

# IDEAS

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## Copyright reform is needed now

GLENN O'FARRELL

**W**ith the House of Commons now in its summer recess, and the parties convening over the coming weeks to prepare their legislative agendas for the fall, Canada's private broadcasters are left again to ponder the reality of parliamentary business concluding without any meaningful action taken on copyright.

Why does it matter? Simply stated, the copyright regime, taken as a whole, is running off the rails. Consider private radio: The collection of existing and proposed copyright payments could result in an increase of over 100% over current payments for broadcasters and an unprecedented escalation of costs that could significantly impact on the prosperity of many radio stations in Canada.

For years, private broadcasters have called on successive governments to address the problems surrounding an increasingly complex and fragmented copyright regime. As a partial solution to these growing problems, broadcasters have

over the past 18 months sought a clear direction from the government to the Copyright Board, the economic regulatory body that sets fees for the use of copyrighted works. The government direction to the board would provide a framework for decision-making to streamline processes and decision-making, addressing important elements of the current complexity and fragmentation.

We have been told by successive governments to remain patient, and that needed reforms, including new legislation, were just around the corner. Yet, another session ends, without any meaningful action taken on copyright.

Private broadcasters are faced with a copyright system that is stalled in the past, and characterized by an increasing burden of tariffs and an increasing complexity for rights owners, users and the regulator alike.

Commercial radio stations in Canada currently pay three times for the music they play: the tariff to composers, authors and publishers for the communication right, the tariff for neighbouring rights to

performers and makers of sound recordings and the tariff for reproduction rights to composers, authors and publishers (essentially the same copyright owners as the first group). This represents over \$70-million per year in copyright fees from radio broadcasters. And the collectives administering these tariffs have filed to have them increased for the years 2008 forward.

Moreover, the tariffs continue to pile up. A reproduction right was proposed by the record industry this spring, seeking up to 4% of radio stations' revenues. For 2007 and beyond, private broadcasters will likely face additional tariff payments for streaming music online, and there remains a very distinct possibility that these tariff payments could be assessed retroactively, creating an unknown liability for broadcasters.

To be clear, this call for action shouldn't be viewed as an indictment of the work of the Copyright board, or the approach they have taken to setting rates. The Board can only work within the guidelines that they are provided.

The notion that is floated around

Ottawa that copyright is too complex an issue to be dealt with in a minority government is mistaken. Action can be taken without necessitating a complete redrafting of the Copyright Act, given that the Act includes a provision that allows for Cabinet to provide a directive to the board. With such a directive, the government can provide a mandate to better respond to the evolving realities of creators and users alike by focusing on streamlining processes and decision-making.

It's not as though action can't be taken. The new movie piracy legislation (Bill C-59) has made its way from the drafting stage and through three readings and votes in the House almost overnight. A directive from Cabinet would be a much less intensive process than redrafting legislation.

The copyright regime is inefficient and ineffective. The current government has demonstrated willingness to modernize the manner in which regulation is done in Canada. If Canada's private broadcasters are to remain competitive in a changing environment, a new direction for copyright is a must.

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■ Glenn O'Farrell is the president and CEO of the Canadian Association of Broadcasters.