

What is private copying?

Canada's *Copyright Act* was revised to allow consumers to copy recorded music for their own personal use. In exchange, legislators provided for a private copying royalty to compensate those with rights in recorded music.

Why charge a royalty on blank audio-recording media?

Private copying of music has increased over the last few 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 their work. 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 be compensated for their work and investment.

It is hoped that this compensation will be an incentive for music creators and artists to continue to create music, and for record companies and publishers to continue to invest in its creation.

What is this 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 economic administrative tribunal, based upon evidence presented in a formal hearing process.

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. When retailers buy blank audio-recording media from Canadian importers and manufacturers to sell to consumers, the royalty is then built into the price.

What is the Canadian Private Copying Collective (CPCC)?

CPCC is the 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.

What authority does the Copyright Board have?

The Copyright Board, an economic administrative tribunal, may adjust royalties based on arguments for and against a proposed private copying royalty structure. The Copyright Board can decide which media are ordinarily used for private copying and should, therefore, attract a private copying royalty. It can also decide what rate is appropriate. In the previous two hearings, the Copyright Board used both of these powers to amend the proposed private copying royalty after an open, public hearing.

Isn't this just another tax by the 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 compensate rights holders for private copying. The private copying royalty helps to ensure rights holders receive some compensation for the use of their work to assist them in continuing to create, and invest in the creation of, music.

Who is entitled to receive payments?

The royalties will be distributed among rights holders, including music authors, music publishers, recording artists and record companies. These royalties are the mechanisms by which they are paid for the use of their work and investment. By adding royalties on the blank media, creators and other rights holders are able to receive some compensation for the use of their work.

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 and 2002 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%

How much money will be distributed?

More than \$28 million in royalties will be available for distribution to eligible rights holders for 2000 and 2001. The CPCC oversees the distribution process so that the funds can be fairly distributed to the tens of thousands of eligible rights holders by the CPCC member collectives.

How does a rights holder secure payment?

As a rights holder, the easiest way to access payment is by joining one of the CPCC's member collectives:

Canadian Musical Reproduction Rights Agency (CMRRA)

56 Wellesley Street West, Suite 320
Toronto, ON M5S 2S3
Tel: (416)926-1966 Fax: (416)926-7521
E-mail: inquiries@cmrra.ca
www.cmrra.ca

Neighbouring Rights Collective of Canada (NRCC)/La société canadienne de gestion des droits voisins (SCGDV)

920 Yonge Street, Suite 502
Toronto, ON M4W 3C7
Tel: (416)968-8870 Fax: (416)962-7797
E-mail: info@nrsv.ca

Through one of its member collectives:

- The American Federation of Musicians of the United States and Canada (AFM)
- The ACTRA Performers' Rights Society (APRS)
- La société de gestion collective de l'Union des artistes (ARTISTI)
- Audio-Video Licensing Agency (AVLA)
- La société de gestion collective des droits des producteurs de phonogrammes et de vidéogrammes du Québec (SOPROQ)

Society for Reproduction Rights of Authors, Composers and Publishers in Canada/Société du droit de reproduction des auteurs, compositeurs et éditeurs du Canada (SODRAC)

759 Carré-Victoria, bur. 420
Montéal, QC H2Y 2J7
Tel: (514)845-3268 Fax: (514)845-3401
E-mail: sodrac@mblink.net
www.sodrac.com

Society of Composers, Authors and Music Publishers of Canada/Société Canadienne des auteurs, compositeurs et éditeurs de musique (SOCAN)

41 Valleybrook Drive

Don Mills, ON M3B 2S6
Tel: 1-800-557-6226 Fax: (416)445-7108
E-mail: socan@socan.ca
www.socan.ca

Who is exempt from the private copying royalty and what is the zero-rating program?

Under the *Copyright Act*, the perceptually disabled are granted an exemption on all media otherwise subject to private-copying royalties. CPCC has also voluntarily established a program to allow the following groups to purchase analogue cassettes and MiniDiscs royalty-free:

- Broadcasters
- Religious organisations
- Law-enforcement agencies
- Courts/tribunals/court reporters
- Music/advertising industry
- Professional users
- Educational institutions

Users that fall into one of the groups listed above must register with the CPCC before they can buy royalty-free blank audio-recording media. The CPCC 's zero-rating program is currently under review and its scope may be expanded.

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

Will payment for music be made twice?

It has been suggested that consumers are being asked to pay more than once for the same music on the false belief that payment for a CD includes the right to make copies. It does not. Additionally, most copying does not involve making a second copy of a CD the individual copier owns. People are generally creating their own compilations with their favourite tracks from many CDs.

Payments have only recently begun to be made for the right to download recorded music from the Internet. The vast majority of music downloads are not of legitimately-purchased music. The CPCC will reduce its claim to the extent that the copying being done has already been authorized by, or on behalf of, the rights owners in the music.

What specific blank media will be 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 proved to be ordinarily used for this purpose. Currently, royalties are applied to:

Analogue Cassette:

1/8-inch recording tape mounted on reels in a plastic shell, recorded and played back at 1-7/8 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 2-1/2 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.

Compact Disc-Recordable (CD-R):

a polycarbonate disc coated with material which can be "burned" (i.e., recorded) once 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. 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. Digitally recorded audio information can be recovered in a CD-ROM drive or, in most cases, a standard CD or DVD player.

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

In its proposal for 2003 and 2004, CPCC has asked that the Copyright Board also permit it to begin collecting a private copying royalty on recordable DVD, MP3 players, removable flash memory and removable micro hard drives.

Non-removable hard drives in MP3 Players:

MP3 players are used primarily, even exclusively, to copy recorded music. It is for this reason that CPCC is requesting royalties on these. CPCC's proposal on non-removable hard drives is confined to MP3 players and similar devices that are intended primarily to record and play music.

Removable memory:

Because some MP3 players use removable memory, CPCC is requesting a private copying royalty on removable memory used in MP3 players (electronic memory cards, flash memory and removable micro-hard drives).

DVD:

CPCC preliminary research confirms that, just as three years ago consumers were beginning to copy significant quantities of music onto blank CDs, over the past year, music has begun to be copied onto blank DVDs. It is for this reason that CPCC is requesting a private copying royalty on blank DVDs.

The CPCC has not requested a tariff on personal computers or the hard drives used in computers. Additionally, an important factor in the calculation of the current and proposed royalties is the extent to which media are also used for other purposes. In the past, these other uses, such as data storage on CD-Rs, have resulted in a lower royalty claim.