

## OPINION

# Copyright: this is not a tipping point, it's a breaking point



Photographs by Jake Wright, *The Hill Times*

**Copyright Act heats up:** Industry Minister Jim Prentice and Canadian Heritage Minister Josée Verner are responsible for the Copyright Act. Canada's private broadcasters want to address radio's unfair copyright burden, argues Glenn O'Farrell, who says radio needs an effective reproduction right exception.

BY GLENN O'FARRELL

As far as Canada's radio broadcasters are concerned, successive initiatives to reform the Copyright Act have followed a blinkered path. Over the years, we have seen brokered amendments to the Copyright Act that have created a cumulative tariff burden that is pushing local radio to the breaking point.

Radio broadcasters are suffering from copyright pile-on. Fees have already risen from \$22-million in 1995 to \$74-million a year in 2006. Now, various rights-holders are proposing increases for 2008 that would, all told, push the bill to more than \$200-million per annum. That would amount to a hyperbolic cost increase of more than 170 per cent, just in the last two years.

Applying the same percentage increases to the price of a CD, that shiny little compact disk would set consumers back \$109.

While private radio contemplates the impact of such major new expenses, it's essential to keep in mind that broadcasters fully appreciate the importance of paying their fair share of copyright to compensate artists. Broadcasters have been paying the fees for more than 80 years. At the same time, radio does a great deal more in promoting emerging Canadian artists and bringing the sounds of new music to our listeners than any other media sector. As the Canadian Music Week conference rolls out March 5-8, with its panels and keynotes, and performers generating buzz—as Arcade Fire, Nelly Furtado, Michel Rivard, K-OS and Michael Bublé did in years past—new waves of Canadian talent are primed for 'discovery.' Broadcasters are primed to partner with the recording industry to promote rising artists on-air and artists, in turn, regularly give the radio industry credit for their success.

In fact, radio is soaring to great heights in helping to bring audiences the new talent. Figures for 2001-2006 indicate Canada's broadcasters have pumped more than \$100-million into industry initiatives and funds that support talent development, funds such as Radio Starmaker/Fonds Radiostar, FACTOR and MusicAction.

There isn't any business model that can be expected to sustain comparable combined cost escalations without facing a breaking point on its horizon. And that's

where private radio currently finds itself.

The Canadian Association of Broadcasters (CAB), representing Canada's private broadcasters, wants legislators to address radio's unfair copyright burden. Amendments to the Copyright Act need to include a meaningful reproduction right exception for broadcasters so stations would not incur expensive new fees based on this right. Here's a brief background: when radio stations were simply playing a song directly from a vinyl record, the airing triggered the payment of certain copyright fees to copyright holders. But when stations began to transfer songs from CDs to a computer hard drive for airing via music management software, rights holders came forward to claim a new fee, based on the reproduction right.

If a new fee proposed by the record labels is approved, additional payments from Canadian broadcasters to the labels—many based outside Canada—are expected to total approximately \$50-million per year. In claiming this fee, these labels are looking to take advantage of a provision in Canada's Copyright Act to compensate themselves for losses they say they have incurred via internet downloading. Rather than adapting their business models to the opportunities presented by evolving digital media, the labels are engaging in what is essentially an abuse of the principles of the Copyright Act. The act looks to balance creator and user rights but fails to recognize that broadcasters add tremendous value to the songs they air.

Radio needs an effective reproduction right exception.

Just as broadcasters strive to promote a Canadian identity that reflects all elements of Canadian culture and talent, and to balance that promotion with fair remuneration for all the players in the recording industry, the revised Copyright Act must respond to the technical realities of the broadcasting industry and help broadcasters fulfill their cultural mandate. In essence, the government needs to restore a true balance between the rights of creators and users. As MPs and Senators consider the diverse interests on copyright, they should consider this unequivocal message: radio broadcasters are at the tariff breaking point.

*Glenn O'Farrell is the president and CEO of the Canadian Association of Broadcasters.*

news@hilltimes.com  
The Hill Times