



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
416 486 3064 [FAX]
www.cpcc.ca

Frequently Asked Questions

1) What is the Canadian Private Copying Collective (CPCC)?

The 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 music authors, music publishers, recording artists and record companies.

2) What is private copying?

A "private copy" is a copy of a track, or a substantial part of a track, of recorded music that is made by an individual for his or her own personal use. A compilation of favourite tracks is a good example of how people typically use private copies.

The private copying provisions of Canada's Copyright Act came into effect in 1998 to allow consumers to copy recorded music for their own personal use. In exchange, legislators provided for a royalty to remunerate those with rights in recorded music for private copying.

Similar royalties are collected in over 40 countries around the world. The payment songwriters, artists, music publishers and record companies receive allows them to continue both creating and making recorded music.

3) Why charge a royalty on blank audio-recording media?

Private copying of music has increased over the last several years. As a result, music authors (composers, lyricists and songwriters), music publishers, recording artists and record companies are not collecting payment for a large proportion of the copies made of their work.

Survey evidence ("Market Study of Private Copying of Pre-recorded Music in Canada," Circum Network Inc., August 2002) indicates that 1.1 billion tracks of recorded music were copied between July 2001 and June 2002 in Canada. Of this number, only 3% were authorized by and involved payment to copyright holders. Two-thirds of what's being copied onto CD-Rs by individuals is music, and individuals use MP3 players almost exclusively to copy music.

Attaching a royalty to the blank media used for private copying allows those with rights in recorded music to receive some remuneration for their work and investment. This compensation allows music creators and artists to continue to create music, and for record companies and publishers to continue to invest in its creation.

4) What is the private copying royalty?

Royalties are applied to the kinds of media that are ordinarily used for private copying. The media included and the royalty rates are determined by the Copyright Board, an impartial federal administrative tribunal, based upon evidence presented in a formal hearing process.

5) Isn't this just another tax by the federal government?

The private copying royalty is not a tax. Unlike a tax, which is collected by the government, the private copying royalty is collected by the CPCC to provide remuneration to rights holders for private copying. The private copying royalty helps to ensure rights holders receive some payment for the copying of their work and to assist them in the creation of music.

6) Who is entitled to receive payments?

The royalties are distributed among rights holders, including music authors, music publishers, recording artists and record companies. These royalties are the mechanism by which they are paid for the use of their work and investment.

While music authors and publishers may qualify regardless of their nationality, at present only Canadian performers and record companies qualify for payment.

The Copyright Board has allocated the royalties for 2001 to 2007 as follows:

Eligible music authors and publishers: 66%

Eligible performers: 18.9%

Eligible record companies: 15.1%

The allocation for 2000 is:

Eligible music authors and publishers: 75%

Eligible performers: 13.7%

Eligible record companies: 11.3%

7) How much money has been distributed?

Distribution of the private copying royalties began in early 2003. For the current amount of royalties that has been distributed, please see the Financial Highlights page of our web site at <http://cpcc.ca/english/finHighlights.htm> .

8) What is the distribution methodology?

The CPCC and its constituent member collectives have developed a distribution process that ensures royalties are fairly distributed to the tens of thousands of rights holders whose recorded music is in current use.

Since no inventory of privately copied tracks exists, distribution is based on representative samples of radio airplay and album sales, which are given equal weight in the distribution. Together they provide a proxy for determining the titles that Canadians typically copy for private use.

As information is not available concerning exactly what tracks of recorded music are copied, the CPCC has used the two most comprehensive available sources of information – data indicating the recorded music that is sold both in retail outlets and online in Canada and data concerning the recorded music that is broadcast by commercial radio stations and the CBC. Airplay and sales are weighted equally. Airplay and sales data are believed to provide the best available indication of the titles that Canadians typically copy for private use.

9) How does a rights holder get payment?

As a rights holder, the easiest way to access payment is by joining the CPCC's member collective(s) that best represent your particular rights. For a list of CPCC's member collectives, please visit the Information for Copyright holders section of our website at <http://cpcc.ca/english/infoCopyHolders.htm>.

10) Do the private copying provisions in the Copyright Act make peer-to-peer file trading on the Internet legal?

No. The *Copyright Act* states that it is not an infringement of copyright in a musical work, a performer's performance or a sound recording, for individuals to make a copy onto an "audio recording medium" for their own private use. However, it does not permit the sharing of those copies with millions of people through the Internet – private copies must, by definition, remain private. The payment of the private copying levy is also not a passport to steal the source material. "Copying" should not be confused with "gaining access" to the material to be copied. The fact that one is allowed to copy recorded performances of musical works does not mean that the original sound recordings themselves are suddenly free. As a result, the levy does not replace the need to obtain legally (for example, by buying it) the material to be copied.

The legal status of unauthorized downloading was addressed on May 19, 2005 in a decision of the Federal Court of Appeal. An earlier Federal Court decision by Mr. Justice von Finkenstein had contained a statement that "downloading a song for personal use does not amount to infringement". However, the Federal Court of Appeal concluded that, in reaching that view, Mr. Justice von Finkenstein had erred in several ways, including that he "gave no consideration to the possible application of subsection 80 (2) and the circumstances in which the defence of "private use" will not be available, such as, *inter alia*, where the reproduction of a musical work embodied in a sound recording onto an audio recording medium is done for the sale, rental, distribution, communication by telecommunication or performance to the public". He also had not considered the fact that the exemption would not apply if the users were not using an "audio recording medium". The conclusion of the Federal Court of Appeal was that the earlier statements of Mr. Justice von Finkenstein with respect to whether there was copyright infringement should be disregarded.

