



February 20, 2012

Cathy McLeod
Member of Parliament
Kamloops-Thompson-Cariboo Constituency Office
979 Victoria Street
Kamloops, BC V2C 2C1

Re: Bill C-11

Dear Ms. McLeod:

We congratulate you and the Government for the introduction of legislation to amend the copyright law of Canada. It is long overdue and reflects this Government's stated goal of putting Canada into a position of competitiveness. We are greatly supportive of that, and were proud to participate in a nation-wide radio campaign in 2011 in which the industry committed over 10,000 spots of airtime worth approximately \$600,000 to publically demonstrate that support for the Government's action on copyright.

While we continue to be supportive of copyright reform, the radio stations across Canada need a technical change to the proposed Bill C-11. In order to avail ourselves of the currently drafted exception for incidental copying done to facilitate the broadcast, radio stations must delete our entire catalogue of music (on average 5000 artist tracks) every 30 days. With a 30 day limitation, the exception can't work, and Bill C-11 offers nothing to address the unfair multiplication of payment required for broadcasting.

You will be familiar with our 2 local stations, 98.3 CIFM (CIFM-FM) and B-100 (CKBZ-FM). These radio stations create value in music and are a fundamental element of cultural life. The international record labels have recently stepped up misleading comments about private radio. The contributions private radio makes directly to artists have increased substantially in the last ten years, far faster than the rate of revenue growth for private radio. In fact, radio's contribution forms a significant portion of the total value of the independent Canadian music industry. We are doing more than our share for artists, and along with direct financial contributions, we promote and have launched many young artists' careers.

We acknowledge that artists should be paid for their work. We too are in business. As an industry, radio broadcasters paid about \$65 million last year to artists for the performance of their music. Our payments for performance to Canadian and international composers, publishers and artists have increased by 63% in just the last decade. The new legislation will not change that. Bill C-11 seeks to correct a mistake that was made during the last major round of copyright reform that led to unfair multiplication of payments.

In 1997, the music industry asked the Liberal Government for a change in the law to help them stop the unauthorized copying of records and CD's. Radio and legal experts agreed that this was

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needed. The legal experts called for a new right to be introduced and suggested an exception for broadcasters. At the time, they called it an ephemeral exception. When the new right was being debated, music industry representatives said they would not charge Canadian broadcasters for the incidental copies of music we make to use in our broadcasts.

But the industry representatives misled the government and once the law changed they filed for a huge tariff which, when certified, almost doubled what we had to pay the big multinational record labels. And that Liberal tax has increased by 483% over the last decade as more layers of payment are added on top.

The main opposition to our request is the assertion that Canadian artists benefit from the money we have to pay for the reproduction right, and they will lose \$21 million directly out of their pockets if radio gets an exception. This is a gross exaggeration. The vast majority of that \$21 million goes to the international labels and publishing houses and almost none ends up with any artist, let alone a Canadian one. This was confirmed by the artists who appeared in front of the Special Legislative Committee on Bill C-32. The structure of the music industry and the tariffs themselves show clearly that it is foreign corporations that will miss out on the \$21 million, not Canadian artists.

We have heard from some departmental officials that the Government's intent was merely to provide a temporary exception, and that the legislation as currently drafted includes an exception and it applies for 30 days. As noted above, 30 days does not provide a meaningful exception. As a matter of practice, your office would find it extremely inefficient if they had to re-enter your Kamloops-Thompson-Cariboo constituent mailing list data once a month. Let's say that process took five minutes for each entry and you had to do a couple of thousand each month. You get the picture. It is a big job and deleting and reconstituting the same information is a time and money waster. Requiring radio to do that would fly in the face of the Government's stated wish to make Canada more efficient and competitive.

Ensuring the reproduction right exception is effective will make a significant difference to the future of radio and the future success of local business and will promote jobs in your riding. It is also about the future of the best place for MP's and Ministers to reach constituents. Radio is connected to local issues and is about the only place where the Prime Minister can talk to local Canadians in each riding about an important event on Election Day. Furthermore, we employ people in ridings and we help local retailers and other businesses to get their message out to the local community in ways and at times that other media can't or won't do. Local radio fills a need that no medium does as well.

Radio has withstood technological change over the past century and continued to remain relevant and important to Canadians. In order to take advantage of the new Canadian digital economy, like other businesses we need the *Copyright Act* to support our growth and innovation, not stand in its way. Without our proposed technical amendments (attached) radio stations would have to back track innovation and operate as they did in 1995 to limit this unnecessary liability. This is neither progressive nor logical given this Government's commitment to providing businesses with the necessary tools to remain competitive in the new digital economy.

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For all these reasons, I am asking that Bill C-11 be amended to provide for a real exception process that will still help artists protect their music while helping us to create the value in that music that we have been doing for almost a century. We have given this language to your colleagues and attach it for convenience.

I appreciate your time on this matter, and would welcome an opportunity to discuss this with you at your convenience.

Sincerely,

A handwritten signature in blue ink that reads 'Rick Arnish'.

Rick Arnish
President/General Manager
CIFM-FM and CKBZ-FM

Attachment: Proposed amending language for Bill C-11

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Canadian Association of Broadcasters
Association canadienne des radiodiffuseurs

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.