

December 15, 2000

1. 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.

2. What is "Private Copying"?

Before the *Copyright Act* was amended in 1998, copying any sound recording for almost any purpose infringed copyright, although, in practice, the prohibition was largely unenforceable. The amendment to the *Act* legalized private copying of sound recordings of musical works onto audio recording media - i.e., the copying of pre-recorded music for the private use of the person who makes the copy. 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.

3. Which blank audio recording media are subject to the levy?

Analog Audio Cassette Tapes: All analog audio cassettes with a recording time of 40 minutes or more are subject to the private copying levy. No distinction is made among types of cassettes (e.g., normal versus 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.

CD-R and CD-RW: These digital media are typically used in CD writers found in personal computer systems. They are used to record and store data, including digital sound recordings.

CD-R Audio, CD-RW Audio and MiniDisc: CD-R Audio and CD-RW Audio are recordable and re-writeable digital media formats, respectively, that are electronically marked for use in certain consumer audio recording equipment. MiniDisc is a re-writeable digital medium (i.e., a 2 ½ inch disc) that relies on data-compression to store recorded music.

Other recording media, including Digital Audio Tapes and microcassettes, typically not used for private copying, are not subject to a levy. Some media, such as MP3 player memory cards, are not subject to the levy because the Canadian Private Collective Society (CPCC) did not ask for one. As markets evolve, new types of blank audio recording media used for private copying may be identified and be made subject to a levy.

4. I buy blank CDs regularly to use in my computer. Are they subject to the levy and if so, how much is it?

Both "ordinary" CD-Rs and CD-RWs and their "Audio" counterparts can be used to copy music. Having said this, most CDs used to copy music are "ordinary" CD-Rs and CD-RWs (for which the levy is 21¢), not "Audio" products (for which the levy is 77¢).

CD-R Audio and CD-RW Audio products were created at least in part to comply with US legal requirements. They are encoded so as to be recognized as audio products when played on digital audio recording equipment and may not be readable by all CD-ROM drives. Otherwise, they are technologically identical to their non-Audio counterparts.

CD-Rs Audio and CD-RWs Audio are marketed as such, and are sold at a much higher price (sometimes twice as much or more) than "ordinary" CD-Rs and CD-RWs. They also represent less than one per cent of the Canadian recordable CD market.

From a practical perspective, if the package of blank CDs you purchase does not state that they are Audio CDs or "for music use only", then they are subject to a levy of 21¢.

The use to which a recordable CD is actually being put does not determine whether it is subject or not to the levy. Manufacturers and importers of blank CDs pay royalties on all the CDs they sell blank.

5. How were the new levies for 2001 and 2002 established?

The Copyright Board conducted a public proceeding, starting in March of this year and recently concluding with public hearings in November, to review and set new levies for 2001 and 2002. CPCC filed evidence and proposed levies for this period on behalf of eligible rights holders (i.e., eligible authors, performers and makers). Major manufacturers and importers of blank audio recording media were represented in the proceeding by the Canadian Storage Media Alliance (CSMA).

The new rates announced today are based on the evidence provided by these parties along with testimony provided by expert witnesses appearing on their behalf during the public hearings phase of the proceeding. The case was heard by a panel of Copyright Board members composed of the Honourable Mr. Justice John H. Gomery, Chairman, Stephen J. Callary, Vice-Chairman and CEO and Sylvie Charron, Member. The decision was unanimous.

6. When will the Board's reasons explaining how the new levies were set be issued?

The public hearings phase of the proceeding was completed only a few weeks ago in late November. In order to ensure that the new levies could be implemented on schedule for January 1, 2001, the Board released its decision regarding the level of the new rates today. However, the detailed reasons for the new levies, explaining the methodology and data used to set them, will be issued early in the New Year.

7. What are the new private copying levy rates set by the Board?

Effective January 1, 2001, the Board has certified that the following levies come into effect:

- *Analog Audio Cassette Tape* (of 40 minutes or more in length): 29¢ per unit
- *CD-R and CD-RW*: 21¢ per unit
- *CD-R Audio, CD-RW Audio and MiniDisc*: 77¢ per unit

The new levies are certified by the Board for the years 2001 and 2002.

8. The new levies have increased from current levels. What are existing levy rates?

The existing private copying levies, which were set by the Board in December 1999, are as follows:

- *Analog Audio Cassette Tape* (of 40 minutes or more in length): 23.3¢ per unit
- *CD-R and CD-RW*: 5.2¢ per unit
- *CD-R Audio, CD-RW Audio and MiniDisc*: 60.8¢ per unit

These levies remain in effect until December 31, 2000.

9. Why have the levies been increased?

In setting the new levies, the Board took into account the evidence and testimony provided by both the CPCC and CSMA. This evidence demonstrated that significant changes in private copying behaviour had occurred over the last year since the Board set the existing rates including, among other things, increased usage of digital media, such as CD-Rs, for the copying of pre-recorded music. The Board's detailed reasons for its decision regarding the new levies will be issued early in the New Year.

10. 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 new levy rates.

Based on its projections of leviable blank audio recording media sales in Canada for 2001 and 2002, the Board expects that the private copying levies will generate approximately \$27 million in 2001 and \$32 million in 2002.

11. 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. 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 CPCC include:

- Canadian Mechanical Reproduction Rights Agency (CMRRA)
- Neighbouring Rights Collective of Canada (NRCC)
- *Société de gestion des droits des artistes-musiciens* (SOGEDAM)
- Society for Reproduction Rights of Authors, Composers and Publishers in Canada (SODRAC)
- Society of Composers, Authors and Music Publishers of Canada (SOCAN).

12. 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 implemented a zero-rating scheme which permits 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. This waiver applies to all blank audio recording media except CD-Rs and CR-RWs. Those interested in finding out more about the terms and conditions of the zero-rating scheme may contact CPCC at telephone (416) 486-6832 or visit its Web site at: www.cpcc.ca.