



what's right for music



SOCAN

Society of Composers, Authors and
Music Publishers of Canada

Société canadienne des auteurs,
compositeurs et éditeurs de musique

statement of principles

1

The Society shall protect, preserve and promote the rights of its membership and those of foreign affiliated performing rights societies whose rights it administers in Canada.

2

The Society shall ensure that it is wholly owned and controlled by its members, who are composers, lyricists, songwriters and publishers.

3

The Society shall ensure that its board of directors is composed only of members. The elected board may appoint additional directors.

4

The Society shall seek appropriate tariffs from all users of musical performing rights and enforce these as provided in the Copyright Act.

5

The Society shall license performing rights, collect royalties for those licences and distribute them in a cost-effective manner.

6

The Society shall make fair and equitable distributions of the royalties collected.

7

The Society shall ensure that all of its members are treated equally, irrespective of the idiom, genre, or style of music.

8

The Society shall ensure that it is open, accessible to its members and that it will keep its membership informed as to its rules, policies and activities.

9

The Society shall review and work to improve copyright laws both in Canada and internationally.

10

The Society shall work to improve the status of its membership on both national and international levels.





who we are

The Society of Composers, Authors and Music Publishers of Canada ("SOCAN") is the Canadian copyright collective for the performance of musical works.

SOCAN was formed in 1990 from the merger of Canada's two performing rights organizations – Composers, Authors and Publishers Association of Canada ("CAPAC," founded in 1925 as the Canadian Performing Right Society) and Performing Rights Organization of Canada ("PROCAN," founded in 1940 as BMI Canada). SOCAN operates on a not-for-profit basis and ensures that its members – composers, lyricists, songwriters and music publishers – are compensated when their music is broadcast or performed in public. Our members are risk-taking entrepreneurs who create musical works that make a significant contribution to the Canadian economy and our cultural heritage.

SOCAN is governed by a board of directors consisting of and elected by SOCAN members. Our Statement of Principles directs us to protect, preserve and promote the rights of music creators and to improve the status of our membership and copyright laws on a national and international scale.

As the Canadian copyright collective for the performance of musical works, SOCAN ensures that its members are represented with a strong and unified voice.

Canada's Performing Rights Organization for Musical Works

The Society of Composers, Authors and Music Publishers of Canada represents an important part of Canadian culture.

Our members – Canadian composers, lyricists, songwriters and music publishers – and members of our affiliated organizations are responsible for virtually all of the music that Canadians listen to every day across the country.

As Canada's performing rights organization (PRO) for musical works, we ensure that creators are compensated when the musical works they create are broadcast or performed in public, both in Canada and around the world.

The *Copyright Act* of Canada requires SOCAN to file proposed tariffs for the performance of music before the Copyright Board of Canada for its approval. These tariffs generate the royalties that we distribute to SOCAN members and to the thousands of music copyright owners around the world, whose works SOCAN also licenses in Canada.

We at SOCAN are extremely proud of our members, including composers and songwriters such as Nelly Furtado, Claude Léveillée, Susan Aglukark, Blue Rodeo's Jim Cuddy and Greg Keelor, Avril Lavigne, Bruce Cockburn, Kareem "Choclair" Blake, Robert Charlebois, Shirley Eikhard, Sam Roberts,



Joni Mitchell, Glenn Lewis, Sarah Harmer, Alexina Louie, René Dupéré, Carolyn Dawn Johnson, Luc Plamondon, John Weinzwieg, Nickelback's Chad Kroeger, Mike Kroeger and Ryan Peake, Rita MacNeil, Murray McLauchlan, Daniel Lanois, Gordon Lightfoot, Rush's Geddy Lee, Alex Lifeson and Neil Peart, The Tragically Hip's Gordon Downie, Gord Sinclair, Paul Langlois, Bobby Baker and Johnny Fay, Mychael Danna, Paul Zaza, Sum 41's Dave Baksh, Steve Jocz, Jay McCaslin and Deryck Whibley, Roch Voisine, Rufus Wainwright and the many others who have demonstrated that Canadian music can be successfully exported around the world.

