



Good morning Mr. Chairman, members of the Committee, ladies and gentlemen.

Thank you for this opportunity.

My name is Michael McCarty and I am President of **ole**, Canada's largest music publisher. We have over \$115 million invested in music copyrights, and our large catalogue generates significant royalty revenue around the world - which flows back into Canada, contributing to the economy. Our songwriters have received numerous Canadian awards, as well as a Grammy for one of the many Taylor Swift compositions that we own. Two weeks ago, we proudly announced the signing of legendary rock superstar and lead singer of Aerosmith, Steven Tyler.

I have an admission to make. I admit that the copyright business has lost the nomenclature war. When we stand up for our artists' right to earn a living from their work, we are roundly demonized by our opponents. They use emotionally charged terminology to position us to be against God and Country, and we have failed to prevent it.

**They** are for "Freedom" and "Innovation". **We** are for "Regulation" and "Intrusion on Privacy". **They** are the great protectors of "Freedom of Speech". **We** are just greedy companies and rich rock stars trying to put a "**tax** on **their** innovation". **They** say, "Information wants to be free", and we say "it's ok to feel like it's free, but **somebody** needs to pay for it"

There is an excellent new book by journalist Robert Levine, that exposes what really drives our opponents. In his book, "Free Ride", Levine points out that "...this messaging often emanates from large companies that make a great deal of money from other people's pirated and/or giveaway works..." These companies are all about "...perpetuating **their** freedom to profit from the theft of **our** copyrights".

Here is the reality. It has been almost twenty years since the Internet was switched on, and thirteen years since Napster launched the era of mass digital music piracy. This resulted in a decade long "frat party" attended by the Silicon Valley gang. Creators and copyright owners were not invited to the party, but we ended up with the hangover. Bill C-11 is not the cure.

In the past, as new developments in technology disrupted copyright markets, governments could be relied upon to adapt intellectual property laws to the new products and services. From printing presses to piano rolls, radio to records, and



TV to cable, society has always been able to rely on governments to re-set the ground rules for a proper copyright marketplace. Until now.

Bill C-11 fails to create any useful new rights, or stretch existing ones to keep copyright markets in step with technology. Worse, it will actually “pick the pockets” of artists and songwriters to the tune of \$30 million a year through the proposed elimination of the Broadcast Mechanical Tariff and Private Copying. Ironically, the two most modern rights are now being dumped in the name of “modernization”. Make no mistake; this is a backwards step in our ability to turn digital art into dollars.

In copyright, the role of government is to create rights, then leave it to the marketplace or the Copyright Board to establish the value of those rights. With Bill C-11, the Government has overstepped its role and decided that our reproduction right should be worthless when a radio station digitally copies our music, leading to the elimination of approximately \$25 million per year in revenue for our artists.

The private copying royalty concept – paying creators for the widespread, unstoppable copying of their music – is a highly effective solution to a problem that digital music and the Internet have made more widespread than ever. To not use the “*Copyright Modernization Act*” to modernize this right for the digital era makes no sense at all.

Bill C-11 favours the Free Riders who are happy to benefit from music but think it is someone else’s responsibility to pay for it. It allows delivery systems to be built at the expense of the content creators.

For instance, “Notice and notice”, which supposedly targets ISPs for the piracy activity on their networks, simply requires them to assist in redirecting blame to the consumer. This amounts to even greater protection for the ISP, as they profit from piracy, and enshrines their argument that they are merely “dumb pipes” for data. ISPs are not “dumb pipes”; they are “smart networks” that act dumb when it suits them.

There are relatively simple amendments that can be made to make Bill C-11 work.





First, rein in the free riders by broadening the “enabling provision”. This provision was intended to “...make the enabling of online copyright infringement itself an infringement of copyright”, but it is so narrowly written that it will only apply to the most egregious offenders. It should be broadened to include all of the industries that profit parasitically from piracy.

It was the existence of this law in the US that led to the creation of the iTunes store, one of the most innovative digital services ever devised.

Second, reverse the expropriation of current rights. If Bill C-11 goes ahead without revisions, millions of dollars of annual broadcast mechanical revenue will disappear. Because of a major loophole in the legislation, broadcasters would simply have to refresh their hard drives every 30 days by copying one drive onto another, in order to avoid paying royalties.

Finally, in the absence of strengthening the enabling provision sufficiently, ole supports the extension of the private copying levy to digital devices. An improved enabling provision would eliminate the need for extending the private copying levy, since companies that enable infringement would be liable for their actions and would seek a marketplace solution by negotiating with the creators.

A fair marketplace exists when a willing seller and a willing buyer are free to negotiate the sale of goods or services. When the buyer can take the product without paying, there is no real marketplace. For the creators of music, Bill C-11 will severely limit their ability to turn their digital art into dollars.

Your deliberations represent an historic fork in the road for Canada’s future. In the digital age, where ideas may be more valuable than tangible goods, a country that fails to protect creators’ ability to profit from their intellectual property fails to protect its economic future.

You are the last hope to stop or fix this bill before it not only picks the pockets of Canadian songwriters and musicians in the near term, but damages the long term interests of Canada as a whole. We must not discourage our children’s dreams of becoming artists that can also pay the rent. The time to get it right is now. It is in your hands. Thank you.

