

Executive Summary

The Canadian Association of Broadcasters (CAB) welcomes this opportunity to formally state its perspective on Bill C-32, *The Copyright Modernization Act*. The most important challenge for the broadcasting industry is copyright and copyright reform, particularly the establishment of a fair and balanced copyright tariff regime that reflects the important contributions of all those who generate success and wealth in the Canadian cultural sphere. By taking on this key broadcaster challenge and including a broadcaster reproduction right exception, Bill C-32 achieves an important objective for our industry and goes a long way to reducing unnecessary and unfair duplication in royalties paid out by broadcasters. We support passage of a Bill C-32 that contains a broadcaster exception.

Here's why the broadcaster exception is essential:

- **Broadcasters already pay for the right to play music.** Paying five times for the same thing represents an unfair burden by any standard.
- Broadcasters make reproductions only to facilitate the broadcasting of the music we've already paid to use. **No new use is made of the music, radio makes no additional revenues.**
- The types of reproduction engaged in by broadcasters **do no harm to the rights holder:** they do not encroach on the rights holders' content exploitation markets in any way.
- Copyright tariff payments are calculated as a percentage of revenues, which means a more **successful broadcasting sector translates into higher tariff payments**, even with an exception.
- The repeal of subsection 30.9(6) would **bring Canada's exception closer in line with the exceptions provided by the majority of G-20 countries.**
- Money that would otherwise flow outside the country to foreign multibillion dollar companies **will stay in Canada with 100% Canadian companies that invest substantially in Canadian artists and culture.**
- The broadcaster exception is consistent with other proposed exceptions such as the time shifting exception, which technically infringes the broadcasters' signal right. We understand that **common sense copyright exceptions are economically and socially sensible** and are not opposing the time shifting exception. The concept of a broadcaster exception is identical and should be afforded similar common sense treatment.
- **Governments have promised the broadcasting industry that it would get true exceptions from copyright liability** for these "technical reproductions" and conditions that will allow them to be competitive in the borderless new media environment.

1. The Canadian Association of Broadcasters (CAB) welcomes this opportunity to formally state its perspective on Bill C-32, the *Copyright Modernization Act*. This submission is complemented by submissions from a variety of regional broadcasting associations, as well as submissions from small, medium and larger broadcasters. We support the positions outlined in those submissions. We also support the submission of Hayes eLaw LLP in respect of proposed technical amendments to section 30.9 to ensure that the provision, as worded, will meet the Government's stated intention that radio broadcasters will no longer be required to compensate copyright owners for making reproductions in the context of their operations.
2. The CAB's copyright concerns are consistent with the stated objectives in this copyright reform process, and particularly with the need for balance, modernizing copyright to keep up with a fast-moving digital environment, and reflecting Canada to Canadians in a shrinking world.

Copyright Reform is Essential for Canada's Private Broadcasters

3. The CAB has a membership made up of more than 800 private broadcasters from the radio, television and specialty sectors (See Appendix A for complete list of CAB member companies). The CAB works collectively on matters of central importance to the industry and provides certain administrative and other functions that are to the benefit of the public and the radio, television and specialty/pay television sectors. The most important issue for the broadcasting industry is copyright and copyright reform.
4. The CAB member companies are perhaps the most important element of the copyright-based economy in Canada. Broadcasters find and fund artists through development projects. We then create value in works by generating awareness and audiences for their works that would not otherwise exist. This value creation takes many forms, the most important of which is free airplay which promotes the works, the artists and related money-making events for the artists such as concerts. Our value-add consists of both direct payment through development investment and royalties for use, and indirect benefits that generate sales of the works or tickets to events. This significant value that Canada's broadcasters create in musical works is not recognized by the current copyright tariff regime.
5. Copyright issues such as policy and tariff proceedings have a significant impact on radio, local television and specialty/pay broadcasters. The costs of using musical works have moved out of step with the economic value of the works. The radio sector's tariff liability has increased by over 140% in the last ten years while our use of music has not changed at all. Such increases are not reasonable or sustainable.
6. Copyright reform is of critical importance to private broadcasters. Our ability to effectively compete in a global communications environment depends on having a copyright regime that will allow our sector to succeed. We recognize the impacts of digital interactive technologies on

