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# From Copyright Cartels to Commons and Care: A Public Infrastructure Model for Canadian Music Communities De cartels du droit d'auteur à des carrefours soignants : un modèle d'infrastructure publique pour les communautés musicales canadiennes

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## From Copyright Cartels to Commons and Care: A Public Infrastructure Model for Canadian Music Communities

### De cartels du droit d'auteur à des carrefours soignants: Un modèle d'infrastructure publique pour les communautés musicales canadiennes

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#### **Abstract / Résumé**

Using research on the political economy of the music industries, interviews with independent musicians about their lived experiences, and the authors' experience participating in government copyright consultations in Canada, this article discusses how the market power of major music companies and their capture of the policy-making process through lobbying has made copyright reform an extremely limited avenue for remedying the variety of hardships facing musicians in the streaming media era. Against the continued consolidation and concentration of power within the music industries, we explore a case study of Edmonton Public Library's Capital City Records as an

alternative model that may inspire further initiatives that advocate for artists and users. We conclude by discussing a commons-based, public-infrastructure and governance model that could serve as a tool to circumvent uneven power dynamics in the music industries, facilitate stronger music communities, and maintain sustainable livelihoods for working musicians in Canada.

En s'appuyant sur des recherches sur l'économie politique des industries de la musique, sur des entrevues avec des musiciens indépendants sur leurs expériences vécues et sur l'expérience des auteurs qui ont participé à des consultations gouvernementales sur le droit d'auteur au Canada, cet article examine comment le pouvoir de marché des grandes entreprises de musique et leur mainmise sur le processus d'élaboration des politiques par le biais du lobbying ont fait de la réforme du droit d'auteur une approche extrêmement limitée pour remédier aux diverses difficultés auxquelles sont confrontés les musiciens à l'ère des médias en continu. Contre la consolidation et la concentration continues du pouvoir au sein des industries de la musique, nous explorons une étude de cas de Capital City Records de la bibliothèque publique d'Edmonton comme un modèle alternatif qui peut servir d'inspiration pour d'autres initiatives qui défendent les artistes et les utilisateurs. Nous terminons en discutant d'un modèle de gouvernance et d'infrastructure publique basé sur la notion de carrefour qui pourrait servir d'outil pour contourner les dynamiques de pouvoir inégales dans les industries de la musique, faciliter le renforcement des communautés musicales et fournir des moyens de subsistance durables aux musiciens actifs au Canada.

### ***Keywords / Mots-clés***

music industry, copyright, public libraries, commons  
industrie de la musique, droit d'auteur, bibliothèques publiques, carrefours

### ***Introduction***

With COVID-19, the plight of independent musicians in the streaming era has been made readily apparent. Streaming platforms had already eliminated reliable royalty revenue of recordings for all but the most popular musicians; the pandemic then eliminated touring, one of the few remaining revenue opportunities. The process of following this development in the news was confounding: On one hand, stories about struggling musicians proliferated alongside stories of the hardships faced by essential workers and small businesses. On the other hand, the influence of big tech platforms accelerated, magnifying the inequalities of platform capitalism. Meanwhile, lobbyists such as Music Canada were pursuing new and more restrictive copyrights. It would seem that the problem, however complex, is at its root quite obvious: Musicians, like all other workers, are being oppressed and exploited in a winner-takes-all capitalist society. But what is to be done?

Librarians and others engaged in information studies—particularly those with expertise on open access/commons-based scholarship—may have a role to play in answering this question. This article summarizes our experiences with researching the consolidation of

the music industries, interviewing independent musicians about their lived experiences, and advocating for musicians in government copyright consultations. Ultimately, based on the market power of the biggest music companies and their capture of the policy process through lobbying, we conclude that copyright reform is an extremely limited avenue for solutions. From the top-down, antitrust and anti-monopoly action is needed to restrict the undemocratic power of big companies. From the bottom up, a public streaming infrastructure is needed, one that prioritizes care and community. Against trends and trajectories of consolidation and the concentration of power within the music industries, we explore a case study of Edmonton Public Library's Capital City Records as an alternative model that may inspire further initiatives that advocate for artists and users in the streaming music era. Lastly, a public infrastructure and governance model is proposed, as it could: circumvent the uneven power dynamics in the music industries, gesture towards the potential for commons-based alternatives that would provide stronger support for music communities, and maintain sustainable livelihoods for working musicians in Canada.

