and churches represented by the Independent Canadian Recording Media Coalition (ICMRC). The case was heard by a panel composed of The Honourable Mr. Justice John H. Gomery, Chairman, Stephen J. Callary, Vice-Chairman and Sylvie Charron, Member. The decision was unanimous.

Which blank audio recording media are subject to the levy?

Analog Audio Cassette Tapes: All analog audio cassettes with a playing time of 40 minutes or more are subject to the private copying levy. The Board found that tapes of shorter length accounted for a small portion of the audio cassette market and, moreover, that they are generally not convenient for copying sound recordings such as pre-recorded CDs which have average lengths of over 50 minutes. In addition, no distinction is made between types of cassettes (e.g., Type I or Normal versus Type II or High Bias cassettes), nor between standard length and custom length cassettes or cassettes with other characteristics (e.g. record protect tabs removed) that may make them less suited to private copying.

MiniDisc, CD-R Audio and CD-RW Audio: MiniDisc is a re-writeable digital medium (i.e., a 2 ½ inch disc) that relies on data-compression to store recorded music. CD-R Audio and CD-RW Audio are recordable and re-writeable digital formats, respectively, that are electronically marked for use in certain consumer audio recording equipment. These recording media are mostly, if not exclusively, targeted at consumers to copy music. However, sales of these digital media are relatively limited in Canada today.

CD-R and CD-RW: These digital media are typically used in "CD burners" found in personal computer systems. They are used to record and store data, including digital sound recordings. The penetration of PCs with CD burners in Canadian households is very limited to date. As a result, individual consumers account for a relatively small share of the sales of CD-Rs and CD-RWs in Canada. However, sales of CD-Rs and CD-RWs are expected to grow very rapidly over the next few years.

Other recording media, including Digital Audio Tapes and microcassettes, generally not used for private copying, are not subject to a levy. As markets evolve, new types of blank audio recording media used for private copying may be identified and be made subject to a levy.

How was the amount of the levy set by the Board?

In setting the levy, the Board relied on evidence regarding the average remuneration that typically flows to authors, performers and makers in the case of pre-recorded CDs. This level of remuneration was then adjusted to take into account a variety of factors including the eligible musical repertoire, the nature of the private copying market, market and usage characteristics for each audio recording medium, and the relative valuations of analog versus digital recordings. Based on these considerations, the Board established the following levies:

Analog Audio Cassette Tapes (of 40 minutes or more in length): **23.3 cents per unit**

Among other factors, the amount of this levy reflects the lower value typically ascribed to analog relative to digital recordings as reflected in the price of pre-recorded cassette tapes versus CDs.

Last year, retail prices for audio cassettes generally varied between 90¢ and \$3 per unit for normal and high bias tape formats. As with virtually all recording media, prices are generally declining for cassette tapes.

MiniDiscs, CD-Rs Audio and CD-RWs Audio: **60.8 cents per unit**

A higher levy applies to these digital media due to, among other reasons, the fact that they are all digital media, almost exclusively purchased by individual consumers, and used almost exclusively for copying sound recordings.

Last year, retail prices for MiniDiscs generally ranged from \$5 to \$6 per unit, CD-R Audio prices ranged between \$8 and \$10, and CD-RW Audio prices \$15 and \$18.

CD-Rs and CD-RWs: **5.2 cents per unit**

A substantially lower levy applies to these digital media due to, among other reasons, the fact that only a relatively small portion of sales of these media are to individual consumers and they are used for a wide variety of uses other than copying sound recordings (e.g., computer data storage).

Recent retail CD-R prices generally varied between \$1.70 and \$2.50 per unit and CD-RW between \$3.50 and \$10; prices are falling rapidly for these media.

The tariff certified by the Board is for the years 1999 and 2000. However, the members of the Canadian Private Copying Collective (CPCC), in a letter to the Board and a press release dated January 18, 1999, stated that they would start collecting the levy at the earlier of the date of the Board's decision or December 31, 1999.

Who Pays the Levy?

Manufacturers and importers are responsible for paying the levy on each unit of leviable media that they sell or otherwise dispose of in Canada. While the levy is paid at the wholesale level, the cost of the levy could be borne, in whole or in part, by retailers and other distributors and, in turn, passed on to consumers. Consequently, while prices for blank audio recording media have generally been declining, the prices consumers pay for recording media could likely be higher than otherwise as a result of the levy.

The Board expects that the total volume of leviable blank audio recording media sold in Canada in 2000 will be in the order of 105 million units (approximately 18.5 million audio cassettes, 500,000 MiniDiscs, CD-Rs Audio and CD-RWs Audio and 88 million CD-Rs and CD-RWs). If this proves to be correct, the levy is expected to generate approximately \$9 million dollars in 2000.

At least 25 countries, including most G-7 and European Union members, have introduced comparable regimes with respect to the private copying of sound recordings.

Who benefits from the levy?

The entitlement to receive remuneration in respect of private copying of sound recordings applies to eligible authors, performers and makers. This is a corollary to the right of individuals to copy musical works for their own private use.

The Canadian Private Copying Collective (CPCC) has been designated as the collecting body for the private copying levy. The CPCC is also responsible for distributing the funds generated by the levy to the collective societies representing eligible authors, eligible performers and eligible makers. The member collectives of the CPCC include:

- Canadian Mechanical Reproduction Rights Agency (CMRRA)
- Neighbouring Rights Collective of Canada (NRCC)
- *Société de gestion des droits des artistes-musiciens* (SOGEDAM)

- *Société du droit de reproduction des auteurs, compositeurs et éditeurs au Canada* (SODRAC); and
- Society of Composers, Authors and Music Publishers of Canada (SOCAN)

Is anyone exempt from paying the levy?

The Board cannot grant exemptions from the levy. However, the *Copyright Act* does grant one exemption to associations representing persons with perceptual disabilities. In this respect, to help mitigate the effect of the levy on certain groups, the CPCC has proposed a zero-rating scheme which would permit manufacturers and importers to sell blank audio recording media to certain categories of users without having to pay the levy. 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. Those interested in finding out more about this so-called zero-rating scheme may contact CPCC at telephone (416) 486-6832 or facsimile (416) 485-4373.