the music industry because we are an integral part of it. Multiple and layered tariffs constitute a significant impediment to our ability to maintain relevance to our audiences. We need to make investments to ensure a Canadian presence on the multiple digital platforms on which content is consumed. Taxing us through punitive and overlapping tariffs coupled with interminable administrative proceedings will do nothing to help the Canadian music industry. It will, however, greatly diminish our ability to foster and promote the Canadian artists that this debate is supposed to be about.

7. Private broadcasters support Bill C-32, the *Copyright Modernization Act*. As an industry whose business is to connect consumers with music and entertainment, our ability to compete in a highly fragmented media market is significantly hampered by the fact that we are required to pay the same recipients (often large multinationals) multiple times for the same use of music. Bill C-32 presents the best opportunity to date to achieve balance in copyright.
8. The inclusion of a reproduction right exception for broadcasters' purely technical transfers of format is an essential step in recognizing that incidental processes should not attract additional liability. By taking into account this key broadcaster issue, Bill C-32 achieves an important objective for our industry and goes a long way to reducing unnecessary and unfair duplication in royalties paid out by broadcasters. We urge passage of the Bill that includes a broadcaster exception. .

Private Broadcasters: A Key Element of Canada's Cultural and Economic Fabric

9. As key players within Canada's cultural fabric, broadcasters are essential to fulfilling the Government's cultural policy objectives in a variety of ways. Some of the ongoing benefits that broadcasters provide to Canada include the following.
 - (i) **Stimulating wealth; creating jobs**
10. In 2008-09, private radio, conventional television, and pay/specialty television generated revenues of \$6.58 billion. These revenues generate significant economic spinoffs – the indirect and induced impacts of private broadcasting on the Canadian economy. The Conference Board of Canada estimates that every dollar of direct GDP investment in culture (which includes broadcasting) generates indirect and induced impacts of \$1.84. Consequently, private broadcasters' \$6.58 billion in revenues, using the Conference Board multiplier, would represent \$12.1 billion in overall economic impact in Canada.
11. According to the Department of Canadian Heritage, the music sector generates \$3 billion in economic activity, of which commercial radio accounts for a large share (over 50%). Another 25% is derived from concerts and live music (gross revenues for live musical performances),

22.5% from recordings (total operating revenue of Canadian and foreign-controlled sound recording companies) and 4% is performing rights (music publishing). This indicates the significant contribution that broadcasters continue to make to the Canadian economy and highlights why copyright must work to enable that contribution to continue going forward.

12. In 2008, over 23,000 people worked in private broadcasting, for which the private broadcasting sector paid \$1.62 billion in salaries, wages and benefits. Nearly 13,500 people were employed in private conventional television and pay/specialty television in 2007. Private television (conventional and pay/specialty) spent about \$1 billion on salaries, wages and benefits, compared to \$1.1 billion spent on the same categories by film/video production, post-production and distribution firms in Canada (both Canadian and foreign-controlled). 10,500 people were employed in private commercial radio in 2008. Canadian radio paid \$612 million in salaries and other staff benefits in 2007, compared to some \$145 million paid in salaries, wages and freelance fees paid by Canadian and foreign-controlled sound recording publishing, studio, production and distribution firms in 2007.
13. In addition to these direct investments in the Canadian economy, private broadcasters make significant investments across Canada in a multitude of other ways. We have over 600 radio stations providing services to virtually all 308 electoral ridings in Canada. Local radio is the first and best provider of local news and reflection. Our industry helps raise tens of millions of dollars for various national and local charities in the communities we serve and we provide millions of dollars worth of free air time to promote various charities in our respective communities. Accordingly we don't just generate economic activity, we also give back substantially to the communities we serve.
14. ***The bottom line: private broadcasting generates wealth, creates jobs and significantly enhances the stature of Canada's cultural fabric and economic framework.***
15. It is essential that copyright reform decisions are made with an eye to ensuring the continuing health of the broadcasting sector, as broadcasters are integral to Canada's cultural fabric and a key player in Canada's economy. As creators of value within the system, broadcasters must be able to continue to innovate and evolve in order to deliver creative content to Canadians. Copyright reform must be undertaken with an intention to enhance this development and promotion, rather than restrict it. It follows that a weak broadcasting system would have a ripple effect on the other "feeder" copyright sectors and on the economy at large.

