

Written Submission to the Department of Finance in Advance of the Upcoming Federal Budget 2022

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Canadian Private Copying Collective

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Recommendation: Commit in Budget 2022 to introducing legislation to amend the *Copyright Act*, in an expedited manner, which would allow for amendments 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 creators and music companies 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 emerging 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 and the companies that invest in them. 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 less than \$1 million in 2020 – even as annual copying activity has more than doubled.

Current Situation

As the country grapples with recovering from 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 intellectual property. The pandemic has laid bare just how difficult it is to join the middle class if you work in any part of the music industry. Government emergency relief measures have been essential to minimizing the immediate impacts of COVID-19 on Canada's music industry, but it is imperative to map out now the necessary approaches to recovery and resilience.

A functioning copyright framework is a critical building block – rights-holders with predictable, healthy royalty streams produce both cultural riches and employment and investment opportunities for creators, labels, publishers, managers, recording engineers, live music venues, and thousands of other Canadians from coast to coast to coast.

Private copying royalties are 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 2019 research found that there are **5.95 billion tracks of music stored on Canadians' phones and tablets**, and that **half of those copies are unlicensed**. Unlicensed, and no levy – that is tens of millions of dollars in revenue out of the pockets of music rights-holders. The whole recorded music industry in Canada has gone unpaid for years, simply because the *Copyright Act* has not kept pace with technology.

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.

The House of Commons Standing Committee on Finance has previously supported this proposal: 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."*** We also note the inclusion of the recommendation by the FINA committee in their Budget 2021 consultation document, calling on the government to *"complete the review of the Copyright Act during the year by making the necessary amendments to the Act to ensure that rights-holders receive fair compensation for the use of their works."*

More recently, the mandate letters for both the Minister of Canadian Heritage and Minister of Innovation, Science and Industry instruct them **to amend the *Copyright Act* to further protect artists, creators and copyright holders.** The CPCC now calls on the government to enact these legislative changes without further delay.

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 leviabile 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 amortized over the life of consumers' multi-year contracts with intermediary companies that provide these devices in a bundle with mobile network services.

Industry-Wide Support

During the Statutory Review of the *Copyright Act*, undertaken in the 42nd Parliament, **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 from the above noted review, addressed to former Minister of Canadian Heritage, Steven Guilbeault and former Minister of Innovation, Science and Industry, Navdeep Bains, signed by the 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. In concept, Canada's private copying regime is **a bold and creative way to ensure that rights-holders can be compensated** for private copies that can't otherwise be licensed. In practice, only a technologically-neutral private copying regime can ensure that rights-holders are actually compensated regardless of how technology changes. Moving forward with this legislative change will **reinstate 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.**

Although this marketplace solution is not a direct Budget 2022 ask in terms of line-item support, **it requires broad-based government support in order to move the legislation forward to allow for its passage ahead of an election.** This is a medium- to long-term solution that will help one of the country's hardest-hit

¹ CPCC analysis of data from *Private Copying Global Study – Law and Practices 2020*.

sectors to both bounce back and grow and involves no government funding. **As such, we urge the Government of Canada to commit to these changes in this year's Budget to ensure that artists and the broader cultural sector can count on this income as they rebuild from the pandemic era.**

As noted above, the recommendations enclosed have previously been supported by the Standing Committee on Finance. As they have not been adopted by the government to date, we ask the Minister of Finance for her support to make this marketplace solution a reality, which will be essential regardless of whatever direct financial support to the music sector may be included in Budget 2022.