

SOCAN

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musique. monde. **connectés.**

Society of Composers, Authors and Music Publishers of Canada

Submission to the Standing Committee on Finance

2016 Pre-Budget Consultations

Overview

SOCAN (the Society of Composers, Authors and Music Publishers of Canada) is a songwriters, composers and music publishers controlled organization that represents the Canadian performing rights of millions of Canadian and international music creators and publishers. SOCAN is proud to play a leading role in supporting the long-term success of its more than 130,000 Canadian members, as well as the Canadian music ecosystem.

SOCAN is making three recommendations to the Standing Committee on Finance:

- That the government, under the themes of productivity, taxation and helping the middle class, **introduces new tax incentives to improve the living conditions of artists, which will help support and foster the creative economy.**
- That the government, under the themes of productivity and taxation, **ensures the Copyright Board of Canada has adequate resources to fulfill its mandate.** Such an investment would have significant productivity benefits and ensure taxation fairness for Canadian creators.
- That the government, under the theme of productivity, **extends copyright terms for authors, including composers and songwriters, to life plus 70 years.** Such an action would bring Canada in line with international norms, thereby supporting productivity and Canada's trade agenda.

Music and the economy

Canadian music plays a vital role in our economy, with live performances alone generating an estimated \$455 million in revenue and contributing \$252 million directly to the economy annually.¹

SOCAN also distributes royalties to its members for the use of Canadian music around the world in collaboration with its peer societies, acting as platform for creators to collect the revenue from their 'exported' works. Canadian music is a great export success: whenever a Canadian song is played abroad copyrights are collected by SOCAN's international partners and repatriated to Canada. These royalties are then redistributed to Canadian artists, ensuring they are fairly compensated for their work.

¹ <http://musiccanada.com/wp-content/uploads/2014/06/Music-Canada-Economic-Impact-Analysis-of-the-Sound-Recording-Industry-in-Canada.pdf>

In 2015 alone, SOCAN collected and distributed estimated royalties of \$310 million to music creators and publishers, with \$62 million coming from international revenues.²

The Government of Canada has a role to play in ensuring creators and artists continue to work in an environment that fosters growth and economic development by ensuring policies and regulations in place enable fair compensation for creators. The three proposed recommendations outlined in this document would go a considerable way towards improving that environment.

Tax measures for a creative economy

Tax incentives are indispensable for certain sectors of the economy to enable it to grow and prosper. This is the case for the culture sector, where artists often live on unpredictable incomes and would benefit from tax incentives which would provide them with the means to further develop their art and contribute to the growth of the economy. The two measures presented below would help artists achieve a more decent living from the revenue of their creation, and they have already been adopted in other jurisdictions around the world, as well as in Quebec - a province leading in this sector in Canada.

Income-averaging for artists

Artists' earnings often fluctuate, with larger revenue some years and lesser revenue in others. In 2004, the province of Quebec introduced a measure allowing artists to average their income from artistic activities³. Artists can, under certain conditions, purchase an annuity using a portion of their income from artistic activities. Much like an RRSP, the purchase is tax deductible, and income tax is instead charged as the annuity matures, enabling the artist to spread the taxation of income over a maximum of seven years. Such measures already exist in numerous countries like Germany, Denmark, the Netherlands, Greece, France, the United Kingdom, Luxemburg and Australia. We believe that the Canadian government should implement income-averaging annuity for artists.

Tax deductions for copyright income

Another tax credit that exists in Quebec and which is highly regarded by songwriters and composers is a tax deduction for revenue coming from copyright income. Allowing a small tax deduction for income from copyright royalties promotes a creative economy that would benefit

² <http://www.socan.ca/news/socan-tracks-more-record-results-2015-music-creators>

³ Revenu Québec, Guide – Business and Professional Income, 2015

music creators and would plant the seeds for economic growth. For example, in Quebec, an artist is entitled to a tax deduction of up to a maximum of \$15,000 if the revenue from copyright is less than \$60,000 annually⁴. SOCAN asks the Government of Canada to evaluate the costs and benefits associated with the introduction of such a tax credit, which would allow artists with modest incomes to improve their livelihood.

