

# Sound Policy for the Creators in a Digital World

November 25, 2016

Presented to Minister Mélanie Joly and the Department of Canadian Heritage by the members of ACCORD:

Association des professionnels de l'édition musicale (APEM)

Canadian Music Publishers Association (CMPA)

Canadian Musical Reproduction Rights Agency (CMRRA)

Songwriters Association of Canada (SAC)

Screen Composers Guild of Canada (SCGC)

Société du droit de reproduction des auteurs, compositeurs et éditeurs au Canada (SODRAC)

Société Professionnelle des Auteurs et des Compositeurs du Québec (SPACQ)

Society of Composers, Authors and Music Publishers of Canada (SOCAN)



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## Executive Summary and Recommendations

ACCORD is a coalition of five Canadian music professional organizations and three music rights organizations representing music creators and those in the music ecosystem who directly support them. By definition, music creators bring musical works into existence, making them the foundation upon which the entire music industry is based. They are true “authors” within the meaning of the Canadian *Copyright Act*, which fairly deems them to be the first owners of the copyright in the musical works they create.

Together, we represent a wide section of Canada’s music industry with more than 130,000 English and French-Canadian songwriters, composers and publishers as our members. We are pleased to submit this document that addresses the policy issues concerning music creators and other members of the Canadian music industry in the digital age. The submission forms our collective response to the consultation process organized by Minister Joly and the Department of Canadian Heritage.

Based on our experience, trends, facts and data, this paper makes recommendations to the federal government across different policy areas. They are presented below.

**1. Ensuring the place of creators in any policy changes.** *It is recommended that public policy affecting the music sector should take account of the needs of the entire music value chain. That includes the most important part of all – the creators.*

**2. Continuity of government policy resolve.** *It is recommended that:*

- (a) pursuant to policies established over several decades, the Federal government continue to support the music industry – especially its creators – through regulatory and other policy and legal tools that can be adapted to the current music sector environment; and*
- (b) government avoid reaching precipitous conclusions on the extent to which traditional measures for supporting Canadian Content can (or cannot) be used in the digital age; and that it be resolute and creative in adapting policy tools to the evolving music sector environment.*

**3. Modernizing the regulatory role over digital communications.** *It is recommended that the Governor in Council exercise its policy direction powers under sections 7 and 8 of the Broadcasting Act to require the CRTC to:*

- (a) bring digital music and audiovisual streaming services under its regulatory aegis and develop appropriate licensing; and*
- (b) make such streaming services subject to a regulatory framework requiring them to make contributions to the Canadian music sector similar to the level of conventional broadcasters.*

**4. Discoverability and Promotion of Canadian Content.** *It is recommended that:*

- (a) any review of CRTC regulations of content and language of music airplay should take into consideration: (i) the continued value of radio airplay for discoverability; and (ii) the current stability of private radio broadcasting in Canada, which is not harmed by Canadian content regulations;*
- (b) once brought under CRTC regulation, the digital streaming and downloading services be required to further support Canadian creators through more exposure on playlists;*

- (c) federally funded programs recognize the growing need for access to data;*
- (d) the federal government to encourage and support all parties to adopt metadata standards for Canadian music.*

**5. Encouraging Strong Export Programs of Canadian Content.** *It is recommended that the federal government should:*

- (a) develop a National Music Export Strategy and bring together all the music industry elements as well as the provincial government support activities;*
- (b) demonstrate continued leadership in redefining the Canada Brand.*

**6. Sustainability of Canadian Content in the Digital Era.** *It is recommended that the federal government:*

- (a) bring the digital music and audiovisual services – streaming and downloading, ad-supported and subscriber-supported – under the general value added tax regimes;*
- (b) establish a “Buy Canadian” incentive, whereby audiovisual productions should be encouraged and receive incentives for the use of Canadian music in audiovisual productions.*

**7. Complementary copyright revisions and support of collections implementation.** *It is recommended that federal government:*

- (a) approach the 2017 Copyright Act review and revision as an important and highly integrated component of promoting Canadian music content in a digital age;*
- (b) programs designed to foster growth of an industry and promote Canadian exports work with music rights organizations to ensure that they are well equipped to support Canadian creators.*

**8. Development of a Fair Trade Music Ecosystem.** *It is recommended that the federal government provide support for the “Fair Trade” not-for-profit organization – [fairtrademusicinternational.org](http://fairtrademusicinternational.org) – launched by music creators to promote awareness and the certification of music services that provide fair remuneration for the use of music on a global basis.*

## 1.0 Introduction

On September 13, 2016, Minister Joly launched consultations on Canadian Content in a Digital World and requested submissions from the public and industry stakeholders. This submission pertains to the concerns and interests of the music creators. We represent the eight primary music rights organizations in Canada that are concerned with music creators and their future in the digital environment. More specifically, we speak on behalf of music composers, authors and their publishers.

We are encouraged that the government is taking this tremendous (and daunting) task to review and update Canadian policies and laws to reflect the realities of the digital world. Supporting Canadian creators to tell Canadian stories is a cornerstone of our country and Canadian content remains as important and popular than ever. As we saw in the music sector this summer, almost 1 in 3 Canadians watched the *Tragically Hip's* concert broadcast on the CBC, which will be remembered as a defining Canadian cultural moment.

We ask that the government look at any changes to Canadian laws and regulations through the perspective of Canadian creators to ensure that Canadian stories will continue to be supported and told, both in Canada and abroad.

The organization of our submission is as follows:

- Section 2 provides a summary of the major technology developments and resulting market structure changes in the music sector as they impact the creator members of our ACCORD organization, as well as other participants in the general picture of music industry revenues and music value chain.
- Section 3 suggests modernizing the role of the CRTC in the regulation of digital services and requiring contributions to Canadian cultural funds.
- Section 4 raises the issue of regulation of digital services as essentially the same as radio broadcasting, except carried over web-based platforms. This section outlines the benefits of such regulation to creators.
- Section 5 highlights the role of exports in the livelihood and careers of creators. It discusses the tight relationship between the rest of the music industry ecosystem and creators, and makes recommendations concerning the strengthening of export support activities.
- Section 6 addresses the sustainability of Canadian music content by suggesting two mechanisms to add revenue to government coffers and more directly by offering incentives to buy Canadian.
- Section 7 discusses issues related to improving copyright protection for music creators in the forthcoming 2017 revisions to the *Copyright Act*.
- Section 8 recommends the government to develop a fair trade music ecosystem by supporting a grassroots not-for-profit initiative started by creators.
- Section 9 provides an overview conclusion to this submission.

Recommendations are made throughout this submission, and are summarized in the above executive summary.

## 2.0 Music Industry Situation Report in the Digital Age

The music industry has possibly been the most disrupted of the cultural sectors globally and in Canada. It was the first major creative industry to be affected deeply by digital platforms. It is possibly the first creative industry sector to come out of digital disruption in a dramatically different place than it

occupied in the heyday of the physical distribution format. While much of this recent tumult in the industry is widely known, it is worthwhile setting the stage for the more specific recommendations made in this submission.

