

December 12, 2003

Ottawa -- The Copyright Board of Canada has today issued a decision on private copying levies for 2003 and 2004. This is the Board's third substantive private copying decision. The first was issued in 1999. It established Canada's initial private copying levies for 1999 and 2000. The Board's second decision, issued in December 2000, set revised levies for the subsequent two year period, 2001 and 2002. Until today, interim levies had been in effect for 2003 which were set by the Board at levels identical to those in place in the previous two years.

The case was heard by a panel composed of the Honourable Mr. Justice John H. Gomery, Chairman, Stephen J. Callary, Vice-Chairman and CEO, Sylvie Charron and Brigitte Doucet, Members. Vice-Chairman Callary wrote a dissent.

Today's decision freezes all existing private copying levies at their current levels. As a result, the current levies of 29¢ on audio cassette tapes of 40 minutes or longer (no levy applies to tapes of shorter length), 21¢ on CD-Rs and CD-RWs and 77¢ on CD-R Audio, CD-RW Audio and MiniDiscs will remain in effect until the end of 2004.

The Board also sets for the first time a levy on non-removable memory permanently embedded in digital audio recorders (such as MP3 players) at \$2 for each recorder with a memory capacity of up to 1 Gigabyte (Gb), \$15 for each recorder with memory capacity of more than 1 Gb and up to 10 Gbs, and \$25 for each recorder with memory capacity of more than 10 GBs.

The Board denied the Canadian Private Copying Collective's (CPCC) request to establish a levy on blank DVDs, removable memory cards and removable micro hard drives. It finds that the evidence available at this time does not clearly demonstrate that these recording media are ordinarily used by individuals for the purpose of copying music.

Vice-Chairman Callary agreed with the majority on the inadmissibility of DVDs and removable memory cards and micro hard drives. However, he would have certified different rates on medium already subject to a levy. He would have certified a rate of 28¢ on audio cassette tapes, 29¢ for CD-Rs, 21¢ for CD-RWs and 72¢ for CD-R Audio, CD-RW Audio and MiniDiscs. The rates on non-removable memory would have been the same.

Manufacturers and importers of blank audio recording media are required to pay private copying levies to the CPCC when these media are sold in Canada. The amounts collected by the CPCC are distributed to eligible authors, eligible performers and eligible producers of recorded musical works copied by individuals for personal use in Canada.

When the private copying levies were first implemented in 2000, the CPCC introduced a "zero-rating" program under which manufacturers and importers of blank audio recording media were permitted to sell media levy free to certain parties such as 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. Audio cassettes, CD-R Audio, CD-RW Audio and MiniDiscs were covered by the

program. The CPCC announced some time ago its plan to extend its zero-rating program to include CD-Rs and CD-RWs.

However, objectors raised a number of concerns with the existing or planned extended CPCC's zero-rating program, claiming, among other things, that the program is inherently unauthorized, illegal and unfair. The Board concluded that just as it does not have the legal authority to create levy exemptions under the Copyright Act, nor does the CPCC. As a consequence, the Board concluded that CPCC's existing or proposed expanded zero-rating program is illegal.

In his dissent, Vice-Chairman Callary disagreed with this conclusion and stated his concerns for those many organizations which have relied on the existence of a zero-rating program and that could now find themselves faced with a major unexpected potential liability.

Claude Majeau, Secretary General of the Board, noted that: "In reaching its decision, the Board took into consideration the substantial amount of detailed evidence brought forward by participants to the proceeding, which included comments on the proposed levies from over 1,500 parties and individuals."

Mr. Majeau explained that: "The Board faced many difficult challenges in these proceedings, including conflicting evidence concerning the size of the Canadian market for blank audio recording media required to update existing levies, significant developments in digital recording media technologies and controversial issues relating to the legal status of CPCC's zero-rating program, among others." He added that: "The Board majority found that, based on the available evidence, increasing existing levy rates as proposed by the CPCC was not justified at this time, and that fairness and equity dictated that the status quo for the existing levies be maintained."

For more information, contact:

Mr. Claude Majeau  
Secretary General  
Copyright Board of Canada  
Ottawa, Ontario K1A 0C9  
Tel: (613) 952-8621  
Fax: (613) 952-8630  
E-mail: [majeau.claude@cb-cda.gc.ca](mailto:majeau.claude@cb-cda.gc.ca)