

Submission of ole Media Management
on
the Statutory Review of the *Copyright Act*

Presented to the Standing Committee on Industry, Science and Technology
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I. Introduction

ole applauds the Minister of Innovation, Science and Economic Development for undertaking this important statutory review of the *Copyright Act*.

With the rapid evolution and development of digital technology, music is being accessed and enjoyed more than ever before. Music creators, and companies like ole that support them, have embraced the new digital landscape but need a functioning Canadian marketplace in order to continue to innovate and compete globally. Various exceptions and other aspects of the governing legislation interfere with the ability of music creators, and those that they partner with, to achieve fair compensation and protect their copyrights in Canada. Changes to the *Copyright Act* are needed to ensure that artists and the creative industries can continue to thrive in the digital world.

II. About ole

ole is Canada's largest independent music publisher and one of the world's foremost rights management companies. We are proudly Canadian owned and operated, employing close to 100 people at our Toronto head office, and around the same number across six offices in Nashville, New York, Los Angeles, and London. ole ranked in the top 10 in Billboard's ranking of top music publishers for the 1st and 2nd quarters of 2018 and has been named "Music Publishing Company of the Year" for 12 consecutive years at the Canadian Country Music Association Awards.

ole has invested over half a billion USD in music copyrights. Our catalogue includes over 55,000 songs, including works by Canadian legends like Rush, Lighthouse, Dan Hill, and Stompin' Tom Connors, as well as many international hitmakers. Our songs have been recorded by Beyoncé, Taylor Swift, and many other top international recording artists. Our 60,000+ hours of film and TV music includes catalogues from leading Canadian producers and distributors like Bell Media, Corus, DHX, eOne, and the National Film Board, and major Hollywood studios like Sony Pictures, MGM, and Miramax.

ole's activities also extend beyond traditional music publishing. Our industry leading music production businesses, *Jingle Punks*, *5 Alarm*, *Cavendish*, and *Music Box*, offer custom compositions and over 750,000 library tracks for film and TV. Our *Compact Media* division in London is the world leader in audio-visual secondary rights administration, representing more than 700 film and TV producers and distributors, globally. We also operate a robust record label group, including legendary Canadian rock label, *Anthem Records*, home of Rush, Big Wreck, Steven Page, and The Tea Party.

ole's substantial investment in music copyrights enriches Canada's creative ecosystem. Our acquisition of foreign catalogs, like MGM and Sony Pictures, has redirected millions of dollars to Canada annually. This export revenue funds the development of new songwriting talent and further catalog acquisitions. And through our investment in the music and secondary rights of Canadian producers, we contribute directly to the financing of new Canadian film and TV content.

III. Recommendations

ole urges the government to establish a framework that ensures that those who create and invest in music receive their fair share of the economic benefits, and that recognizes the responsibilities of new delivery services and the value music brings to their businesses. We support several specific recommendations made by the Canadian Music Publishers Association (CMPA), Music Canada, and the Canadian Music Policy Coalition (CMPC), among others.

1. Amend the 2012 Copyright Exceptions

Several of the exceptions from copyright infringement introduced in 2012 should be amended to close gaps in protection and fix unintended consequences that affect the music publishing industry. Some exceptions, such as the exemption for backup copies, have relieved commercial, profit-driven users from the obligation to pay for commercially valuable uses of music. Others, including the exception for temporary reproductions for technological processes, are vague and uncertain, making investment in the cultural industries a risky proposition. The consequence is that royalties and investment dollars are taken directly out of the pockets of songwriters, music publishers, and rightsholders, who are forced to subsidize the profitable businesses of broadcasters and online services rather than fund the creation of new music.

2. Close the Value Gap

Online music and video sharing platforms reap major benefits, including significant advertising revenues, from the use of vast amounts of music. However, those platforms often hide behind safe harbour protections to avoid paying royalties to songwriters, artists, and rightsholders. That results in a “value gap” – a massive reallocation of the value of the creative content that is accessed and enjoyed by consumers from songwriters and other rightsholders to ad-supported online platforms.

The value gap is an unintended consequence of the well-intended introduction of safe harbour protections at a time when today’s sophisticated, feature-rich online platforms could not have been contemplated. Online platforms that offer features to actively enhance the user experience, and grow their profits, were not the intended beneficiaries of the safe harbour protections. Therefore, ole supports the closing of the value gap by clarifying that the safe harbour protections are available only to services that are truly no more than passive intermediaries.