11) Isn't the point of the levy to compensate rights holders for losses due to peer-to-peer file trading on the Internet?

No. The private copying legislation that passed in 1997 did two things. First, it made it legal for individuals to make copies of recorded performances of musical works if the copies were made for the private use of the copier on a medium ordinarily used to copy music. Second, the law provided for a fair and equitable levy to provide remuneration to copyright holders for the making of those private copies. The legislation recognizes that privately made copies have their own inherent value and for that reason it ensured that rights holders received compensation for the copy itself through the levy. It was never the purpose of the private copying levy to compensate copyright holders for lost revenue due to peer-to-peer file trading.

12) What is the Copyright Board and what authority does it have?

The Copyright Board, a federal administrative tribunal, decides which media are ordinarily used for private copying and should, therefore, attract a private copying royalty. It also may adjust the proposed royalties based on arguments for and against a proposed private copying royalty structure.

Because technologies come and go and the value of copying can change over time, the legislation does not create a static catalogue of specific types of media on which there should be a royalty or fix royalty amounts for all time. Instead, it sets up a framework that allows for periodic review by the Copyright Board.

13) How does the Copyright Board set the private copying royalty rates?

The process by which the private copying royalty rates are set is fair and open. The amount of the royalties is set by the Copyright Board after hearing arguments from both rights owners and the blank media industry, as well as other concerned individuals and organizations.

The process the Board follows is described fully in the Supplement to the Canada Gazette of March 9, 2002 (where the proposed tariff for 2003-2004 was published) and on the Board's website (<http://www.cb-cda.gc.ca>). Objectors can come to the Board and offer their own arguments as to why the tariff is not justified. The Copyright Board is free to amend the tariff if, based on arguments for and against the proposed tariff, it does not regard the proposal as reasonable and justified. Specifically, the Board can decide that a blank recording medium on which CPCC has requested a levy does not qualify under the definition the Government set out in the Copyright Act.

14) Who pays the royalty on blank audio recording media?

Under copyright law, importers and manufacturers of blank audio recording media are required to pay the royalty on blank audio recording media sold or otherwise disposed of in Canada. Blank media that are exported from Canada are not subject to the royalty and no royalty is payable on sales to organizations that represent the perceptually disabled. When retailers buy blank audio recording media from Canadian importers and manufacturers to sell to consumers, the royalty is then built into the price.

15) What specific blank media are subject to a private copying royalty?

To be subject to a private copying royalty, media must be capable of being used for private copying and must be proven to be ordinarily used for this purpose. An important factor in the calculation of the current royalties is the extent to which media are also used for other purposes. These other uses, such as data storage on CD-Rs, have resulted in lower royalties.

Currently, royalties are applied to:

Analogue audiocassettes (40 minutes or longer):

1/8-inch recording tape mounted on reels in a plastic shell, recorded and played back at 1 and 7/8 inches per second in analogue mode on a transverse head. Analogue audio information can be recorded, played back and erased in a standard cassette recorder or played back in a play-only device.

MiniDisc (MD):

An erasable format that uses a 2-inch disc housed in a protective caddy that resembles a small computer diskette. Its small size is made possible by a data-compression system that eliminates portions of the music that are deemed inaudible. The MD typically stores up to 80 minutes of music, however, the new MDLP Long Play feature now permits 320 minutes of compressed music files to be recorded onto an 80-minute blank MiniDisc.

Recordable Compact Discs (Recordable CDs)

Polycarbonate discs coated with material which can be "burned" (i.e., recorded) with a series of short and long "pits" representing the ones and zeros of digitally encoded information. Typically sold in a configuration capable of recording 700 megabytes of information, which is equivalent to 80 minutes of recording time in CD audio format.

Compact Disc-Recordable (CD-R):

Information can be recorded only once and cannot be erased. Digitally recorded audio information can be recovered in a CD-ROM drive or, in most cases, a standard CD or DVD player.

Compact Disc-Rewritable (CD-RW):

Identical to a CD-R, but capable, when used in an appropriately equipped drive, of not only recording information but erasing it.

Compact Disc-Recordable Audio (CD-RA):

Identical to a CD-R, but electronically marked as being authorized for use in certain consumer audio recording equipment. Digitally recorded audio information can be recovered in a CD-ROM drive or any standard CD player.

Compact Disc-Rewritable Audio (CD-RWA):

Identical to a CD-RW, but electronically marked as being authorized for use in certain consumer audio recording equipment. Digitally recorded audio information can be played on a CD-ROM drive or any standard CD player

16) Zero-Rating

a.) What is the zero-rating program?

In 1999, CPCC established a program to permit media otherwise subject to private copying royalties to be purchased "zero-rated" or royalty free. The program was available to a wide range of groups. Purchasers were required to be certified in advance by CPCC and buy from a CPCC-authorized seller. The original program was confined to audio

cassettes, MiniDiscs, CD-R Audio and CD-RW Audio. CPCC's Board of Directors has now approved the extension of zero-rating to CD-R and CD-RW. The new program came into effect on September 1, 2003.

b.) Who can qualify for zero-rating?

Educational institutions, broadcasters, law enforcement agencies, advertising agencies, the music, film and video industries, courts, tribunals and court reporters, religious organizations, telemarketing firms, software companies, duplication facilities, medical institutions, technology companies, conference and training companies, governments, and other firms duplicating audio and data for business use - these, and others too, can obtain access to zero-rated media.

Participation in the program is open to any business and to any institution or non-profit organization, and to professional musicians who are members of the American Federation of Musicians. Even very small businesses can qualify, regardless of whether they are incorporated or are simply registered businesses.

For more information about CPCC's zero-rating program, please consult the CPCC website at www.cpcc.ca.