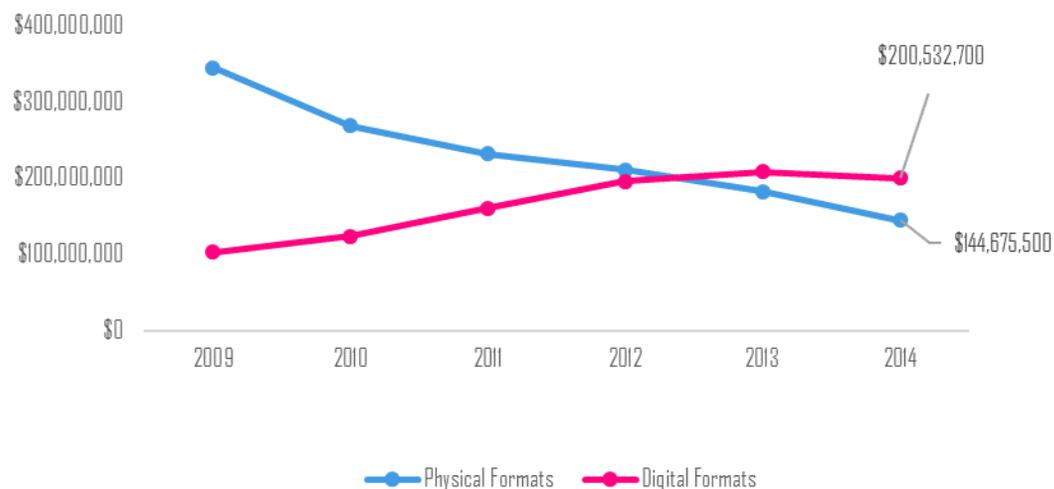
This section provides a summary of the major developments in the music sector as they impact creators. It also profiles artists and other music industry contributors in the general picture of music revenues and value chain.

## 2.1 Negative growth and changing revenue composition

The music industry has endured more than two decades of digital impact which has radically altered the career trajectories of creators and business models of music companies. Essentially, the focus on physical distribution of recorded music as a traditional marketing and promotion tool has given way to the digital distribution and marketing platforms. Some of the main highlights of this transition are the following:

- The 21<sup>st</sup> century saw vinyl almost fade away (although recently resurrected in a modest way), to be replaced by cassette deck and then by the CD. However, the disruption of the value chain was accelerated by illegal file sharing, promoted first by Napster, then others. The result was a debasement of the value of music, particularly to the younger generation, as illegal downloading became the norm.
- Led by iTunes, a digital downloads business model was created for recorded music, though at price points lower than the packaged, physical products. The result was that revenues from the sale of recorded music tumbled, and were only partly replaced by new digital revenues from downloading and later, music streaming. Although the decline has been long and painful for the industry, digital distribution has now reached a crossover point in Canada, whereby digital revenues now exceed revenues from the sale of physical goods, as illustrated in the figure below. This crossover point was reached a few years earlier in the US.<sup>1</sup> Nevertheless, the overall sales of recorded music have not regained their peak sales levels, so total industry revenue remains lower than in preceding decades.

Figure 1: Total Trade Value of Recorded Music in Canada, by Format



Source: Music Canada Statistics, 2014.

<sup>1</sup> IFPI Recording Industry in Numbers, 2015

- In the period from 2011-14, the International Federation of the Phonographic Industry (IFPI) reports negative growth each year from recorded music revenues, as shown in the figure below. The decline of the largest category of revenues – physical sales – has not been balanced by an equal rise in other distribution platforms. While year-over-year growth rates have been impressive for streaming services (26% in 2014<sup>3</sup>), these emerging revenue streams started small and have not caught up to the decline of physical unit sales.
- More recently, a similar decline has been observed in digital unit sales (which began earlier in the US), as consumers increasingly adopt streaming services rather than the sale of individual tracks via downloads.

Because of the advent of digital streaming services at different times in different countries, the download to digital streams revenue mix has evolved quite differently. In Sweden, for example, piracy became so extreme in the early 2000s that streaming gained fast (even desperate) support among a broad cross-section of music industry participants including publishers, artists, industry associations, and regulators. Because of Sweden’s highly developed broadband infrastructure and wide mobile device penetration, mobile streaming was both technically feasible and enjoyed early support by Sweden’s dominant mobile provider, Telia. This network services operator offered streaming service subscriptions (by Swedish originated Spotify) alongside its mobile data plans.<sup>3</sup> Unsurprisingly, this combination of supporting factors led to rapid market penetration by the nascent Spotify – in fact, the most recent data from IFPI shows that 86% of revenue from recorded music in Sweden is now generated by streams<sup>4</sup>, which continues from the trend that is evident in Figure 2.

Largely because of a small marketplace in Canada, the take-up has been slower to develop in Canada. This lag in consumer adoption of streaming in Canada because there was lack of product, is graphically illustrated in Figure 3, in sharp contrast to Sweden (Figure 2).

Figure 2: Recorded music revenues in Sweden, 2011-14



Source: IFPI Recording Industry in Numbers, 2015

<sup>2</sup> IFPI Recording Industry in Numbers 2015

<sup>3</sup> IFPI Digital Music Report, 2014

<sup>4</sup> <http://www.musicbusinessworldwide.com/recorded-music-sales-up-in-sweden-as-streaming-revenue-grows-10/>

Figure 3: Recorded music revenues in Canada, 2011-14



Source: IFPI Recording Industry in Numbers, 2015

In Canada, streaming represented only 9% of total revenue in 2014.<sup>5</sup> However, on a per user basis, streaming royalties vary considerably depending on the subscription model. In more mature streaming markets such as Sweden (and to a lesser extent, the US), streaming users have shown a tendency to migrate from ‘free’ ad-supported subscriptions to the more direct revenues flowing from the paid-subscriber model. More recently, the International Confederation of Societies of Authors and Composers (CISAC) released its 2016 Global Collections Report providing insight into the remuneration of creators in the year 2015. The report showed that collections from digital services jumped 21.4%, representing 7.2% of overall royalties collected around the world.<sup>6</sup>

If a meaningful transition to paid subscriptions occurs in Canada, it is reasonable to expect that streams will become a more important source of domestic revenues. The rapid adoption of streaming also underscores the importance of exposure on playlists of popular streaming services. Streaming’s strong subscriber base in some foreign markets means that sales and exposure through this medium will become much more important both in Canada and internationally where it lags leading countries.

Music creators and companies have adopted several strategies to offset the decline in revenue. Overall, the trend seems to be establishing a more diversified portfolio of (smaller) revenue streams. Creators and their publishers have attempted to expand their revenue from licensing their material to new content providers, including new content forms like video games. As well, some rights owners appear to be benefitting from more efficient collection of royalties in Canadian and foreign markets.

YouTube is a dominant platform for youth listening – for example, 83% of UK youth use YouTube to listen to music. While the same study found that radio remains the most important source for new

<sup>5</sup> IFPI Recording Industry in Numbers 2015

<sup>6</sup> <http://www.cisac.org/Newsroom/News-Releases/Global-royalties-for-creators-reach-record-high-of-8.6-billion>

music discovery among youth, streaming claimed a close second, with 56% of the UK youth market using streaming services to learn about new music.<sup>7</sup>

However, the monetization of streaming has been problematic for music owners, and debates with YouTube and other streaming services are ongoing on this point. Some of the key disputes relate to the “value gap” attributed to inadequate monetization of both licensed and unlicensed user-generated content<sup>8</sup>; low revenues generated by ad-supported streaming services<sup>9</sup>; the disparity between revenues of labels and creators; and the practice of ‘stream ripping’, whereby consumers download streamed media as audio files (e.g., mp3)<sup>10</sup>.

