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CPCC Addendum to Submission on C-32 (Now Bill C-11)

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Established in 1999, the Canadian Private Copying Collective is a non-profit umbrella organization whose member collectives represent songwriters, composers, music publishers, recording artists, musicians and record companies. It is responsible for collecting and distributing private copying levies to its members.

In that capacity, the CPCC appeared before and made a submission to the Legislative Committee studying Bill C-32 (*An Act to Amend the Copyright Act*) in the last Parliament. As the newly introduced Bill C-11 in this Parliament has the exact same content as could be found in C-32, and the government has indicated that it will not be extending an invitation to those organizations that appeared before the Legislative Committee during the previous session, the comments made in the original submission stand.

It is important, however, to highlight a number of important issues related to C-11, especially for those members of the legislative committee who are new to the debate and did not have the opportunity to take part in our initial presentation.

C-11 will be problematic for rights holders in many ways, especially those in the music industry. Two of the largest issues relate specifically to the private copying regime. First, Part VIII of the Copyright Act has not been amended to extend the private copying levy to digital audio recorders (DARs) more commonly known as MP3 Players, such as the iPod. And second, due to amendments in Section 29.22, individuals will have the right to make copies onto devices for personal use with no compensation given to music rights holders.

As outlined in our original submission, the CPCC believes that the private copying levy is an effective way to provide compensation to rights holders for copies made of their music. Given changing consumer behavior, however, its application needs to be extended to those devices now most commonly being used to copy music, DARs. The government has rejected, as a matter of policy, the extension of the levy, referring to it erroneously as an “iPod tax.”

The government has proposed in C-11 that illegal downloading be combated through aggressive litigation against those who infringe on copyright. To facilitate this, the government proposes a new civil liability to target those who willfully and knowingly enable online infringement.

In practice, this proposal is not an effective solution. It would require artists to launch separate legal actions against those infringing on their copyright. Aside from the fact that this would represent an enormous expense and would be logistically impossible to execute, it would be unlikely to serve as a deterrent and it puts artists in the almost untenable position of constantly suing sites that illegally host their music, or even worse, launching legal actions against those fans who ensure their economic viability.

More importantly, it would have no impact on the number of private copies that are made. Individuals will continue to make private copies for their own use. All that will change is that rights holders will no longer receive compensation for those copies.

Another amendment that the government has proposed is the use of digital locks. Digital locks are not a viable solution for several reasons. First of all, they are costly to install and can be easily circumvented. Secondly, consumers do not want to purchase music with digital locks. As a result, the music industry abandoned the concept of digital locks several years ago, and there is no appetite within the industry to return to this failed deterrent method. In any event, digital locks are impossible to enforce. Rights holders would first have to identify the individuals that have circumvented a digital lock and would then be in the untenable position of launching numerous individual actions against the infringers, most probably fans.

At its core, this is a matter of fairness. The companies that make and sell the blank media and devices that people record onto, whether they record onto blank CDs or iPods, all get paid by consumers. The music is the reason why people purchase the media and devices in the first place, as no one listens to an empty iPod or a blank CD. The music is what makes these media and devices valuable. It is only fair that the rights holders whose music is being copied should also receive compensation.

Many of our up-and-coming music artists are truly small business people, working from pay cheque to pay cheque, with every revenue stream being crucial to their survival. They invest a significant amount of money, upwards of $100,000 per album, into music creation, and the levy assists them tremendously as they continue to create music. Removing this income is tantamount to asking Canadian music artists to work for free, something Parliamentarians would not consider asking of a worker in any other industry in this country.

The matter is urgent, as artists are quickly losing the revenue they were receiving for private copies made of their music from the current levy, with a revenue drop of almost 70% over the past four years. At this rate, music rights holders will be receiving no compensation for private copying in a very short period of time.

Over the years the CPCC, and many of the artists it represents, have had the opportunity to meet with Parliamentarians from all political parties. One thing that we have found is that there is

common ground among all Members of Parliament and Senators in regard to the basic principle that artists should be fairly compensated for their work. As a result, if there is no way to amend this legislation to allow for this compensation to take place, CPCC would make the following recommendations:

- Ensure that the provisions found in Section 29.22 are eliminated, so that copies of musical works are not allowed to be made without compensation.

- Incorporate the so-called "Berne Convention three-step test" into the *Copyright Act*, in order to ensure that Canada complies with its international treaty obligations. Under these obligations, exceptions to copyright protection are only permitted if the exceptions a) are limited to special cases, b) do not conflict with a normal exploitation of the work; and c) do not unreasonably prejudice the legitimate interests of the rights holder.

- Explore ways in which Parliamentarians, particularly on the government side, would be willing to assist in finding a solution to ensure rights holders receive compensation for private copies made of their music. During Second Reading debate on C-11, the Liberal party proposed transitional funding through the establishment of a Private Copying Compensation Fund, enshrined within the *Copyright Act*. We believe this proposal should be given consideration by the committee.

We look forward to working with members of the C-11 Legislative Committee to ensure that creators continue to receive compensation for private copies made of their music. If you have any further questions, we would be happy to provide a response to committee members in any manner they see fit.