SOCAN recognizes that the amount of royalties that remain in Canada is directly related to the amount of Canadian music that is performed here at home. That is why we are so dedicated to working with the Government of Canada to develop and promote policies that ensure Canadian music creators play a key role in Canada, and that Canadians have reasonable access to their own airwaves.

SOCAN is committed to the development and promotion of Canadian culture at home and around the world. We hope this brochure helps explain how we are working to fulfill our commitment.

what is a Performing Right?

To understand how we operate, it is essential to understand the source of the performing right: the copyright.

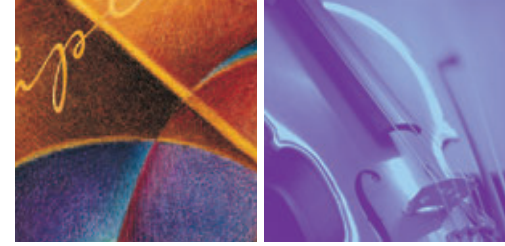
Copyright comprises several different and distinct rights, which have evolved over time in response to technological and other changes. Originally, copyright focused on the exclusive right of authors to produce, reproduce (i.e., copy), or publish their works.

Performing rights developed through recognition that authors should also have the exclusive right to permit public performances (e.g., music accompanying film or video presentations) of their works. This right becomes even more important in the digital marketplace where rights can be exploited (i.e., performed or communicated) in a myriad of ways to innumerable destinations involving a multiplicity of transactions.

The Canadian *Copyright Act* creates several distinct and separate rights that belong to anyone who creates music or lyrics (a musical work), including:

1. the right to *produce* or copy the musical work (e.g., sheet music);
2. the right to *reproduce* the musical work, which includes:
 - mechanical rights (i.e., audio reproductions such as sound recordings); or
 - synchronization rights (i.e., reproductions of the musical work in audio-visual productions – films and videos); and
3. the *performing* right, which gives copyright owners of musical works (words and music) the sole right to perform their works in public, or to communicate their works to the public by telecommunication (e.g., broadcast), or to authorize others to do so in return for royalty payments.

SOCAN is not involved in reproduction rights (i.e., mechanical rights or synchronization rights). We are involved only in performing rights, which belong to anyone who creates a musical work.



collecting and distributing

Performing Rights Royalties

Performing rights are the most important rights for composers, lyricists, and songwriters because performing rights royalties are often the primary source of income for the individuals we represent.

SOCAN administers these performing rights in musical works through an assignment of these rights to us by our members, the copyright owners.

The collection and distribution of performing rights royalties create significant challenges. These challenges are constantly changing as the means of distributing public performances of musical works expands due to the evolving technologies of fibre-optic cable, satellite broadcasting, computer software, digital recording, the Internet, etc.

Even if these technologies were not evolving, it would be impossible for every individual Canadian composer or lyricist to keep track of the millions of music users and public performances and broadcasts of their works across Canada and abroad.

Likewise, music users would find it impossible or very costly to obtain the permission of each of the hundreds of thousands of copyright owners from Canada and around the world each time they wished to perform or authorize the performance of music.

We meet these technological and logistical challenges by licensing music users who pay SOCAN licence fees in accordance with tariffs set by a federal government-appointed tribunal, the Copyright Board of Canada. Once we have collected these licence fees, we distribute them as royalties to SOCAN members and to international affiliated organizations whose members' works SOCAN also licenses in Canada.

In order to collect licence fees, the *Copyright Act* stipulates that SOCAN must file tariff proposals with the Copyright Board. SOCAN is required to apply for more than 20 tariffs, including tariffs for radio, television, the Internet, restaurants, clubs, live concerts, exhibitions and motion picture theatres.

If music users object to any of SOCAN's proposed tariffs, the Copyright Board will consider these objections and, if necessary, conduct extensive public hearings. At all times during this process, the interests of music users are fully considered before the Board sets SOCAN's tariffs. As a result, the interests of music users are balanced with the rights of music creators to ensure fair and equitable compensation when their music is broadcast or performed in public.

promoting Canadian culture

at home and around the world

Music is the most universal of the arts and, therefore, has always been an international enterprise.

