



## FACT SHEET

### Copyright Board Decision Private Copying 2008-2009

*December 5, 2008*

#### ***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”?***

Before the *Copyright Act* was amended in 1998, copying a sound recording for almost any purpose infringed copyright, although, in practice, the prohibition was largely unenforceable. The amendment to the *Act* legalized the private copying of sound recordings of musical works onto audio recording media – i.e., the copying of prerecorded 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.

#### ***What specific forms of blank recording media are subject to the levy?***

*Analog Audio Cassettes:* 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 according to bias, nor between standard length and custom length cassettes.

*CD-Rs and CD-RWs:* These recordable and rewritable digital media are typically used in CD writers found in personal computers. They are used to record and store data, including sound recordings.

*CD-Rs Audio and CD-RWs Audio:* These are recordable and rewritable digital media formats, respectively, that are electronically marked for use in certain consumer audio recording equipment.

*MiniDiscs*: This is a rewritable digital medium (a 2½ inch disc) that relies on data compression to store recorded music, primarily for use in portable MiniDisc audio players.

***What specific forms of recording media are not subject to the levy?***

The Board concluded in its first private copying decision, issued in 1999, that Digital Audio Tapes (DAT) and micro-cassettes are not typically used by individuals for copying music for private use and, therefore, are not subject to a levy.

The Board also concluded in the past that recordable and rewritable DVDs, removable electronic memory cards (such as SmartMedia, CompactFlash and Secure Digital Memory cards) and removable micro hard drives were not ordinarily used by individuals for the purpose of copying music. Therefore, these media are not subject to a levy.

In addition, the Federal Court of Appeal recently decided that digital audio recorders such as the iPod cannot be considered as a music copying medium for the purpose of the private copying regime, and thus are not subject to a levy.

***I buy blank CDs regularly to store data from my computer. Are they subject to the levy?***

Yes. Both “ordinary” CD-Rs and CD-RWs and their “Audio” counterparts can be used to copy music, and both are commonly used for this purpose. In fact, in volume terms, most CDs used to copy music are “ordinary” CD-Rs and CD-RWs, not “Audio” products. In any event, all CDs are subject to the same levy of 29¢. In establishing the levy rates on CDs, the Board has taken into account the fact that they have other uses than recording music, such as storing data and digital images.

***How were the levy rates for 2008 and 2009 established?***

The Copyright Board conducted a public hearing process which started in January 31, 2007, when the statement of proposed levies for the period 2008-2009 was published in the *Canada Gazette*. The proposal was made by the Canadian Private Copying Collective (CPCC) on behalf of eligible rights holders (authors, performers and makers). Evidence in support of the proposed tariffs was filed with the Board by CPCC.

There were initially a number of objectors to the proposed tariff: the Canadian Broadcasting Corporation, the Retail Council of Canada (RCC), the Canadian Association of Broadcasters, the Canadian Storage Media Alliance, the Canadian Wireless Telecommunications Association and Dataware Corporation. Some individuals also expressed interest in the proceedings. However, through the proceedings, all but one objector withdrew. RCC, the only remaining objector, stated that it would not present evidence or call witnesses but would maintain a “watching brief”. In order to expedite matters and to properly protect the public interest, the Board sent to CPCC a number of questions in advance of a one-day hearing held on April 28, 2008.

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

For the period from January 1<sup>st</sup>, 2008 to December 31<sup>st</sup>, 2009, the Board certified the following levy rates:

- *Audio Cassette* (of 40 minutes or more in length): 24¢ each
- *CD-R, CD-RW, CD-R Audio, CD-RW Audio and MiniDisc*: 29¢ each

***Do the rates apply retroactively?***

The *Copyright Act* requires that the Copyright Board set a tariff for the years 2008 and 2009. However, in a correspondence of November 14, 2007 and in a press release of December 18, 2007, CPCC indicated its intention not to collect any increases in the rates retroactively when the certified tariff for 2008-2009 is issued.

***What were the rates proposed by CPCC for the years 2008 and 2009?***

CPCC proposed rates of 24¢ for each audio cassette of 40 minutes or more in length, and 29¢ for each CD. CPCC also proposed rates for removable memory cards and digital audio recorders. Proposed rates for memory cards were later withdrawn by CPCC. After the decision of the Federal Court of Appeal on digital audio recorders, the proposed rates on these were struck out of the proposed tariff.

***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, it is generally accepted that the cost is passed on to consumers.

***Who benefits from the levy?***

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

CPCC has been designated as the collecting body for the private copying levy. CPCC is also responsible for distributing the amounts generated by the levy to collective societies representing eligible authors, performers and makers. Member collectives of CPCC include:

- the Canadian Mechanical Reproduction Rights Agency (CMRRA);
- the Neighbouring Rights Collective of Canada (NRCC);
- the Society for the Reproduction Rights of Authors, Composers and Publishers in Canada (SODRAC); and
- the Society of Composers, Authors and Music Publishers of Canada (SOCAN).

For more information, please consult CPCC's website: [www.cpcc.ca](http://www.cpcc.ca)

***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.

***How much revenue is expected to be generated by the levy?***

The Board estimates that the royalty rates certified today would have generated total royalties for the year 2008 to an amount of about \$30 million (which will not be realized because of CPCC's undertaking not to collect levy increases retroactively). In spite of the CD levy rate increase, total royalties nevertheless remain similar to what CPCC has collected on average in the past. This reflects the fact that blank CD sales should go down. Should this forecast not materialize, the estimated amount of royalties would be adjusted accordingly.