As this brief review of the effects of technology on the music sector illustrates, the money to be earned from music appears to have been severely compromised to date by digital platforms. However, this can be corrected if the right policies regulating digital platforms are put in place in Canada and elsewhere.

ACCORD members have been affected by and witnessed first-hand how the music industry has radically changed over the last few decades following the advent of the internet and digital music services, both legal and illegal. While it is true that new revenue streams now exist, the ongoing challenges faced by creators remain formidable.

## 2.2 The music ecosystem

The music industry ecosystem has changed dramatically in recent years as revenues from the sale of recorded music have declined despite the emerging digital platforms. The figure below illustrates the value chain of the music industry, linking these mutually beneficial activities to the related revenue streams. While all these activities independently generate revenue, each also serves as marketing for – and provides information that can be leveraged to support – other revenue streams.

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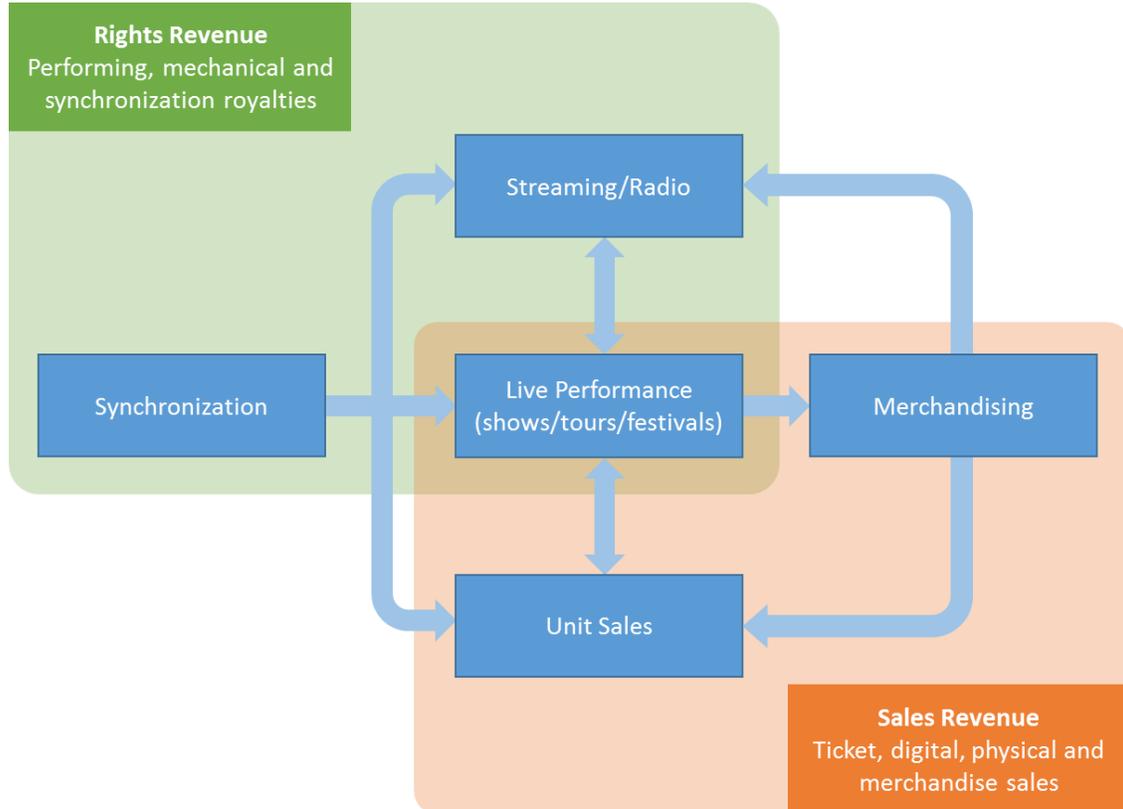
7 <http://musically.com/2014/08/29/youtube-music-listening/>

8 <http://ifpi.org/news/IFPI-GLOBAL-MUSIC-REPORT-2016>

9 <http://www.ifpi.org/news/The-value-gap-the-missing-beat-at-the-heart-of-our-industry>

10 <http://www.ifpi.org/news/Worlds-largest-music-stream-ripping-site-faces-international-legal-action>

Figure 4: Music industry value chain: sources of rights and sales revenue



Music companies (publishers, indie labels, managers, promoters, etc.) all play a vital role in the careers of creators and artists, as the industry increasingly functions as an interdependent music ecosystem. The Canadian component has many smaller organizations that seek to cope with the mega trends in the industry.

Clearly, the repercussions for the music sector ecosystem has led to significant changes for the creators. There is less room for music companies to take risks or longer term investments in artists in face of revenue shortfalls. Thus, there is frequently more marketing responsibility pushed on the shoulders of songwriters/composers and artists/performers; they have been forced become a larger part of the overall promotion of their work, mainly because of the demands on them to engage with fans through social media.

The international majors have been disrupted by the new platforms, but being global in scale, are better positioned to deal with streaming companies.

Overall, the Canadian music industry constitutes one big ecosystem that all must fit together to succeed in a multitude of mutually dependent activities. However, the success of the music industry begins with providing support and opportunities for creators, and any policies have to keep these interests in mind.

*It is recommended that public policy affecting the music sector should take account of the needs of the whole music value chain. That includes the most important part of all – the creators.*

## 2.3 Canadian Policy Support for Music – A Historical Centrepiece of Canadian Culture

The music of Canada not only reflects the diverse influences that have shaped the country, but the principle behind Canadian public policy which holds that popular cultural industries must be financially supported and protected if they are to survive and maintain a national identity. In effect, the Canadian government has for years played a significant role in shaping Canada's musical life through legislation, regulation and consultation, as well as through direct or arm's length financial and organizational assistance.

Driven by Canada's participation in UNESCO (1946) and other international obligations – as well as a recognition that the Canadian music industry was becoming a sizable industry in need of protection from foreign ownership or control – the Canadian government began to understand the growing importance of musical activities in the mid-20th century. Since this time, government administration and funding have been critical to the formation of professional musical institutions, standards and practices in Canada. In so doing, they have had a major impact on the present structures of public and commercial broadcasting, sound recording and international exploitation of rights. Indeed, the Canadian government has made great strides in recognizing the interdependence of musical activities with education, copyright regulation, the export/import of merchandise, employment and broadcast communication.

Attached is an Appendix that provides an overview of the key milestones of federal support to the Canadian music sector through the purviews of radio broadcasting regulation and federal support programs. This brief historical account of the federal government's interventions on behalf of music artists and other creators shows a continuity in addressing changes in the environment, especially technology.