### ***Context: Copyright and Consolidation***

In 2012, the Copyright Modernization Act in Canada significantly updated the Copyright Act in order to account for digital technologies. Included in it was the requirement that the act be reviewed every five years in order to keep it up to date. Thus, in 2017, the Standing Committee on Industry, Science and Technology (INDU) began a lengthy process of consultation on the act. As part of this mandatory review, INDU asked the House of Commons Standing Committee on Canadian Heritage (CHPC) to look specifically at creator remuneration. Together, the committees heard more than 250 briefs and more than 300 witnesses on issues around copyright, compensation, and the role of copyright in cultural production. INDU eventually released a report, titled *Statutory Review of the Copyright Act (2019)*, that offered 36 recommendations. This report was considered somewhat balanced (Canadian Association of Research Libraries, 2019; Carling, 2019; Geist, 2019; International Publishers Association, 2019; Sheppard, 2019), as it reflected both the rights of users and the concerns of rightsholders. Recommendations relevant to independent creators included: the retention of internet safe harbour rules (which allow internet providers to not resort to overly aggressive content blocking), a review of user-generated content to limit liability (user-generated content is important for content creators who remix and reuse copyrighted materials without profit), and to maintain Notice and Notice (a system requiring multiple notifications of suspected infringement that protects against immediate removal) to protect creators from copyright "troll" takedown requests. INDU also recommended exploring a 25-year reversion right (whereby rights for artistic works would revert to their creators 25 years after creation), which will be examined in greater detail below.

The authors of this article submitted briefs (2018a, 2018b) to both of these parliamentary proceedings as part of our ongoing research initiative, the Cultural Capital Project (funded by a Social Sciences and Humanities Research Council of Canada grant since 2018). Our project investigates issues of fair payment for creators as well as ways to encourage new and creative artistic production. We made recommendations to

INDU and CHPC based on data collected on music and media industries consolidation, interviews with local independent musicians, and cultural economics. A longer version of this research appears in our article “Independent Canadian Music in the Streaming Age” (2021). Our submissions argued that a more thorough consideration of public-domain principles in our thinking around the digital music industries and copyright/cultural policies is essential if we are to take seriously issues of equity and sustainability in the music industries (more on these recommendations follows). However, a status-quo narrative of continued copyright protection was pushed by industry representatives, dominating the consultations and subsequent reports. It is our contention that these reports fail to properly recognize the dire situation of Canadian independent musicians in the streaming age.

### **Shifting Heritage Paradigms: Canada’s Copyright Consultations**

Our testimony to CHPC was only a few days after Canadian musician Bryan Adams testified and strongly suggested an automatic rights reversion for artists (Lum, 2018). We had to quickly rewrite to indicate support for this idea (and work in at least one Bryan Adams lyric). Our testimony to CHPC included the following key recommendations, based on our data and artist interviews:

- 1. Recognize that increasing market consolidation is at odds with a vibrant and diverse music industry:** Pursue antitrust regulation and increase public funding to smaller creators.
- 2. Recognize that user rights and the creative commons have value for Canadian creativity and culture and that these should be protected:** In order to protect small creators, limit statutory damages, protect Notice and Notice, and reject industry-sponsored proposals for site blocking and de-indexing.
- 3. Consider automatic rights reversions as a way to mitigate the ill effects of term extensions:** Ensure contract override is not permitted.
- 4. Support vibrant arts communities through direct funding and policies other than applying new limitations via the Copyright Act:** User taxes should not unduly impact lower-income Canadians; fund emerging artists and place lifetime caps on larger grants; support local initiatives, including provincial and municipal communities. As part of local communities, libraries can play an important role in this support.

The hearings for CHPC, and its report, were noticeably different from those of INDU: The testimony was largely provided by industry lobbyists. This industry focus was strongly reflected in the committee’s final report, *Shifting Paradigms* (2019), which was considered by academic copyright experts to be far less balanced than the INDU report (Knopf, 2021). Interestingly, and potentially due to its limited scope, INDU did not end up referencing *Shifting Paradigms* in its final report, despite the fact that it was essentially commissioned by INDU. INDU put out a press release on June 18, 2019 that effectively rebuked CHPC, as follows: “As master of its own proceedings, CHPC chose instead to present a report to the House of Commons and ask for a response from the

Government of Canada.” Presumably, this was to defend the non-inclusion of CHPC’s findings in INDU’s own report.

*Shifting Paradigms* included a mix of recommendations that could be helpful for enhancing independence and diversity in Canadian music. For instance, certain recommendations sought to: amend a rule that drastically minimizes the royalties due on the first \$1.25 million in advertising revenue for radio stations to specifically only apply to independent and/or community-based radio stations; provide more educational materials on copyrights; and further consider the 25-year reversion right. However, a number of other recommendations would more than likely prove harmful: review safe harbour provisions; extend the term of copyright to 70 years *after death* for almost all creations; and increase regulation attempts to stop piracy (which frequently result in algorithmic takedowns that are unfair and harmful to smaller creators). Many of these recommendations were included in Bill C-10, the hotly debated amendment to the Broadcasting Act proposed in 2020 and reintroduced in 2022 as Bill C-11, the Online Streaming Act. Bill C-11 aims to increase Canadian content (the percentage of content created by Canadians) on online services, but includes numerous regulatory suggestions that would likely make the internet a less fair and free space for creativity (Geist, 2021).

