

# PRE-BUDGET SUBMISSION (2018) TO THE HOUSE OF COMMONS STANDING COMMITTEE ON FINANCE

## THE CANADIAN PRIVATE COPYING COLLECTIVE

AUGUST 4, 2017

### EXECUTIVE SUMMARY

The Canadian Private Copying Collective (CPCC) is an umbrella organization whose member collectives represent recording artists, songwriters, music publishers and record companies. The private copying levy is collected by the CPCC to compensate these music creators for private copying of their work. Because the levy is currently restricted to blank CDs, that remuneration has plunged from \$38 million in 2004 to less than \$3 million in 2016, even though annual private copying doubled in that time. Amendments must be made to the *Copyright Act* to make the private copying regime technologically neutral, so it can keep up with how Canadians consume music, but it would be years before that process would result in equitable revenue for creators.

**Therefore, the CPCC asks that the federal government create in Budget 2018 a four-year Private Copying Compensation Fund of \$40 million per year, to ensure that music creators continue to receive fair compensation for private copies made of their music, helping Canadian music artists and music companies to be more productive and competitive at home and globally. The Fund is urgently required *on an interim basis* until a more permanent solution can be found through legislative change.**

### BACKGROUND

Like other Canadians who make and market a product, music creators depend on revenue from the sale and use of the music they create for their livelihood. Music has value, in both the artistic and monetary senses of the word. Unfortunately, music creators don't enjoy the same kind of safeguards that makers of other products do to ensure they are fairly compensated when their work is used.

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 remuneration to music creators for that use of their music. Under the *Act*, manufacturers and importers of blank audio recording media pay a small levy for each unit imported and sold in Canada. Those levies are collected by the **Canadian Private Copying Collective (CPCC)** on behalf of its member collectives, representing recording artists, songwriters, music publishers and record companies.

**For many years since its creation, the private copying regime was an important source of earned income, generating over \$300 million in revenue for over 100,000 music creators,**

**enabling them to continue to create and commercialize important cultural content.**

Unfortunately, the regime has been limited since 2008 to a single blank audio recording medium, which is quickly becoming obsolete: CDs.

## **THE SITUATION**

The majority of consumers are now making copies of music onto devices such as smartphones, and the use of blank CDs to copy music is rapidly declining. As a result, the revenue collected for music creators 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 music creators have plunged from a high of \$38 million in 2004 to less than \$3 million in 2016.**

**Private copying activity has doubled over that same period. Canadians copied over 2 billion tracks of music in 2015-16.**

**The loss of remuneration from this use of their work is tantamount to asking Canadian music creators to work for free.** In fact, to the extent our private copying exception is not accompanied by remuneration, Canada is in violation of its international copyright treaty obligations.<sup>1</sup> By contrast, many European countries (including Austria, Belgium, Croatia, France, Germany, Hungary, Italy, Netherlands, Portugal and Switzerland) have healthy private copying regimes that extend levies to a wide variety of media and devices, like smartphones and tablets.

**Many of Canada's up-and-coming music artists and music companies are truly small businesses – people working from pay cheque to pay cheque, with every revenue stream being crucial to their survival. They invest a significant amount of money into making and marketing music and, in the past, the levy assisted them tremendously to be more productive and competitive.**

The matter is increasingly urgent as the music industry continues to become more global in nature and more IT-intensive. It is already an expensive and risky proposition to achieve success at home, but now our artists and companies must invest more resources than ever to expand their international market share, and to interact with the various technologies that facilitate micro-payments. If Canada doesn't protect their ability to earn the income that pays for these essentials, we will lose music creators and all of the cultural and economic benefits they bring us.

Amendments must be made to the *Copyright Act* to make the private copying regime in Canada technologically neutral, as originally intended. Unfortunately, the full Parliamentary Review of

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<sup>1</sup> The so-called "Berne Convention three-step test" specifies that exceptions to copyright protection, like private copying regimes, are only valid if the exceptions a) are limited to special cases, b) do not conflict with a normal exploitation of the work; and c) do not unreasonably prejudice the legitimate interests of the rights holder.

the *Act* mandated for 2017 has yet to be announced, and the review period could be lengthy. Throughout this process, and while music creators then wait for any resulting levies to be successfully implemented, their compensation from the current levy will continue shrinking to an even smaller fraction of what they received in prior years. Further, **the ability of the collective itself to continue to operate and maintain its already-minimal infrastructure will be jeopardized, which would be both unfair and inefficient.** The CPCC has the expertise required to ensure that any changes to the *Act* will bring the maximum benefit possible for music creators at minimum expense.

## **HELPING CANADIAN MUSIC ARTISTS AND MUSIC COMPANIES TO BE MORE PRODUCTIVE AND COMPETITIVE**

The Committee has asked participants in the pre-budget consultations process to address the following questions:

1. What federal measures would help Canadians to be more productive?
2. What federal measures would help Canadian businesses to be more productive and competitive?

The individual Canadian artists and Canadian businesses whose music is copied so extensively for personal use can only produce and compete if they are paid when their work is used, just as the businesses producing and selling the media and devices used to copy music receive fair market value for their products.

### **Recommendation**

**The CPCC asks that the federal government create in Budget 2018 a four-year Private Copying Compensation Fund of \$40 million per year, to ensure that music creators continue to receive fair compensation for private copies made of their music. The Fund is urgently required on an interim basis until a more permanent solution can be found through legislative change.**

### **Amount**

During the 2011 review of the *Copyright Act*, the CPCC worked with political officials to create a **balanced solution** to ensure music creators received compensation for the billions of private copies being made of their work. A \$35 million Private Copying Compensation Fund was one option proposed by Parliamentarians. Under the proposal made to the CPCC, the Fund would be increased at the rate of inflation and be reviewed on a five-year basis in order to ensure the amount of compensation remained fair.

The \$35 million figure corresponds to the average levies collected in CPCC's five peak years.<sup>2</sup> If average inflation since 2011 (1.5%) were factored in, that figure would be closer to \$40 million by 2018.

**As an interim measure, for the years 2018-2021, a constant Private Copying Compensation Fund of \$40 million per year would provide both a fair level of remuneration, and an appropriate level of stability and predictability.**

### Process

Under the *Copyright Act*, the Copyright Board has the duty of naming the collecting body that, in the Board's opinion, would best fulfil the objects of the private copying regime. The Board has never varied from its designation of CPCC to both collect and distribute levies. **By directing the Private Copying Compensation Fund to the CPCC, with its existing infrastructure and policies, agreed to by the member collectives, the government would ensure this important remuneration reaches its intended recipients efficiently and accurately.**

### Source

It has been suggested that **proceeds from the various spectrum auctions** be used to stimulate Canadian content creation, including in Minister Joly's recent Digital consultations. With over \$8 billion collected during those auctions to date, and several billion more expected in the coming years as new auctions come online, **the CPCC submits that drawing from these proceeds for the Private Copying Compensation Fund would be a perfect interim solution.**

## CONCLUSION

The CPCC is committed to working with the federal government and all stakeholders in the music industry to find a permanent solution that will preserve the private copying regime as an important collective exercise of copyright, and ensure that Canada respects its obligations under the numerous treaties it has signed on copyright. Until then, the Private Copying Compensation Fund is urgently needed to ensure creators continue to receive compensation for private copies made of their music, helping them to be more productive and competitive at home and globally.

We appreciate the opportunity to provide this submission and recommendation and look forward to appearing before the Finance Committee as part of its Pre-Budget 2018 hearings in the Fall.

For more information, please contact:

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<sup>2</sup> <http://www.cpcc.ca/en/the-cpcc/financial-highlights>