December 10, 2018

Dan Ruimy, M.P.
Chairman, Standing Committee on Industry, Science and Technology
Sixth Floor, 131 Queen Street
House of Commons
Ottawa, ON K1A 0A6

Dear Chairman Ruimy:

Re: Statutory Review of the Copyright Act - Comments of Corus Entertainment Inc.

Corus Entertainment Inc. ("**Corus**") is pleased to contribute to the Industry, Science and Technology Committee's ("**Committee**") review of the Copyright Act (the "**Act**").

Corus is proud to be Canada's leading integrated, pure-play media and content company. Our portfolio of assets includes: 44 specialty television networks, 15 conventional television stations, 39 radio broadcasting services, Canada's largest animation studio (Nelvana), Canada's largest independent book publisher (Kids Can Press), a leading animation software company (Toon Boom) and a global content business ([Nelvana and Corus Studios]). Through our various platforms we are able to deliver Canadian stories to audiences at home and around the world, and support thousands of Canadian artists, journalists and creators.

One of the "Areas for Action" listed in Canada's *Innovation Agenda* is to develop, "the next generation of job-creating global companies." That is precisely what Corus aims to be: a competitive player in the global communications market, while remaining a critical piece of the Canadian content ecosystem.

However, the media industry is changing at breathtaking speed and broadcasters like Corus are facing historic challenges. Today, we compete not only with other domestic broadcasters for audience attention and revenues, but also with untaxed, unregulated, foreign-based companies like Netflix, Amazon, Apple, Facebook and Google. These are challenging conditions particularly for our conventional television and radio stations, which deliver local, regional and national news to communities across Canada.

Broadly speaking, Corus believes the Act strikes an acceptable balance between creators, users, and intermediaries, and should be largely maintained in its current form. The Committee has heard from many stakeholders that seek to expand, eliminate or introduce new rights or exceptions, which would generate significant

costs for Canadian businesses, and fail to serve the public interest. In this submission, we will comment on three proposals made by others:

1. The proposal to eliminate the partial royalty exemption for local commercial radio in section 68.1

2. The proposal to amend the definition of "sound recording" in section 2

3. The proposal to amend the time-shifting exception in section 29.23

In addition, we will recommend one amendment to the Act that would permit greater enforcement against content theft. We elaborate further on each of these points below.

<u>The Partial Royalty Exemption for Local Commercial Radio Should be Maintained</u>

Section 68.1 of the Copyright Act permits commercial radio stations to pay neighboring rights royalties of $100 on their first $1.25 million in revenue. Beyond that, radio stations pay a percentage of advertising revenue at rates set by the Copyright Board.

In recent months, large multi-national record labels have orchestrated a lobbying campaign to eliminate this exemption. They argue that no other parties benefit from such an exemption, the exemption was only intended to be temporary and it exacerbates a "value gap" for performers.

Corus urges the Committee to reject this proposal.

The labels claim that local radio stations receive special treatment under the Act, but that is only half the story. US-based labels are not entitled to collect similar royalties from US radio stations, because there are no neighbouring rights under US copyright law. When neighbouring rights were introduced into Canadian copyright law in 1997, Parliament enacted Section 68.1 in hopes of mitigating Canadian radio's competitive disadvantage.

The labels suggest the exemption was intended to be temporary. Music industry stakeholders have been lobbying to eliminate this exemption since its inception. Parliament has repeatedly rejected these attempts because it understood the exemption to be a long-term measure to mitigate a unique entrenched competitive disadvantage for Canadian businesses.

Canadian broadcasters pay more than their fair share. Commercial radio broadcasters pay $91 million in copyright tariffs on an annual basis, and pay additional CRTC-regulated amounts. In the 2015-2016 broadcast year, commercial radio operators

contributed three cents per revenue dollar, totaling $47 million, to support Canadian content development.[1] Regulated broadcaster contributions are given to certified initiatives like MUSICACTION and the Radio Starmaker Fund, which financially support Canadian artists. These regulated contributions, on top of copyright royalties, have supported hundreds of emerging Canadian artists over many years.

As Vice Chair of the Canadian Heritage Committee, Pierre Nantel recently commented during the appearance of the Canadian Association of Broadcasters, "I was directly involved, from 1987 to 2002, in the relationship between radio broadcasters and television and music. It is so right when you say that you've been the best partner that we could have, so right."[2]

To the extent performers are undercompensated for their work, it is the multinational labels and publishers who are responsible. Tellingly, in his testimony before the Heritage Committee, Bryan Adams focused on unfairness in the publisher-performer relationship.[3]

In addition to serving as a platform for Canadian artists, Canadian radio provides local and regional news in communities large and small and serves as an emergency alerting system during crises like the Ottawa-Gatineau tornadoes or the Fort McMurray wildfires. Imposing millions of dollars in new royalty obligations would undoubtedly serve the interests of foreign conglomerates while exacerbating the challenges of a vital Canadian medium. It would not be in the public interest.

<u>The Definition of "Sound Recording" Should be Maintained</u>

The multi-national record labels similarly seek to expand the definition of "sound recording" in the Act to collect additional royalties from Canadian broadcasters and exhibitors.

Corus urges the Committee to reject this proposal.

Section 19(1) of the Act grants equitable remuneration ('neighbouring rights') to "performers" and "makers" (which include labels) for the public performance or communication by telecommunication of published sound recordings of musical works. In other words, Section 19 permits performers and labels to collect royalties for the unintended or unauthorized use of their sound recordings, such as by radio stations.

