CANADIAN FEDERATION OF MUSICIANS

SUBMISSION on Bill C-32: Copyright Reform

1. Preamble. Who are we?

The Canadian Federation of Musicians (CFM) is the distinctly Canadian operation of the American Federation of the United States and Canada (AFM), which is the largest entertainment organization in the world, with close to 100,000 members, 17,000 of which are Canadian. Affiliated with the AFL-CIO and CLC, we fulfill the traditional role of a union and/or professional association with respect to collective bargaining, member services, immigration assistance, lobbying and the collection of royalties emanating from scale agreements and pursuant to legislation, as well as the provision of an extensive menu of other related benefits.

We were instrumental, along with the other arts organizations, in securing Federal *Status of the Artist* legislation, under which we are certified as the bargaining agent to **represent all musicians in Canada**. CFM was involved in the previous revisions of the *Copyright Act*, most notably Neighbouring Rights, and a driving force behind securing provincial *Status of the Artist* legislation.

Since 1896, the AFM has been one of the most active and member-driven of all unions and associations in North America, securing benefits and providing relentless service while maintaining a profile of fairness and integrity with both employers and the public. With 25 distinct service centres in Canada, we are the most significant advocates of musicians and their industry, and funded entirely through membership dues. While many

of our members are international stars and household names, the majority are not, and fall into a low-income category. It is this latter group which stand to benefit most, and deservedly so, from fair and well-structured legislation with global application.

2. Our Statement of Support for Copyright Reform

AFM Canada wholeheartedly endorsed previous copyright revision efforts **as** a necessary step forward in the much-needed implementation of the WIPO initiatives, and the positive impact this would have upon Canadian creators/performers. Specifically, musicians and performers (whenever their creations are being accessed, here or abroad), would benefit from the protection. Respect of ownership and monetary reward are necessary in maintaining both creativity and performances as a legitimate, viable way to earn a living. However, **Bill C-32 contains nothing of value for our members. Rather, it represents an expropriation of existing revenue streams, which will cost us millions.**

It is a fundamental principle that creators/performers should be compensated for their works and performers should be compensated for their performances. While we understand the balance concept (promoting the public interest on the one hand, and the encouragement and dissemination of works of the arts and intellect while obtaining a just reward for the creator/performer on the other hand), we must never lose sight of the fact that the internet is merely the latest technology in the ever-evolving methodology of delivering product to the consumer.

Technological advances have changed our attitudes toward intellectual property. We, as a society, have seen ourselves as more and more entitled to access. Starting with radio and television, where entertainment has always been accessible to the public for "free", we have come to expect to have access to intellectual property without direct cost. But the key word is "direct". Someone has been paying for our free access: advertisers; and in the case of public broadcasters, taxpayers. With the advent of the web, we have continued to expect to get content for free, but have been forgetful of the fact that nobody is paying for it.

Emerging technology has shown to facilitate a threat to the centuries-old laws and ideals which have recognized the rights of creators/performers. The meaning of “copyright infringement” of books, sheet music, vinyl recordings, and movies has long been universally recognized and accepted by the general public. Just because technological advancements suddenly make infringement simple and widespread, this should not cloud the fundamental principles behind copyright, nor should it strip copyright holders of those rights.

3. Key Issues for our Members.

(a) WIPO

As are all one hundred and fifty (150) member-countries of FIM (Fédération Internationale des Musiciens), CFM is firmly committed to compliance with WIPO treaties. Therefore, we approve the enactment of the provisions of the WIPO treaties, i.e. the WIPO Copyright Treaty (WCT) and the WIPO Performance and Phonograms Treaty (WPPT), (which Canada has already signed onto more than twelve (12) years ago), be implemented and made part of Canadian law.

While within those treaties a country is allowed flexibility in terms of national treatment, we must be cognizant of different systems by which creators/performers are compensated. CFM is concerned that **C-32 weakens the intent of WIPO**, and seeks stricter adherence to those standards, since our ability to negotiate reciprocal agreements with collective societies within treaty countries is contingent upon that level of compliance. Given the popularity of Canadian artists world-wide, extended collective licensing and effective negotiations will result in new money, through royalty dollars, flowing into Canada.

RECOMMENDATION: Incorporate the Berne Three-Step Test into *The Act.*

(b) Canadian Private Copying Collective (CPCC)

This has been an invaluable means by which to offset sales loss by distributing $30M annually to the exact people who suffer from copying. However, with technology shifts and different consumer choices of delivery or storage, the money will disappear unless we take steps to maintain and expand the regime.

RECOMMENDATION: A new system must be adopted and implemented to ensure the revenue stream does not disappear. The CFM has an idea for such a new regime, based on a model within our royalty system which has been extremely successful for years. We would be delighted to share our ideas and experience in this regard, upon request.

(c) User-Generated Content

C-32 provides for non-commercial use of content, such as "mash-ups". This language undermines existing royalty streams, violates each of the Berne Three-Step tests and capriciously ignores the moral rights of the creator. In addition, there is no such thing

any longer as a "non-commercial use". The moment this type of content is posted on a site such as YouTube, advertising banners are in play and the site is generating income.

RECOMMENDATION: Delete the User-Generated Content provisions entirely.

(d) Reproduction for Private Purpose

C-32 proposes to grant to consumers new private copying rights, at the expense of creators and performers. While our members **encourage liberal and generous access** to their work to consumers, this must be only **when appropriate, and with reasonable compensation.**

RECOMMENDATION: Narrow and clarify "private purpose" if this language is to be retained, build on existing royalty systems and enact the new system described herein under CPCC.

4. Additional Concerns

(a) Ephemeral Recordings

The proposal to eliminate subsection 30.9(6) of the Act drastically reduces revenues to music publishers, and represents a concerted effort to destroy collective society regimes, and further erodes the rights of stakeholders. CFM supports retaining the subsection on "broadcast mechanicals".

(b) Statutory Damages

The weakening of statutory damages purports the notion that infringement for non-commercial purposes is less damaging than for commercial use. This is not only wildly inaccurate, but sends the message to consumers that theft is acceptable. We believe the section was fine the way it was, and that the courts are quite capable of ensuring that the "punishment fits the crime".

(c) Technological Protection

In an era when many artists choose to follow the 'independent' recording regime, we have no issue with a creator/performer who makes an informed decision to present his works free of charge or obligation. However, we support the notion that until the creator/performer specifically relinquishes his or her rights, they must be protected in

law, as required under WIPO. We believe the choice to employ TPMs should be left to the distributor.

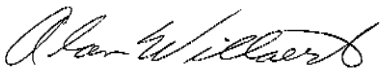
(d) ISP Liability

CFM believes that the Notice and Notice regime within the Bill should be discarded in support of a Graduated Response system, which is gaining favour in other jurisdictions.

(e) Fair Dealing

CFM believes that the current *Copyright Act* has enough exceptions, and generous access to copyright materials through collective licensing. The expansion of Fair Dealing to education, or anywhere else, should be abandoned.

Respectfully submitted,



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