



Canadian Association of Broadcasters
Association canadienne des radiodiffuseurs

November 1st, 2011

Mr. Dean Del Mastro, M.P.
House of Commons
Ottawa, ON
K1A 0A6

VIA EMAIL: dean.delmastro@parl.gc.ca

Dear Mr. Del Mastro,

Canada's Private Broadcasters would like to congratulate you on your appointment to the Legislative Committee on Bill C-11. This Bill is an important and necessary piece of legislation that has been long anticipated by a broad range of stakeholders, including broadcasters.

As we have noted in press releases and in correspondence with members of the Heritage and Industry Committees, and in our appearance before the Special Legislative Committee on Bill C-32, Canada's Private Broadcasters support copyright reform, and are very pleased the Government is taking steps to ensure Bill C-11 is approved. We are particularly pleased with the inclusion of amendments to section 30.9, which acknowledge the operational realities of modern, digital broadcasting operations.

Creating an exception to the reproduction right for broadcasters recognizes the incidental and technical nature of the programming process that takes place at a radio station. This Government understands that radio broadcasters have been unfairly paying multiple times for a redundant process and that copyright law should be clear. Broadcasters pay millions annually to play music on air, and that is not in dispute. What your Government has recognized with the explicit inclusion of an exception for broadcasters is that the additional layer of payments for purely technical copies is an unfair and unnecessary application of the law to an industry that contributes greatly to Canadian artists.

Canada's Private Broadcasters pay \$64 million annually in royalties to authors, composers, publishers, performers and sound recording makers for the right to broadcast their works. In addition, over \$51 million is spent on Canadian Content Development initiatives which directly benefit Canadian artists exclusively by supporting their marketing and touring initiatives both in Canada and abroad.

Both of these payments will continue with the adoption of Bill C-11. On top of this \$115 million in investments to the music industry, broadcasters spend countless hours of airtime promoting artists and ensuring their music is heard by Canadians.

We are committed to supporting Canadian artists. We want to see them succeed and we will continue to promote their music to Canadians. By including amendments to s. 30.9, the Bill recognizes the continuing evolution of broadcasting technology and corrects an imbalance in the existing legislation that was created in earlier legislation.

In order to ensure the language of Bill C-11 satisfies the intention of Government to give broadcasters a real and meaningful exception from reproduction right liability, small technical amendments are required. The Bill currently states that any reproductions, no matter how incidental or technical, must be destroyed within 30 days even if a broadcaster retains the original copy of a file. The reality is that virtually every song on a radio station is in rotation for longer than 30 days. This means that the exception, as worded, will not have any meaningful impact on the liability of broadcasters. The policy rationale for this amendment is to provide broadcasters with an exception that reflects their modern operations. The small technical amendments attached will ensure Bill C-11 achieves the government's goal. With the inclusion of these amendments, the CAB will be pleased and proud to continue supporting this Government as Bill C-11 makes its way through the legislative process.

We look forward to working with you and your colleagues to see this Bill passed. We would be happy to host you and your colleagues for a "behind the scenes" tour of a broadcast facility.

Sincerely,



Sylvie Courtemanche
Chair
Canadian Association of Broadcasters

cc. CC-11 Legislative Committee Members



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Proposed Technical Revisions for Broadcast Exception

These following proposed technical amendments are necessary to ensure the broadcaster provision is in line with the Government's stated intention to provide broadcasters with an exception from reproduction right liability. If incorporated, these technical amendments would provide broadcasters with the full exception intended and result in no additional costs or loss of revenue to the rights holders. As well, broadcasters will continue to pay all the same rights holders pursuant to the far more valuable communication right, in addition to supporting countless Canadian content initiatives with significant levels of funding.

As currently worded, s. 30.9(1)(a) requires a broadcaster to "own" a copy of a musical track in order to avail themselves of the exception. This concept pre-dates digital technologies. At this point, virtually all broadcasters use digital files of sound recordings, which can only be "possessed" not owned. This is a drafting error that can be easily remedied to ensure the legislation is technologically neutral.

The removal of the reference to performer's performance or work will help eliminate redundant language – if a broadcaster possess a sound recording, it must also possess the performer's performance and work which are embodied in the sound recording. The addition of the reference to "owner of copyright in the sound recording" is consistent with operational realities for both the broadcaster and the copyright owner – the broadcaster receives its digital music from the sound recording maker.

Finally, Bill C-11 builds on earlier analog-era references to a 30 day time frame for retaining copies. By removing the words "at the latest", the Government can ensure that the retention provision does not force broadcasters to unnecessarily delete and reconstitute files at significant expense even when the original authorized copies of the file are retained.

The artificial 30 day "destroy regime" is potentially expensive and administratively restrictive for smaller broadcasters, yields no benefit to rights holders and is, in any event, unenforceable. This proposed modification does not change the intent of the provision; it merely removes a reference that would otherwise interfere with an authorized activity pursuant to the broader exception in s. 30.9.

The following are the CAB's proposed technical amendments to s. 30.9 of the *Copyright Act* as set out in s. 34(1) and (2) of Bill C-11 in **RED**:

30.9 (1) It is not an infringement of copyright for a broadcasting undertaking to reproduce in accordance with this section a sound recording, or a performer's performance or work that is embodied in a sound recording, solely for the purpose of their broadcasting, if the undertaking

(a) ~~owns the~~ possesses a copy of the sound recording, ~~performer's performance or work~~ and that copy is authorized by the owner of the copyright **in the sound recording**, or has a licence to use the copy;

[...] (4) The broadcasting undertaking must destroy the reproduction when it no longer possesses the sound recording, or performer's performance or work embodied in the sound recording, or its licence to use the sound recording, performer's performance or work expires, or ~~at the latest~~ within 30 days after making the reproduction, unless the copyright owner authorizes the reproduction to be retained.