Section 2 of the Act defines "sound recording", and excludes "any soundtrack of a cinematographic work where it accompanies the cinematographic work." Parliament

[1] CRTC Communications and Monitoring Report, 2017, Section 4.1, page 123.
[2] Standing Committee on Canadian Heritage, 42nd Parliament, 1st Session, September 25, 2018
[3] Testimony before Standing Committee on Canadian Heritage, 42nd Parliament, 1st Session, September 18, 2018

thus excluded sound recordings on film and television sound tracks from the definition, and performers and record labels cannot collect royalties for that use. The reason for the exclusion was simple: performers and record labels are already compensated for that use.

When sound recordings are used in film or television soundtracks this use is fully controlled and authorized by the rights-holders. Broadcasters and exhibitors enter into agreements with rights-holders for that use and compensate them accordingly for compensation.

By contrast, the neighbouring rights regime in Section 19 is intended to compensate rights-holders for uncontrolled, unauthorized use of their works. The labels thus propose to expand the neighbouring rights regime beyond its intended purpose. Numerous Canadian courts have rejected the music industry's interpretation of "sound recording" over the years for this very reason.[4]

To reiterate, broadcasters already pay for use of sound recordings in television soundtracks. We urge the Committee to reject this attempt by large foreign conglomerates to 'double-dip' at the expense of Canadian media businesses. We further urge performers to pursue more equitable arrangements with their labels and publishers to the extent they believe they are undercompensated for their work.

The "Time-Shifting" Exception Should Remain Unchanged

In 2012, Parliament adopted an exception to copyright infringement that allows users to record a television program for later viewing, a practice often referred to as 'time-shifting.' Section 29.23 of the Act contemplates a single-use, time-limited recording for each user, which may only be made for their own "private purposes."

When recordings are made in the cloud, the cloud is often referred to as a network personal video recorder ("**NPVR**"). In testimony before the Committee, TELUS Communications Inc. ("**Telus**") recommended expanding the time-shifting exception within NPVRs to allow for the sharing of "a single recording of a program among all

[4] Re:Sound v. Motion Picture Theatre Associations of Canada, 2012 SCC 38, affirming 2011 FCA 70 and the Federal Court of Appeal's dismissal of an application for judicial review from the decision of the Copyright Board dated September 16, 2009 ("Reasons for the decision dealing with NRCC Tariffs 7 and 9", the "Copyright Board Decision"). In particular, see the Copyright Board Decision at para 31: "The performer and maker, having authorized the inclusion of a performance or sound recording in a movie soundtrack, are precluded from exercising both their respective copyright (including the rental right) and their remuneration right, when the soundtrack accompanies the movie."

the users who initiated a time-shifted recording of that particular program … without any additional liability being incurred by the network operator.”[5]

The Committee ought to reject this proposal.

Telus cites the avoidance of “excessive duplication” and “waste” for network operators as key reasons for its proposal. While presented as a cost and efficiency issue, which is laudatory, the likely effect of the proposal would be to deprive copyright owners of revenue.

Copyright owners negotiate compensation for different ‘windows’ of rights to their content, which include, for example, discrete territorial linear broadcasting rights windows, and video-on-demand windows. Granting network operators the right to record and store a program for access by multiple customers would enable users to record hundreds of hours of programming and build an entire library of content. This could, in turn, incent users to avoid paying for video-on-demand and home video versions of that content, driving down demand for those rights windows. The result of this would be to depress the value of certain Canadian rights windows and further erode the discrete Canadian rights market - where territorial rights to programming from US-based studios is secured – further threatening to undermine a critical part of the Canadian broadcasting business.

On balance, we do not believe dramatically expanding the Section 29.23 exception to permit multiple, time-unlimited copies of programs within an NPVR is in the public interest. As Shaw Communications Inc. noted during testimony at Committee, “Canadian law strikes the correct balance between incenting investment in network services and ensuring that these services support the integrity of copyright.”[6] As such, Corus believes the existing exceptions, including Section 29.23, should be maintained.

New Enforcement Powers to Combat Piracy

As mentioned, Corus believes the Act should be largely maintained in its current form. We do, however, support one amendment: providing greater enforcement tools to combat piracy. This Committee has heard ample evidence on this issue during these proceedings. We will only reinforce that piracy is content theft, the problem is pervasive and it is making it even more difficult to build a sustainable, internationally competitive Canadian content ecosystem.

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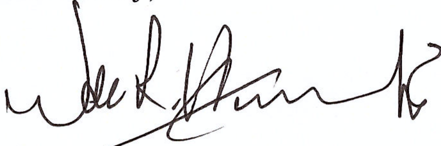
[5] Testimony of TELUS Communications Inc. before Standing Committee on Industry, Science and Technology, 42nd Parliament, 1st Session, October 1, 2018.

[6] Testimony of Shaw Communications Inc. before Standing Committee on Industry, Science and Technology, 42nd Parliament, 1st Session, September 26, 2018.

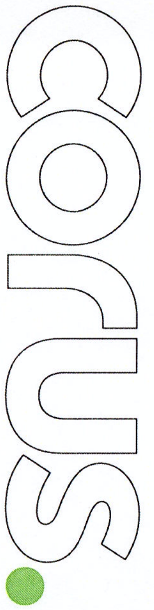
Corus therefore supports amending the Act to empower the Federal Court of Canada to address the issue of access to websites that are found to be infringing.

Thank you for the opportunity to provide these comments.

Sincerely,



Dale Hancocks
Executive Vice President and General Counsel
Corus Entertainment Inc.



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