

Songwriters Bid To Legalize File Sharing Gets a Rewrite

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In November 2007, the Songwriters Association of Canada shocked the music industry and many Canadians by proposing the full legalization of music file sharing. The SAC proposal was based on the premise that file sharing was not going away, that lawsuits against file sharers do more harm than good, and that the continued emphasis on using digital locks to control copying has been a complete failure.

In the view of thousands of Canadian songwriters, the better way forward was to encourage music sharing by monetizing it. The SAC proposal envisioned a levy (five dollars per month was floated as a possibility) that would be used to compensate creators for the sharing. In return, Canadians would be entitled to freely share music for non-commercial purposes.

The reaction to the SAC proposal was generally critical. The recording industry rejected it out-of-hand, arguing that it violated international copyright law. Consumer groups were also skeptical, noting that a mandatory universal levy would result in payments by non-music sharers, who would effectively subsidize those sharing music.

Notwithstanding the criticism, the SAC persisted. Last week, it quietly unveiled a revised version of the proposal at a public forum on copyright in Toronto. The new version, which addresses many of these earlier criticisms, is far more promising and there are indications that the SAC may be joined by other creator organizations in pursuit of a legalization strategy.

The foundation of the proposal remains the same - the creation of a new right of remuneration for music file sharing in return for the consumer freedom to share an unlimited amount of music across all platforms including peer-to-peer networks, mobile devices, instant messaging, and even email. The SAC notes that downloading music for non-commercial purposes is arguably already lawful in Canada due to the private copying levy, but that its proposal would cover more broadly all music file sharing activities.

The most important change to the SAC proposal is that it would now be voluntary for both creators and consumers. Artists could choose to participate, thereby addressing international copyright law concerns about mandated participation. The proposal also envisions providing consumers with the right to opt-out of the plan if they do not share music files.

The voluntary approach - which resembles elements of a plan the Electronic Frontier Foundation began promoting in 2003 - should remove the consumer concerns associated with stiff monthly fees for non-music sharers. While some artists may reject the plan, the SAC is betting that most will participate given the opportunity to benefit from a new source of revenue.

The SAC has also made changes to the pricing model, dropping the five dollar monthly fee and instead leaving the issue in the hands of the Copyright Board of Canada. The Board would set the fee after input after full public hearings.

While these changes may address many criticisms, some issues remain, including fears that a music-only approach leaves open the prospect of future demands for levies on other forms of content such as video.

If last week's copyright public forum is any indication, other creator groups may be ready to join with the SAC in a broader proposal that covers video works as well. ACTRA, which represents 21,000 Canadian performers, indicated its willingness to pursue a similar plan. National Executive Director Stephen Waddell told the audience that solutions based on locking down content were failures and that it was time to explore other options such as collective licencing that would fully legalize sharing activities in return for creator compensation.

As creator groups begin to line up behind these proposals, the public may still need convincing. A recent public opinion survey from Angus Reid Strategies found widespread Canadian opposition to new levy schemes, suggesting that even the revised SAC approach will be a tough sell. With the willingness to move toward voluntary plans, however, we are witnessing a dramatic shift in attitude as groups abandon their reliance on outdated legislated solutions in favour of innovative new alternatives.

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