The battle of the two committees is compelling, as INDU’s report seems concerned with balancing the rights of smaller creators, while CHPC’s largely reflects the briefs submitted by industry lobbyists such as Music Canada and the Society of Composers, Authors and Music Publishers of Canada (SOCAN). Subsequently, there have been consultations on mitigating copyright term extension, online intermediaries, artificial intelligence, and the “internet of things” (Selman et al., 2021; Canadian Heritage, 2021). It is unfortunately very difficult for those who are not paid professional lobbyists to keep up with the speed, complexity, and intensity of these consultations, and this is likely going to limit the range of voices and perspectives included in these consultations. Large collective societies themselves can easily become dominated by bigger industry players, which facilitates cartel behaviour and the drowning out of independent voices in the copyright reform landscape. Some of the time and effort entailed in these consultations might be better spent gaining data and insight into the lived experiences of creators, such as through the many surveys on the musician experience during COVID that have recently been commissioned in the United States and United Kingdom (Digital, Culture, Media, and Sport Committees, n.d.; Guibert & Hyde, 2021). These data can also be used by musicians themselves to make decisions and more effectively lobby for change.

### **Copyright Inadequacies**

So why is the government of Canada extending the term of copyright, and then immediately seeking to mitigate term extension? And can it be mitigated?

The length of copyright is not the same in every country or for every medium, although it is increasingly becoming standardized across the globe. The pressure to extend term protection has been growing over the years in Canada’s trade agreements with the

United States and Mexico, a process that began in 2015 with the extension of the term of protection for sound recordings (Tarantino, 2015), continued in 2016 with the Trans-Pacific Partnership (though not ratified), and remained an issue in the Canada-United States-Mexico Agreement (CUSMA), ratified in 2020. The Canadian government implemented all the other copyright provisions that were affected by CUSMA in the basic CUSMA Implementation Bill, but general term extension from 50 years to 70 years was delayed as the government took advantage of the time period allowed to conduct consultations (Innovation, Science, and Economic Development Canada, 2021). Term Extension has now been included in Bill C-19, the 2022 Budget implementation Bill, seemingly without any of the mitigations discussed during consultations.

Cultural economists have studied ways to calculate the optimal term for copyright, which balances the rightsholder interests in exclusivity with the interests of access to culture of the general population. The analysis of cultural economists William Landes and Richard Posner (1989) and others has indicated that there are marginal, if any, economic benefits to rightsholders with term extension, with a net negative benefit to the public. The commercial value of a work declines as it ages, as the potential audience shrinks. Economist Rufus Pollock uses the term “cultural decay” to partly explain this decline in value (2009).

The majority of works are “out-of-commerce” (not commercially available) for most of the period that they qualify for copyright protection, yet they are still valued by artists and the public who have difficulty accessing and gaining permission to use the works. Jacob Flynn, Rebecca Giblin, and François Petitjean (2019) found that, contrary to the argument that long terms with exclusive rights encourage publishers to make works available, works are less available and more expensive while under copyright. While 50 countries have national legislation detailing what happens to out-of-commerce works, Canada does not. Some, but not all, contracts allow for rights to revert to creators if a work goes out-of-commerce, though in a digital era it is an increasingly difficult task to adequately define “out-of-commerce”: Digital records require no printing and can conceivably be made available indefinitely, long after a label is interested in marketing or promoting a work. For musicians, negotiating these terms without legal expertise can be excessively difficult.

Automatic rights reversion 25 years after rights were assigned can address some of these imbalances. While creators may try to retain the rights to their works, it remains common practice that the rights for recordings are signed over to record labels. In his commissioned study for CHPC, legal scholar Paul Heald (2021) estimated that nearly 95% of anticipated income for a work is earned in the first 25 years, which is why he suggests that term length be what is available before automatic rights reversion. This is slightly longer than what Pollock (2009) calculates as the optimal length of term, which is 15 and a half years (though he agrees this number may be different for different types of works). Rights reversion also incentivizes declaring a commercial interest while the creator is still alive, which helps clarify if a work is out-of-commerce for future uses. Heald found rights reversion can allow for new publishers to release materials if the previous publisher is no longer interested. Allowing new distribution is in both the artists’

and the public's interest. Typically, renegotiating contracts both increases availability of works and lowers prices. New contracts also have the big advantage in terms of direct economic benefit to creators if there is still commercial interest.

