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## Remarks to the Standing Committee on Canadian Heritage Tuesday, May 29, 2018

**Ms. Lyette Bouchard (Chair, Canadian Private Copying Collective) :**

*[Translation]*

Good morning.

Members of the committee, thank you for the invitation.

My name is Lyette Bouchard and I am the Chair of the Canadian Private Copying Collective (CPCC). As you said, Madam Chair, I am here with Lisa Freeman, who is the Executive Director.

In 1997, Canada's *Copyright Act* was changed to allow Canadians to copy music onto audio recording media for their private use. In return, the private copying levy was created to provide remuneration to music creators for that use of their music.

Under the *Act*, manufacturers and importers of blank audio recording media pay a small levy for each unit imported and sold in Canada. Those levies are collected by CPCC on behalf of its member collectives, representing recording artists, songwriters, music publishers and record companies.

For many years, 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, helping them, of course, to continue to create and commercialize important cultural content.

The original intention in the wording of the *Act* was to make the private copying regime technologically neutral; however, decisions of the Federal Court of Appeal and the previous Federal Government have limited the regime to media that are quickly becoming obsolete. I'm talking, of course, about blank CD copies.

Since most consumers are now making copies of music onto devices such as smartphones or tablets, the use of blank CDs to copy music is rapidly declining. As a result, the revenue collected for music creators for private copying is also rapidly declining.

Annual revenue from the private copying levy has declined by 89%, from a high of \$38 million in 2004 to less than \$3 million in royalties in 2016.

In 2015-16, Canadians copied over 2 billion tracks of music – more than double the copies made in 2004. Rights holders are now not compensated for the majority of those copies, including the hundreds of millions of unlicensed copies made on devices like smartphones.

What would the situation be if Canada had followed the European example in 2012, when the *Act* was last revised, and made the system technologically neutral so that a levy would apply to smartphones and tablets? According to sales data for those devices, a royalty of \$3, which is the European average, would have generated \$40 million per year for rights holders. Between 2012 and 2017 alone, the music industry lost \$240 million.

It is urgent that we act.

The CPCC recommends that the government make the regime technologically neutral to keep up with how Canadians consume music.

The solution is to amend the *Act* so that the regime applies to both audio recording media and devices, such as smartphones or tablets.

The CPCC is also proposing other very minor amendments to the *Act*. In a sense, it is simply to clarify that the regime applies only to copies made from a sound recording in a person's possession. However, we want to be sure there is no doubt: offering or obtaining music illegally, whether through an unlicensed online service, online stream ripping or even stealing an album from a store, remains illegal. Of course, stealing is an illegal act.

It must also be clear that the private copying regime neither undermines legal online music services, nor legalizes infringing services.

Whenever possible, rights holders license the fruits of their labour for those who wish to use them. The private copying regime is focused on compensation for copies that cannot be controlled.

We need a permanent legislative solution, but in the meantime, it is essential that a \$40 million interim fund be put in place, as Mr. Henderson pointed out earlier.

Thank you.

**Ms. Lisa Freeman (Executive Director, Canadian Private Copying Collective):**

*[English]*

I wanted to focus again on the very good reasons to fix the private copying regime. Just as Music Canada had four points to make, I can give you three categories of good reasons to fix the private copying regime.

First, it remains the best solution to what is an ongoing problem. Streaming may dominate the legal music market, but Canadians still value and make copies of music, over two billion per year since 2010. It has been quite consistent. The levy system is the best mechanism to compensate rights holders for copies that can't be licensed, which remains the bulk of those copies. It just needs to be amended so that it can keep up with how Canadians consume music in a changing marketplace, now and in the future.

With minimal revisions, the private copying regime can 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 – without undermining legitimate online music services.

The process for setting levies would remain the same, as the CPCC would be required to file a proposed tariff with the Copyright Board and to prove through empirical evidence which devices and media are ordinarily used to copy music.

As it stands now, Canada is an international outlier. Most countries in the EU and some countries in Africa and Asia, about 40 strong regimes around the world, embraced the technological shift years ago and now have healthy private copying regimes that extend levies to a wide variety of media and devices like smart phones and tablets. In Europe, that includes Austria, Belgium, Croatia, France, Germany, Hungary, Italy, the Netherlands, Portugal, and Switzerland.

A comprehensive global study of private copying produced in December of last year by CISAC, which is an international organization of authors' societies, called out Canada in particular on the need for our regime to be “updated and adapted to new uses with levies on digital devices”. That is the first set of reasons.

The second set of reasons revolves around the question of fairness. In the past two decades, the private copying levy has answered an important need for both rights holders and consumers of music in Canada, allowing both for fair compensation to rights holders and for consumers to benefit from knowing their copies are legal. Without a legislative solution like the one the CPCC now proposes, Canadians' private copying activity will remain illegal, and royalties to music creators to compensate them for the massive private copying of their work will very soon be completely eliminated.

Canadian music creators need to be paid for this extensive use of their work, just as the businesses producing and selling the devices used to copy music all get paid. The private copying levy is not a tax, nor is it charity or a subsidy program. It is earned income.

The Copyright Board ultimately determines the value of the levy. However, CPCC's proposed levies will certainly be a small fraction of the cost of a smart phone or tablet, and will be comparable to the levy rates in most European countries where the average levy payable on a smart phone is around three dollars, the price of a cup of coffee.

As always, the levy would be payable by manufacturers and importers of the media and devices. In fact, we all know that the cost of many smart phones and tablets is already subsidized for consumers by the intermediary companies that provide the devices in a bundle with mobile network services.

The third and last category of good reasons for fixing the private copying regime I want to leave you with is the urgency around it. We can't begin to stress how urgent this matter is. As you have heard just now from Music Canada, at the same time as music creators have been losing revenue from the private copying regime, their 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 *Act*.

The individual Canadian artists and Canadian businesses whose music is copied for personal use can only produce and compete on the international stage if they are paid when their work is used.

We urge the government to immediately follow this parliamentary review with the introduction of legislation so that the necessary minor amendments to the *Act* can be made as soon as possible.

Thank you very much for your time. We look forward to your questions.