



Canadian Independent Music Association

The Hon. Shelly Glover
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15 Eddy Street
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The Hon. James Moore
Minister of Industry
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**CIMA Submission to the Consultation on the Regulation of the “Notice and Notice”
Regime**

Dear Ministers,

I would like to take this opportunity to thank you for including Canada’s domestic music industry in the consultation on the regulations governing the implementation of the “notice and notice” regime, included in the *Copyright Modernization Act*.

Canadian music creators are heartened to learn that the government will not implement a fee for submission of notices, a decision that is certain to help content creators make best use of the new law. The government’s goal of ensuring that the regulations help deter copyright infringement is both shared and supported by Canada’s independent music industry, and we are tremendously appreciative that the government has included this important principle in its notice of consultation.

While the Canadian Independent Music Association (CIMA) had originally supported a notice-and-takedown system, I would like to take this opportunity to express our principles for an effective notice and notice regime, as well as offer recommendations to ensure that it achieves its objective of deterring copyright infringement. CIMA believes that the implementation of notice-and-notice rules will put the onus on the copyright owner to take action when infringement occurs, while placing relatively little responsibility on the Internet Service Provider (ISP) to stop copyright violation. As such, CIMA believes that the regulations should lead to a notice system that is easy for copyright holders to use, provides assurances that notice has been served and be transparent for all parties involved.



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About the Canadian Independent Music Association

By way of background, CIMA represents Canada's domestic music industry, which consists of more than 190 Canadian companies and professionals engaged in the worldwide production and commercialization of Canadian music. These companies, in turn, represent thousands of Canadian artists and bands.

CIMA's membership consists of Canadian-owned companies and representatives of Canadian-owned companies involved in every aspect of the English-language music and music-related industries. They are exclusively small and medium sized businesses which include: record producers, record labels, publishers, recording studios, managers, agents, licensors, music video producers and directors, creative content owners, artists and others professionally involved in the sound recording and music video industries.

Some of the great Canadian independent artists and bands represented by our members include Rush, Bruce Cockburn, Sarah McLachlan, Broken Social Scene, Feist, The Trews, Tokyo Police Club, K'Naan, Luke Doucet, Blue Rodeo, City and Colour, Chromeo, K-OS, Metric, Diamond Rings, Lights, Our Lady Peace, Said The Whale, Jenn Grant, Dan Mangan, Chilly Gonzales, Delhi to Dublin, Canadian Brass and Saidah Baba Talibah, to name but a few.

Principles for Notice and Notice

Ease of Access: One of the realities of the notice-on-notice system is that it will require copyright owners to assume responsibility for monitoring copyright infringement and initiating action. Internet service providers (ISPs) will be required to retain customer information for a period of time and serve notice of a copyright violation to the infringing party. Given the ease of access to customer information available to an ISP, as well as the fact that serving notice will likely take the form of an email in most cases, CIMA does not believe that the notice-on-notice system will place a resource-intensive burden on ISPs.

Canada's independent music sector is comprised entirely of small businesses. According to CIMA's *Sound Analysis* study, 60 percent of Canadian independent music companies generate less than \$50,000 in annual revenue. Nearly half of the independent music companies in Canada are sole proprietorships, reflecting a highly de-centralized industry made of micro-sized companies. These small companies thrive without easy access to credit and often without significant resources-on-hand, yet they collectively add \$303 million to the Canadian economy and employ almost 13,500 FTEs. Independent music companies engage in all manner of activity, including creating and selling sound recordings, staging live performances, artist management, publishing and licensing music, and much more. It is not



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uncommon for one company to engage in multiple activities at the same time, requiring a significant time commitment on the part of the owner.

The realities of the independent music industry illustrates that Canada's domestic industry lacks both the time and resources to participate in an overly complex notice-submission system. If the information required to submit a notice takes more than an elementary technological understanding, or requires a time-consuming registration or correspondence process, many small businesses engaged in the creation of music will be deterred from putting forth the time and effort to submit notices.

