

**Written Submission for the
Pre-Budget Consultations
in Advance of the 2019 Budget**

August 3, 2018



Canadian Private Copying Collective

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List of Recommendations

- Recommendation 1:** That the government create in Budget 2019 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. The private copying levy is collected by the CPCC to compensate these music creators for unlicensed private copying of their work.

Like other Canadians who make and market a product, music creators depend on revenue from the sale and use of the music they create for their livelihood. Music has both artistic and monetary value. Unfortunately, music creators don't enjoy the same kind of safeguards that makers of other products have to ensure they are fairly compensated when their work is used. They rely on copyright.

Copyright is a bundle of rights allowing creators to authorize, prohibit and monetize the use of their work. Every stream of income from copyrighted music is essential for creators attempting to cobble together a living from their creative output. **Private copying levies are payment for a use of music that is different from any other use.** Music rights holders need to and should get paid, for example, when their work is streamed, when it is used in audiovisual works, or performed live, *and* when people make copies for their own use. If private copies did not have value, no one would make them. However, private copying presents a unique challenge: technology has made it increasingly easy to copy music, but it remains impossible for rights holders to authorize, prohibit or monetize much of that activity.

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. Under the *Act*, manufacturers and importers of blank audio recording media pay a small levy for each unit imported and sold in Canada.

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, enabling them to continue to create and commercialize important cultural content – ensuring they remained competitive. Unfortunately, the regime has been limited since 2008 to a single blank audio recording medium, now virtually obsolete: recordable CDs.

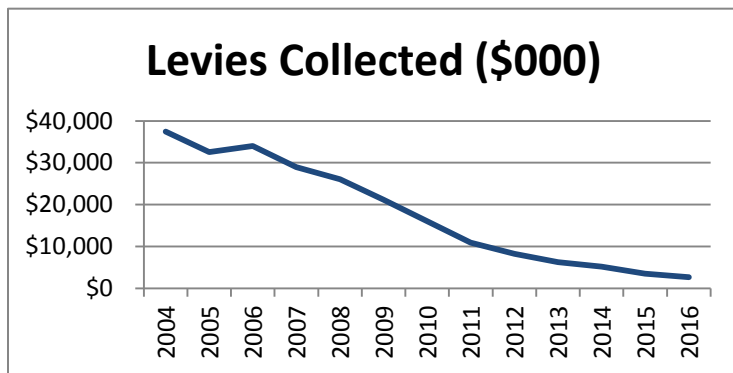
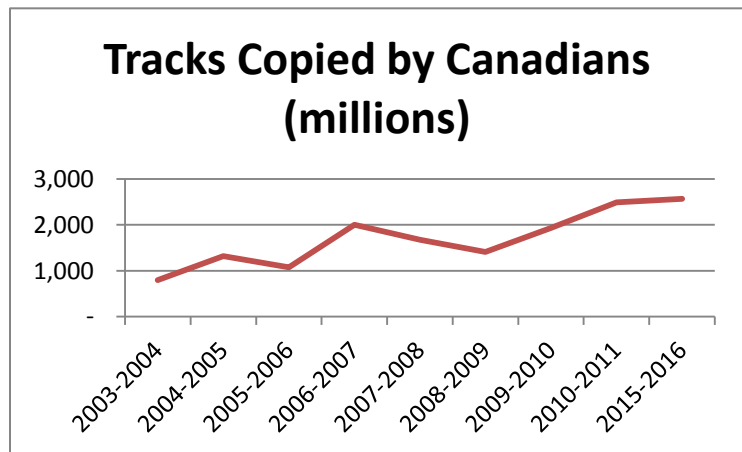
The Situation:

Canadians are making more copies of music than ever before, but they are making those copies onto state-of-the-art devices such as smartphones¹, while the use of recordable CDs to copy music (or for any other purpose) has rapidly declined. As a result, the revenue

¹ Based on our latest research, CPCC estimates that in June 2018 there were 18.3 billion tracks of music stored on cell phones and tablets in Canada.

collected for music creators for private copying is also rapidly declining.

Canadians copied over 2 billion tracks of music in 2016 – more than double the copies made in 2004.



Over that same period, annual revenues from the private copying levy to Canadian music creators plunged from a high of \$38 million in 2004 to less than \$3 million in 2016.

By contrast, *global* collections for private copying rose by 6% between 2007 and 2015. Most of the almost 40 other countries around the world that have healthy private copying regimes extend levies to a wide variety of media and devices, like smartphones and tablets - including Austria, Belgium, Croatia, France, Germany, Hungary, Italy, Netherlands, Portugal and Switzerland.²

Many of Canada’s up-and-coming music artists and music companies are truly small businesses – people working from pay-cheque to pay-cheque, with every revenue stream being crucial to their survival. They invest a significant amount of money into making and marketing music and, in the past, the levy assisted them tremendously to be more productive and to ensure their competitiveness.

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

The matter 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*. New challenges have also arisen as the music industry continues to become more global in nature and more IT-intensive. It is already an expensive and risky proposition to achieve success at home, but now our artists and companies must invest more resources than ever to expand their international market share, and to interact with the various technologies that facilitate micro-payments. If Canada doesn't protect their ability to earn the income that pays for these essentials, we will lose music creators and all of the cultural and economic benefits they bring us.

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 copying that cannot be controlled by rights holders – without undermining legitimate online music services. The CPCC is therefore actively participating in the current Parliamentary Review of the *Act*, but well before any resulting new legislation could be enacted, it is very likely that **compensation from the current levy regime will cease entirely**.

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

The 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 2019 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 received compensation for the hundreds of millions 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 on a five-year basis 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 2019-2022, 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, in the Board's opinion, 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

The recent Digital Consultations undertaken by then-Heritage Minister Joly included significant discussions related to funding options to stimulate Canadian content creation, including the proceeds from recent and future auctions of wireless spectrum frequencies. The 2014 and 2015 auctions brought almost \$8 billion into general revenues for the government. The planned 2019 auction of the valuable 600 MHz range to wireless carriers is anticipated to bring an additional \$8-10 billion in revenue, with an even more substantial 5G spectrum auction in the 3500 MHz range on the horizon for 2020. 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 ten-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.**

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.

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
- 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)

Several of these same groups and others, representing record companies, recording artists, music publishers, composers and songwriters, testified to their ongoing support at INDU and CHPC meetings this spring as part of the Parliamentary 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. The private copying levy system is the best mechanism to compensate rights holders for those

copies that cannot be licensed. The CPCC is committed to working with the Federal Government and all stakeholders in the music industry to find a permanent solution that will ensure rights holders continue to receive compensation for unlicensed private copies made of their music. Until then, the Private Copying Compensation Fund is urgently needed to ensure our creators can be productive and competitive at home and globally.

We appreciate the opportunity to provide this submission and would welcome the chance to appear before the Finance Committee as part of the Pre-Budget 2019 hearings in the fall.

For more information, please contact:

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