

**Written Submission for the  
Pre-Budget Consultations  
in Advance of the 2020 Budget**

**August 2, 2019**



**Canadian Private Copying Collective**

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## List of Recommendations

- Recommendation 1:** That the government create in Budget 2020 a 4-year Private Copying Compensation Fund (PCCF) of \$40 million per year, to compensate music creators for unlicensed private copies made of their music on an interim basis until a more permanent solution can be found through legislative change.
- Recommendation 2:** That the government draw the necessary funds for the creation of the PCCF from the proceeds from existing and future spectrum auctions.

## Background

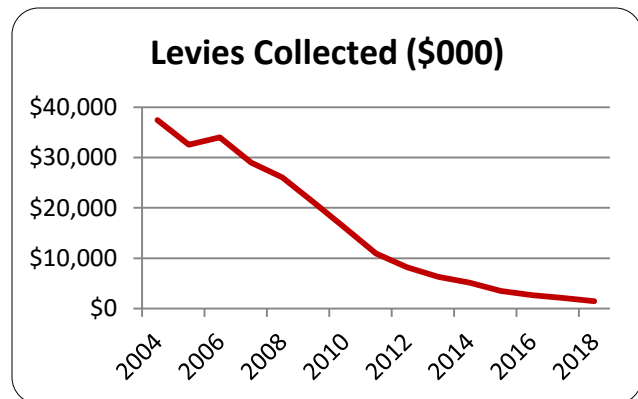
The Canadian Private Copying Collective (CPCC) is an umbrella organization whose member collectives represent recording artists, composers, songwriters, music publishers and record companies. Under the *Copyright Act*, manufacturers and importers of blank audio recording media pay CPCC a small levy for each unit imported and sold in Canada, to compensate music creators for unlicensed private copying of their work.

**private copying:** *making copies of your music collection for your own personal use, anywhere, anytime.*

Private copying presents a unique challenge: technology has made it increasingly easy for consumers to copy music, but it is not always possible for rightsholders to authorize, prohibit or monetize those copies. In recognition of this challenge, Canada's *Copyright Act* was changed in 1997 to **allow Canadians to copy music** onto audio recording media for their private use. In return, the **private copying levy was created to remunerate music creators** for that use of their music.

Every stream of income from copyrighted music is essential for creators attempting to cobble together a living from their creative output, particularly Canada's many up-and-coming artists and small music companies. **Private copying levies are payment for a use of music that is different from any other use.** Music rightsholders are remunerated when (for example) their work is streamed, used in audiovisual works, or performed live, but they must also be remunerated when people make copies for their own use. Copies have value or no one would make them.

For many years since its creation, the private copying regime was an important source of earned income, generating a total of over **\$300 million in revenue for over 100,000 music creators**. Unfortunately, the regime has been **limited since 2008 to a single blank audio recording medium, now virtually obsolete: recordable CDs**. That means compensation for music creators has plummeted from **\$38 million in 2004 to \$1.5 million in 2018** – even as **annual copying activity doubled from 2004 levels to over 2 billion tracks of music in 2016**.



By contrast, **global collections for private copying rose by 6% between 2007 and 2015**<sup>1</sup>. Most of the almost **40 countries around the world** with healthy private copying regimes – including Austria, Belgium, Croatia, France, Germany, Hungary, Italy, Netherlands, Portugal and Switzerland – extend

<sup>1</sup> *International Survey on Private Copying, Law & Practice 2016*, WIPO and Stichting de Thuiskopie, p15  
[https://www.wipo.int/edocs/pubdocs/en/wipo\\_pub\\_1037\\_2017.pdf](https://www.wipo.int/edocs/pubdocs/en/wipo_pub_1037_2017.pdf)

levies to a wide variety of media and devices.<sup>2</sup>

## Current Situation

Streaming may have taken over from the days of burning CDs, but Canadians still make and value private copies. **Wherever possible, rights holders now license the streaming, downloading and other copying of their music, but the reality is still that not all copying can be licensed,** including copying of music originally obtained as an illegal download, or by stream-ripping.

In a **March 2019 national survey, we asked almost 10,000 Canadians (age 13+)** about the tracks of music stored on their cell phones and tablets for listening offline. The findings:

<b>5.95 BILLION</b>	<b>TRACKS OF MUSIC ARE CURRENTLY STORED ON CANADIANS' PHONES &amp; TABLETS</b>
<b>1/2</b>	OF THE COPIES WERE MADE IN THE PRIOR 12 MONTHS
<b>1/2</b>	OF THE COPIES WERE PAID FOR THROUGH LICENSED DOWNLOADING AND STREAMING SERVICES
<b>1/2</b>	OF THE COPIES WERE <b><u>UNLICENSED</u></b>

Unlicensed, and no levy – that is **a lot of revenue out of the pockets of music creators**. The situation is increasingly urgent as **Canadian music creators' income from many other sources has also been in decline**, in part due to additional exceptions to copyright introduced in the 2012 revisions to the *Copyright Act*.<sup>3</sup> If Canada doesn't protect their ability to earn income, we will lose music creators and all of the cultural and economic benefits they bring us.