(ii) Best Friends of Canadian Talent

16. As noted above, broadcasters are not just passive conduits for the creative content they distribute to consumers. They add real value to the content through the manner in which it is programmed and packaged for distribution. By virtue of the business model – delivering

creative content to audiences in innovative and interesting ways – the music and audio-visual content conveyed through broadcasting receives substantial and meaningful promotion.

17. Radio airplay remains the primary method by which Canadians learn about new music. This promotional value represents a meaningful contribution to the success of artists. It is also incremental to the direct payments made for the use of copyright works.
18. For example, between 1998/99 and 2007/08 private radio paid \$569 million in copyright payments to SOCAN, the Neighbouring Rights Collective of Canada (NRCC, now known as Re:Sound), the Canadian Musical Reproduction Rights Agency (CMRRA) and Société du droit de reproduction des auteurs, compositeurs et éditeurs au Canada (SODRAC) for the use of musical works. Similarly, between 2001/02 and 2007/08, private conventional television paid an additional \$317 million in copyright payments to SOCAN.
19. On top of these royalty payments broadcasters also contributed millions to the development of Canadian talent and to the creation and broadcast of Canadian content and talent. In 2009, radio broadcasters contributed \$51 million to Canadian Content Development initiatives under the CRTC's applicable policies (See Appendix B – Commercial Radio's Social Cost).
20. In addition to these contributions, broadcasters also make direct contributions within their own communities to local events and initiatives supporting the music industry, nurturing community interest in musical artists. Here are just some of the many music industry initiatives that CAB radio members supported in 2009-10:
 - Winnipeg Jazz Festival
 - Kitchener-Waterloo Octoberfest concert series
 - City of Pembroke Music Festival
 - Waterloo Region District School Board for purchase of new instruments and sheet music
 - Mariposa Folk Festival
 - RNC Media-Antenne 6 bursary program to support students from the journalism program of Collège de Jonquière,
 - The Western Canada Music Awards
 - Les Rencontres de l'ADISQ
 - North by Northeast
 - Music Education Program of the Canadian Academy of Recording Arts and Sciences
 - FANFEST at Canadian Music Week
21. There are also publicity and direct cash investments through programs like the *Big Money Shot* on Newcap Ottawa station *Live 88.5* which invests \$500,000 worth of grants in Ottawa area artists every year. Through this program, Newcap Radio has already added 10 artists in full rotation and

100 artists in feature spins on its radio stations, putting unsigned Canadian artists next to the world's best bands like U2, Nirvana, Kings of Leon and the Black-Eyed Peas. Newcap Radio has recently launched a similar program on their Calgary FM station, *AMP 90.3*.

22. Broadcasters support their entire communities, not just the musicians within them. Tens of millions of dollars are raised for local charities by broadcasters every year. An example is Astral's National Day of Caring for Kids Radiothon, through which, for two years in a row, Astral listeners raised a record \$7.1 million dollars for Children's Miracle Network and several of Astral's own children's charities. Similarly, in 2010, Corus Radio stations contributed over \$15 million to Canadian charities.
23. It has been said that granting the broadcaster exception will mean that broadcasters will get a free ride. Our payment of over \$115 million for artists in a single year on top of tens of millions in community and charitable contributions is hardly a free ride. We believe that we are doing our part to support Canadian artists (See Appendix C – Music and Social Cost Growth Buries Radio's Revenue Growth).