As the federal government prepares to assess the extent to which it can, should or should not regulate new digital technologies, it should not succumb to the simplistic proposition that these new forms of content distribution cannot be regulated. Experience in other jurisdictions is already demonstrating such claims to be without foundation. Consider for example the European Commission "*Proposal for a Directive of the European Parliament and of the Council amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services in view of changing market realities*". This proposal is giving serious consideration to the implementation of regulations which, if adopted, would create mandatory levels of European film content to be made available on platforms operated by digital AV work providers such as Netflix.

The historical continuity of government policy resolve should be maintained in the new digital space, leading to the following two recommendations which exhort the need to be adaptable as well as continuity in the government interventions.

*It is recommended that:*

*(a) pursuant to policies established over several decades, the Federal government continue to support the music industry – especially its creators – through regulatory and other policy and legal tools that can be adapted to the current music sector environment; and*

*(b) government avoid reaching precipitous conclusions on the extent to which traditional measures for supporting Canadian Content can (or cannot) be used in the digital age; and that it be resolute and creative in adapting policy tools to the evolving music sector environment.*

### 3.0 Modernizing the regulatory role over digital communications – to increase funding

It is well known that the average Canadian music creators cannot support themselves by their art alone. In the digital era, music has largely been used to create equity in the hands of a small group of individuals and businesses and to subsidize the sale of technology products, including ISP bandwidth. Music has also become a product sold by large multinational service operators under a business model that sells content at a fraction of the price it used to be. Meanwhile, those same international service providers do not provide any direct support for Canadian content – unlike domestic and regulated content providers. In doing so, they challenge the sustainability of the music support system in Canada by overwhelming consumers with limitless foreign content.

The CRTC has not tried to regulate digital streaming services even though they exhibit strong similarities to broadcasting undertakings that require licences. In fact, the original digital media exemption order was used to desist from any regulation of such digital services. That exemption order was last re-affirmed in 1999, and has been subject to only minor updates since. The CRTC's 2009 affirmation of the exemption order was at a time that it was still not clear how exactly digital would change traditional radio and other aspects of the Canadian broadcasting system. That is now much clearer, and the exemption should be thoroughly reviewed.

Considering especially the licensing of satellite radio, whose multiple ad-free stations closely approximate digital streams, it is not at all clear why digital music streaming services should not come under the aegis of regulation as well. There are different ways in which digital streaming services have been formulated – from free to subscriber-based and ad-supported. Clearly, these services would be considered broadcasting services if they were digital signals transmitted over the air. That they are somehow different, then, is not and should not be a valid reason for being exempt from regulation.

*It is recommended that the Governor in Council exercise its policy direction powers under sections 7 and 8 of the [Broadcasting Act](#) to require the CRTC to:*

- (a) bring digital music and audiovisual streaming services under its regulatory aegis and develop appropriate licensing; and*
- (b) make such streaming services subject to a regulatory framework requiring them to make contributions to the Canadian music sector similar to the level of conventional broadcasters.*

Once the CRTC considers the regulation of the digital streaming services, it goes to the heart of the Cancon matter. There is a range of other “undertakings” that could be imposed on foreign and Canadian streaming services as licence conditions. It is beyond the scope of this submission to propose a new licensing regime for Cancon, but in principle, options can and should be considered.

One such option is the **direct contribution to Canadian music funds**, whereby some of the revenue earned by these services – both subscriber and advertiser-based - could be captured for FACTOR and Musicaction. In this way, they would mirror licensed Canadian radio services, including radio and satellite radio.

Aside from more contributions to music funds, the potential benefits to be derived from regulatory oversight by the CRTC would include the potential for generating more exposure of Canadian music through greater access to highly rated playlists offered by the digital music streaming services – and thus tap into their growing importance to music discoverability. There is also a potential for encouraging these digital streaming services to release additional important data, including crucial

marketing data, to creators and other Canadian music rightsholders, including data that is available to international labels.

Such mechanisms could raise funds for the further development of Canadian creators in the music business.

## 4.0 Discoverability and Promotion of Canadian Content

The digital world has created an abundance of choice. Virtually all the world's music repertoire can be accessed instantaneously on a hand-held device at the press of a button. The average consumer can choose any song they want, at any time. However, the average consumer frequently relies on recommendation algorithms, curated content, bloggers, and traditional advertising to find the content they want to listen to. In a world of limitless choice, consumers still rely on exposure and word-of-mouth from others to pick the content they wish to access. Conventional radio remains an important agent of discovery as well.

PCH has shown that it understands that discovery, marketing and promotion are particularly important in the digital era. Over the past year, it has been managing a research study on this subject.<sup>11</sup> The department has sought "information, data, and insights on marketing practices and their impact of the discoverability and consumption of Canadian music."<sup>12</sup> The Department documented changes in how consumers listen to their music, that production costs have declined, and that thus there is an increase in the amount of music available for Canadians and world audiences. Therefore, "the marketing of artists and content on traditional and digital platforms represent an increasingly important part of music companies' expenditures."<sup>13</sup>

This section of the report discusses the importance of the phenomenon called "discoverability", formerly known as promotion. It proposes regulatory and program support that will lead to more "discovery" of Canadian creators and other artists.

### 4.1 Trends in discovery and promotion

The importance of discoverability and promotion of Canadian content is ever more urgent when a million acts all over the world are clamouring for attention. In terms of discovery, there are two somewhat conflicting trends to consider.

1. People in general can learn of new music from radio airplay, as well as family and friends' recommendations (though that can be via social media). This social behaviour means that while the traditional ways to promote and discover music have eroded (mainly airplay on radio), they are still very important in the discovery process. This finding makes Canadian content rules just as important, if not more important, in the digital era to help consumers discover great Canadian art.
2. Millennials and especially teens look to **YouTube, the digital streams, and social media recommendations** from friends for discovering content.<sup>14</sup> This trend means that digital platforms are growing in importance for exposing and marketing Canadian music – they need access to the more popular playlists of Spotify, Apple Music, and whoever else enters the Canadian market.

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<sup>11</sup> <https://buyandsell.gc.ca/procurement-data/award-notice/PW-15-00692765-001>

<sup>12</sup> <https://buyandsell.gc.ca/procurement-data/tender-notice/PW-15-00692765>

<sup>13</sup> Ibid.

<sup>14</sup> In a 2013 survey in the US, among teens, 64% of teens discover music via YouTube and 56% discover it via radio. Overall, however, 48% of consumers discover music via radio and only 7% discover it via YouTube. A 2015 Canadian survey by Nielsen corroborated this finding: while less important for teens, radio remains the top vector for discovery when all age groups are considered.

### (i) The continued importance of radio airplay

As recounted in the discussion above, Canadian regulatory policy has ensured that radio airplay by licensed broadcasters has been a critical component of the support system for Canadian music. Based on the evidence, some of it cited above, support for the continuation of Canadian content is very much warranted in the radio regulation. The support of French language music in French speaking Canada is part of this continued support – especially since it is even more difficult for French language music to make it onto playlists of the international streaming services.

The issue of discoverability via radio for French-language music came to the fore in 2011 in a complaint filed by the Association québécoise de l'industrie du disque, du spectacle et de la vidéo (ADISQ). This filing alleged that Quebec radio stations had been combining multiple English-language selections as a montage to minimize the number of English-language selections when determining compliance with French-language vocal music (FVM) quotas.<sup>15</sup>

Radio stations rebut complaints such as this one, arguing that FVM quotas put them into unfair competition with online streaming services which are not subject to similar programming restrictions. French-language artists maintain that they rely on such quotas, given the difficulty of entering the major English-centric streaming services.<sup>16</sup>

It is understood that digital advertising is in the ascendancy, and that traditional media is severely challenged. However, radio revenues have held steady over the past five years, thus illustrating the unique value proposition they bring to advertisers.

