



CANADIAN PRIVATE COPYING COLLECTIVE
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SUBMISSION FROM THE CANADIAN PRIVATE COPYING COLLECTIVE TO THE CANADIAN CONTENT IN A DIGITAL WORLD CONSULTATIONS

The Canadian Private Copying Collective (CPCC) is an umbrella organization whose member collectives represent recording artists, songwriters, music publishers and record companies. Like so many other Canadians who make and market a product, music rights holders depend on revenue from the sale and use of the music they create for their livelihood. Unfortunately, music creators don't enjoy the same kind of safeguards that the makers of other products do to ensure they are fairly compensated when their work is copied and used. Music has value, in both the artistic and monetary senses of the word.

The Situation

- In 1997 Canada's *Copyright Act* was changed to **allow Canadians to copy music** onto blank audio recording media for their private use. In return, the **private copying levy was created to provide compensation** to music creators for the use of their music.
- Since being created in 1997 by the Liberal government, the **private copying regime** has become an **important source of revenue for rights holders**.
- The **original intention** in the wording of the *Copyright Act* was to make the **private copying regime technologically neutral**; however, the decisions of the Federal Court of Appeal have limited the private copying regime to **media that are quickly becoming obsolete** (CDs). As a result, **rights holders are not receiving compensation** for the billions of private copies that are being made each year.
- As the **majority of consumers** are now **making copies** of music onto devices such as **smartphones**, the use of blank CDs to copy music is rapidly declining. As a result, the **revenue collected for rights holders for private copying is also rapidly declining** despite the fact that private copying of music is increasing. Revenues from the private copying levy to Canadian musical rights holders have **plunged** from a high of **\$38 million** to an anticipated total of **\$2 million** by 2017.
- In 2012, a **new exception** was created by the addition of Section 29.22 to the *Copyright Act*. Section 29.22 **allows individuals to make copies of music** acquired from legal sources onto devices for their own private use. While this significantly **enhances the value** of these devices to **the manufacturers' benefit**, **rights holders** who create the content that is enjoyed by consumers **are not compensated** for this added value or for a significant portion of the copies made by those consumers.
- Many **countries within the EU** (including Austria, Belgium, Croatia, France, Germany, Hungary, Italy, Portugal and Switzerland) **have private copying regimes** that extend levies to **CDs, DVDs, External Hard Drives, MP3 players, Personal computers, Smartphones and**

Tablets. Currently in Canada, the private copying levy is only applicable to private copies made onto CDs.

- **Amendments must be made** to the *Copyright Act* to make the private regime in Canada technologically neutral as well as to provide compensation for the exception in Section 29.22 of the *Copyright Act*. Unfortunately, a full Parliamentary review of the Act is not expected until late 2017, by which time the **compensation to music rights holders** from the current levy will have **dwindled to next to nothing**.

The Solution

- During the 2011 review of the *Copyright Act*, the **CPCC worked with the Liberals to create a balanced solution** to ensure music creators received compensation. A \$35 million **Private Copying Compensation Fund** was proposed by the Liberals, which would be increased at the rate of inflation and reviewed on a five-year basis. This fund was indeed **part of the 2011 Liberal election platform**.
- The Liberals proposed this fund as a “**long-term, technologically neutral and sustainable solution to ensure music creators are properly compensated for their work.**” The CPCC believes the **creation of a compensation fund** would ensure that rights holders continue to receive compensation for private copies made of their music **on an interim basis** until a more **permanent solution can be found through legislative change** to the *Copyright Act*.
- During the 2011 and 2015 election campaigns, the Liberals proposed the **use of proceeds from the various spectrum auctions** to be used to stimulate **Canadian content creation**. With over **\$8 billion** collected during those auctions to date, and several billion more expected in the coming years as new auctions come on line, the CPCC submits using this funding would be a perfect interim solution.
- **Minister Joly** has been exploring these options (along with a possible ISP levy) during her **ongoing Digital consultations**. Even Michael Geist supports the concept, “The good (ideas) involve proposals to divert revenues from spectrum licenses to cultural funding (effectively a spectrum tax invisible to consumers).” (Globe and Mail – Oct 12, 2016)

The CPCC is committed to working with all stakeholders in the music industry, and the Government of Canada, to find a solution that will ensure creators continue to receive compensation for private copies made of their music. The private copying regime created by the Liberals in 1997 has been a success generating over \$300 million in revenue for rights holders. It is now time to update the private copying regime to ensure that rights holders continue to receive the compensation to which they are entitled.

Further information on private copying regimes worldwide can be found at the following link:

http://www.wipo.int/edocs/pubdocs/en/wipo_pub_1037_2016.pdf