



SOCAN

Written Submission for the Pre-Budget Consultations in Advance of the Upcoming 2024 Federal Budget

By: Society of Composers, Authors and Music Publishers of Canada (SOCAN)

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Recommendation 1: Ensure the *Copyright Act* Protects Creators in the Context of Artificial Intelligence

That the Government ensure a) that artificial intelligence systems comply with fair market principles to obtain licences and compensate copyright owners for the use of their works, and b) that no new exemptions from copyright or other intellectual property rights are created.

Recommendation 2: Clarify the exemption at section 32.2(3) in the *Copyright Act*

That the Government amend the language of the exemption at section 32.2(3) of the *Copyright Act* to clarify that the exemption only applies where an organization acts “without motive of gain.”

Recommendation 3: Modernize private copying

That the Government amend the *Copyright Act* to make the private copying regime technologically-neutral and confirm the ability of the Copyright Board to set levies for unlicensed private copies made on audio recording media and audio recording devices.

Recommendation 4: Clarify enforceability of copyright tariffs

That the Government amend the *Copyright Act* to clarify that tariffs approved by the Copyright Board of Canada are enforceable against users of copyright-protected works for uses that fall within the ambit of an approved tariff unless the user has already obtained a valid licence for the use.

Background

1. Society of Composers, Authors and Music Publishers of Canada (SOCAN) is Canada's largest rights management organization. SOCAN has over 185,000 songwriter, composer, and music publisher members and clients, and licenses tens of thousands of businesses and organizations across Canada. SOCAN issues licences for the performing rights and reproduction rights of musical works and collects and distributes royalties to its members and the international rights management organizations with which it has reciprocal agreements.
2. In 2022, SOCAN collected \$483.8 million in licence fees and distributed \$362.6 million to copyright owners.

Recommendation 1: Ensure the *Copyright Act* Protects Creators in the Context of Artificial Intelligence

3. Authorship and original expression are the very foundation of the *Copyright Act*. These fundamental concepts are defined by a large body of jurisprudence and legislation both national and international that has developed over time and in response to successive waves of technological innovation. The concepts of authorship and original expression have proven to be quite flexible in adapting to the development of increasingly complex tools used to assist in the creative process. Legislative solutions should strive to build on these fundamental concepts when addressing the challenges that may be posed with the advent of AI.
4. SOCAN would have serious concerns should the Government entertain proposals that attempt to create new exceptions in the *Copyright Act* to allow the use of creators' works without permission and compensation. We are only starting to uncover the full potential and implications of AI in the creative sphere. We are also only beginning to understand the potential disruptive effect of AI on cultural activity and economic business models. SOCAN urges the Government to ensure that the balance and policy objectives of the *Copyright Act* are preserved, namely, to foster creativity and allow creators and their representatives to continue to have the means to control how their works are used, by whom, and on what terms.

Recommendation 2: Clarify the exemption at section 32.2(3) in the *Copyright Act*

5. The *Copyright Act*, at section 32.2(3), provides an exception for the payment of royalties for the public performance of music when the performance is "in furtherance of a religious, educational or charitable object" by a religious, educational or charitable organization. Some organizations rely on this provision as *carte blanche* for refusing to pay music creators when they perform their music, even when the performances are for an ordinary business purpose.
6. No other creative profession (including filmmakers, literary authors, or visual artists) is legislatively required to subsidize the use of their works by charitable, religious or educational organizations. These organizations, regardless of the purpose for which they are using literary, dramatic, artistic or cinematographic works, must properly remunerate the creators and artists for those uses.
7. We recommend that the Government amend section 32.2(3) to state:

“32.2(3) No religious organization or institution, educational institution and no charitable or fraternal organization shall be held liable to pay any compensation for doing any of the following acts without motive of gain in furtherance of a religious, educational or charitable object: ...”

8. The language “motive of gain” exists in the exemption for agricultural exhibitions and fairs in section 32.2(2). This language has been judicially considered by the Supreme Court of Canada and interpreted such that a performance that is “without motive of gain” means that the performers cannot be paid and the exhibitors cannot receive private profit.¹

Recommendation 3: Modernize Private Copying

9. The introduction of private copying in the Copyright Act in 1997 addressed the then-revolutionary technological advances in recording technology that provided ordinary Canadians the means to copy sound recordings onto audio-cassettes and blank compact discs for their personal use and enjoyment, while music copyright owners could not authorize, prohibit or monetize those copies. The private copying regime covered this gap by levying the blank audio recording media used to make these copies, and distributing the collected royalties to music copyright owners to compensate them for these copies of their works.
10. Unfortunately, the private copying levy has not changed with new technological advances and only applies to blank compact discs when most of the current unlicensed private copying is done on devices like smartphones and tablets to which the levy does not apply. For years now, the large technology companies have been enjoying the benefits and profits from facilitating private copying but have not been obliged to share those profits with music copyright owners. As a result, the annual royalties collected under the private copying levy have plummeted – from \$38 million in 2004 to less than \$1 million in 2022 – even though annual private copying activity has more than doubled.
11. We recommend that the Government amend the Copyright Act to make the private copying regime technologically-neutral and confirm the ability of the Copyright Board to set levies on audio recording devices, to capture the value of unlicensed private copying that uses current and future technologies.
12. SOCAN supports the pre-budget submission of the Canadian Private Copying Collective (CPCC) on this important recommendation.

Recommendation 4: Clarify the enforceability of copyright tariffs

13. Collective management of copyright and the tariff regime exist to address the inefficiencies of licensing and enforcing rights on an individualized basis. Collective management benefits both copyright owners, users, and the public at large. In the Copyright Board’s 2021-2022 Annual Report, royalties generated by Copyright Board tariffs were estimated to be \$662 million in 2020.
14. The Supreme Court of Canada in *York University v. The Canadian Copyright Licensing Agency (Access Copyright)*, 2021 SCC 32 held that tariffs approved by the Copyright Board of Canada are not

¹ See *Composers, Authors and Publishers Association, Limited v. Western Fair Association*, 1951 CanLII 5 (SCC), [1951] SCR 596.

enforceable against users who “opt out” of the tariffs. The only available remedy for copyright owners against such users is an action for copyright infringement.

15. This decision introduces unpredictability and inefficiencies in the entire system of collective management, to the detriment of copyright owners and users alike.
16. We recommend that the Government clarify that tariffs approved by the Copyright Board of Canada are enforceable against users of copyright protected works for uses that fall within the ambit of an approved tariff unless the user has otherwise obtained a valid licence for the use.

Conclusion

17. The creative industries are an important economic sector in Canada. It is paramount that the *Copyright Act* continues to serve its objective to foster human creativity and that it continues to provide rights holders with a just reward for their creation.
18. Ensuring a strong copyright framework is critical to help future generations of Canadian music creators and publishers.
19. We thank the Government for the opportunity to contribute to this important process.