

Copyright Board
Canada



Commission du droit d'auteur
Canada

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Proceeding	CPCC – Private Copying Tariff (2025-2027)
Proposed Tariff Considered	CPCC – Private Copying Tariff (2025-2027)
Members	The Honourable Luc Martineau Katherine Braun René Côté

**Approval of Proposed Tariff
As
CPCC – Private Copying Tariff (2025-2027)**

Reasons for Decision

I. Overview

[1] The Canadian Private Copying Collective (CPCC) is an umbrella organization representing songwriters, recording artists, music publishers and record companies through its member collectives, namely the Canadian Musical Reproduction Rights Agency, Re:Sound Music Licensing Company, and the Society of Composers, Authors and Music Publishers of Canada.

[2] On October 13, 2023, pursuant to Section 83 of the Copyright Act¹ (the Act), CPCC filed a proposed tariff of levies to be collected on the sale of blank audio recording media in Canada for the years 2025, 2026 and 2027 (the “Proposed Tariff”). “Blank audio recording media” is defined in the Proposed Tariff as blank recordable compact discs (CD-R, CD-RW, CD-R Audio, and CD-RW Audio) made in, or imported into, Canada (together “blank CDs”).

[3] On May 15, 2024, a Case Management Conference (CMC) was held to provide an opportunity for exchange and clarification related to issues and questions from the

¹ *Copyright Act*, RSC, 1985, c. C-42 [Act].

Board and identified in the Initiation Notice,² concerning the quality of data and robustness of the economic evidence submitted in previous proceedings.

[4] On November 29, 2024, CPCC filed its evidence and arguments in support of its proposed tariff. CPCC submitted evidence from three witnesses: Lisa Freeman, Executive Director, CPCC; Benoît Gauthier, President, Circum Network Inc and Marcel Boyer, Professor Emeritus.

[5] For the reasons below, we conclude that the evidence, while not strong, supports our conclusion that blank CDs will be ordinarily used to copy music during the years 2025, 2026, and 2027. We further conclude that the levy should remain unchanged. We recommend no changes to the apportionment of the levy among those eligible for remuneration and identified no issues with the terms and conditions of the Proposed Tariff. Accordingly, we approve the Proposed Tariff for the years 2025-2027, with a levy rate of \$0.29 per blank CD.

II. Background & Issues

[6] Part VIII of the Act provides the legislative framework of the private copying regime. Under this regime, eligible authors, performers, and makers of sound recordings have a right to receive remuneration from manufacturers and importers of blank audio recording media for the reproduction for private use onto an “audio recording medium” of sound recordings and musical works and performers’ performances embodied therein.³ This compensation takes the form of a levy set by the Board, to be paid in respect of each blank audio recording medium sold, or otherwise disposed of, in Canada.⁴

[7] Pursuant to section 82 of the Act, only a “blank audio recording medium” can be subject to a levy. Section 79 of the Act defines an “audio recording medium” as a recording medium onto which a sound recording may be reproduced and that is of a kind “ordinarily used” by individual consumers for that purpose.

[8] In this proceeding, we must first determine whether blank CDs will qualify as an audio recording medium, as defined under section 79 of the Act, in the years 2025–2027. If we conclude that they will, then we must determine the levy payable by makers and manufacturers of blank CDs for those years. Finally, we must determine the apportionment of that levy among those eligible for remuneration.

[9] We identified the following issues for consideration:

² Notice of the Board CB-CDA 2024-029, April 29, 2024.

³ Act, *supra* note 1, s.81.

⁴ *Ibid*, s.82.

- Issue 1: Will blank CDs qualify as an “audio recording medium” in 2025-2027?
- Issue 2: What is the appropriate levy rate?
- Issue 3: What is the appropriate apportionment of the levy among rights holders?

III. Analysis

Issue 1: Will blank CDs qualify as an “audio recording medium” in 2025-2027?

1. What is the meaning of “ordinarily used”?

[10] Section 79 of the Act defines an “audio recording medium” as a recording medium onto which a sound recording may be reproduced and that is of a kind “ordinarily used” by individual consumers for that purpose. However, the Act is silent on how the concept of “ordinarily used” is to be assessed.