These measures were introduced in 2012 in a Private Member's Bill (C-427) but were defeated at second reading by the previous government, despite the support of both the Liberals and the NDP⁵. The bill titled *Act to amend the Income Tax Act (income averaging for artists)* proposed an income averaging for artists as well as a \$10,000 tax deduction for copyright income⁶. The Finance Department has estimated the cost of these measures to a mere 25 million dollars a year and the Parliamentary Budget Officer has estimated a range of between 20 to 30 million dollars.⁷

Scott Brison, Liberal MP for Kings—Hants also spoke favorably for these measures in 2012 by saying:

*"...idea of income averaging for artists, because it is important to realize that all of our cultural artists, such as musicians, painters, sculptors and authors, face huge challenges and tremendously cyclical income curves over the period of their careers. They will work for years and not make any money, and then one year will have a really good year and be in a top marginal tax bracket. That is why I think we should move this to committee and have it studied. It is important to realize that this is an important issue for our cultural community, that the current system, as it stands, is not fair and that changing it to reflect the incredible variance in incomes of cultural creators makes a lot of sense."*⁸

These measures were supported by the opposition parties in 2012 and could be introduced at a minimal cost and a significant benefit. They would considerably improve the living standards of artists and enable them to pursue their creativity with positive impacts on the economy.

Copyright Board Resources

⁴ *ibid*

⁵ <http://www.parl.gc.ca/LegisInfo/BillDetails.aspx?Language=E&Mode=1&billId=5614611>

⁶ <http://www.parl.gc.ca/HousePublications/Publication.aspx?Docid=5624795&file=4>

⁷ http://www.pbo-dpb.gc.ca/web/default/files/files/files/Bill_C427_Artists_EN.pdf

⁸ <http://www.parl.gc.ca/HousePublications/Publication.aspx?Pub=Hansard&Doc=153&Parl=41&Ses=1&Language=E&Mode=1#7690488>

The Government of Canada could also greatly improve their economic wellbeing by granting the Copyright Board of Canada the resources it requires in order to render decisions on a timely basis. A recent study showed that the average time it took the Board to certify a tariff was 3.55 years.⁹ While the average for certifications not requiring hearings is shorter than this, when hearings are required, the average timeline jumps to 4.42 years.¹⁰

In many ways, songwriters and composers are entrepreneurs, and much like entrepreneurs in other industries, cash flow is a significant concern for our members. Although SOCAN continues to disburse royalties to our members while Copyright Board decisions are pending, the amounts paid are (by definition) estimates. In the case of a royalty decision being higher than SOCAN's estimate, SOCAN pays any additional amounts recovered to its members once the decision is rendered. However, given that these delays span tax years, a sudden one-off payment can have significant tax implications for our members. If the royalty decision is lower than estimated, SOCAN may be required to reclaim the excess from our members. As such, the delay creates significant uncertainty for our members.

By streamlining the decisions of the Copyright Board, this uncertainty could be greatly reduced, thereby both increasing productivity and removing a significant tax distortion for our members.

SOCAN is not alone in advocating for such an investment; one of the recurring themes heard at the Standing Committee on Canadian Heritage's 2014 Review of the Canadian Music Industry was the need for improvement at the Copyright Board. In fact, the Committee's report went as far as to make the Copyright Board the subject of its first recommendation:

1. The Committee recommends that the Government of Canada examine the time that it takes for decisions to be rendered by the Copyright Board of Canada ahead of the upcoming review of the Copyright Act so that any changes could be considered by the Copyright Board of Canada as soon as possible.¹¹

The examination of the Copyright Board's decision making timelines should be a priority for the government.

