

**Written Submission for the
Pre-Budget Consultations
in Advance of the Upcoming Federal Budget**

August 7, 2020



Canadian Private Copying Collective

Lisa Freeman, Executive Director

Recommendation: That the government amend the *Copyright Act* to make the private copying regime technologically neutral; the focus of these amendments would be to allow the regime to apply to both audio recording media and devices.

Background

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

private copying: *making copies of your music collection for your own personal use, anywhere, anytime.*

Private copying presents a unique challenge: technology keeps making it easier for consumers to copy music, but it is not always possible for rights-holders 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 work.

Every stream of income from copyrighted music is essential for those 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 rights-holders are remunerated when (for example) their work is recorded, streamed, or performed at a festival, but they must also be remunerated when people make copies for their own use. Copies have value or no one would make them.

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 blank audio recording medium, now virtually obsolete: recordable CDs. That means compensation for rights-holders has plummeted from \$38 million in 2004 to \$1.1 million in 2019 – even as annual copying activity more than doubled.

Current Situation

This income source is now on the verge of disappearing entirely, which is fully and completely at odds with the reality of private copying activity in Canada. Streaming may have taken over from the days of mixed tapes and burning CDs, but Canadians still make billions of private copies for listening offline. Wherever possible, rights-holders license the streaming, downloading and other copying of their music, but the reality is still that not all copying activity can be licensed.

Our most recent research shows that there are **5.95 billion tracks of music currently stored on Canadians' phones and tablets**, and that **half of those copies are unlicensed**. Unlicensed, and no levy – that is a lot of revenue out of the pockets of music rights-holders. The *Copyright Act* has not kept pace with technology, **leaving rights-holders unpaid**.

As the country grapples with a global pandemic, it has never been more important for recording artists, composers, songwriters, music publishers and labels to be able to earn

income from their creative output. Government emergency relief measures have been essential to minimizing the immediate impacts of COVID-19 on Canada's music industry, but it is also imperative to map out now the necessary approaches to recovery.

Solution

The CPCC asks that the government amend the *Copyright Act* to make the private copying regime technologically neutral; the focus of these amendments would be to allow the regime to apply to both audio recording media and devices.

Legislative change was vital for a functioning, world-class music sector in Canada long before the arrival of COVID-19. Now, in conjunction with short-term direct government supports aimed at sustaining the sector, copyright reform will be more essential than ever to a music industry faced with re-building.

In the medium-to-long term, marketplace solutions like a technologically-neutral private copying regime will be critical to the music sector's recovery. Updated copyright legislation will put lost revenues back into the system, and back into the pockets of the creators and music companies that earned them, instead of just relying on government-funded support measures.

With 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.

CPCC also proposes 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.

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

The Copyright Board would ultimately determine the value of any approved levy on devices, but CPCC's proposal is a small fraction of the cost of a device, comparable to the average levy payable on a smartphone in Europe: around CDN\$3, or the price of a cup of coffee.¹ 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.

¹ CPCC analysis of data from *International Survey on Private Copying, Law & Practice 2016*.

Industry-Wide Support

In the recent Statutory Review of the *Copyright Act*, private copying reform was among the issues most widely supported – and least opposed – in submissions from any sector, leading to a recommendation from the Standing Committee on Industry, Science and Technology that the government should “extensively assess the opportunity to extend the private copying regime to digital devices”.

Private copying reform remains a priority across the music industry. Appended to this submission is a letter addressed to Minister of Canadian Heritage, Steven Guilbeault and Minister of Innovation, Science and Industry, Navdeep Bains, signed by CPCC and 19 other music-industry organizations, urging the government to amend the *Copyright Act* to bring technological neutrality to the private copying regime.

Conclusion

Technology-neutral private-copying levies are internationally recognized as the best solution to provide compensation to rights-holders for those copies that cannot be licensed. Moving forward with this legislative change will create a true marketplace solution for the music industry, which will help to restart the Canadian music economy, as it recovers from the COVID-19 pandemic.

In advance of the 2019 Budget, FINA’s pre-budget report included the following recommendation: *“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.”* As this recommendation has not been adopted by the government to date, we ask the Finance Committee to renew its support and help make this marketplace solution a reality in Budget 2021.

