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Montreal, January 31, 2011

Mr Gord Brown, M.P.
House of Commons
Ottawa, Ontario
K1A 0A6

BY EMAIL

Re: Bill C-32 – The Copyright Modernization Act

Dear Mr. Brown,

Astral Media inc. ("Astral") appreciates the opportunity to submit comments to the Legislative Committee studying Bill C-32. This piece of legislation is of the utmost importance for the broadcast industry and for Astral, a company that employs 2 800 people across Canada in the fields of television, radio and out of home advertising. The *Copyright Act* has a direct impact on the day to day operations of our services: affecting the dealings, cost and potential development of our 83 radio stations including brands such as NRJ, RockDétente, boom fm, Virgin, EZ Rock, The Mix and The Bear, as well as impacting our 19 pay and specialty programming services including notably TMN, Family Channel, Canal Vie, VRAK.TV and the respective web sites operated by these radio and television services.

Astral supports Bill C-32 and adds its voice to the comments filed by the Canadian Association of Broadcasters and by Hayes eLaw. Astral believes that Bill C-32 is the most balanced copyright bill that has been tabled in recent times, and notes that this is the likely result of the wide consultations held by the Government in the summer of 2009. These consultations brought into light the issues faced not only by rights owners but also those of consumers and commercial users. The resulting copyright bill takes into account the needs and issues faced by all of these stakeholders and attempts to balance these consumers and commercial users' needs with those of the copyright owners. This is unprecedented as the *Copyright Act* has been historically seen as a public policy tool to protect copyright owners, leaving unaddressed most issues faced by consumers and commercial users. Without any doubt, the growth of the internet led to a paradigm shift and made consumers of music, films and books part of the equation.

IMPACT OF AN INEFFICIENT COLLECTIVE ADMINISTRATION SYSTEM

For years we have been calling for an update to the *Copyright Act* which has become severely outdated in the face of rapid developments in digital technology, the arrival of internet communications and the impressive multiplication of means to distribute the same content over multiple platforms. Each of these platforms constitutes new opportunities for tariff filings by collectives, triggering numerous and seemingly endless costly hearings before the Copyright Board for commercial users such as broadcasters. The Copyright Board is not equipped to deal with so many collectives who file yearly tariffs. By the time that a hearing is held by the Copyright Board and its decision is rendered and finalized (including review of the Copyright Board decisions by higher courts), the certified tariffs usually result in significant increases owed by commercial users, often with retroactive payments that can reach back as far as ten years¹. The resulting unforeseeable financial liabilities to use copyrighted material directly impact Canadian companies' ability to make accurate business plans, invest in new business developments and provide Canadians with innovative applications that are currently flourishing in other countries.

This past summer, the Copyright Board of Canada levied two more tariffs against Canadian radio stations, adding a hefty increase to already substantial copyright payments. It seems that every year there is another copyright payment layered on top of existing ones. First it was just SOCAN, then NRCC was added, then CMRRA-SODRAC, then AVLA-SOPROQ and ArtistI, and now ACTRA PRS/MROC². There seems to be no end to this layering of tariffs and to the formation of new collectives. The Copyright Board has repeatedly said that in order to streamline this system, legislative changes must be sought through the *Copyright Act*.

Music inputs cannot have an infinite value to the broadcast activity simply because the current copyright system allows, with absolutely no oversight, the formation of new collectives which file tariffs to seek additional royalties for existing uses. It is interesting to note that Canada holds the world record number of 36 collectives³. It makes no sense that the use of music is costing our radio industry more than 2.5 times more in 2011 than it was 10 years ago.

The graphic below shows that over the past 10 years, while radio revenues grew 41%, the reproduction right royalties and the communication right royalties for

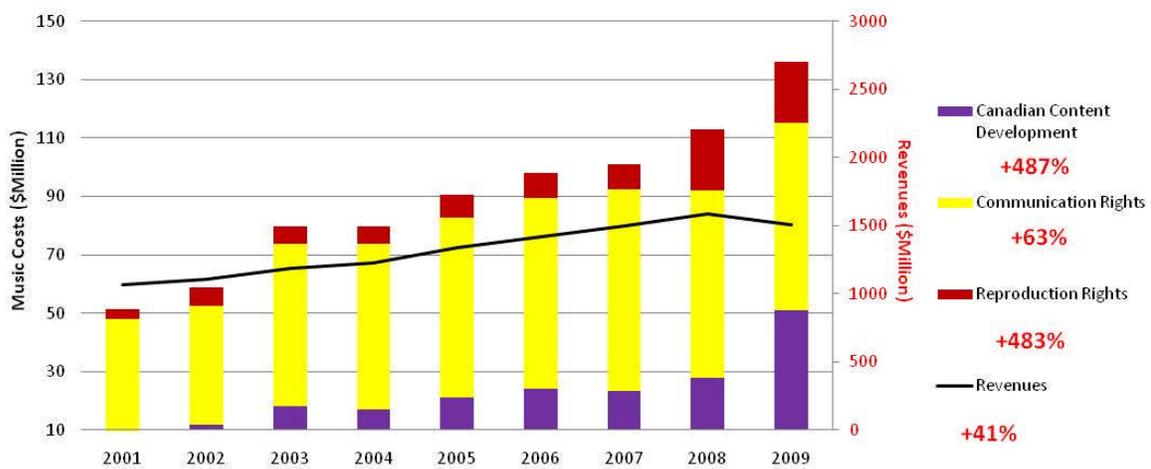
¹ Tariff No 22B-G, News Release dated October 24, 2008 from the Copyright Board of Canada, **Socan Internet Tariff 1996-2006**, <http://www.cb-cda.gc.ca/decisions/2008/20081024-m-nr-e.pdf>

² ACTRA PRS and MROC would respectively be the 8th and 9th collectives seeking royalty payments for the use of music on radio. See their statement of proposed royalties at <http://www.cb-cda.gc.ca/tariffs-tarifs/proposed-proposes/2010/2010-06-19-1.pdf>

³ Ariel Katz, The potential demise of another natural monopoly: rethinking the collective administration of performing rights, p. 3, <http://ssrn.com/abstract=547802>

our industry respectively grew 483% and 63% over the same period. In addition, our Canadian Content Development contributions⁴ grew 487%.