Copyright Extension

⁹ <http://jeremydebeer.ca/wp-content/uploads/2015/04/Copyright-Tariff-Setting-Study-2015-04-16.pdf>

¹⁰ *ibid*

¹¹ *ibid*

In Budget 2015 and the subsequent Budget Implement Act, the Government of Canada proposed and passed an extension of the term of copyright for sound recordings to 70 years. This was an increase of 20 years (from 50 years) and brought Canada in line with the majority of our peer nations. SOCAN welcomed this change, both privately and publically¹². However, we believe that the same 20 years extension should be granted to the authors and composers who created that music as well.

While the Berne Convention of 1886 sets the minimum copyright term as life plus 50 years, the world has changed significantly in the past 100-plus years, and the majority of countries that Canada trades with regularly have already increased their copyright term beyond this length. As was the case for the copyright term for sound records prior to the recent extension, Canada lags behind our peer nations in the length of time it protects songwriters, composers and other authors:

Country (or Region)	Copyright term for songwriters and composers
Canada	Life plus 50 years
United States	Life plus 70 years ¹³
Australia	Life plus 70 years ¹⁴
United Kingdom	Life plus 70 years ¹⁵
Other countries from European Union	Life plus 70 years ¹⁶

While this disparity may lead Canadian creators to wonder why their works are protected for a much longer period in other countries than at home, it also has significant real world implications. While tariffs are often recognized as a leading barrier to trade, non-economic barriers, such as a variance in regulatory requirements from country to country, are also significant impediments to trade. Because of this, standardization has been a key factor of recent trade deals.

¹² <http://www.socan.ca/SOCAN-encouraged-by-Canadian-Government-commitment-to-some-music-rights-owners>

¹³ <http://copyright.cornell.edu/resources/publicdomain.cfm>

¹⁴ http://www.austlii.edu.au/au/legis/cth/consol_act/ca1968133/

¹⁵ <http://www.legislation.gov.uk/ukpga/1988/48>

¹⁶ <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32006L0116>

As it stands, Canada's copyright term for songwriters and composers is not meeting the new international standard, and this places us at a disadvantage vis-à-vis our major trading partners.

A PricewaterhouseCoopers report showed, through empirical comparisons, no statistical difference in the price of copyrighted and non-copyright protected music in the UK.¹⁷ The lack of proof of a price differential was replicated in both physical and digital music purchases, and suggests that any criticism of copyright extensions on a consumer-cost basis is misplaced. Barry Sookman, a senior partner with the law firm McCarthy Tétrault and an adjunct professor of intellectual property law at Osgoode Hall Law School also stated that:

This hasn't been problematic in the more than 90 countries that have terms of 70 years or more. It's mostly an argument for use of works without paying. In fact, Canadian creators could benefit from a term extension in countries (such as EU member states) which only provide longer terms of protection for foreign works on a reciprocal basis.¹⁸

Also, there has been significant support for such an extension both domestically (from Canadian songwriting luminaries such as Randy Bachman¹⁹ and Michel Pagliaro²⁰) and internationally (from the International Confederation of Societies of Authors and Composers²¹).

Conclusion

Canadian songwriters, composers and music publishers represent an important cultural and economic success story, both here in Canada and internationally. The modest proposed recommendations outlined in this submission – the introduction of tax incentives, increasing resources for the Copyright Board of Canada and increasing copyright term to 'Life plus 70 years' – would provide significant support to songwriters and composers, at a minimal cost to the Government of Canada. They would enable Canadian music to flourish while improving the standard of living for artists, which ultimately increases their contribution to the Canadian economy.

¹⁷ <http://www.ifpi.org/content/library/legc-study.pdf>

¹⁸ <http://www.financialpost.com/m/wp/blog.html?b=business.financialpost.com//fp-comment/why-canada-has-nothing-to-fear-over-tpp-and-intellectual-property>

¹⁹ <http://www.theglobeandmail.com/globe-debate/taking-care-of-the-canadian-music-business/article25082297/>

²⁰ <https://www.socan.ca/news/time-%E2%80%9Ctake-care-business-songwriters-composers-and-all-authors%E2%80%9D-%E2%80%93-randy-bachman>

²¹ <https://www.socan.ca/news/jean-michel-jarre-calls-canada-include-authors-proposed-copyright-extension>