



August 16, 2004

**Canadian
Association of
Broadcasters**

**L'Association
canadienne des
radiodiffuseurs**

The Honourable Liza Frulla
Minister of Canadian Heritage
Department of Canadian Heritage
12th Floor
15 Eddy Street
Gatineau, Quebec
K1A 0M5

The Honourable David Emerson
Minister of Industry
Industry Canada
11th Floor, East Tower
235 Queen Street
Ottawa, Ontario
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Dear Ministers:

Re: Copyright Reform

On behalf of the Canadian Association of Broadcasters (CAB), I would like to provide some comments regarding the next stage of copyright reform, and copyright issues of interest to broadcasters. The CAB is the national voice of Canada's private broadcasters, representing the vast majority of Canadian programming services – including private television and radio stations, networks, and specialty and pay-per-view television services.

The CAB has always played an active role in copyright reform because of our members' significant financial and operational stakes in the outcome of reform efforts. Canadian broadcasters are creators and owners of copyright works that they make themselves; rights holders in works created by others; and, as well, they are major users of the works of others. The CAB is a frequent participant in proceedings before the Copyright Board. A fair, modernized, effective and workable copyright regime is therefore of paramount importance to the day-to-day operations of our over 700 members' businesses and to the ongoing future of our industry.

The CAB has been following the work of the Standing Committee on Canadian Heritage and is aware of the Committee's Interim Report on Copyright Reform (May 12, 2004). That report recommends that legislation to permit ratification of the WIPO treaties be introduced in the House of Commons by November 15, 2004. The CAB hopes that you will be in a position shortly to announce your legislative plans; and the priority you intend to place on copyright reform.

While the Standing Committee's Interim Report addressed some of the contentious WIPO implementation issues, there are a number of other issues that are of urgent interest to Canada's private broadcasters.

Broadcasters do not object to the creation of new rights to cover new substantive uses of copyright material, but would object if the new rights overlap with existing rights thereby creating new liabilities for them with respect to current activities governed by the existing rights regime. For example, with the arrival in Canada of legitimate music download services, there is a requirement to clarify, in legislation, the scope of the rights being utilized. The "making available" right proposed to be granted for sound recordings and performers needs to be clearly distinguished from the communication right so that the ability of broadcasters to use streaming technology is not hindered. The CAB will be concerned if the "making available" right proposed for Canada goes beyond the minimum required to comply with the WIPO Performances and Phonograms Treaty. The Status Report on Copyright Reform submitted by your predecessors in March 2004, to the Standing Committee on Canadian Heritage, acknowledged that the making available right as formulated in the WIPO Treaties "applies specifically to copyright material made available on an on-demand basis, i.e. available at a time chosen by the user".

The CAB also has an interest in seeing how existing exceptions will be maintained in light of WIPO Treaty requirements to introduce protection for Technological Protection Measures (TPMs) and Rights Management Information (RMI). Your decisions on how to deal with TPMs, RMI and exceptions will be critical in creating and maintaining the "balance" that is so critical in copyright legislation.

The CAB also believes that the next legislative package must be broader than WIPO Treaty implementation measures. Given that successive governments have underestimated the time required to prepare copyright legislation, and to get it through Parliament, the CAB proposes that several non-WIPO Treaty implementation issues be dealt with as well.

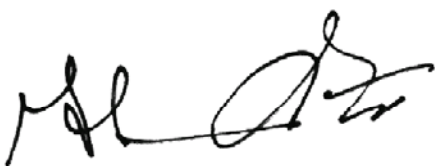
In addition to clarifying the ISP liability issue which the Interim Report addresses, and on which the Supreme Court of Canada has recently given useful guidance, the CAB urges you to include provisions to amend the ephemeral recordings and transfer of formats section (sections 30.8 and 30.9) of the Copyright Act in order to provide true exceptions to broadcasters to facilitate their operations. In essence, broadcasters are seeking an exemption that would allow them to make technical copies of works and sound recordings without payment in circumstances where they have already paid for the right to broadcast the work or sound recording. The CAB and its members view the amendment of these provisions as an overdue remedy to an unintended result of the last major copyright reform package. We believe that by including provisions similar or identical to those contained in Private Member's Bill C-506 introduced by Mr. Proulx in the last Parliament, you will be presenting a fairer and more balanced package.

In addition, failing a more comprehensive review of the entire Private Copying regime in the Copyright Act, the CAB believes that the next legislative package must clarify that broadcasters are not subject to the private copying levy. As you know, various aspects of the Copyright Board's decision on the Private Copying levies is before the Courts. Including this clarification in legislation now will avoid needless expense and delays in arriving to the conclusion that the Canadian Private Copying Collective (CPCC) and broadcasters have already reached – that is, broadcasters' industrial use of blank recording media is not "private copying" and should not attract payment.

The CAB has consistently advocated greater protection for broadcasters' signals. As you may know, there was a meeting held in Geneva of WIPO's Standing Committee on Copyright and Related Rights in June of this year addressing the need to provide greater protection for broadcasters. The CAB asks you to support the convening of a Diplomatic Conference within WIPO as soon as possible with a view to concluding a multilateral treaty on the protection of broadcasting organizations, and thereby set the stage for further domestic reform in this area.

The CAB looks forward to working with you and your officials on these copyright issues, and other issues of mutual interest, in the months and years to come. I and my staff will be following up with you and your officials shortly to provide any additional information you may require on these specific copyright issues and other WIPO-related matters. I would welcome the opportunity to discuss these issues with you personally.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Glenn O'Farrell', written in a cursive style.

Glenn O'Farrell
President and CEO

c.c. S. Bulte, MP
J. Pickard, MP
J-P Blais
B. Stockfish
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