We appreciate the opportunity to provide this submission and, as we have not had the chance to in the past, would welcome the opportunity to appear before the Committee as part of the pre-budget 2021 hearings.



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July 7, 2020

**Market-driven private copying regime an important part of the path forward
for the Canadian music industry**

Dear Minister Guilbeault and Minister Bains,

On behalf of the Canadian Private Copying Collective (CPCC), we would like to take an opportunity to thank the federal government for its support of the Canadian music industry ecosystem during these times. As the sector deals with the disruption and impact of COVID-19 across the country, we are encouraged by your government's efforts in rolling out a series of emergency measures to address the sector's immediate needs.

As you know, the CPCC is an umbrella organization whose member collectives represent recording artists, composers, songwriters, music publishers and labels. The private copying levy is collected by CPCC in order to compensate these music creators and the businesses that invest in them for unlicensed private copying of their work. Since its enactment in 1997 by the Liberal government of the day, the private copying regime has generated over \$300 million for over 100,000 rights-holders – a significant source of earned income that helped them to continue creating and commercializing important cultural content.

As the private copying regime has been limited to recordable CDs since 2008, the music rights-holders we represent have watched this critical source of revenue decline **from a high of \$38-million per year down to just \$1.5 million in 2018**. It is now on the verge of disappearing entirely. This is fully and completely at odds with the reality of private copying activity in Canada: our most recent research shows that there are **5.95 billion tracks of music currently stored on Canadians' phones and tablets**, and that **half of those copies are unlicensed**. Technology keeps making it easier to copy more and more music, and unfortunately, the *Copyright Act* has not kept pace, **leaving rights-holders unpaid**.

Legislative change was vital for a functioning, world-class music sector in Canada long before the arrival of COVID-19. Now, in conjunction with short-term direct government supports aimed at sustaining the sector, copyright reform will be more essential than ever to a music industry faced with re-building.

In the medium-to-long term, marketplace solutions like a technologically-neutral private copying regime will be critical to that recovery. Technologically neutral legislation will put lost revenues back into the system, and back into the pockets of the creators and music companies that earned them.

We wish to highlight that in the recent Statutory Review of the *Copyright Act*, private copying reform was among the issues most widely supported – and least opposed – in submissions from any sector, leading to a recommendation from the Standing Committee on Industry, Science and Technology that the government should “extensively assess the opportunity to extend the private copying regime to digital devices”. CPCC is also aware and supportive of our industry’s efforts to secure other key copyright reforms, including: immediate implementation of CUSMA’s term extension provisions; amendment of the definition of ‘sound recording’; and repeal of the \$1.25 million exemption for commercial radio stations.

We would welcome any opportunity to meet with you and your senior staff to continue the dialogue on updating the private copying regime.

Thank you for your continued work for the sector. I can be contacted any time at lfreeman@cpcc.ca.

Sincerely,



Lisa Freeman
Executive Director



Lyette Bouchard
President

The following music industry organizations have signed on in support of this letter:



David Sparrow
National President



Solange Drouin
Executive Director



France D'Amour
Chair



Jérôme Payette
Executive Director



Sean McManus
Chair



Alan Willaert
Vice-President from
Canada, AFM



Stuart Johnston
President



Paul Shaver
President



Luc Fortin
President



Meg Symyk
President



A handwritten signature in black ink, appearing to read "Margaret McGuffin".

Margaret McGuffin
Executive Director



A handwritten signature in black ink, appearing to read "David Jandrisch".

David Jandrisch
Chair



A handwritten signature in blue ink, appearing to read "Lou Ragagnin".

Lou Ragagnin
President and Chief
Executive Officer



A handwritten signature in black ink, appearing to read "Greg Johnston".

Greg Johnston
President



A handwritten signature in black ink, appearing to read "John Welsman".

John Welsman
President



A handwritten signature in black ink, appearing to read "Jennifer Brown".

Jennifer Brown
Interim Chief Executive
Officer



A handwritten signature in black ink, appearing to read "Lyette Bouchard".

Lyette Bouchard
Executive Director



A handwritten signature in black ink, appearing to read "Edgar Bori".

Edgar Bori
President



A handwritten signature in blue ink, appearing to read "Sophie Prigent".

Sophie Prigent
President