One of the fundamental principles of the 1886 Berne Copyright Convention is national treatment that requires signatory countries to treat foreign authors and composers the same as they treat their own authors and composers.



There are performing rights organizations similar to SOCAN in every developed country and in the majority of developing countries around the world. A network of reciprocal bilateral agreements between these organizations and a series of international copyright treaties enable the performing rights of musical works of SOCAN members to be protected almost everywhere in the world.

In 1992, a milestone was achieved when, for the first time, SOCAN's writers earned more royalties from performances of their music outside Canada than they earned for performances within Canada. Every day, creators like Paul Brandt, Leonard Cohen, Kathleen Edwards, Tom Cochrane, Kevin "K-OS" Brereton, Randy Bachman, Burton Cummings, Milan Kymlicka, Sarah McLachlan, Kevin Parent, Lara Fabian, Steven Page and Ed Robertson of Barenaked Ladies, Hawksley Workman and Ron Sexsmith demonstrate that Canadians can and do compete around the world. However, in order to compete successfully abroad, Canada's music creators must first receive support at home.

SOCAN's board of directors broadly represents all the regions of Canada, the French and English languages, and all popular and concert musical styles.

Ultimately, music users determine the international flow of royalties. SOCAN recognizes that the amount of performance royalties that remain in Canada is directly related to the amount of Canadian music that is performed here at home. That is why we are so dedicated to encouraging the use of more Canadian music in Canada.

To promote Canadian music, SOCAN holds many seminars and workshops and supports annual awards presentations for English and French language Canadian composers, lyricists and music publishers.

We also publish two quarterly magazines, *Words & Music* and *Paroles & Musique*. These publications celebrate the performance of Canadian music and are distributed around the world.

SOCAN further promotes Canadian composers and lyricists through concerted efforts to improve the status of the organization's membership and copyright laws, both nationally and internationally.

SOCAN and

the Government of Canada

As noted earlier, SOCAN administers rights that are created by an Act of Parliament – the Copyright Act – and royalties are determined by a federal government-appointed tribunal – the Copyright Board. As a result, SOCAN has always worked closely with federal Cabinet Ministers, Members of Parliament, and government officials to ensure Ottawa's decision-makers are familiar with SOCAN's activities and the concerns of its members.

Enclosed are several Fact Sheets for your information, which briefly discuss a number of important issues affecting SOCAN and its members. Should you require further information regarding SOCAN on these and other issues, please contact us:

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Canadian Culture,

International Trade and Technology

Canada's national identity will not reach its full potential if our cultural industries remain exposed to highly political disputes with the United States and our other trading partners as a result of unclear international trade rules. Notwithstanding that Canada is the most open cultural market in the world, this inadequate treaty protection has resulted in numerous disputes regarding Canadians' rights to see, hear, and read about ourselves.

On February 17, 1999, Canada's International Trade Minister welcomed the Report of the Cultural Industries Sectoral Advisory Group on International Trade (SAGIT), which recommended that Canada protect and promote our unique culture by negotiating a new international instrument on cultural diversity. Several years later, SOCAN continues to support the new instrument, but there are growing concerns that, if the Government of Canada does not conclude an agreement soon, decisions taken in the World Trade Organization (WTO), and other international trade negotiations may limit our options.

We believe that Canadian content rules should be included in any treaty list of legitimate cultural measures to be protected because they respect the international trade principles of transparency and national treatment. In addition to formally safeguarding culture in current and future trade treaties, the Government of Canada must strengthen its Canadian content rules at home.

By increasing opportunities for domestic exposure, Canadian Content (CanCon) rules have promoted success in the Canadian market. This domestic success has served as a springboard for international success. As a result, music has become one of Canada's greatest "invisible exports."

