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A NEW VOICE: POLICY POSITIONS OF THE CANADIAN MUSIC CREATORS COALITION

Debates about the way copyright law and cultural policy affects Canadian music have been dominated for a long time by a very small number of special-interest lobbyists. In the midst of the wrangling over the demands of powerful representatives of recording and music publishing companies, collective societies and the broadcasting industry, actual Canadian artists have been squeezed out of copyright discussions. Although some lobbyists purport to speak on behalf of artists, the voices of real people who actually make music—songwriters, composers, performers, musicians and the like—have been mostly neglected. This document marks the start of an effort to change that, by talking truthfully about Canadian artists' wishes for the future of copyright law and cultural policy in Canada.

Who We Are

We are a growing coalition of Canadian music creators who share the common goal of having our voices heard when it comes to making the laws and policies that affect our livelihoods. We are the people who actually create Canadian music. Without us, there would be no music for copyright laws to protect.

Our musical backgrounds and interests are diverse. We represent a wide variety of musical genres. We create everything from popular top-40 tunes to critically acclaimed selections to grassroots folk songs. We make rock, pop, blues, jazz, R&B, hip-hop, folk, country and even classical music. We play various roles in the music production process. We are not just singers and songwriters, although most of us write or perform our own music to some extent. Some of us are also record producers and music promoters, for ourselves or other artists.

We have won dozens of Juno and Grammy awards, and have sold tens of millions of albums worldwide. Most, although not all, of us are associated with major record labels, collecting societies and industry associations. We have

found that our voices are drowned out within or by these groups. They do not genuinely represent our interests.

“Not in Our Names”

Until now, a group of multinational record labels has done most of the talking about what Canadian artists need out of copyright. But let’s be clear: major labels are looking out for their shareholders, not for Canadian artists. Recording industry lobbyists, despite claiming to represent artists, seldom speak for us. Legislative proposals, particularly those that would facilitate lawsuits against our fans or increase the labels’ control over the enjoyment of music, are made not in our names, but on behalf of the shareholders of the labels’ foreign parent companies.

Record companies and music publishers are not our enemies. They’re often run by people who love music and are passionate about the promotion of Canadian culture. However, representatives of the sound recording and music publishing industries are in an inherent conflict of interest. This conflict has led to fundamental problems in the way Canadian artists have been represented in the copyright reform process.

Industry lobbyists claim that they represent our interests. In truth, these representatives are often beholden to the directors and corporate shareholders of a small number of multinational companies headquartered outside Canada. As part of the effort to maximize revenue, record labels typically seek to acquire, not protect, artists’ copyrights.

Most of the campaigning on behalf of major record labels is not about protecting artists or promoting Canadian culture. It is about propping up business models in the recording industry that are quickly becoming obsolete and unsustainable. It is about preserving power structures and further entrenching the labels’ role as industry gatekeepers. Lobbying efforts are focussed on obtaining laws that restrict artists’ ability to take control of their own music, reach their fans in more direct ways and earn a decent living from music without sacrificing their autonomy.

Canadian artists are deeply concerned, not only about autonomy and financial security, but also about creating, preserving and spreading Canada’s unique cultural heritage. Laws that help to cede control over the Canadian music industry to foreign labels do not address these concerns. It is the government’s responsibility to protect Canadian artists from exploitation. This requires a firm commitment to programs that support Canadian music talent, and a fresh approach to the process and substance of copyright law reform.

Guiding Principles

We, as Canadian music creators, have identified three simple principles that should guide copyright reform and cultural policy: (1) Suing our fans is destructive and hypocritical, (2) Digital locks are risky and counterproductive, and (3) Cultural policy should support actual Canadian artists.

Suing Our Fans is Destructive and Hypocritical

We do not want to sue our fans. We oppose any copyright reforms that would make it easier for record companies to do this. The labels have been suing our fans against our will, and laws enabling these suits cannot be justified in our names.

We believe that the current litigious atmosphere in the music industry is destructive. Lawsuits unfairly alienate our fans. Artists cannot expect to say, “see you in court,” and then, “see you at Massey Hall next fall.” A few other countries have created a legal climate where suing fans is the norm. Lawsuits against music fans benefit no one. If there is a threat to Canadian artists, it is not p2p downloading or sharing music but lawsuits brought by the recording industry against our fans.