*It is recommended that any review of CRTC regulations of content and language of music airplay should take into consideration: (i) the continued value of radio airplay for discoverability; and (ii) the current stability of private radio broadcasting in Canada, which is not harmed by Canadian content regulations.*

### (ii) Enhancing discovery through regulation of digital music streams

The potential benefits to be derived from regulatory oversight would be the following:

- There is a potential for generating **more exposure of Canadian music** through greater access to **highly rated playlists** offered by the digital music streaming services – and thus tap into their growing importance to music discoverability.
- There is a potential for encouraging these digital streaming services to release crucial **market data** to Canadian artists and creators (and indie labels); data that is available to international labels.

**More exposure:** “access to playlists” is consistent with the music Cancon regulations for Canadian radio, as a continuation of the role of exposure as the technology evolves (first radio, now streams). While it is fully recognized that implementing effective regulatory measures that reflect this provision needs careful consideration, it would be consistent with the long time Canadian regulatory policy.

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<sup>15</sup> Broadcasting Decision CRTC 2011-726. The issue has been revisited more recently in the CRTC’s Notice of Consultation 2015-318, which proposed to address the trend toward streaming in relation to FVM quotas, however the hearing was postponed to a yet unspecified date. [http://www.crtc.gc.ca/eng/cancon/r\\_french.htm](http://www.crtc.gc.ca/eng/cancon/r_french.htm)

<sup>16</sup> Quebec’s provincial legislature came out in support of ADISQ’s position, insisting that FVM quotas are extremely important to the preservation of the Quebecois identity and will not halt the migration to streaming services. <https://www.thestar.com/entertainment/2015/11/14/the-fight-to-dial-down-french-language-radio-quotas.html>

As discussed above, these measures are very important to music exploration and discovery – particularly for younger demographics. Achieving greater access to playlists available to foreign services would extend the exposure of Canadian works to even larger audiences. Although perhaps less related to the traditional undertakings one might consider for the domestic audience, it is worth noting the value in out-of-country distribution and exposure.

*It is recommended that once brought under CRTC regulation, the digital streaming and downloading services be required to further support Canadian creators through more exposure on playlists.*

**Access to market data:** The promotion of music is increasingly interdependent with access to market data and its analysis (so-called “data analytics”). The more that creators, artists, labels and their representatives can access, interpret, and act upon consumer data and information, the stronger their sales will be. The sale could be a concert ticket or merchandise, a download or a component of the subscription service, or indirectly through media (radio or streams whose business model is the sale of advertising).

The data can be used for planning concert tours (by having data on the location of the artists’ fans), for identifying “super fans” (by knowing who the intense users are), and for taking advantage of a breakthrough moment (knowing when to invest in promotion). Some will leave the analysis in the hands of their managers/labels. Others, who also may be active in social media, will learn to use the data in the same way.

Some of the data (e.g. Google analytics) is available to anyone. Some of the data is available on a subscriber basis (e.g. Soundcharts). However, some of it is kept closely guarded in the hands of the digital services. Information as to fans’ levels of engagement, for example, is not typically made available. Or, information as to the artists who they most closely resemble (and can thus organize their tours more effectively).

*It is recommended that federally funded programs recognize the growing need for access to data.*

## 4.2 Metadata standards

Another data issue that should be addressed is that the absence of metadata standards for music hinders the collection of royalties by rights holders. Metadata standards comprise the identification of genre, nationality, and stakeholders in a musical work that can be captured by the metadata identifier attached to a digital work.

Canadian music rights organizations make a substantial contribution to all the different types of creators in the music industry. With the increasing complexity of the digital distribution system and myriad music platforms, it is vital to be able to track and identify the uses to which Canadian music has been put. The various MROs can then invest in data collection methods that are more efficient and generate more revenue for Canadian music.

*It is recommended that federal government encourage and support all parties to adopt metadata standards for Canadian Music.*

## 5.0 Encouraging Strong Export Programs of Canadian Content

Canadian music is popular worldwide. In 2015, the performance of music written by Canadian authors and composers alone brought in \$62.7 million in foreign performing right royalties, which represents an increase of 60.3% since 2007.<sup>17</sup> CMPA and APEM publisher members have revenues exceeding \$199 million – 73% of which comes from foreign territories. Canada's export program may be on the right track for some purposes, but we need to continue this trend to strengthen Canada's creators and our international reputation. We should also remember that a strong export strategy begins with a strong investment at home in the development of Canadian cultural products. Without the support needed to create music at home, there will be nothing to export.

This section highlights the role of exports in the livelihood and careers of creators. It discusses the tight relationship between the rest of the music industry ecosystem and creators, and makes recommendations concerning the strengthening of export support activities.

### 5.1 Sources of revenue from abroad

The primary foreign market accessible to English language artists has traditionally been the USA. However, digital streams can enter most markets, and any other form of exposing a work on the internet can be consumed by anyone with good internet access. So, the opportunity grows for Canadian creators to be exposed to global audiences and to earn revenues from abroad.

Exporting music involves several activities, such as tracking and collecting more royalty payments from foreign sources, accessing the global streams as well as all the national/regional music platforms that are digital, touring internationally, and earning revenue from streams emanating from sales outside Canada. They need to be supported in foreign markets as vigorously as in domestic markets.

### 5.2 Partnerships with the rest of the music industry

Creators and other artists can be helped enormously by their ecosystem partners – the business side as well as the collectives.

First, the MROs' relationships with their counterparts in other countries can help grow royalty payments, as the payments trends showed in section 2.

Second, creators can benefit from their partnerships with music publishers and labels. When they arrange for the artists to tour abroad or for distributors and streams to take on the works they are managing, they are potentially putting money into the pockets of the creators and artists. In fact, creators, publishers, artists, managers, promoters, publicists, etc. are all parts of the ecosystem who can help can help drive up interest, popularity, and sales internationally.

Thus, greater exports will be achieved through a successful collaboration between creators and entrepreneurs. Under fair terms creators and artists should be accessing foreign markets physically via touring, and electronically via digital platforms – it is a great complementary story.

### 5.3 Recommendations to improve music exports

Canada is a musical powerhouse, and the branding should show it. It should focus on our extraordinary Canadian creators and artists, and promote Canadian music cities. Other countries and cities (e.g. Austin and Nashville) have been quite successful to brand their music industry in a highly favourable light. So too could Canada.

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<sup>17</sup> SOCAN 2015 Annual Report

*It is recommended that the federal government show continued leadership in redefining the Canada Brand and should develop a National Music Export Strategy and bring together all the music industry elements as well as the provincial government support activities. It should provide support and funding to develop a strategy for the promotion and export of Canadian music internationally.*

## 6.0 Sustainability of Canadian Content in the Digital Era

As indicated in section 4, the intention is not to “regulate the internet”, nor to apply an additional tax to ISP service providers. It is to seek additional revenues for the music industry from contributions made arising from the regulation of digital music services. That is part of the answer to the issue of sustainability of Canadian content in the digital era.