Although Canadian music has demonstrated that it is second to none, history shows that, without CanCon rules, foreign music would severely reduce the domestic exposure of Canadian music creators. For example, playlists developed outside Canada are often used by Canadian radio stations; without CanCon rules, Canadian music would likely not be added to these playlists. On May 17, 1999, the Canadian Radio-television and Telecommunications Commission (CRTC) announced that it would not regulate new media services on the Internet. This decision has undermined the Canadian content system's ability to promote distinctively Canadian programming in an era of digital channels and Internet-based programming.

Notwithstanding the existence of widespread illegal music downloading and other technological developments during this century, the CRTC has not held a scheduled five-year review. If the CRTC continues to refuse to review its outmoded decision, the Government of Canada should issue a direction to the CRTC pursuant to Subsection 7(1) of the *Broadcasting Act*.



In November 2004, the CRTC held hearings to consider satellite radio applications. SOCAN advised the CRTC that the satellite radio applications are contrary to the *Broadcasting Act's* requirement that maximum use be made of Canadian creative resources, and that the applicants have not established why satellite radio renders the use of Canadian Content impracticable.

SOCAN has also expressed its concerns to the Director General of Industry Canada's Telecommunications Policy Branch regarding proposed changes to the Government's Satellite-use Policy for the Delivery of Broadcasting. SOCAN opposes any regulatory changes that would allow foreign-owned satellites to dump foreign broadcasting signals, as is, into the Canadian market.

In the future, Canadian content will be more important than ever because Canadian broadcasters will be unable to compete against foreign channels by relying on foreign programming. To differentiate themselves in Canadian and global markets, Canadian broadcasters will need more Canadian content, not less. The growing importance of Canadian content will require that Canadian creators receive full copyright protection and that they have adequate "shelf space" for their creations in Canada.

SOCAN believes that domestic exposure will always be a precondition for international success. Therefore, CanCon rules are as essential today as they were when they were introduced over 30 years ago. Consequently, they must continue to be strengthened and maintained as international trade treaties and technology evolve.



The Copyright Reform Process

The *Copyright Act* is important to SOCAN because it defines how our members receive royalty payments for the use of their works. The copyright reform process is also of critical importance because our members – composers, lyricists, songwriters, and their publishers – cannot be fairly compensated unless Canada’s copyright legislation is kept up to date with the latest technological developments.

On June 22, 2001, the Government of Canada launched the latest process of consultation and reform designed to modernize Canadian copyright legislation and stated:

The law needs to be in line with today's economic, social, technological and international environment, taking into consideration:

- *the Internet and other digital technologies;*
- *two World Intellectual Property Organization (WIPO) treaties concluded in 1996; and*
- *the commitment for a parliamentary review of the Copyright Act before September 2002.*

The current copyright reform initiative raises several important issues for creators of musical works. First, as a representative of authors’ rights, SOCAN believes that amendments to the *Copyright Act* should not prejudice the rights of our members. Different rights holders should not be granted rights in a way that an unreasonable relationship or hierarchy of rights is created between those rights holders. For example, *downstream* record companies should not be given rights that place them in a preferable position to that of the *upstream* creators of the musical works that are recorded.

To ensure our members’ rights are not prejudiced, the following amendments are required:

Parliament has recognized the principle of non-derogation in Section 90 of the *Copyright Act* and SOCAN submits that Section 90 should be amended to include any new rights, including the proposed “making available right.” In addition, to ensure there is no uncertainty regarding an author’s “making available right,” the *Copyright Act’s* definition of “communicate the work to the public by telecommunication” should specify that it has always included and continues to include the exclusive right of “making available.” This right should cover both the act of “uploading” as well as the act of “downloading.”

Second, it is safe to assume that rapidly developing technology will provide the necessary safeguards for copyright owners to protect their works in an online environment. As a result, the United States, the European Union, and other countries have already taken steps to protect technological measures and rights management information. This being the case, SOCAN believes



that it is incumbent on the Government to protect rights management information and to make it unlawful to interfere with technological measures that protect copyrights.