As already noted, copyright-adjacent activities are not the be-all and end-all of musicians' practices. "In many cases," legal scholars Carys Craig and Bob Tarantino (2020) note, "the copyright system's celebrated insensitivity is wholly unnecessary to stimulate creative activity, and indeed it imposes obstacles that creators, audiences, and intermediaries must actively work around" (p. 570). They noted that during the pandemic, as artists were cut off from playing live shows and touring, many of the aggressive, so-called copyright "protection" measures touted by industry were in fact detrimental to artists trying to earn income. Algorithmic enforcement of copyright, they contended, encodes foreign law (typically that of the United States) and inverts the expected scenario where copyright enforcement *follows* copyright infringement, rather than presupposing infringement that does not exist in many cases.

There are numerous examples of algorithmic mistakes leading to automatic takedowns, such as for playing public domain music (Bode, 2018), or for looking too much like Tom Hiddlestone (Lord Amalthean, 2021). Craig and Tarantino state, "Studies have indicated that up to 30 percent of automated takedown requests are problematic in the sense that there were issues with the accuracy of the 'matching' between the library of protected content and the new content" (During COVID, this resulted in several live streams and videos being taken down for copyright infringement that didn't occur, preventing artists from earning desperately needed revenue. Similarly, many of the technological enforcement measures suggested by Bill C-10 to "combat piracy" will interfere with the livelihoods of independent creators.

### **The Consolidation of the Music Industries**

In order to adequately position the role of copyright within a nation's political economy of music, an attention to global macroeconomic structure is essential, as national industries are increasingly subject to the control of an oligopoly of transnational (mostly U.S.-based) music and technology firms. Each subsector in the music industries is heavily controlled by only two or three such firms—sometimes even a single massive conglomerate—shaping the opportunities for musicians of all stripes. After decades of mergers, acquisitions, and consolidation, what was once a thriving, diverse marketplace for recording and publishing is now dominated by the "Big Three": Sony Music Group, Warner Music Group, and Universal Music Group, which operate a global copyright cartel. Calculations of the extent of the Big Three's control range from at least 70% globally in 2019 (Stasen, 2019) to as high as 84% of the North American recording and publishing market in 2015 (Christman, 2015), if one counts distribution, not just ownership. According to the 2018 Worldwide Independent Market Report (also known as WINTEL 2018), Canada has one of the highest rates (75%) of major label market share in the world, with only Spain, Denmark, and the United Kingdom having a higher rate. Correspondingly, Canada has one of the lowest rates of independent record label market share in the world (25%), leaving independent musicians with even fewer

opportunities than in the United States, where the rate is 38% (Worldwide Independent Network, 2018).

Technological solutions are repeatedly hailed as solving problems of market power, but a longer view shows that new technologies are inevitably incorporated into established conglomerations. “The music cartels,” according to Aram Sinnreich (2015, p. 620), “artificially limited the functionality of digital music to emulate the inherent limitations of twentieth century distribution platforms, thereby preserving the integrity of economic and institutional models premised on those limitations.” For example, the satellite radio market once promised expanded diversity and opportunity but has since merged into SiriusXM, with Liberty Media as its majority owner. Internet radio was another format with potential for a wider range of content, but its biggest success, Pandora, was also recently acquired by Liberty Media. The largest U.S. operator of radio stations, iHeartMedia, is another of Liberty’s investments, as is the largest stake in LiveNation, the biggest concert promoter and management firm, and Ticketmaster, the biggest ticketing firm. Liberty Media Chairman John Malone plainly stated that “the goal would be to get to full consolidation” (Szalai, 2020). Thus, Liberty can use its market power in the biggest terrestrial radio network, the biggest satellite radio network, and by far the biggest internet radio platform to promote its Live Nation artists, tours, festivals, and venues, all facilitated by tickets from Ticketmaster.

The result of this consolidation in the music industries has been a boon for corporations but devastating for most musicians, excepting a handful of superstars. The inequality among artists is worsening:

- The top 1% of artists accounted for 77% of all recorded music income in 2014 (Mulligan, 2014), but by 2020 the top 1% of artists accounted for 90% of streams and the top 10% accounted for 99.4% (Smith, 2020).
- The 10 top-selling tracks command 82% more of the market and are played almost twice as much on Top 40 radio than they were the decade previous (Thompson, 2014).
- The top 1% of live performers earned about 20% of worldwide concert revenue in 1980, but climbed to 60% in 2017; the market share for the bottom 95% of musicians decreased from 38% of the market to just 15% (Krueger, 2019).

Meanwhile, the average musician in the United States made only \$21,300 from their craft in 2018, which was not sufficient to meet their living expenses for 61% of those who participated in the survey (Krueger and Zhen, 2018). In Canada, the average musician is well below the poverty line, making only \$17,900 per year, less than half of the average Canadian worker’s income (Hill Strategies Research, 2019).

