



**Pre-Budget Submission to the House of Commons Standing  
Committee on Finance**

August 2, 2018

Music Canada

Graham Henderson, President & CEO

## Music Canada recommends:

- Eliminating the Radio Royalty Exemption by repealing section 68.1(1)(a)(i) of the *Copyright Act*.
- Redefining the term “sound recording” at section 2 of the *Copyright Act* so that performers and record labels receive royalties when their music is used as part of a soundtrack in television and film.
- The creation of an interim Private Copying Fund until a more permanent solution can be found through legislative change.
- Extending the term of copyright for musical works to the author’s life plus seventy years by amending section 6 of the *Copyright Act*.

Music Canada is a non-profit trade organization that represents the major record companies in Canada: Sony Music Entertainment Canada, Universal Music Canada and Warner Music Canada, as well as their partners, the artists. We are passionate advocates for music and those who create it. Music Canada's members are engaged in all aspects of the recording industry, including the manufacture, production, promotion and distribution of music. Music Canada's member companies actively develop and nurture Canadian talent throughout the world.

We thank the Standing Committee on Finance for the opportunity to contribute to the consultations in advance of the 2019 budget. We provide these recommendations not only on behalf of our members, but because we believe that they will strengthen the entire Canadian music industry. The recommendations made in this submission position all aspects of the Canadian music industry for economic growth and continued international competitiveness.

The Canadian music industry is a key driver in Canada's 21<sup>st</sup> century economy, contributing over \$3 billion dollars to the Canadian economy annually. As powerful as it is, the potential of this creative industry is significantly curtailed by outdated laws that create a *Value Gap*. Government can unlock industry potential by modernizing laws that drive investment out of the industry.

The biggest issue facing the Canadian music industry, and in fact all cultural industries around the world, is the Value Gap. It is defined as the significant disparity between the value of creative content that is accessed and enjoyed by consumers, and the revenues that are returned to the people and businesses who create it.

The result is the disappearance of the creative middle class in Canada, making it harder and harder for creators to earn a living from their work. Acclaimed artists whose art is widely listened to, watched and loved are seeing online intermediaries commercialize their work leaving them with only slim returns.

One of the main causes of the Value Gap are laws that were implemented at the dawn of the Internet era. Technology companies claimed they needed exceptions from copyright law to provide new Internet services. This was a time when Internet intermediaries were commonly thought of as simply providing "dumb pipes." It was alleged technology companies needed protections, such as safe harbour laws and exceptions, because they claimed they did not and could not know what millions of anonymous users were doing on the Internet. Two decades later, those safe harbours and exceptions that helped to stimulate the internet era are no longer needed – they are being exploited by technology companies to commercialize users' online activities. For instance, YouTube executive Lyor Cohen has publicly bragged that 80% of content viewed on the service is the result of YouTube recommendations, based on a prediction of consumer habits.

Fixing the Value Gap is a global effort, but one that also requires the continuation of the important work undertaken by this government here in Canada. We can help Canadian creators today, by addressing domestic sources of the Value Gap.

Currently, both the Standing Committees on Industry and Canadian Heritage are engaged in statutory reviews of the *Copyright Act*. Both committees have heard from stakeholders who identified the need to address Canadian causes of the Value Gap. Music Canada is thankful to the committees and stands by our contributions to the work of the committees. However, we believe strongly that action by the government is required today; artists can't afford to wait any longer. The industry needs government action well before any meaningful reforms from these review processes can be reasonably expected.

With this goal in mind, Music Canada recommends that Budget 2019 urgently address the Canadian causes of the Value Gap to improve the Canadian music industry's economic competitiveness. Music Canada recommends the following four actions for inclusion in Budget 2019 as a comprehensive package to assist a key sector within the Canadian creative industries:

- **Eliminate the Radio Royalty Exemption:**

Since 1997, Canadian commercial radio stations have been exempted from paying royalties on their first \$1.25 million of advertising revenue.<sup>1</sup> The Radio Royalty Exemption, found at section 68.1(1)(a)(i) of the *Copyright Act*, effectively creates an \$8 million annual cross-industry subsidy paid by artists and their recording industry partners to large, vertically-integrated and highly profitable media companies. No other country has a similar exemption. The exemption is unjustified and should be eliminated.

This amendment was widely supported by all the key music industry stakeholders during the recent parliamentary reviews of the *Copyright Act*.<sup>2</sup>

Repealing section 68.1(1)(a)(i) of the *Copyright Act* will give the power back to the Copyright Board and its stakeholders to set a fair, market-based tariff on a sliding scale, taking into account station revenues, use of commercial music, and ability to pay. Eliminating the exemption would not impact any other parts of the Act, nor would it impact the profitability of commercial radio stations in any material way. Furthermore, smaller radio stations (e.g. campus, community and non-profit) will continue to be treated differently from commercial large commercial radio stations. This change will put millions of dollars back into the music industry ecosystem by properly compensating performers and record labels for the commercial use of their music.

**Music Canada recommends eliminating the Radio Royalty Exemption by repealing section 68.1(1)(a)(i) of the *Copyright Act*.**

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<sup>1</sup> Each station, regardless of its size, profitability or whether they are part of a conglomerate, pays a nominal \$100 on the first \$1.25 million in revenue.

