



CANADIAN PRIVATE COPYING COLLECTIVE
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The Canadian Private Copying Collective (CPCC) is an umbrella organization whose member collectives represent recording artists, composers, songwriters, music publishers and record companies. Under the *Copyright Act*, manufacturers and importers of blank audio recording media pay CPCC a small levy for each unit imported and sold in Canada, to compensate music creators for unlicensed private copying of their work.

Background

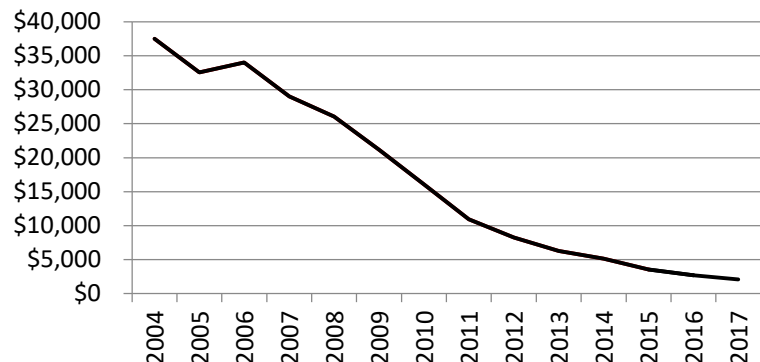
Private copying presents a unique challenge: technology has made it increasingly easy for consumers to copy music, but it is not always possible for rightsholders to authorize, prohibit or monetize those copies. In recognition of this challenge, Canada's *Copyright Act* was changed in 1997 to **allow Canadians to copy music** onto audio recording media for their private use. In return, the **private copying levy was created to remunerate music creators** for that use of their music.

Every stream of income from copyrighted music is essential for creators attempting to cobble together a living from their creative output, particularly Canada's many up-and-coming artists and small music companies. **Private copying levies are payment for a use of music that is different from any other use.** Music rightsholders are remunerated when (for example) their work is streamed, used in audiovisual works, or performed live, but they must also be remunerated when people make copies for their own use. Copies have value or no one would make them.

The Situation

For many years since its creation, the private copying regime was an important source of earned income, generating a total of over **\$300 million in revenue for over 100,000 music creators**. Unfortunately, the regime has been **limited since 2008 to a single audio recording medium, now virtually obsolete: recordable CDs**. That means compensation for music creators has plummeted – from **\$38 million in 2004 to \$2 million in 2017**.

Levies Collected (\$000)
Redevances perçues (000 \$)



By contrast, **global collections for private copying rose by 6% between 2007 and 2015**¹. Most of the almost **40 countries around the world** with healthy private copying regimes – including Austria, Belgium, Croatia, France, Germany, Hungary, Italy, Netherlands, Portugal and Switzerland – extend levies to a wide variety of media and devices.

Canada: an international outlier

The European Parliament took a leadership role internationally in looking for solutions for private copying in the digital age. Their resulting 2014 resolution asserted the need to preserve and update private copying levy regimes so that the system could take greater account of technological progress because “there is currently **no alternative approach in this area that would ensure appropriate remuneration for the rightholder [sic] and at the same time make private copying possible.**” Private copying regimes are described as “a **virtuous system** that balances the exception for copying for private use with the right to fair remuneration for rightholders” and “**worth preserving**, especially in cases where rightholders are not in a position to license directly the right of reproduction...” [http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+REPORT+A7-2014-0114+0+DOC+XML+V0//EN#title1]

In its 2017 global study of private copying regimes, the International Confederation of Societies of Authors and Composers (CISAC) called out Canada on **the need for our private copying regime to be “updated and adapted to new uses with levies on digital devices.”** [https://www.cisac.org/CISAC-University/Library/Studies-Guides/Private-Copying-Global-Study] Their Director of Legal Affairs, in charge of the study, told Le Devoir (translation): “It’s unavoidable: if you exclude digital supports, you can frame your compensation system and hang it on the wall; it won’t be much good for anything else. Any compensation system of this kind needs to evolve and adapt to the marketplace and users’ habits.” [“Sans lecteurs numériques, point de salut,” October 25, 2017, Guillaume Côté, Cultural News]

We may have given up burning playlists onto CDs, and streaming may dominate Canada’s legal music market, but Canadians still copy lots of music to listen to wherever and whenever they want. **Wherever possible, rights holders now license the streaming, downloading and other copying of their music, but the reality is still that not all copying can be licensed**, including copying of music originally obtained as an illegal download, or by stream-ripping.

¹ *International Survey on Private Copying, Law & Practice 2016*, WIPO and Stichting de Thuiskopie, page 15 https://www.wipo.int/edocs/pubdocs/en/wipo_pub_1037_2017.pdf

In a **June 2018 national survey, we asked 2,500 Canadians (age 18+)** about the tracks of music stored on their cell phones and tablets for listening offline.² The findings:

| | |
|------------------------|---|
| 18.3 BILLION | TRACKS OF MUSIC ARE CURRENTLY STORED ON CANADIANS' CELL PHONES & TABLETS |
| 53.5% (9.8 BILLION) | OF THOSE COPIES WERE MADE IN THE PRIOR 12 MONTHS |
| 71% | OF THOSE COPIES WERE PURCHASED DOWNLOADS OR FROM SUBSCRIPTION STREAMING SERVICES |
| 29% (5.3 BILLION) | OF THOSE COPIES WERE <u>UNLICENSED</u> |

Unlicensed, and no levy – that is **a lot of revenue out of the pockets of music creators**. The situation is increasingly urgent as **Canadian music creators' income from many other sources has also been in decline**, in part due to additional exceptions to copyright introduced in the 2012 revisions to the *Copyright Act*.³ If Canada doesn't protect their ability to earn income, we will lose music creators and all of the cultural and economic benefits they bring us.