Amidst this inequality and corporate consolidation, the diversity of music across gender, class, and ethnicity is decreasing. Spotify’s most-streamed artists of 2018 were all men (Byager, 2018). From 2012 to 2017, Billboard’s Hot 100 songs featured an average of 16.8% female performers, 12.3% female songwriters, and only 2.1% female producers

(Smith et al., 2018). U.K. musicians from a working class background had fallen from 21% in 2015 to only 12% in 2019; women and people of colour were further disadvantaged (Carey et al., 2020). In Canada, female artists make 82 cents on the dollar compared to male artists, while Indigenous artists make only 68 cents on the dollar (Hill Strategies Research, 2020).

This industry consolidation is of key importance when considering remuneration and creators' livelihoods, but it was rarely mentioned at the CHPC hearings. Music Canada, one of the bigger lobbyists, is frequently cited as a major source of representation for musicians, but its priorities are more aligned with record labels than artists because it is a trade group funded by the Canadian subsidiaries of the Big Three record labels (Music Canada, n.d.). Our disheartening experience with the copyright hearings, combined with our research on copyright's limits, led us down a different path: one populated with fewer lobbyists and more actual musicians.

### ***Research: Listening to Musicians***

The power dynamics across the music industries and in the policy-making process—which structures the way that industries and artists operate and are financially compensated—are such that artist perspectives and voices are often subsumed by the perspectives advanced by industry representatives (such as those affiliated with major record labels or music publishers). As one example, in coverage of the pressing issues facing artists in the streaming music economy, news media perpetuate an imbalance of power through privileging industry perspectives over that of artists. What readers most regularly encounter are articles and interviews on or about the digital music industries that quote from industry representatives. One study we conducted found that out of 359 articles on the digital music industries from 2009 to 2019, 88 (24.5%) feature a quote from an artist (The Cultural Capital Project, n.d.). By comparison, 194 articles (54%) include a quote from an industry representative. What can we learn by turning to the musicians themselves, listening to their perspectives and values? And what can we do with this information in order to advocate on their behalf?

To get a sense of how artists in Canada have been navigating their careers, we interviewed 17 independent musicians in Edmonton, Alberta and Winnipeg, Manitoba (nine in the former and eight in the latter). Interviews ranged from 30 to 90 minutes and took place in person between December 2019 and March 2020, although some were conducted via phone or video chat for artists who were located elsewhere. The interviews followed a fixed set of questions with exploratory contextual prompts to continue in areas that seemed of particular interest to the project and the interviewee themselves. These interviews with music artists influenced our recommendations to the copyright consultations and also helped us to identify a need for considering models beyond copyrights to better address the needs and interests of these artists. Throughout our interviews, a few key themes emerged that stand out as central issues with respect to the artist experience in Canada. These include:

- **Sustainability of music-making:** how to protect against burn out, particularly as the need to become more entrepreneurial intensifies; observations about playing the industry game (when to hire a publicist, for instance); and reflections on touring and geography for music performance in Canada.
- **Livelihood (regardless of economic privileges):** the ability to earn a living from making music; the requirements of financial privilege (which leads to a lack of diversity in the music we hear); and the ways in which musicians are exploited for their labour by those with more capital (including by record labels and at live shows).
- **Communities of care:** Musicians benefit greatly from mutual aid in terms of informal mentorships, places to stay while on tour, skill and knowledge sharing, and material support for survival.

Running through these themes is the need for more funding for supports such as public infrastructure, more accessible grants, and resources like free legal clinics to democratize participation in music.

### **Sustainability, Livelihood, and Inequalities**

According to data from the Future of Music Coalition's *Artist Revenue Streams* survey (n.d.), musicians only receive 5.6% of their revenue from sound recordings. The majority of their revenue comes from other sources, including live touring and performance, teaching, session work, and the sale of merchandise. In the smaller Canadian market similar findings are apparent. A study on the music ecosystem in Alberta noted that 73% of artist income comes from performances and touring (Sound Diplomacy, 2020). This finding was clearly reinforced by our interviews, which emphasized the need for a variety of available revenue sources for working musicians today. A number of the artists we interviewed explained that royalties from radio play are a regular and substantial source of income, particularly from SiriusXM satellite radio programming (royalties that are distributed via Sound Exchange). One anonymous artist added that national airplay on CBC Radio (Canada's national public broadcaster, the Canadian Broadcasting Corporation) led to an increase in sales and fan activity. For others, live touring generates the most income. Greg MacPherson, Winnipeg singer-songwriter and co-owner of indie record label Disintegration Records, explained: "Live shows are the only place you really make any money. Like, we don't make money from records. We don't—there's an economy of scale. If you record well and you put your money into a good sounding record, at the end of the day it's harder, I find, to break even on the expense of that." While live shows remain an important income stream, touring a large and spread out country like Canada can be expensive and time consuming, and became nearly impossible when the COVID-19 pandemic hit.