<sup>2</sup> The Canadian Federation of Musicians, Canadian Music Publishers Association, ArtistI, ACTRA, ADISQ, Re:Sound Music Licensing Company, SOCAN, and the Canadian Independent Music Association (CIMA) all supported the elimination of the Radio Royalty Exemption during the reviews of the *Copyright Act* at the Standing Committees on Industry and Canadian Heritage.

- **Amend the Definition of “Sound Recording” in the *Copyright Act*.**

The current definition of a “sound recording” in the *Copyright Act* excludes performers and record labels from receiving royalties for the performance of their recordings in television and films. This exception is unique to television and film, and unique to performers and record labels. For instance, composers, songwriters and music publishers receive full royalties for the use of their works in television and film. It is inequitable and unjustified, particularly in light of the profound role recorded music plays in film and television, and it is costly to artists and record labels, who continue to lose approximately \$45 million in unpaid royalties per year.

This amendment was widely supported by all the key music industry stakeholders during the recent parliamentary reviews of the *Copyright Act*.<sup>3</sup>

The definition should be amended using the language suggested by the Supreme court of Canada in *Re:Sound v. Motion Picture Theatre Associations of Canada*, 2012 SCC 38 (at para. 36).<sup>4</sup> This would have a profound and immediate effect on the recorded music industry.

**Music Canada recommends amending the definition of ‘sound recording’ at Section 2 of the *Copyright Act* such that performers and record labels receive royalties for the use of their music in television and film.**

- **Create an Interim Private Copying Fund while Modernizing the Private Copying Regime**

Music Canada fully supports the work of the Canadian Private Copying Collective to modernize the private copying levy and to create an interim private copying fund while this is underway. The current private copying levy, which was intended to be technologically neutral, has, thanks to various decisions, become limited to media that are obsolete. This important source of earned income for over 100,000 music creators is now in jeopardy unless the regime is updated. The scope and application of the exception needs to be modernized and clarified, including clarifying that the exception does not apply to copies obtained from illicit sources or by illicit means. In the meantime, creation of an interim fund would allow artists to be fairly compensated for their works that are being privately copied.

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<sup>3</sup> The Canadian Federation of Musicians, *Guilde des musiciens et musiciennes du Quebec*, Artistl, ACTRA, ADISQ, Re:Sound Music Licensing Company, SOCAN, Canadian Media Producers Association and the Canadian Independent Music Association all advocated for the redefinition of the term “sound recording” in the *Copyright Act* during the reviews of the *Copyright Act* at the Standing Committees on Industry and Canadian Heritage.

<sup>4</sup> The suggested wording from the SCC was as follows (which the amendment in bold/underline): “*Sound Recording* means a recording, fixed in any material form, consisting of sounds, whether or not of a performance of a work, but excludes **the aggregate of sounds in** any soundtrack of a cinematographic work where it accompanies the cinematographic work.”

Addressing problems associated with the private copying regime, including creating an interim fund, was recently supported by all Canadian cultural industries stakeholders that raised it during the parliamentary reviews of the *Copyright Act*.<sup>5</sup>

**Music Canada recommends the creation of an interim Private Copying Fund until a more permanent solution can be found through legislative change.**

- **Amending the Term of Copyright for Musical Works**

Music Canada supports the efforts of SOCAN and other music organizations in their efforts to amend the term of copyright for musical works. The term of copyright protection in Canada for the authors of musical works subsists for the duration of the author's life plus a further period of 50 years, which is out of line with international standards.

Amending the term of copyright for musical works was recently supported in the committees reviewing the *Copyright Act* by all cultural industry stakeholders who spoke to the issue.<sup>6</sup>

**Music Canada recommends extending the term of copyright for musical works to the author's life plus a period of seventy years by amending Section 6 of the *Copyright Act*.**

Canada's cultural industries have been clear throughout the current reviews of the *Copyright Act* that urgent government action is required to address the Value Gap. The lengthy timelines associated with the reviews of the *Copyright Act* threaten Canada's competitiveness in the global market. Our recommendations reflect the needs of Canada's music industry and each recommendation creates the opportunity for Canadian artists to be fairly remunerated when their work is commercialized by others. Our recommendations will improve the lives of Canadian artists and strengthen the global competitiveness of our entire industry.

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<sup>5</sup> The Canadian Federation of Musicians, Canadian Music Publishers Association, Guilde des musiciens et musiciennes du Quebec, Artistl, ACTRA, ADISQ, Canadian Private Copying Collective, SOCAN, Canadian Musical Reproduction Rights Agency, SODRAC, Alliance nationale de l'industrie musicale, Professional Music Publishers' Association, the Canadian Independent Music Association, and ole all spoke in favour of a renewed private copying regime, including the creation of an interim fund during the parliamentary reviews of the *Copyright Act*.

<sup>6</sup> The Canadian Music Publishers Association, Guilde des musiciens et musiciennes du Quebec, ADISQ, Re:Sound Music Licensing Company, SOCAN, Canadian Musical Reproduction Rights Agency, SODRAC, Professional Music Publishers' Association, Société professionnelle des auteurs et des compositeurs du Quebec, ole and the Canadian Independent Music Association all spoke in favour of extending the term of copyright for musical works during the parliamentary reviews of the *Copyright Act*.