Meanwhile, **the ability to store music on these devices increases their value and sales, to the benefit of large technology companies**. In fact, the price of a multi-functional device reflects the value of many such features, like Bluetooth, even though not every consumer uses every function. As the Copyright Board of Canada has said: **"there is value in the option to private copy, even for those who choose not to exercise that option."**<sup>4</sup>

With minimal revisions to Canada's *Copyright Act*, the private copying regime can be restored to what it was originally intended to be: a flexible, technologically neutral system that monetizes private

<sup>2</sup> <http://www.wipo.int/publications/en/details.jsp?id=4183>; and <http://www.cisac.org/What-We-Do/Legal-Policy/Private-Copying-Global-Study>

<sup>3</sup> See in particular Section 2 of Music Canada's study 'The Value Gap' <https://musiccanada.com/resources/research/the-value-gap-report/>

<sup>4</sup> Copyright Board Decision on Private Copying III, 2003-2004, pp 26-27

copying that cannot be controlled by rights holders – without undermining legitimate online music services. The CPCC therefore actively participated last year in the government’s Parliamentary Review of the *Act*, but well before any resulting new legislation could be enacted, **compensation from the current levy regime may cease entirely.**

Further, the ability of the collective itself to continue to operate and maintain its already-minimal infrastructure (2 employees) 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.

## **Solution**

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. Therefore, until rights holders can be remunerated through a technologically neutral private copying regime, an interim Private Copying Compensation Fund is urgently needed.

### **Recommendation 1:**

**The CPCC asks that the government create in Budget 2020 a four-year Private Copying Compensation Fund of \$40 million per year, to compensate music creators for unlicensed private copies made of their music 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 would continue to receive compensation for the huge volume of unlicensed 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 every five years in order to ensure the amount of compensation remained fair.

The CPCC’s requested \$40 million Fund corresponds to what the European average levy on smartphones (CDN\$2.80) would generate on annual Canadian sales of the smartphones and other devices where most private copies are currently made. It also aligns with the average annual revenue from CPCC’s five peak years (plus inflation), representing remuneration for the majority of unlicensed private copying activity at that time.

As an **interim measure, for the years 2020-2023**, a constant PCCF 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 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 PCCF to the CPCC**, with its existing infrastructure and policies, agreed to by its member collectives (representing recording artists, composers, songwriters, music publishers and record companies), the government would **ensure this important remuneration reaches its intended recipients efficiently and accurately.**

## Source of Funding

### Recommendation 2:

**The CPCC recommends the government draw the necessary funds for a four-year interim Private Copying Compensation Fund from the proceeds of existing and future spectrum auctions.**

The 2018 Digital Consultations undertaken by Canadian Heritage included significant discussions related to funding options to stimulate Canadian content creation, including utilizing a percentage of the proceeds from recent and future auctions of wireless spectrum frequencies. To date, these auctions have brought almost **\$18 billion** into general revenues for the government. The value of the planned 2020 auction of the 3500 MHz range (which will power 5G networks across the country) is expected to be even greater. The amounts garnered from these auctions to date have far exceeded the government's targets, and are expected to continue to do so.

The standard terms of sale of the licences require payment over a twenty-year period, leaving significant revenues available for an interim PCCF on a short-term basis, prior to legislative change to the *Copyright Act*. The CPCC submits that drawing from these proceeds for the PCCF would be a **perfect interim solution.**

## Industry Support

The recommended interim Fund has broad-based sector support. In January 2018, the following 15 trade organizations and music licensing bodies underscored their support for the measure in a letter to Ministers Morneau and Joly on behalf of the music industry across the country, asking that the PCCF be created in Budget 2018:

- Alliance of Canadian Cinema, Television and Radio Artists (ACTRA)
- Association québécoise de l'industrie du disque, du spectacle et de la vidéo (ADISQ)
- Association des professionnels de l'édition musicale (APEM)
- Artisti
- Canadian Independent Music Association (CIMA)
- Canadian Music Publishers Association (CMPA)
- Canadian Musical Reproduction Rights Agency Ltd. (CMRRA)
- Music Canada

- Connect Music Licensing
- Musicians' Rights Organization Canada (MROC)
- Re:Sound Music Licensing Company
- Screen Composers Guild of Canada (SCGC)
- Society of Composers, Authors and Music Publishers of Canada (SOCAN)
- Society for Reproduction Rights of Authors, Composers and Publishers in Canada (SODRAC)
- Société de gestion collective des droits des producteurs de phonogrammes et de vidéogrammes du Québec (SOPROQ)

Since then, further support for the interim Fund and/or legislative change came from 30 organizations and individuals in testimony at INDU and CHPC meetings and in written submissions to the Standing Committees as part of the statutory review of the *Copyright Act*.

## Conclusion

Streaming may now dominate the music market, but Canadians continue to make and value copies of music for their own private use – **over two billion a year since 2010**. Technology-neutral private copying levies are internationally recognized as the best solution to provide compensation to rightsholders for those copies that cannot be licensed. But while we work toward that legislative solution, the Private Copying Compensation Fund is urgently needed to protect creators and the music Canadians love.

In advance of the **2019 Budget**, **FINA's pre-budget report included the following recommendation:** *"Work with the Canadian Private Copying Collective to examine both an interim and permanent solution to ensure rights holders continue to receive compensation for unlicensed private copies made of their music."* As neither solution has yet been put in place, **we ask the new Finance Committee members in the 43<sup>rd</sup> Parliament to renew the support received in the last Parliament and help make an interim solution a reality in Budget 2020.**

We appreciate the opportunity to provide this submission and would welcome the chance to appear before the Committee as part of the Pre-Budget 2020 hearings.

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