[11] Early in the regime, the Board took the view that for the purpose of section 79, this concept encompasses all non-negligible uses.⁵ This approach was upheld as reasonable by the Federal Court of Appeal.⁶ That court also upheld the Board’s approach whereby it is usage by individual consumers that must be ordinary, not the general use of the product.

[12] Since Private Copying Tariff 2018-2019,⁷ the Board has mainly relied on the following three metrics to determine whether blank CDs are ordinarily used to copy music:

1. The total number of music tracks copied onto blank CDs
2. The number of blank CDs purchased by individual consumers
3. The percentage of blank CDs used to copy musical work

[13] The weight accorded by the Board to these metrics has varied over the years, according to the Board’s evaluation of the quality of data or the relevance of a variable. The Board’s evaluation of evidence pertaining to private copying has included both qualitative and quantitative considerations.

[14] As reiterated by the Board in past decisions, “a finding that a medium is ordinarily used for the purpose of private copying is a matter of impression, taking into account not only levels but also trends.”⁸

⁵ CPCC – *Tariff for Private Copying 1999-2000* (reasons) (December 17, 1999), p.19.

⁶ *Avs Technologies Inc. v. Canadian Mechanical Reproduction Rights Agency*, [2000] FCJ No 960, paras 3, 9-11.

⁷ CPCC – *Tariff for Private Copying 2018-2019*, CB-CDA 2017-148 (reasons) (December 1, 2017), paras 36-49.

⁸ CPCC – *Tariff for Private Copying, 2015-2016* (reasons) (December 12, 2014), para 31; CPCC – *Private Copying Tariff (2022-2024)* 2021 CB 12 (December 17, 2021), para 12.

[15] In this proceeding, the CPCC filed evidence in respect of i) Number of music tracks copied onto blank CDs, ii) Number of blank CDs purchased by individual consumers, and iii) Percentage of blank CDs used to copy musical work. We consider the evidence on each of these metrics in turn.

Number of music tracks copied onto blank CDs

[16] Mr. Gauthier projects that 141.9 million tracks of music will be copied onto blank CDs in 2025, 127.0 million in 2026, and 113.7 million in 2027.⁹ Mr. Gauthier obtained this result by applying the observed average annual rate of change between 2021 and 2024 (being -10.5%) to the number of tracks copied onto blank CDs in 2024, as reported in the 2024 Internet-based Music Monitor Survey (MM24).

[17] We note that, in the documents filed for the Board's consideration of the last-approved tariff, that CPCC estimated, based on the average annual rate of change between 2015 and 2021, that 221.3 million tracks would be copied onto blank CDs in 2024.¹⁰ However, data from the MM24 suggests that only 158.4 million tracks were copied onto blank CDs in 2024, representing an overestimation of approximately 40%.¹¹

[18] We would have welcomed an explanation of this discrepancy, along with clarification regarding the measures taken, if any, to prevent similar overestimation in the current projections. Nevertheless, we conclude that these figures are useful to account for the trend and provide an estimate of the number of music tracks copied per year onto blank CDs.

Number of blank CDs purchased by individual consumers

[19] Mr. Gauthier states that 1.438 million units of blank CDs were sold in 2024 and projects sales to decline to 1.274 million units in 2025, to 1.129 million in 2026, and to 1.001 million in 2027.

[20] To obtain the result for 2024, Mr. Gauthier used the data collected by Circana¹² from selected retailers for the period 2017 to 2024. Mr. Gauthier grossed up Circana's data in accordance with the approximated representation level of the market identified by them. To project the number of blank CDs that will be sold in 2025, 2026 and 2027, Mr. Gauthier calculated the average annual rate of change between 2017 and 2024

⁹ Exhibit CPCC-3, para 51.

¹⁰ CPCC - *Private Copying Tariff (2022-2024)* 2021 CB 12 (December 17, 2021), para 28.