CIMA understands that copyright owners must submit clear and thorough notices. Indeed, the notice requirements already stated in the copyright modernization act are reasonable and valid. However, the draft notice-and-notice regulations have the potential to add a laundry list of new requirements, each of which would represent additional time and effort on the part of a small business-owner in the music industry. Further, additions to the notice requirements are likely to be more technical in nature than the ones currently enshrined in legislation. Requiring music professionals to search for things like "IP addresses", "port numbers" and other internet location information may fall beyond the technical expertise of many in the music industry, which will deter participation in the new system.

CIMA believes that notice-submission system should be both simple and straightforward. Keeping the administrative burden of the notice-submission system low will help the government's stated objective of deterring copyright infringement, by allowing businesses to easily assume their responsibility to monitor and report infringement. CIMA agrees with the government's views that regulation beyond the legislation may not achieve this end. We would respectfully submit that no additional information requirements should be placed on notices unless they either (a) help better deter copyright infringement, or (b) require little or no new effort on the part of the copyright holder. If neither of these conditions are satisfied, additional notice requirements will deter Canada's domestic industry from exercising their right to submit copyright infringement notices.

Principle: Transparency

For notice submission to be a worthwhile undertaking for copyright holders, it must be a fair and transparent process. Currently, the ISP acts as an intermediary between the copyright holder and the infringing party. ISPs are only required to inform the copyright holder that a notice has been sent to the infringing party. CIMA submits that changes can be made to make the process more transparent to copyright holders. As is, a copyright holder who submits a notice of infringement has no official mechanism to know whether the infringing party received the notice, or whether they understood it.



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If a court proceeding were to be initiated, the success or failure of a particular case would likely be heavily influenced by whether the copyright holder followed “due process,” starting with the submission and receipt of a notice. If this is not properly defined, the integrity of the system is subverted for all parties involved. As such, CIMA believes that the regulations for notice-and-notice should contain a provision that ISPs must formally acknowledge receipt of a notice from a copyright holder. Further, an ISP must issue a formal response to the copyright holder, informing them that notice has been received and sent to the infringing party.

Confirmation of (a) when notice has been received by an ISP, and (b) when the ISP has sent the notice to the individual who has infringed copyright would make for a more transparent notice-and-notice regime, and give copyright holders a greater degree of confidence that all parties are helping to deter copyright infringement to the best of their ability.

CIMA believes that an ISP formally acknowledging receipt of a copyright infringement notice would help the new notice-on-notice system be far more transparent for all parties involved.

Recommendation: Internet Service Providers must formally acknowledge receipt of all notices of copyright infringement, and inform copyright holders when a notice has been sent to the infringing party.

Principle: Openness & Flexibility

We believe that the notice requirements set out in the *Copyright Modernization Act* are both fair and sufficient to allow an ISP to serve notice to an individual who illegally hosts copyrighted material. With the exception of our belief that copyright holders must be assured that a notice has been received, read and issued by an ISP, CIMA’s position on the notice-on-notice regulations is that very little new regulation is needed. Indeed, too much new regulation will deter the small-businesses that comprise our membership from exercising their rights under the *Copyright Modernization Act*.

CIMA believes that the process of drafting these regulations must be as open and transparent as possible. As such, CIMA requests that prior to the regulations coming into force, the federal government release its final draft regulations for one last review by all stakeholders. In this submission, we have outlined the principles we believe the regulations should abide by. A review of the draft regulations would allow us to evaluate whether our principles are reflected in the final regulations and provide informed feedback.



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Recommendation: The federal government should release the final draft regulations for review and feedback by all stakeholders.

I'd like to extend my thanks for including CIMA in the consultation on these important issues. I look forward to talking with you or your staff further, as well as answering any questions you may have on these principles and recommendations. If you would like to arrange a meeting, or have any feedback, please direct your staff to contact my administrative assistant, Emy Stantcheva, at 416-485-3152 ext. 221, or at emy@cimamusic.ca.

Yours sincerely

Stuart Johnston
President, Canadian Independent Music Association