

**Written Submission for the FINA
Pre-Budget Consultations in Advance of
Budget 2023**

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Canadian Private Copying Collective

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Recommendation: That the government amend the *Copyright Act* to make the private copying regime technologically neutral, requiring large technology companies to finally pay their fair share to copyright holders. The focus of these amendments would be to allow the regime to apply to both audio recording media and devices.

Introduction

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 **royalties in the form of a small, one-time levy** on 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.

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 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. 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.

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 royalties for over 100,000 music creators and the companies that invest in them. Unfortunately, because the *Copyright Act* has not kept up with technology, the regime has been limited since 2010 to a single blank audio recording medium, now virtually obsolete: recordable CDs. That means **royalty income for private copying has plummeted from \$38 million in 2004 to less than \$1 million in 2021** – even as annual copying activity has more than doubled. **Large technology companies have taken in huge profits every year from enabling private copying on phones and tablets, while copyright holders have gone unpaid** for this vast, unlicensed use of their work.

Almost every Canadian owns devices on which they can store copies of their music collections and playlists for private use. Canadians rely on their phones and tablets for their ability to access this content offline. Large technology companies build music tools into these devices because they know it meets a demand and increases the value and sales of their products.

The Government must act now to ensure those who manufacture these devices and profit from this use of music contribute their fair share to rights-holders. As the Copyright Board of Canada explained so simply in its decision on the inaugural 1999-2000 Private Copying Tariff:

...those who are most directly concerned with the scheme benefit from it and caused the need for it. By selling and actively marketing blank audio recording media, manufacturers and importers encouraged the now legalized activity and directly profited from it. They contributed to the need for the regulation.

Current Situation

Private copying royalties are now on the verge of disappearing entirely, which is fully 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**.¹

Unlicensed, and no levy – that is a lot of revenue out of the pockets of music rights-holders. Canada's *Copyright Act* has not kept pace with technology, leaving rights-holders unpaid while massive foreign-owned technology companies have relied on music to grow their profits.

In contrast to the situation in Canada, the most recent international study reports that global collections for private copying rose from €669 million in 2015 to €1.046 billion in 2018.² That's because most of the countries around the world with functioning private copying regimes – including Austria, Belgium, Croatia, France, Germany, Hungary, Italy, Morocco, Netherlands, Paraguay, Portugal and Switzerland – extend levies to a wide variety of devices.

A functioning copyright framework is a critical building block to a thriving Canadian music sector – 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.

As the country grapples with an affordability crisis in the post-pandemic period, it has never been more important for our recording artists, composers, songwriters, music publishers and labels to be able to earn income from their intellectual property. The last few years have laid bare just how difficult it is to join the middle class if you work in any part of the music industry. It is more important than ever to return these lost revenues to the sector.

¹ March 2019 national survey of almost 10,000 Canadians (age 13+)

² <https://www.cisac.org/Newsroom/news-releases/new-private-copying-global-study-shows-potential-better-remuneration>

Solution

The CPCC asks that the government amend the *Copyright Act* to make the private copying regime technologically neutral, requiring large technology companies to finally pay their fair share to copyright holders. The focus of these amendments would be to allow the regime to apply to both audio recording media and devices.

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.

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 need to approve and determine the value of any 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\$3.³ A \$3 levy on sales of phones and tablets would generate about \$40 million a year to help keep Canadian creators and music companies making music.** 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.

In the medium-to-long term, marketplace solutions like a technologically-neutral private copying regime – adding a small levy of just a few dollars on the sale of a smartphone or tablet, will be critical to the music sector’s sustainability. 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 leaving them to rely on government-funded support measures while technology companies alone profit from this valuable use of music.

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**

³ CPCC analysis of data from *Private Copying Global Study – Law and Practices 2020*.

necessary amendments to the Act to ensure that rights-holders receive fair compensation for the use of their works.” The CPCC now calls on the Government of Canada to enact these changes as a market-driven solution for recovery and growth of the music sector.

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.

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** 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. In July 2020, CPCC submitted a [letter](#) to the Minister of Canadian Heritage and Minister of Innovation, Science and Industry, which was 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

For years now, **consumers and technology companies have been enjoying the benefits of unlicensed private copying on devices while rights-holders go unpaid** for this valuable use of their intellectual property. We urge the Government to right this imbalance, to ensure that its copyright framework can keep up with a rapidly evolving digital marketplace so that rights-holders are paid their fair share.

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 **an effective and fair way to ensure that technology companies pay their fair share to rights-holders** for the billions of private copies that can’t 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 is needed more than ever to help the sector recover from the COVID-19 pandemic and face new economic threats.**

These changes can be made through the Budget process, as the Government of Canada did in Budget 2022, through its amendments to the *Copyright Act* related to term extension and the USMCA. Private copying reform is an urgent necessity. We urge the Standing Committee on Finance to recommend that the Government of Canada take action on this matter as soon as possible.