One notable opportunity for artists in a Canadian context—and one that helps to ease a reliance on touring—is a fairly robust funding framework for musical activities including recording, promotion, and travel. A number of interviewees emphasized that grants are essential to their working lives. One folk singer-songwriter from Alberta said that "the

most funding that I get is from grants. I would say that about 50% of them are Indigenous-based grants. And that's the money that goes towards my travel and towards creating new albums." There are a range of grants available to artists from municipal, provincial, and federal governments, and from businesses like radio stations and banks. Grants are important to the majority of artists we spoke to, but are also very imbalanced Canada's funding framework has room for improvement. In the case of grants awarded by the Foundation Assisting Canadian Talent on Recordings (FACTOR) from 2013–2020, more than half of total money went to Ontario musicians, despite the province having less than 40% of the population. Correspondingly, other provinces and territories receive a disproportionately lower amount of funding compared to their population (Cultural Capital Project, n.d.).

Typically, the more local the grant, the easier it is to acquire. The larger grants, such as those offered by FACTOR, were considered by our interviewees to be more difficult to acquire and often need the help of a manager or other expert assistance to secure, therefore requiring some financial commitment or expenditure by the artist. Other juried awards, like the Polaris Music Prize, were said by some to have a regional bias. In many cases, artists have used a variety of funding sources to help sustain their careers and livelihoods. Again, this was something our artist interviews reflected, nicely summarized by Greg MacPherson:

The only flaw I see with Polaris is that it has a regional bias that's extreme, with Southern Ontario and Montreal being way overrepresented, right? Because that's where the population lives. But Canada isn't that. Canada, as we know, is this massive country with all these cities, interesting perspectives and towns where people have their own lives and do their own things and make their own work. And yet there's a lack of respect for that work.

To make matters worse, conservative governments continue to slash funding for arts and culture programs: The Ontario Music Fund was reduced from \$15 million to \$7 million by the Progressive Conservative's 2019 budget (Canadian Press, 2019); the Alberta Foundation for the Arts was reduced 5% by the United Conservative Party (Bishop, 2020); and the Progressive Conservative Party in Manitoba proposed \$3.5 million in cuts to community groups, including the Manitoba Arts Council (Annable & Lee, 2017).

In a larger arts-funding context, there has been a notable shift toward instrumentalist benchmarks for writing and acquiring grants. This points to a larger neoliberal turn in arts funding, one that further restricts access to grants. A common sentiment expressed by artists we interviewed was that grants tend to privilege those who have experience with administrative tasks like grant writing and those who understand the sort of language that tends to find success in grants. MacPherson raised questions about what sort of music might get funded if we circumvented ideas about return on investment, explaining that Manitoba is too "focused on the notion of building an industry here. . . . I would love to see all that support going into something weird, going into Indigenous DJs, or going to some weird electronic music from The Pas or something that's very

different and unique.” Grant funding, then, may be reflecting—and exacerbating—the same homogenization of music encouraged by major record labels and other corporate players in the music industry.

Artists we interviewed frequently reflected on the ways these inequalities lead to a monolithic music culture. Kelly Fraser, who was Inuk, shared many of the ways she saw the system discriminate against artists with diverse backgrounds, and particularly against her desire to have her music be part of cultural and language revitalization: “I don’t know if labels that are mostly run by white people—or people who live in the West with Western ideologies and values—I don’t think they’d be able to see what I’m trying to do, trying to teach.” After being explicitly told to only sing in one language by one label, Fraser was able to find a label that supported her vision of including Inuktitut and English in her songs. John K. Samson, singer-songwriter-poet formerly from the bands The Weakerthans and Propagandhi, said, “I do feel like the homogenization of the industry is basically leading to artists/musicians being mostly people like me. So middle-class people with supports, people who have won various lotteries. I do feel like there’s a real danger that the music industry will increasingly be a narrow segment of the world.”

### **Beyond Copyright in the Digital Era**

If most musicians are clearly struggling and there is little hope from copyright policy to combat inequality and consolidation (in fact, copyrights are frequently the mechanism that fuels consolidation, as they are the capital being acquired), what other avenues might there be aside from automatic rights reversions?

In his influential pre-streaming-era article “Copying and Copyright” (2005), economist Hal Varian suggested business models that might be considered in a digital world in which enforcing copyright becomes virtually impossible:

- **Make the original cheaper than a copy and/or make a copy more expensive than the original:** This can be accomplished through tech or threat.
- **Sell physical/information complements:** Add to the allure of physical media or increase digital options for the full price.
- **Sell subscriptions:** This was, of course, prophetic, as subscriptions to platforms such as Spotify have become a major player when it comes to listening to sound recordings. Unfortunately, this has not resulted in major gains for most artists themselves, as our interviews largely indicated.
- **Sell a personalized version:** Sell a version so personalized that it becomes unattractive to copy because it is a product specially directed to just one person.
- **Advertise yourself:** This is free exposure!
- **Media tax:** The government imposes a tax on some physical good, which is then funnelled to creators. The tape tax was proposed multiple times for digital media by industry during the Heritage hearings (Geist, 2018).