Pre-Bill C-32 Reproduction Right Regime a Drag on Innovation

24. Further to a number of studies and recommendations to Government over a number of years relating to incidental reproductions made in the context of broadcasting, the 1997 Bill C-32 amendments to the *Copyright Act* originally included complete exceptions for broadcasters to make copies without liability, to facilitate their broadcasts.
25. During the Heritage Committee hearings on the 1997 Bill C-32, representatives from the very same collectives that will appear before this Committee, appeared then and told the Heritage Committee

“Music publishers recognize that such copying [i.e. radio's transfers of format] is integral to the operation of radio stations and also realize that any publisher foolish enough to demand payment for such copyright would likely find himself frozen out of the station's playlist in short order.”

26. Following this, a late amendment was added to the 1997 Bill C-32 which overrode and nullified the proposed broadcaster exception. The amendment has allowed various rights holders to make the multiple claims over and above claims for payment for the broadcast itself in recent years.

¹ Direct quote from page 8 of David Basskin of the Canadian Music Publishers Association's oral remarks to the Standing Committee on Canadian Heritage, November 7, 1996.

27. Imagine a small radio broadcaster in Swift Current faced with monthly forms to complete and file with collectives for four separate reproduction right tariff payments, in addition to two tariffs for the “public performance”, or broadcast itself (payable to the same groups of rights holders as the previous four tariffs), and at least one Internet tariff. The administrative burden on a broadcaster is needlessly time-consuming, complex, and costly.
28. The unfair burden of the cost itself, moreover, is particularly striking considering that rights holders originally claimed that they would either not seek payment for the reproduction right, or seek only a nominal payment.
29. Today, radio is still paying that tariff to the music publishers, at a higher rate, and is also paying two additional reproduction tariffs – one to the multibillion dollar foreign record companies, and one of a much smaller amount, to the actual performers. The recent decision of the Copyright Board of Canada to certify two additional reproduction right tariffs brings the total liability, for something all parties agreed should never be compensated, to \$21 million a year. This additional liability and complex regime creates a drag on broadcaster innovation.

The Truth about the Reproduction Right Exception – Follow the Money Trail

30. Throughout the debate on Bill C-32, it has been said that the \$21 million would be carved directly out of the income of artists. That is simply not accurate. While the Copyright Board of Canada estimates that total tariff payments by radio broadcasters for the reproduction right are \$21 million per year, it is important to understand that this money is filtered through a complex collective licencing system that deducts large amounts for the overhead and legal costs of the collective society administering the tariff. What is left is mostly sent to foreign record labels and publishing houses, before any of it ends up with the artists themselves (See Appendix D – How the Reproduction Tax is Split Up).
31. Given that the vast majority of the copyright collectives do not make their financial statements available, precise numbers relating to distribution and expenses are kept secret. Accordingly, the following breakdown of the allocation of reproduction rights royalties are estimates, based on the best available information. Of the total \$21 million, approximately \$10 million goes to the multibillion dollar foreign record labels through the AVLA-SOPROQ commercial radio tariff. While it is possible that a very small percentage of that \$10 million could filter down to artists, a typical record deal will ensure the vast majority of it stays with the record label.
32. Of the remaining \$11 million, an estimated \$1.1 million is deducted for overhead and administrative costs of the 5 collectives involved. This is based on a conservative estimate of 10%, which is much less than the 14.6% for administrative expenses reported by SOCAN. The next deduction carves out 65% for foreign rights holders. This is based on the fact that Canadian

radio stations play 35% Canadian content, and therefore 65% foreign content, according to CRTC regulations. After these deductions, \$3.5 million remains to be divided, not necessarily equally, between publishing companies represented by the CMRRA-SODRAC Inc. (CSI) tariff, and songwriters (also represented by CSI) and some performers (represented by Artist1).

