



CANADIAN PRIVATE COPYING COLLECTIVE
SOCIÉTÉ CANADIENNE DE PERCEPTION DE LA COPIE PRIVÉE
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The Honourable Steven Guilbeault, P.C., M.P.
Minister of Canadian Heritage
25 Eddy Street, 12th Floor
Gatineau, Quebec K1A 0M5

The Honourable Navdeep Bains, P.C., M.P.
Minister of Innovation, Science and Industry
C.D. Howe Building, 235 Queen Street
Ottawa, Ontario K1A 0H5

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



Margaret McGuffin
Executive Director



David Jandrisch
Chair



Lou Ragagnin
President and Chief
Executive Officer



Greg Johnston
President



SCGC
SCREEN COMPOSERS
GUILD OF CANADA

John Welsman
President



music. people. **connected.**
musique. monde. **connectés.**

Jennifer Brown
Interim Chief Executive
Officer



Lyette Bouchard
Executive Director



Société Professionnelle
des Auteurs et des Compositeurs
du Québec

Edgar Bori
President



Sophie Prigent
President



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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 royalties in the form of a small levy for each unit imported and sold in Canada to compensate these rights-holders for unlicensed private copying of their work.

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

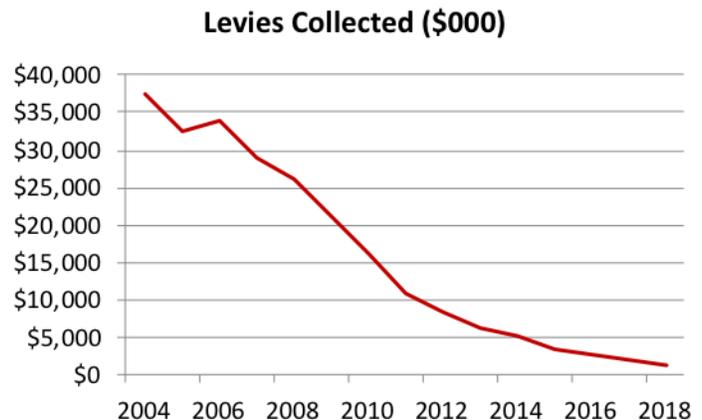
Background

Private copying presents a unique challenge: technology has made it increasingly easy for consumers to copy music, but it is not always possible for 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 creators and music companies** for that use of their music.

Every stream of income from copyrighted music is essential to cobble together a living from music, particularly for 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.** Rights-holders are remunerated when (for example) their music 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.

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 rights-holders**. Unfortunately, the regime has been **limited since 2008 to a single audio recording medium, now virtually obsolete: recordable CDs**. That means compensation for creators and music companies has plummeted **from \$38 million in 2004 to \$1.5 million in 2018 – even as annual copying activity doubled from 2004 levels to over 2 billion tracks of music in 2016**.



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.²

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 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.**

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

² <http://www.wipo.int/publications/en/details.jsp?id=4183>; and <http://www.cisac.org/What-We-Do/Legal-Policy/Private-Copying-Global-Study>

In a **March 2019 national survey, we asked almost 10,000 Canadians (age 13+)** about the tracks of music stored on their cell phones and tablets for listening offline. The findings:

5.95 BILLION	TRACKS OF MUSIC ARE CURRENTLY STORED ON CANADIANS' PHONES & TABLETS
1/2	OF THE COPIES WERE MADE IN THE PRIOR 12 MONTHS
1/2	OF THE COPIES WERE PAID FOR THROUGH LICENSED DOWNLOADING AND STREAMING SERVICES
1/2	OF THE COPIES WERE <u>UNLICENSED</u>

Unlicensed, and no levy – that is **a lot of revenue out of the pockets of rights-holders**. The situation is increasingly urgent as **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 *Copyright Act*.³ If Canada doesn't protect their ability to earn income, we will lose Canadian creators and music companies 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

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, completed in the last Parliament by two Standing Committees, must now be followed by a full Legislative Review so the necessary amendments can be made.

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, and can **keep up with changes in how Canadians consume music now and in the future**.

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

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 its members before the Copyright Board of Canada **in trial-like public hearings** where experts – representing music rights-holders, 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 device**, 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.

CPCC 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.**

Industry-Wide Support

The CPCC's recommendations enjoy an **unprecedented level of support across all sectors of Canada's music industry**. In the recent Statutory Review of the *Copyright Act*, 30 individuals and organizations representing record companies, recording artists, music publishers, composers and songwriters voiced their support for private copying reform, 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 rights-holders 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 creators and music companies.

It's time that we all #standonguardformusic.

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