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## **Backgrounder on the Proposed 2012-2013 Private Copying Tariff**

### **Why is the CPCC proposing a levy on electronic memory cards?**

In 1997 Canada's *Copyright Act* was changed to allow Canadians to copy music for their private use. In return, the private copying levy was created to provide compensation to music rights holders when private copies of their music are made. Canadians pay a small levy on blank audio recording media that the Copyright Board determines to be ordinarily used for private copying. Based on recent research, the CPCC believes that electronic memory cards are now being ordinarily used to copy music.

### **How does the Copyright Board determine whether a type of medium is ordinarily used to copy music?**

In order for the Copyright Board to approve a private copying levy on a type of medium, the Board must agree that the medium qualifies as an "audio recording medium" under the *Copyright Act*. In the past, the Board has determined that CD-Rs, audio cassettes and MiniDiscs (the latter two now obsolete and no longer subject to the private copying levy) met this test. In those cases, the Canadian Private Copying Collective presented the Copyright Board with evidence that those types of recording media were, in fact, ordinarily used by individuals to copy music. As a result, the Board approved a levy to provide compensation to the creators for copies made of their music. The CPCC will have to prove to the Copyright Board that electronic memory cards meet the test in the *Act*, in particular by providing data which shows that electronic memory cards are ordinarily used by Canadians to make private copies of recorded music.

### **How does the CPCC collect evidence that a specific medium is being used to copy music?**

For more than a decade, the CPCC has commissioned Circum Network Inc. to conduct a monthly survey of 1000 individual Canadians. The purpose of the Music Monitor Survey is to collect information about the private copying of music in Canada. Specifically, the monthly surveys identify the types of media and devices that Canadians use to make copies of music.

### **How widespread is the use of electronic memory cards as a medium for copying music?**

Data from the Music Monitor Survey indicates that in 2010/2011 18% of Canadians surveyed had copied something onto electronic memory cards and that music represented 16% of the content they copied onto such cards.

**But not everyone who buys electronic memory cards buys them to copy music. So how is it fair to charge a levy on everyone who buys them?**

The CPCC survey research does not just identify the degree to which music is copied onto electronic memory cards or any other medium. It also identifies the degree to which other types of content are copied. When the Copyright Board determines the levy rate that should be established for a particular medium, it does so taking into account only the degree to which a medium is used to copy music. The levy rate for electronic memory cards will be discounted to the extent that such cards are used for copying photos or any type of content other than music.

**This is not new technology or a new medium. Why hasn't a levy on electronic memory cards been sought before now?**

The CPCC sought a private copying levy on electronic memory cards in 2003-04. However, the Copyright Board declined to grant a levy at that time, stating that it was not satisfied by the evidence the CPCC was able to present at that time. More recently, the CPCC sought a levy on memory cards in 2008, but withdrew its application based on the available evidence, which was for 2006-2007. Since that time there has been a tremendous increase both in the use of electronic memory cards and in the volume of music copying onto such cards. In addition, the memory capacity of memory cards has greatly expanded and prices have fallen sharply. The CPCC believes the evidence now shows that electronic memory cards are ordinarily used by Canadians to copy music. Consequently, the CPCC has requested a levy on these cards.

**How much would it add to the cost of a memory card? What is the basis for the rate(s)?**

The CPCC has proposed a tariff of 50¢ on cards of 1 GB or less, \$1 on cards greater than 1 GB but less than 8 GB and \$3 on cards of 8 GB and greater. The proposed rates are based on the value of the music that is being copied.

**Is this move connected to your ongoing effort to have the private copying levy extended to MP3 players?**

Not at all. The CPCC continues to pursue a levy on MP3 players, since Canadians overwhelmingly use these devices to copy music, and artists are entitled to compensation when copies of their music are made. However, in order to have the private copying levy applied to MP3 players, changes are required to the *Copyright Act*. The Copyright Board has the power to approve a levy on electronic memory cards under the existing legislative framework.

**Is the CPCC seeking a levy on any other media or devices?**

In addition to proposing a levy on electronic memory cards, the proposed Private Copying Tariff for 2012-13 seeks to maintain the private copying levy on CD-Rs at the existing rate. The CPCC has not proposed a levy on any additional medium other than electronic memory cards. The legislation does not currently permit the CPCC to seek a levy on any device.