- **Pure public provision:** Artists and other creators of intellectual property might be paid by the state, financed out of general revenues.

The artists we interviewed had tried many of these strategies, often on the advice of industry experts. The strategy of adding to the allure of music with physical complements is fairly common, with offerings such as coloured vinyl or other forms of merchandise. As with many other measures, such efforts received mixed reviews from the musicians we interviewed. For example, Marti Sarbit, vocalist and songwriter of the bands Imaginary Cities and Lanakai, shared a position similar to many of those we talked to: that selling merchandise is a valuable way to augment live show income:

If you have good merch and people want your merch, that can surpass whatever you're making at the venue. It just depends on what kind of audience you have and whether they're willing to buy your merch, if that's important to them at all.

However, an anonymous musician from Winnipeg noted that novelty doesn't always sell either:

I also did a merch experiment with this last record: bandanas, necklaces, a table's worth of cool stuff. I have a craft fair . . . that's one of the things I've been hearing at those industry panels: . . . "You have to diversify. Think outside the box, expand your merch offerings." I was like, okay, great, I'll do all that. Did not work.

As is now evident, digital subscriptions did not bring financial stability for most artists. Sarbit noted:

[I had] like almost a million plays on one song, which sounds great and is wonderful to think of: that many people, like, having heard it. . . . But that amounts to what, like, \$4,000 or something. It's not very much. Plus I wrote that with two other people. And that took like four years to get to that number.

Due to the way streaming revenue is typically distributed, the 1% of musicians accounting for 90% of plays get a disproportionate payout. One of our anonymous interviewees drew a direct link between these streaming payout models and the lack of diversity in the music industry:

The way that it [streaming] is set up now . . . it's harmful to artists, it's harmful to art, and then there's [sic] huge social concerns about that because if it becomes less and less feasible to make an income as an independent artist, . . . then the voices that we end up hearing and the messages and the stories and the space that needs occupying is only going to be people who can afford it. And then of course we know that there are racial correlations to people who could afford it. We're only going

to be hearing from certain segments of the population and that is just absolutely not what art is for.

Interestingly, much like Varian (2005) suggested, some of the artists we interviewed considered physical media to be a form of free advertisement rather than a source of revenue. Don McLean, Winnipeg blues legend, described albums as a promotional tool:

[For] the average person, you're lucky if you get all of 200 bucks every once in a while. You get a check from SOCAN. . . . But I think even just recording CDs or albums is more of a calling card than it is a money maker.

For similar reasons, some artists share tracks for free on social media platforms or on online music services such as Bandcamp. Many of our interviewees commented, however, on how exhausting this self-promotion and advertising is, such as Natanielle Felicitas, freelance cellist :

All these digital technologies have been given to us and they seem really great at first, but I think it's all creating more work in some ways, including Instagram. The pressure to constantly be on and always there and like showing whatever. What if you just want to be home writing your music as opposed to talking about it?

Varian's final idea—that of pure public provision of culture (or, at least, a move towards it)—is one that we examine through the possibilities provided by public libraries and notions of governance of the commons. Although libraries suffer from a lack of funding, and from increasing scope creep as other public services continue to be defunded, they still offer connections to communities and a commitment to those communities that means that infrastructure and support for musicians within libraries could potentially address some of the concerns raised by the musicians we interviewed.

### ***Discussion: Communities of Care and Music as a Commons***

There have been many philosophical and political formulations of communities that hold trust and accountability as fundamental. Furthermore, a feminist “ethics of care” has emerged in conversation with philosopher Berenice Fisher and political scientist Joan Tronto's landmark article “Towards a Feminist Theory of Caring” (1990), aspects of which can be seen in many music communities: attentiveness (caring about), responsibility (caring for), competence (care giving), and responsiveness (care receiving).<sup>1</sup> These aspects of care are complementary to those of mutual aid, which legal scholar Dean Spade (2020) defines as “collective coordination to meet each other's needs, usually from an awareness that systems are not going to meet them” (p. 12). Our interviewees often found the greatest value in these types of practices, from mentorship in various aspects of the industry to material resources like places to sleep. As an anonymous interviewee explains, these aspects of care are really highlighted on tour:

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<sup>1</sup> This is not, of course, to suggest that most music communities are feminist, as they very frequently are not.

Now that I have been touring for over five years, as I revisit these places I feel at home, . . . Canada feels like a neighbourhood to me and it's really lovely. . . . It is this dimension of care and love that I didn't know before and it's so profound. It's so beautiful.