There are other ways to support the music industry. One way is to generate revenue for federal and provincial coffers from these services and at the same time establish a level playing field for domestic streaming services. That is by applying a value-added tax (GST/HST).

Another way to support Canadian music is via a mechanism that logically flows from the tax incentives for Canadian content in the film and TV sector. That is to provide tax incentives for the audio-visual sector to buy Canadian.

In this section, we address the sustainability of Canadian music content by suggesting two mechanisms to add revenue to government coffers and more directly by offering incentives to buy Canadian.

### 6.1 Fair collection of HST from foreign streaming services

One way for bringing money into government coffers to help defray the costs of the Canada Music Fund, for example, is to add these services as subject to the GST/HST. It would mean charging subscribers for the services supplied for which there is some form of purchase or subscription payment. While we understand that this issue is part of a broader international tax policy and international agreement, it appears that several OECD jurisdictions are accepting the principle that consumption taxes should be based on where the consumers are, not where the service operator is located.

- The EU is proposing to establish taxes for digital services on that basis to facilitate a more equitable tax regime for major companies, which now situate themselves in low tax jurisdictions (e.g. Luxembourg) to lessen the tax liability. Whether the service suppliers (music, books, films, etc.) will lower the price of their products to compensate partially the consumers is not yet clear.
- Australia has proposed similar legislation, which is expected to raise A\$350 million over four years with funds going to the states and territories. Japan and New Zealand are likely to do the same.

In the US, there has been similar activity on the tax front, though mostly motivated by the desire of US states to raise revenues to meet their general budget needs. We can point to many instances in which this mechanism is either being applied or is under review, e.g. the following:

- Pennsylvania has joined several states in enacting a tax on digital streaming and download services. The 6 percent sales tax on services like Spotify, went into effect on Aug. 1, 2016.<sup>18</sup> This tax was part of an overall package in which there was \$4 million pool in tax credits for concerts and rehearsals produced in the state.
- Other jurisdictions in the US have in the recent past have also added digital services to the tax rolls. For example, in 2015 Chicago added a 9 percent "cloud" tax on streaming services; Connecticut applied sales tax to digital "downloads" at 1 percent; and in 2009, Washington state defined digital goods in such a way to include streaming as part of its digital sales tax.

*It is recommended that the federal government:*

*(a) bring the digital music and audiovisual services – streaming and downloading, ad-supported and subscriber-supported – under the general value added tax regimes.*

## 6.2 Buy Canadian initiatives

The content creation sectors have always crossed-over at various times – music has always been used in film and TV shows; books have been converted to film; music videos have been conceived for television; etc. But the separate creative industries usually remained in their separate silos. The internet is the great leveler up to a point as online versions of movies, books, newspapers, magazines, and of course music meet on YouTube and other web-based platforms.

The implication for music is that there can be more sales of rights through licensing for synchronization revenues – for which Canadian artists are finding a useful revenue source. And more sales to new platforms, like interactive games either packaged or available on the web.

These opportunities lead to the potential addition of new incentives for Canadian content producers to add Canadian music – whether it be feature films, TV programs, games, or even TV/video commercials. There is also a significant opportunity for the federal government to assess its own programs, its own Crown corporations, including the CBC, to ensure that film, TV and video game producers are incentivized to use Canadian musical works.

*It is recommended that to support the sustainability of Canadian content in the digital era, there should be a Buy Canadian Incentive, whereby audiovisual productions should be encouraged and receive incentives for the use of Canadian music in audiovisual productions.*

## 7.0 Improved Copyright Protection

Copyright protection of intellectual property is fundamental to any of the creative industries, and none more so than protection of the rights of performers, composers, authors, and lyricists. In fact, in music the role of music copyright collectives is critical to the livelihoods of the creators more so than any other creative industry sector. While copyright protection is fundamental to the producers in all creative sectors, it is more important to music creators than the creators of other sectors.

<sup>18</sup> "Pennsylvania Is the Latest State to Tax Streaming Services" Aug 15, 2016 by Andrew Flanagan. Billboard <http://www.billboard.com/articles/business/7469634/pennsylvania-taxing-streaming-services>

This section discusses issues related to improving copyright protection for music creators in the forthcoming 2017 revisions to the Copyright Act. Copyright is linked to content in a digital world as an issue because of the new challenges and opportunities in copyright brought by the multiplicity of digital platforms. While the issues may well be enjoined next year, it is difficult to treat the future for creators without a brief account of the role of copyright and the need for further reform of the Act.

## 7.1 Copyright legislation

The Minister's assumption as spelled out in the consultation paper is that everything is on the table, and that the current system is broken. While it may be outside the scope of the digital consultations, a more comprehensive approach would be to include a review of the institutional framework around copyright and the ways in which rights are adjudicated, collected, and resolved in the digital era.

The Copyright Act will be up for revision in 2017, and the music industry will be very much part of that process. It is understood that there will always be a balance between concern for the users/consumers as well as need to protect the rights of the creators – and we should never forget the latter. In any consultation process triggered by the revision, the ACCORD members will explain:

- How the rights situation for each platform has evolved, and what are the challenges and opportunities associated with it going forward;
- How metadata and digital matching can help rights owners navigate increasingly murky international waters;
- How important to creators Copyright protection becomes to counteract the loss of traditional forms of protection due to the erosion of Canadian broadcasting regulation and the decline of physical distribution of music; and
- What recommendations on revisions would be complementary to those recommendations that have been advanced in this paper for this consultation process;

The key message of music rights organizations is that if music rights holders are given the tools to protect and enforce their rights, it will go a long way to sustain a vibrant music industry in Canada.

*is recommended that federal government:*

*(a) approach the 2017 Copyright Act review and revision as an important and highly integrated component of promoting Canadian music content in a digital age;*

*(b) programs designed to foster growth of an industry and promote Canadian exports work with music rights organizations to ensure that they are well equipped to support Canadian creators.*

## 8.0 Development of a Fair Trade Music Ecosystem

Fair Trade Music International is a Canadian not for profit company incorporated by the Songwriters Association of Canada with an international Board of Directors and Advisory Council formed to provide music consumers with an independent, transparent and sustainable choice. In addition to being fair for all parties from creators to consumers, Fair Trade Music International encourages a music ecosystem that gives artists, songwriters and composers the chance to make a living so they can dedicate their lives to making great new music for all to enjoy.

Creating a fair trade music certification will:

1. Recognize and reward “fair” behaviour in the music ecosystem by means of an independent, music creator guided certification process;
2. Increase public awareness of who pays and who plays “fair”, and which music distributors and companies are working with music creators to establish an equitable music value chain for all; and
3. Define the concept of what is “fair” to all parties in the music value chain in consultation with all music rights holders and stakeholders.

*It is recommended that the federal government provide support for the “Fair Trade” not-for-profit organization – [fairtrademusicinternational.org](http://fairtrademusicinternational.org) - launched by music creators to promote awareness and the certification of music services that provide fair remuneration for the use of music on a global basis.*

## 9.0 Conclusion

Canadian content rules were introduced to safeguard and enrich Canadian culture in the face of overwhelming foreign competition in the marketplace. While technology has changed the delivery of content and increased foreign competition, it has not changed the purpose behind Canadian content rules and the importance of protecting Canadian stories and our national identity.