Third, the liability of Internet Service Providers (ISPs) in transmissions of musical works from domestic and foreign websites to end-users in Canada is important to all copyright owners. In its June 2004 SOCAN decision, the Supreme Court of Canada recognized:

The capacity of the Internet to disseminate “works of the arts and intellect” is one of the great innovations of the information age. Its use should be facilitated rather than discouraged, but this should not be done unfairly at the expense of those who created the works of arts and intellect in the first place.

On March 24, 2004, the Minister of Canadian Heritage and the Minister of Industry submitted their *Status Report on Copyright Reform* to the House of Commons Standing Committee on Canadian Heritage and proposed the following option:

Amend the Act to provide that ISPs would be subject to liability for copyright material on their facilities. ISPs could escape liability if they meet certain prescribed conditions, namely, timely and effective actions to respond to specified requests or proposals from rights-holders regarding copyright material on their facilities. The actions could include forwarding notices regarding infringing material or collecting royalties for copyright material...

In May 2004, the House of Commons Standing Committee on Canadian Heritage issued its unanimous *Interim Report on Copyright Reform* and stated:

The Committee recommends that the Copyright Act be amended to provide that Internet service providers (ISPs) can be subject to liability for copyrighted material on their facilities.

The Committee notes, however, that ISPs should be exempt from liability if they act as true “intermediaries”, without actual or constructive knowledge of the transmitted content, and where they meet certain prescribed conditions...

SOCAN believes that the views of the Supreme Court of Canada, the Government of Canada, and the Canadian Heritage Committee cannot be ignored. Fairness dictates that Parliament enact legislation that makes ISPs and others responsible for copyright infringement and liable to pay copyright royalties.

SOCAN intends to actively participate in every step of the current copyright reform process and to pursue several key legislative amendments, including the extension of the term of copyright protection to 70 years, clarifications to the Copyright Board’s role and jurisdiction, and refinements to certain exemptions and presumptions.



Ensuring Fair Compensation for Creators

Every day, music touches the lives of Canadians. Whether you are watching television or listening to the radio, attending a film or a concert, at a skating rink, aerobics class, restaurant, a shopping mall, or on hold on the telephone, music is in the air.

SOCAN's *raison d'être* is to ensure that our members and members of its affiliated organizations – composers, lyricists, songwriters, and their publishers – are fairly compensated when their music is broadcast or performed in public. The *performing right* we administer on behalf of music creators is crucial because it is often their primary source of income. However, music creators are not the only ones who benefit from SOCAN's activities. Music users also benefit because our "blanket" licence enables businesses to use music to attract and entertain their customers more cost-effectively.

Consider the role that music plays not only for radio, television, and concerts, but also for the many other businesses that use music, such as hotels, bars, nightclubs, shops, restaurants and ringtone providers. SOCAN's "blanket" licence provides all of them with access to the world's repertoire for the payment of a single licence fee. This "one-stop shopping" not only helps music users to generate revenue, it also saves them time and money because they are not required to track down thousands of different copyright owners and obtain a licence whenever they play their musical works.

The methods SOCAN uses to collect and distribute performing rights royalties are constantly changing. This is because the various ways music is broadcast and performed are being rapidly transformed by the evolving technologies of fibre-optic cable, satellite broadcasting, computer software, digital recording, the Internet, wireless, etc.

Rapid technological changes often necessitate legislative amendments. For example, the creators of music played on "cable and satellite television channels" such as MuchMusic, YTV and A&E could not be compensated until Bill C-88 amended the *Copyright Act* in 1993.

Likewise, as part of its 1997 Phase II copyright reform package, Parliament enacted Bill C-32, which created rights for performers and recording companies. These "neighbouring rights" border on, but are separate and distinct from, the copyright/authors' rights or *droit d'auteur*,



which SOCAN and its predecessors have administered on behalf of music authors for over 70 years. To ensure that neighbouring rights do not prejudice or derogate from our distinct and longstanding performing rights, SOCAN worked hard to ensure that Bill C-32 contained a strong non-derogation clause.