Meanwhile, the businesses producing and selling the devices Canadians use to copy music continue to receive fair market value for their products. **The ability to make private copies of music is one of the reasons Canadians purchase these devices** in the first place. In fact, the price of a multi-functional device reflects the value of many such features, whether it be the option to copy music or use Bluetooth, even though not every consumer uses every function. As the Copyright Board of Canada has said: **"there is value in the option to private copy, even for those who choose not to exercise that option."**⁴

The Long-Term Solution

Amendments must be made to the *Copyright Act* to make the private copying regime technologically neutral, so it can keep up with how Canadians consume music. The focus of these amendments would be to allow the private copying regime to apply to both audio recording media and devices.

The Parliamentary Review of the Act must be followed by a full Legislative Review so the necessary amendments can be made.

CPCP will also propose minor revisions to the *Act* to clarify that this exception to copyright infringement **does not extend to offering or obtaining music illegally**, whether through an unlicensed online service, stream-ripping, or by stealing an album from a store – such activity remains illegal. **The private copying regime is for copying that cannot be controlled.**

² Data collected using Google Surveys from June 1 to 13, 2018

³ See in particular Section 2 of Music Canada's study 'The Value Gap' <https://musiccanada.com/resources/research/the-value-gap-report/>

⁴ Copyright Board Decision on Private Copying III, 2003-2004, pp 26-27

With these minimal revisions to the *Copyright Act*, the private copying regime would be restored to what it was originally intended to be – **a flexible, technologically neutral system** that monetizes private copying that cannot be controlled by rights holders, and can **keep up with changes in how Canadians consume music now and in the future.**

Passage of these amendments would **make it possible for the CPCC to ask the Copyright Board to approve a levy on the smartphones and tablets where Canadians now make their private copies**, and that process would remain the same. For almost two decades now, the CPCC has represented rightsholders before the Copyright Board of Canada **in trial-like public hearings** where experts – representing music creators, consumers and the businesses that sell leviably blank media – present evidence and are cross-examined.

The Copyright Board ultimately determines the value of the levy, but CPCC's **proposed levies would be a small fraction of the cost of a smartphone or tablet**, comparable to the average levy payable on a smartphone in Europe: around CDN\$3, or **the price of a cup of coffee.**⁵ As always, the levy would be **payable by manufacturers and importers** of the device, and in the case of many smartphones and tablets, that cost is already subsidized for consumers by intermediary companies that provide these devices in a bundle with mobile network services.

The Interim Solution

Well before any resulting new legislation could be enacted, **compensation from the current levy regime will likely cease entirely.** Further, the ability of the collective itself to continue to operate and maintain its already-minimal infrastructure will be jeopardized, which would be both unfair and inefficient. The CPCC has the expertise required to ensure that any changes to the *Act* will bring the maximum benefit possible for music creators at minimum expense.

The CPCC asks that the government create in Budget 2019 a four-year Private Copying Compensation Fund of \$40 million per year, to compensate music creators for unlicensed private copies made of their music on an interim basis until a more permanent solution can be found through legislative change. The CPCC recommends the necessary funds be drawn from the proceeds of existing and future spectrum auctions.

During the 2011 review of the *Copyright Act*, the **CPCC worked with political officials to create a balanced solution** to ensure music creators received compensation for the hundreds of millions of private copies then being made of their work. **A \$35 million Private Copying Compensation Fund was one option proposed by Parliamentarians**, to be increased at the rate of inflation and reviewed on a five-year basis to ensure the amount of compensation remained fair.

An annual interim Fund of \$40 million for the years 2019-2022 **would provide a fair level of compensation, and an appropriate level of stability for the industry.** The amount corresponds to what the \$3 European average levy on smartphones would generate on annual Canadian sales of

⁵ CPCC analysis of data from *International Survey on Private Copying, Law & Practice 2016.*

the smartphones and other devices where most private copies are currently made. It also aligns with the average annual revenue from CPCC's five peak years (plus inflation), representing remuneration for the majority of unlicensed private copying activity at that time.

The recent Digital Consultations undertaken by then-Minister Joly included significant discussions related to stimulating Canadian content creation, including **using proceeds from auctions of wireless spectrum frequencies**. Drawing from these proceeds for the Fund would be a perfect interim solution.

Industry-Wide Support

The CPCC's recommendations enjoy an **unprecedented level of support across all sectors of Canada's music industry**. In January 2018, 15 trade organizations and music licensing bodies underscored their support for the interim Fund in a letter to Ministers Morneau and Joly on behalf of the music industry across the country. Further support for the interim Fund and legislative change came from 22 organizations, representing record companies, recording artists, music publishers, composers and songwriters, in testimony at INDU and CHPC meetings and in written submissions to the Standing Committees.

Conclusions

A private copying levy is not a tax, nor is it charity or a subsidy program. This is earned income. Private copying levies are internationally recognized as the best available solution to provide compensation to rightsholders for this ongoing and valuable use of their work that cannot be controlled.

Now is the time for Canada's private copying regime to live up to its original promise for music creators.

CPCC was pleased to see all-party support for Recommendation #76 in the Report of the Standing Committee on Finance, *Cultivating Competitiveness: Helping Canadians Succeed*: "Work with the Canadian Private Copying Collective to examine both an interim and permanent solution to ensure rights holders continue to receive compensation for unlicensed private copies made of their music." We look forward to working with the members of the Standing Committee on Canadian Heritage to achieve this goal.

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