Music & Social Cost Growth Buries Radio's Revenue Growth



While collective administration is, in theory, an efficient way to administrate the dealings between multiple copyright owners and various users, the collective administration of copyright in Canada has seriously derailed to become a barrier to Canadian business development. This must be remedied if Canada is to be competitive in this fast evolving digital era. Finding the right balance between fair compensation for creators of creative works and fair conditions for users to ensure dissemination of these creative works is a very difficult exercise.

It is crucial to understand that Broadcasters are amongst the most important supporters of the cultural sector in Canada. We believe in Canadian culture and in our Canadian artists and work directly with them to promote their career development. In fact, television and radio broadcasters act as a catalyst for the success of artists and a healthy broadcast industry results in more wealth for the cultural community. For example, in terms of copyright payments, the royalties payable by our television and radio stations are set as a function of broadcasters' gross revenues. It follows that if the broadcast revenues grow, more royalties

⁴ These additional radio contributions to the music industry are based on a policy adopted by the Canadian Radio-television and telecommunications Commission entitled Broadcasting Public Notice CRTC 2006-158, Commercial Radio Policy 2006.

revert back to copyright holders. In 2009, the broadcasting industry including radio stations, television stations and their respective internet operations contributed over \$100 million in copyright royalty payments to the music industry for the broadcast of music on these platforms.

BILL C-32 AND RADIO BROADCASTERS

Radio stations are proud to support Canadian talent and to provide artists with every possible opportunity to help their career development through promotion on our radio stations or through our yearly Canadian content development contributions, which amounted to \$51 million for the radio industry in 2009. Radio broadcasters are fine with fair remuneration for the use of music that we play on air. Radio broadcasters alone contributed \$64 million in 2009 to play music on radio. This is a total \$115 million contribution to the Canadian music industry by Canadian radio stations in 2009 alone and these yearly contributions are not affected by Bill C-32.

In the digital age, our radio stations receive music files through a digital delivery service called DMDS that was set up and paid for by the record labels. This system allows record labels to be more efficient by reducing their music delivery costs to radio stations across the country. In turn, while before the introduction of this digital delivery system radio stations were receiving CDs from record label representatives, our music directors must now download the tracks of the new music that they select to promote and play on radio in order to prepare for broadcast. This transfer of digital music files gives rise to an annual \$21 million in copyright liability, on top of the \$64 million copyright royalties that radio stations pay to play the music. Canada is one of the only remaining industrialized countries that is not recognizing that the multiplication of payments demanded of the radio industry for a single use – playing music on radio – is counterproductive and does nothing to enhance the advancement of Canadian music or its artists.

The Government has heard our argument. With the introduction of an exception for the payment of royalties for incidental reproductions, Bill C-32 introduces proposed amendments to Section 30.9 of the *Copyright Act* thereby providing broadcasters with the right to operate their businesses in the digital economy without unfair and irrational duplication of our copyright liability. Much in the same way, Bill C-32 recognizes that personal copies can be made without giving rise to copyright liability for time shifting, format shifting and making backups, the proposed amendments to Section 30.9 recognize that the reproductions made by radio stations are part of a purely technical process which yields no revenue and are employed in preparing music for broadcast. Therefore, we strongly support these amendments and consider them an essential component of Bill C-32. We also support the submission of Hayes eLaw in respect of proposed technical amendments to Section 30.9 that ensure that the provision as



worded will meet the government's stated intention to ensure that radio broadcasters will no longer be required to compensate copyright owners for making reproductions in the context of their operations.

THE ECONOMIC REALITY OF THE REPRODUCTION RIGHT EXCEPTION

It is important to understand that the \$21 million reproduction right payment is filtered through a complex collective licensing system. Each of the 7 collectives that have certified tariffs in place⁵ first deduct significant amounts for administrative overhead and legal costs. After that deduction, a large share of the remaining amount is distributed to foreign labels and publishing houses before any of it ends up with the Canadian artists themselves.

While the record companies and the publishing houses will claim that the broadcaster exception takes money away from artists, the reality is that it is mostly taking money away from collectives that administer the tariffs and from multibillion dollar foreign companies. On the other side of this story, the broadcaster exception is keeping money in the hand of Canadian broadcasters that employ Canadians and heavily invest in their communities and in Canadian artists.

We wish to thank the members of your Committee for the work you are doing on the very difficult task of updating our *Copyright Act*. We are hopeful that the Committee can work together to have this legislation adopted. The reproduction right exception is long overdue. Keeping it in Bill C-32 will go a long way in streamlining collective administration for radio broadcasters and in helping our industry remain competitive with the hefty competition it faces in the digital era from unregulated internet broadcast new players.

Sincerely,

A handwritten signature in black ink, appearing to read 'Nathalie Dorval'.

Nathalie Dorval
Senior Advisor
Regulatory Affairs and Intellectual Property

⁵ SOCAN, NRCC (now re-named RE: Sound), CMRRA-SODRAC (2 separate collectives that filed a joint tariff under the name "CSI"), AVLA-SOPROQ (2 separate collectives that filed a joint tariff) and Artisti.