On June 22, 2001, the Government of Canada launched another round of copyright reform to deal with the Internet and other digital issues. For example, performers and sound recording makers are seeking a new “making available right.” SOCAN does not dispute these rights owners’ claim for this new right. However, owners of the underlying copyright in recordings (i.e. authors and their designates) must be provided equal rights to ensure that a “level playing field” exists in the marketplace.

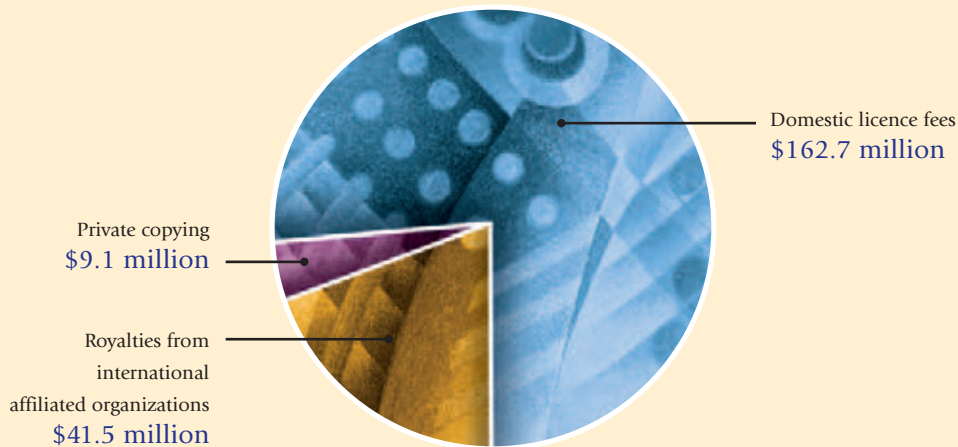
In addition, Section 92 of the *Copyright Act* requires a Parliamentary Committee to undertake a comprehensive review of the provisions and operation of the *Copyright Act*. In May 2004, the House of Commons Standing Committee on Canadian Heritage issued its unanimous *Interim Report on Copyright Reform* and requested a comprehensive response from the Government of Canada.

The current copyright reform initiative and the Section 92 Statutory Review are expected to result in significant legislative amendments to the *Copyright Act* within the current government mandate. This is why it is more important than ever for SOCAN to continue to work hand-in-hand with the Government of Canada and Parliament to ensure that our members are adequately compensated whenever their intellectual property – original musical works – is used by others.

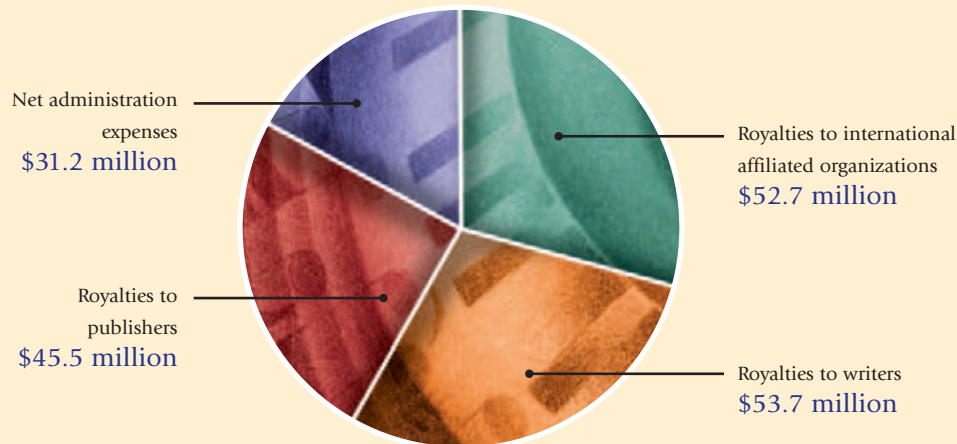
Financial Picture

2004

Total Domestic Licence Fees, Royalties from International Affiliated Organizations and Private Copying Royalties: \$213.3 million



* Total Distributions and Net Administration Expenses: \$183.1 million



* All distributions include performing right royalties, private copying royalties and advances



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RECYCLABLE