We are encouraged to see that the public and industry stakeholders both agreed in the pre-consultation questionnaire that among the most effective tools for ensuring the creation and discovery of Canadian content in a digital world are public funding agencies and enhancing public support for creators.

Overall, government support for the music sector has promoted live performances and the export of Canadian music for nearly a century. Both are important to the development of the music sector but, arguably, there are still opportunities being lost in the market and in the export of music at the federal and provincial levels.

However, evidence suggests that government has worked with technology changes over time has been hugely effective in optimizing them to boost Canadian music both home and abroad. In this sense, the historical narrative encourages us not to declare surrender because of the way in which music distribution and promotion is emerging on internet platforms.

We look forward to discussing, contributing, and learning more about what the government intends to accomplish in this historic review.

## APPENDIX

### Key Historical Milestones of Federal Support to the Canadian Music Sector

This appendix provides an overview of the key milestones of federal support to the Canadian music sector through the purviews of radio broadcasting regulation and federal support programs.

#### Canadian music and radio broadcasting regulation

Radio broadcasting was conceived by the federal government as an appropriate responsibility, and began providing subsidy through the **1932 Radio Broadcasting Act** and the formatting of the **Canadian Radio Broadcasting Commission (CRBC)**. Indeed, the CRBC and **its successor in 1936, the CBC**, were conceived initially as patron, producer, promoter, and regulator of all types of Canadian music, coexisting with small local stations run by commercial broadcasters. The CBC was first and initially the only federal agency mandated to sponsor music by Canadians, mainly by commissioning individual works and performances rather than through full-time support of individuals or groups.

Several other events highlight the long history of federal government intervention in radio broadcasting and its impact on Canadian music.

- The CBC board of governors also regulated private broadcasters until 1958, when the newly elected Diefenbaker government passed a **Broadcasting Act** - creating a Board of Broadcast Governors, re-named **Canadian Radio-television Commission (CRTC)** by the 1968 Broadcasting Act, to regulate both private and public sectors. By creating a separate regulatory body, the 1968 act ended **the 'single system' of Canadian broadcasting**, and created a new mandate for the CBC as a 'public service' responsible for nurturing Canadian unity, identity, and culture.
- Private stations were regulated in terms of ownership (80% Canadian) but not program content, and could expand enormously as part of a national broadcasting 'system' free from minimum levels of sponsorship for program production. Regulation of private broadcasters was the subject of the **1957 Royal Commission on Broadcasting (Fowler Commission)** and the **1965 (Fowler) Report on Broadcasting**, both of which called for minimum standards of public-service programming and Canadian content in the private sector.
  - In response, the CRTC imposed **Canadian-content quotas for AM radio in 1971**: 30% of recorded music broadcast had to be 'Canadian content' (i.e., the MAPL system). To fulfill this requirement, two of the composer, lyricist, performer, and recording studio had to be Canadian.
  - In the **CRTC's 1975 FM radio policy**, 'Cancon' quotas were also established for FM radio, set differentially by format (e.g., 7% classical, 30% country, 20% "Top 40"). To ensure musical diversity within each community, the policy required FM broadcasters to specify a format in applying for licences, choosing from specific popular (music/general or music/traditional) and special interest categories
  - By the end of the 20th century, radio stations would have to play 35% Canadian content broadcast between 6 A.M. and 6 P.M., Monday to Friday, during any broadcast week.<sup>19</sup>

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<sup>19</sup> For French language radio stations, regulations require that at least 65% of the popular musical selections aired during each broadcast hour be in the French language. They also require that at least 55% of popular vocal musical selections aired each week between 6 A.M. and 6 P.M. be French language selections. There are exceptions from Canadian content rules for music formats such as classical and jazz, where Canadian selections can be as little as 20% of all selections played.

Canadian content is credited with creating a domestic market for Canadian music and the subsequent boom in music production, leading to an explosion in the 21st century of Canadian pop musicians dominating the airwaves unlike any era before. Even though music promotion is a more crowded field today, radio airplay remains important.

Because AM radio had declined in audiences and revenues, the **CRTC's 1990 review of FM policy** proposed equalization of FM quotas with AM quotas (30 per cent Canadian content, except for French-language broadcasters) and combined all popular music formats into one category (group 1: pop, rock, and dance) for licensing purposes. In effect, the CRTC considered the emergence of new technology, i.e. the new FM band for radio, and applied appropriate regulation.

Other aspects of music programming subject to regulation and outlined in each commercial FM station's '**promise of performance**' include the proportion of selections played that are defined by the licensed format.

In 2005, the CRTC licensed two satellite radio companies in Canada – Canadian Satellite Radio Inc. (CSRI, operated as XM Canada) and SIRIUS Canada Inc. – requiring both to contribute to the Canadian Talent Development (CTD) fund. This action is further evidence of the CRTC's regulatory landscape changing along with the technology landscape.

This short description of the regulatory policy developments of radio broadcasting documents the ongoing concern of the federal government in the promotion of Canadian creators and other artists. It also shows how regulation handled technology advances, considering and taking action with the rise of new platforms and business models.

## **Funding support for Canadian music through private broadcasters**

There are four principal ways that private broadcasters currently fund the creation of Canadian music, some of which are also supplemented by government funding.

- **Canadian Content Development (CCD)** of the Commercial Radio Policy 2006, consists of various funding initiatives by broadcasters to help create and promote audio content for broadcasting using Canadian resources. All commercial radio broadcasters with more than \$1,250,000 in annual revenues must make annual financial contributions to support CCD based on a station's revenue (e.g. FACTOR, MUSICACTION, Community Radio Fund of Canada (CRFC), Radio Starmaker Fund, Fonds Radiostar, music industry associations (MIAs), educational institutions, community initiatives, etc..).
- **FACTOR** (Foundation Assisting Canadian Talent on Recordings) was founded in 1982 by a partnership of the private radio broadcasters CHUM Limited, Moffat Communications and Rogers Broadcasting Limited, in consultation with the Canadian Independent Record Producers Association (CIRPA) and the Canadian Music Publishers Association (CMPA).
  - In 1985, FACTOR merged with the **Canadian Talent Library (CTL)** development fund, a private trust created by Standard Broadcasting Limited that had been producing Canadian recordings since the early 1960s. The move increased FACTOR's funding budget and created funding room for a diversity of genres.
  - Because of the Canadian Content Development (CCD) policies of the Canadian Radio-television and Telecommunications Commission (CRTC), FACTOR became a major beneficiary of annual contributions made by private radio broadcasters due to licenses and license renewals.
- FACTOR and **Fondation Musicaction** (Musicaction) administer the CMF's New Musical Works Component and Collective Initiatives Component for the English language sector of the

music industry and the French-language sector, respectively. These public-private partnerships are funded in part by private and satellite radio broadcasters.

- The **Radio Starmaker Fund** was created in the fall of 2000 on the initiative of the Canadian Association of Broadcasters and approved by the CRTC. It is a private fund which has as its stated purpose to "make a substantial and discernable difference to the careers of Canadian artists" by providing substantial incremental investment where the artist has established a proven track record and his or her label is making a Significant Investment in their future career.