3. Promptly Enact Term Extension Legislation

ole welcomes Canada’s decision to extend the term of copyright in works to the life of the author plus 70 years. Although Canada has up to 2.5 years to enact term extension once the United States-Mexico-Canada Agreement (USMCA) enters into force, there is no reason to delay. Canada has consistently lagged behind its major trading partners when it comes to updating its copyright laws. Term extension is needed to bring Canada into line with those trading partners and international standards, to encourage investment in classic catalogs, and to continue generating revenue that can be reinvested in the creation of new works.

ole supports the prompt enactment of amendments to carry out Canada’s worthy decision to extend the term of copyright.

4. Extend the Private Copying Regime to Devices

ole supports extending the private copying regime to include devices that are used to copy and consume music.

In the past, the private copying regime was an important source of earned income for songwriters and rightsholders, whose music can be copied to blank audio recording media for free, for private use. However, since 2010, the private copying regime has applied only to blank CDs, which are

essentially obsolete. In today's digital landscape, the majority of consumers are making copies of music onto devices such as smart phones and tablets. ole supports the extension of the regime to include those devices, to ensure the protection of songwriters and rightsholder in the modern technological landscape.

5. Amend the Definition of Sound Recording

The current definition of "sound recording" in the *Copyright Act* prevents record labels and performers from being paid for the performance of their recordings and performances in film and television soundtracks. This exclusion is unique to film and television soundtracks, and does not apply to songwriters and their music publisher partners. The exclusion deprives record labels and performers from receiving fair value for the use of their recordings and transfers that value into the pockets of those who exploit the recordings. There is no reason for this exclusion, particularly when considering the important value that recorded music plays in film and television soundtracks. Eliminating the exemption would help record labels, such as ole's *Anthem Records*, to fund the creation of new recordings, thereby creating additional value for songwriters, performers, and the Canadian cultural industries as a whole.

6. Eliminate the \$1.25 Million Broadcaster Subsidy

ole supports the elimination of the \$1.25 million royalty exemption for commercial radio stations. Since 1997, commercial radio stations have been required to pay royalties of only \$100 on their first \$1.25 million in advertising revenues to broadcast sound recordings and performances of music. The exemption is an unnecessary subsidy that creates massive discounts for large, profit-driven media companies, at the expense of record labels and performers. The exemption is neither fair nor equitable and should be eliminated.

7. Introduce Site-Blocking and De-Indexing Orders

The *Copyright Act* should be amended to specifically authorize Canadian courts to order Internet service providers to block access to websites that facilitate or enable large-scale copyright infringement, and to require search engines to remove those websites from their worldwide search results, on a "no-fault" basis to the intermediary in each case.

Online piracy remains a serious concern for the creative industries. It prevents rightsholders from receiving fair compensation for uses of their works by directing traffic toward infringing sources, at

the expense of legitimate ones. Without effective tools to enforce their rights on the Internet, rightsholders are forced to resort to costly, time-consuming, and often ineffective litigation processes in an effort to protect themselves.

Section 27(2.3) of the *Copyright Act* was introduced in 2012 for the express purpose of providing a remedy against online services that exist primarily for the purpose of enabling copyright infringement. However, that section places a high burden on the rightsholder to prove that the service infringed copyright. It is also all but useless where the infringing service is located outside Canada and is therefore outside the reach of Canadian courts. And, although the Supreme Court of Canada ruled in 2017 that Canadian courts are able to grant worldwide de-indexing injunctions in appropriate cases, the procedural road to that relief is far too long and expensive to be a realistic option for most rightsholders.

Providing specifically for site-blocking and de-indexing orders would recognize that, while Internet intermediaries themselves may not be liable for infringement in these cases, they are best placed to prevent it because of the role they play in hosting, delivering, and providing access to content. The amendments should be framed carefully to create a clear and efficient way for rightsholders to obtain the necessary relief while also providing reasonable procedural safeguards for intermediaries. Introducing these provisions would align Canada with its major trading partners, many of whom have already enacted legislation that expressly permits courts to grant injunctions of these types.

IV. Conclusion

ole takes great pride in its significant contribution to the Canadian music and cultural community to date and looks forward to a bright future. We call on our government to solidify Canada's reputation as a leader in the protection of creative content and cultural businesses, and to help position Canadian music creators, and music companies like ole, to thrive in the digital world.