Fans who share music are not thieves or pirates. Sharing music has been happening for decades. It is hypocritical for labels to sue fans for something that everyone in the music industry has done him or herself. New technologies may have changed the way that fans share music, but they have not changed the fact that sharing helps artists’ careers.

In terms of specific copyright reforms, this principle suggests that the government should repeal provisions of the *Copyright Act* that allow labels to punish fans with damages of \$500 to \$20,000 per song. Statutory damages of this magnitude are unduly harsh where music fans share songs for non-commercial purposes. The threat of such enormous liability does not deter file sharing, but unfairly forces vulnerable people to cave in to the labels’ bullying tactics without a hearing of their case. To sue for non-commercial music sharing, record companies should have to prove their damages or lost profits, as is usually required by law.

Digital Locks are Risky and Counterproductive

Artists do not support using digital locks to increase the labels’ control over the distribution, use and enjoyment of music, let alone laws that would prohibit circumvention of such technological measures. Digital locks, and laws protecting them, are risky and counterproductive.

Most Canadian labels do not use digital locks when distributing artists' music. However, some labels, particularly major foreign labels, wish to increase their control over Canadian artists and music consumers. Artists themselves are given little or no choice over the use of digital locks by labels. If given a choice, most artists would rather allow consumers the flexibility to determine how and when they enjoy the music they buy.

The major labels' tactics are backfiring and hurting artists. The use of digital locks is decreasing consumer confidence in entertainment products and leading to resentment of the music industry as a whole. The labels that employ these tactics feel the backlash, but actual Canadian artists also suffer as a result. The recent incident concerning Sony BMG's digital rights management systems illustrates the risks inherent in trying to control consumers through technology.

Technological restrictions on music are also counterproductive, because they disappoint fans. Taking away consumers' choices will cause fewer fans to buy our music. Artists want to ensure that fans have simple and convenient access to a wide variety of Canadian music on terms that are fair and reasonable. That means that when fans buy music, they should be able to use it how and when they want. It is not fair that fans who buy songs, whether downloaded or on a CD, may be prevented from playing them on certain devices. Yet, rather than provide artists and music consumers with flexible options, record companies are demanding more control over the use and enjoyment of music.

Therefore, the government should not blindly implement decade-old treaties designed to give control to major labels and take choices away from artists and consumers. Laws should protect artists and consumers, not restrictive technologies. If enacted at all, laws prohibiting the circumvention of technological measures should remain narrow. Any new legislation should not prohibit technologies or devices that may increase flexibility and facilitate choice for artists and music consumers. The law should also guarantee that artists and fans retain the ability to access music, and to use it in a fair manner.

On the issue of fair use of music, copyright law should be changed to clarify that transferring songs from one format to another is not an infringement of copyright. It is not fair to require consumers to pay twice for the ability to transfer bought songs to an iPod or other device by imposing additional levies. Instead, eliminating the rigid technicalities of the current fair dealing provisions and moving to a more flexible concept of fair use can solve this problem.

Cultural Policy Should Support Actual Canadian Artists

The vast majority of new Canadian music is not promoted by major labels, which focus mostly on foreign artists. The government should, therefore, use other public policy tools to support actual Canadian artists and a thriving musical and cultural scene. The government should protect Canadian artists from those who would exploit us.

The Canada Music Fund and FACTOR are examples of the types of initiatives that benefit Canadian artists. The government should make a positive long-term commitment to develop and grow these support mechanisms. It should foster the growth and development of Canadian talent by investing in music training and education at all levels. The government should consider creating limited tax shelters for copyright royalties earned by individual artists, which would directly benefit those who most need support. Individual artists should be protected from inequalities in bargaining power, and collecting societies should be subject to greater accountability and more transparency.

Unless actual Canadian artists are supported, concentrated control over access to audiences and music markets will impede their ability to break through on the Canadian and international music scenes. This in turn will restrict the development of a diverse and representative pool of Canadian music talent, and jeopardize the existence of a distinctly Canadian musical identity.