Revenues from commercial radio in Canada over the past five years have been relatively steady, although it has not grown. Total revenues for commercial radio stations were \$1.6 billion in 2015, down 0.7% (-\$11.6 million) compared to 2014. However, given commercial stations have decreased their expenditures, profits before interest and taxes (PBIT) margins have in fact been maintained<sup>20</sup>. Thus, for the time being, at any rate, their contributions to FACTOR and Musicaction should be stable.

**Figure 5: Commercial radio revenues, expenses and profit before interest and tax (PBIT), 2011-15**



Source: CRTC Commercial Radio Statistical and Financial Summaries 2011-2015

Overall, funding from private broadcasters contributes significantly to the creation of new musical works in Canada. As documented above, though traditional revenue from the sale of music units has declined, commercial radio advertising revenue does not seem to be in decline. Therefore, it should remain as an important source of funding for creators.

A significant source of CCD, Radio Starmaker Fund, FACTOR, and Musicaction funding is derived from 'tangible benefits', which are one time amounts committed by the acquiring radio station group of another one. In the calculation of such tangible benefits at least 5.5% of the value of radio ownership transactions must be contributed to these organizations (with another 0.5% directed to the Community Radio Fund of Canada).<sup>21</sup> Much of the radio station consolidation may have occurred (68% of commercial radio revenue are earned by the five largest station groups<sup>22</sup>). Therefore, it is likely that the pool of tangible benefits will decline in the future.

<sup>20</sup> <http://news.gc.ca/web/article-en.do?nid=1056439>

<sup>21</sup> <http://www.crtc.gc.ca/eng/archive/2014/2014-459.htm>

<sup>22</sup> CRTC, Communication Monitoring Report 2016, Table 4.0.2

## Federal support programs

Cultural industries were moved from Secretary of State to the Department of Communications in 1980; the latter established a **Sound Recording Development Program (SRDP)** in 1985. SRDP assisted sound recording producers directly by offering grants for demo tapes, studio recording, business development and promotion, and international touring. FACTOR took on the administration of federal funds upon the SRDP's inception. The SRDP proposed to invest \$25-million over an initial five years into the Canadian independent music industry.

FACTOR was tagged to administer sixty percent of those funds, while the remaining forty percent supported French-language music through **Musicaction**, the French language counterpart. Founded in 1985 to encourage the production and marketing of sound recordings and collective promotion activities, Musicaction's programs are designed to meet the needs of independent music production, producing most Francophone artists' albums across the country. As a rule, nearly 80% of its resources are devoted to francophone vocal music and 20% to other musical genres. English music projects are directed to FACTOR. Musicaction also administers the RadioStar Fund for French language music.

In 2014's Report of the **Standing Committee on Canadian Heritage** (Review of the Canadian Music Industry), several recommendations were asserted to modify the support allocated by FACTOR to reflect the digital environment in which the music industry operates (e.g., more assistance to entrepreneurs to compete in the digital economy, more funding for technology-based projects, more support directed to the creation of Canadian streaming platforms). There are also calls for FACTOR to direct funding away from the more established independent labels toward smaller projects produced by artists themselves.

As the radio sector consolidated, FACTOR/Musicaction grew considerably as delivery agents of federal program support and benefits provisioning based on ever increasing radio revenues. However, as radio revenues plateaued in the 2000s (with no policy in place to tap music streaming), FACTOR/Musicaction's resources are constrained.

**Table 1: FACTOR Revenues 2013-2016**

Year	Total Revenues	Broadcaster Contributions	Canada Music Fund
2013-14	18,720,144	10,219,542	8,500,601
2014-15	22,632,162	14,131,561	8,500,601
2015-16	20,444,536	11,949,935	8,500,601

**Table 2: Musicaction Revenues 2013-2016**

Year	Total Revenues	Broadcaster Contributions	Canada Music Fund
2013-14	9,382,833	4,297,902	5,084,931
2014-15	9,637,432	4,552,489	5,084,931
2015-16	8,522,691	3,437,760	5,084,931

Another policy intended to protect the Canadian recording industry was the charging of **tariffs on imported records and tapes**. In 1991 it was phased out because of conditions agreed to by Canada in the 1989 Canada-US Free Trade Agreement. Tariffs on imported records were intended to assist record and tape manufacture within the country. However, tariffs on imported pre-recorded master tapes

commonly used in the manufacture of records were applied only to the value of the blank tape. The result was a major encouragement toward the massive importing of pre-recorded master tapes in place of recording music in Canada for the manufacture of records.

Founded in 2002 by the Department of Canadian Heritage, the **Canada Music Fund (CMF)** was created to assist the Canadian music industry to meet new challenges. It remains the primary tool implementing the major objectives of the Canadian Sound Recording Policy, *From Creators to Audience*. The CMF has four components: **New Musical Works, Collective Initiatives, Music Entrepreneur, Canadian Music Memories**.

**Table 3: Key milestones in Canadian federal support to the music industry**

Year	Federal Government Support <sup>23</sup>
1932	Radio Broadcasting Act
1957	Fowler Report recommends the establishment of a regulatory agency (Board of Broadcast Governors)
1968	Broadcasting Act created the CRTC "The Canadian broadcasting system should be effectively owned and controlled by Canadians so as to safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada"
1971	CRTC creates first Canadian Content regulations - 30% of AM radio needs to be Canadian
1975	CRTC creates Canadian Content for FM radio
1986	Radio Regulations – e.g., expansion of content requirements for radio broadcasters
1986	Sound Recording Development Program created to increase the quality and quantity of sound recording in Canada through project assistance
1993	New regulatory reforms to meet challenges of multichannel universe
1998	CRTC increases Canadian Content requirements for AM and FM from 30 to 35%
1999	CRTC decides against regulating the Internet and issues the "new media exemption order"
2002	Canadian Heritage creates the Canadian Music Fund to implement the policy objectives)
2009	CRTC rules for a second time against regulating the internet and new media – and thus maintains the "new media exemption order"

<sup>23</sup> Excludes copyright legislative decisions

This continuity of government policy resolve should be maintained, leading to the following two recommendations which exhort the need to be adaptable as well as continuity in the government interventions.

## The regulation of digital broadcasting

The CRTC has not tried to regulate digital streaming services even though they exhibit strong similarities to broadcasting undertakings that require licences. In fact, the original digital media exemption order was used to desist from any regulation of such digital services. That exemption order was last re-affirmed in 1999,<sup>24</sup> and has been subject to only minor updates since.<sup>25</sup> The CRTC's 2009 affirmation of the exemption order was at a time that it was still not clear how exactly digital would change traditional radio and other aspects of the Canadian broadcasting system. That is now much clearer, and the exemption should be thoroughly reviewed.

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<sup>24</sup> Public Notice CRTC 1999-197

<sup>25</sup> In 2009, Broadcasting Order CRTC 2009-660 updated the definition of new media and added reporting requirements for new media undertakings, and in 2012, Broadcasting Order CRTC 2012-409 prohibited new media undertakings from offering television on an exclusive or preferential basis for subscribers to a specific mobile or retail Internet access service.