



CANADIAN PRIVATE COPYING COLLECTIVE  
SOCIÉTÉ CANADIENNE DE PERCEPTION DE LA COPIE PRIVÉE  
150 Eglinton Ave. East, Suite 403  
Toronto, Ontario M4P 1E8  
416 486 6832  
1 800 892 7235  
416 485 3064 [FAX]  
www.cpcc.ca  
inquiries@cpcc.ca

**FOR IMMEDIATE RELEASE**

**17 December 2004**

### **Appeal Court Upholds Constitutionality of Private Copying Levy and Legality of CPCC's Zero-Rating Program**

(Toronto) - The Federal Court of Appeal has dismissed an application for judicial review filed by the Retail Council of Canada following the December 2003 Decision of the Copyright Board. The Retail Council had sought to overturn the private copying levy. The Canadian Private Copying Collective (CPCC) welcomes this confirmation by the Court of Appeal that the private copying levy is constitutional and is not a tax.

Chair of the CPCC Board of Directors, Claudette Fortier said, "We expected that the validity of the levy would be upheld, but it is still a great relief to have the Appeal Court's decision. It removes any uncertainty about whether the levy will continue to be collected".

The CPCC expressed satisfaction as well at the Federal Court of Appeal's confirmation that the CPCC is free to continue to operate its zero-rating program. Under that program the CPCC allows businesses and other organizations that register with the CPCC to acquire blank audio recording media, such as CD-Rs, without paying the levy.

The Copyright Board had stated in its December 2003 Decision that the zero-rating program was illegal. CPCC had asked the Federal Court of Appeal to confirm that it was free to voluntarily waive the collection of the levy. The Appeal Court's Decision states that "The Board had no statutory authority to pronounce on the legality of the program" and, based on its reading of the Copyright Board's decision, concludes that the Board had not held that the program is illegal, "to the extent it is based on the waiver by rightsholders of their rightful entitlement".

"The Copyright Board's decision last year", said CPCC's Executive Director, Anna Bucci, "had caused some importers who supplied blank media at a zero-rate to registered participants in the program to withdraw because the program had been labeled illegal. With this important confirmation that it is perfectly legal to continue the program, there should be no further concern about participating".

The Federal Court of Appeal ruled at the same time on a third issue: the application of a private copying levy to digital audio recorders such as the iPod. Since the Copyright Board's December 2003 Decision a levy has been collected on the flash memory or hard drive incorporated into a digital audio recorder.

However, the Federal Court of Appeal has now held that CPCC's levy on the memory embedded in recording devices is invalid because the Copyright Board had no jurisdiction to impose a levy on digital audio recorders.

CPCC Director David Basskin stated, "We disagree with the Court's finding on the levy with respect to media used in digital audio recorders". He added, "CPCC's Board of Directors is actively

considering an appeal on this issue to the Supreme Court of Canada and our decision on this question will be announced shortly”.

The Canadian Private Copying Collective (CPCC) is a non-profit agency charged with collecting and distributing private copying royalties. Established in 1999, CPCC is a collective of collectives that represent authors, composers, music publishers, artists and record companies.

-30-

For more information contact:

Alison Thompson, CPCC  
tel. (416) 486-6832, ex. 221  
email: [athompson@cpcc.ca](mailto:athompson@cpcc.ca)