¹¹ 221.3 million tracks – 158.4 million tracks = 62.9 million tracks. 62.9 million tracks/158.4 million tracks = 39.7%.

¹² Circana Canada, Ltd, *Retail Tracking Service*.

(11.4%) and applied this change successively to the previous year result, starting in 2025 up to 2027.

[21] Mr. Gauthier estimates that 97.5% of all blank CDs purchased were bought by individuals. We generally accept Mr. Gauthier's forecast relating to the number of blank CDs purchased by individual consumers.

Percentage of blank CDs used to copy musical work

[22] Relying on the MM24 survey, Mr. Gauthier estimates the proportion of blank CDs purchased for the purpose of copying music. According to the MM24 survey results, music was the content copied onto a blank CDs 29% of the time in 2024. This estimate has a statistical precision of 2.0 percentage points at a 95% confidence level. From this finding, Mr. Gauthier concluded that 29% of blank CDs will be used to copy music in 2024.

[23] Results from the Internet-based Music Monitor Survey conducted in 2019 and 2021 showed a level of 30% and 27% of blank CDs used to copy music respectively in those years. Mr. Gauthier concludes that the proportion of blank CDs used to copy music has remained constant since 2019. He asserts that this behaviour is unlikely to change within the next three years. As such, he projects that the proportion of blank CDs used to copy music will remain stable at 29% for the years 2025, 2026, and 2027.

[24] In the last-approved tariff proceeding, Mr. Gauthier forecasted a decline in this proportion: from 26% in 2022, to 25% in 2023, and to 24% in 2024. We note the inconsistency between the recent projections and the downward trend forecasted in the last-approved tariff. The current estimate of 29% may be somewhat overstated.

[25] Nevertheless, the Board considers that, even with a gradual decline, the proportion of blank CDs used to copy music is unlikely to have reached a point of marginality.

Conclusion

[26] Notwithstanding the Board's concerns about the case record and its limitations, we are of the view that the forecasts provided for the number of blank CDs that will be used to copy music, in combination with the number of tracks that will be copied, allow us to conclude, as a matter of impression, that blank CDs will remain ordinarily used to copy music in 2025, 2026 and 2027. As such, we conclude that blank CDs will qualify as an "audio recording medium" during this period.

Issue 2: What is the appropriate levy rate?

[27] CPCC argues that the \$0.29 levy rate is a reality in the marketplace and reflects a consideration of what would have been agreed upon between a willing buyer and a willing seller in a competitive market, the public interest, and the impact of the levy on its targeted users.¹³

[28] Since there was no evidence presented concerning whether purchasers of blank CDs are aware of the existence of the levy, we cannot conclude that they are willing to pay the \$0.29 levy. However, the evidence presented by CPCC on blank CD pricing appears to suggest that, on average, the price of a blank CD is greater than \$0.29. Since retail prices of blank CD exceed the levy rate, we believe that the market has incorporated the levy and as such, it is a reality in the marketplace. Therefore, we maintain the levy, as proposed, at \$0.29 per blank CD sold in Canada in 2025, 2026 and 2027.

Issue 3: What is the appropriate apportionment of the levy among rights holders?

[29] Section 84 of the Act requires that we apportion the levy among eligible authors, performers and makers. We were not asked to change the existing apportionment and see no reason to do so. Accordingly, eligible authors are entitled to 58.2 per cent of royalties, eligible performers to 23.8 per cent and eligible makers to 18.0 per cent.

IV. Decision

[30] We find that blank CDs will continue to be “ordinarily used” to copy music in 2025, 2026, and 2027, and will therefore be a qualifying “audio recording medium.” We also find that it is appropriate to maintain the levy rate of \$0.29 for those years, as well as the existing apportionment of the levy. Finally, we have identified no issues with the terms and conditions of the Proposed Tariff.

[31] We conclude that the rates and terms and conditions in the Proposed Tariff are fair and equitable. We approve the Proposed Tariff, without modification, as CPCC – Private Copying Tariff (2025-2027).

¹³ Exhibit CPCC-4, paras. 8, 18-25.