33. It is clear from these estimates that while the record companies and the publishing houses willingly reinforce the misconception that the broadcaster exception will take money away from artists, the truth is that it will take money away from multibillion dollar foreign companies and keep it in the hands of 100% Canadian companies who invest substantially in their communities and in Canadian artists.

The Case for Granting the Broadcaster Exception

34. Broadcasters' current reproduction right liability effectively taxes radio stations for being innovative and efficient in using technology to get music to listeners. The following are the key arguments in favour of granting a broadcaster exception:
 - a. **Broadcasters already pay for the right to play music** and are not disputing the need to compensate rights holders for playing music. However, the reproduction right tariffs for commercial radio alone now represent three additional payments (and counting) to use music in a broadcast. The multiplicity of payments represents an unfair burden by any standard.
 - b. Making these reproductions only facilitates the broadcasting of the music broadcasters have already paid to use. **No new use is made of the music, radio makes no additional revenues** when they make the reproductions and, in fact, radio makes significant capital investment in the technology and in dedicated staff.
 - c. The types of reproduction engaged in by broadcasters **do no harm to the rights holder**: they do not encroach on the rights holders' content exploitation markets in any way. To the contrary, the use of digital music transfer systems serves to cut costs for the music labels. Broadcasters are no different from consumers or digital network operators when they use technology to make digital music files broadcast-ready: the use is ancillary to an efficient technical process.
 - d. Over the course of many years, **Government had promised the broadcasting industry that it would provide true exceptions from copyright liability** for these types of processes that involve "technical reproductions." Canadian broadcasters are asking for conditions that will allow them to be competitive with other countries in the borderless new media environment.

- e. Canada currently has one of the most restrictive regimes for broadcasters, as we are the only jurisdiction where the existence of a collective vitiates the exception. This type of broadcaster exception has been adopted by the vast majority of Canada's significant trading partners to recognize the temporary, technical, and incidental nature of the reproductions made by broadcasters. The repeal of subsection 30.9(6) would **bring Canada's exception closer in line with the exceptions provided by the majority of G-20 countries**. Failing to adopt a similar exception for Canadian broadcasters, places us at a competitive disadvantage in the global digital environment that we operate in.
 - f. Copyright tariff payments are calculated as a percentage of revenues. This means a more **successful broadcasting sector translates into higher tariff payments**, which will lead to an increase in copyright payments despite the introduction of an exception for broadcasters.
 - g. Money that would otherwise flow outside the country to foreign multibillion dollar companies **will stay in Canada with 100% Canadian companies that invest substantially in Canadian artists and culture**.
 - h. The broadcaster exception is **consistent with other proposed exceptions** in Bill C-32. For example, Bill C-32 provides consumers with an exception for time shifting to allow them to watch TV shows (that we own the rights to) at times that are more convenient for them. **The time shifting exception technically infringes the broadcasters' signal right. Despite this technical infringement, broadcasters understand that common sense copyright exceptions are economically and socially sensible and are not opposing the time shifting exception.** The concept of a broadcaster exception is identical and should be afforded similar common sense treatment.
35. The proposed exception will not undermine the value of the integrity of the work and will provide the broadcasting industry with competitive conditions. The proposed exempted activity – engaging in digital processing to support a lawful broadcast – is simply an intermediary practical step in the course of a legitimate industrial use activity, for which creators are already being compensated.

Conclusion

36. The reproduction right exception for broadcasters is long overdue. Including it will mean money that would otherwise flow out of the country to multibillion dollar foreign companies stays in Canada with Canadian businesses. We urge passage of Bill C-32 with the inclusion of a broadcaster exception.

Appendix A
CAB Membership List