Many music scenes and/or communities are explicitly political in ways that practice ethics of care and mutual aid. John K. Samson notes that some music communities strive for cooperation rather than competition: "I came from a music community that wasn't entirely rooted in music, so it was sort of a political music community. So it had the benefit of: When the market changed, the relationships were still maintained." These community-minded ethics are incredibly important to many musicians but are not always reflected at higher levels of the music industry or represented in formal policy making. These ethics of care and mutual aid challenge notions of scarcity and private property—including those of intellectual property, which is frequently formulated in an individualistic way. This individualistic notion of intellectual property fails to recognize the deep communal role behind much creative output, taking ownership and control away from the communities where music lives.

### **Case Study: Edmonton Public Library and Capital City Records**

One such application of these ethics of care and mutual aid is Edmonton Public Library (EPL), which owns the [Capital City Records](#) streaming service launched in 2015, supported by librarian Raquel Mann. This service runs on the [MUSICat platform](#), created by library open source developer Rabble. Capital City Records embodies many of the ideals of both a community of care and relational stewarding of a commons (or something akin to it). Artists can respond to an open call for local music and, if selected by the jury composed of people from Edmonton's music community, receive an honorarium for uploading and sharing their music with EPL's members. The rights are non-exclusive, and artists can opt in or out of the licenses at any time. This generous approach to licensing offers artists insight into licensing issues, with a gentle learning curve and without the risk of completely signing away their rights.

Capital City Records also runs concerts and has released a vinyl record with the support of the Edmonton Arts Council. Prior to building Capital City Records, EPL ran [YEG BandCamp](#), an "unconference" with people across the music community to develop the desired direction for the platform and to develop models for the selection of artists and governance. There is ongoing and frequent consultation with the music community to drive development and priorities, and while not formally part of a governance structure, the music community clearly does play a role in governance and decision making. For example, Capital City Records used to have a fee structure based entirely on the number of tracks an album had, but after conversations with artists, this was amended to also take into account overall album duration, which is an important consideration for musicians in experimental genres.

In the process of building Capital City Records, EPL has developed a somewhat unique relationship with Rabble. While many library-vendor relationships are built on the model of libraries purchasing services with very little say in the way those services look (or with

substantial fees any time a development request is taken up), EPL and Rabble work cooperatively to design a service that protects users' privacy and reflects the needs of both the library and the artist community. This is done as part of a larger discussion with other libraries using Rabble, and is part of the yearly flat fee to Rabble. The platform fee to Rabble, as well as the honorariums, come out of the library's core operating budget.

Mann currently leads the program (along with other open digital initiatives) and frequently provides documentation and guidance to other libraries looking to start local music streaming on Rabble. Mann says many of the artists who are involved with Capital City Records have credited their participation to a baseline trust that EPL is not exploiting them for profit; this is an ethical imperative that Mann takes very seriously. Mann highlights the importance of the project's encouragement of "community building and energizing"—words no longer heard much when it comes to music streaming (personal communication, June 9, 2021). Unlike many of the larger grants, Capital City Records is less concerned with industry viability, and more concerned with community. It echoes what we heard from musician Greg MacPherson:

We need to try to take a step back from the notion that commercial viability is the best way to achieve our collective goals. And my hope would be that our collective goals . . . would be to create a culture of creativity, of imagination, of celebration, of our uniqueness here and less about competing on the market to get some sort of weird market share that's already flawed and broken.

Projects like Capital City Records recognize that cultural production comes *from* our communities, as well as being *for* our communities. By widening the range of who can contribute to music making and streaming, they are also building the communities of care that our project has identified as an important value for musicians. Although the honorariums are not in themselves enough to address concerns about earning a fair livelihood and having sustainable music careers, it represents the start to a shared, rather than an extractive, music infrastructure.

### **Public Provision of Music**

One way to think about this shared infrastructure is Varian's final suggestion for helping musicians in the digital era: the public provision of music—a musical commons. What does a commons look like when it comes to digital music? Is it piracy? Or is it common infrastructure and shared digital spaces, like Capital City Records? Two recent articles from music journalists (Cooper, 2021; Pelly, 2021) explore what public infrastructure for music streaming might look like, with great relevance for libraries.

Cooper argues, based on many of the same data sets documenting industry consolidation explained above, that music tends towards natural monopoly and industry consolidation leads to *artist* consolidation. "For a natural monopoly," Cooper explains, "there are two classic policy solutions: regulation or nationalization." With Bill C-11, we are seeing an attempt at regulation, which, as Cooper notes, will entail "a lot of complicated oversight of private owners, who will always be attempting to squirm out from under the rules or capture the board to boost their profits." Unfortunately, the

private owners in these scenarios tend to have vast resources in order to enact this regulator evasion, especially in comparison to the inadequate resources of governments tasked with enforcing the oversight.

Alternatively, Cooper proposes a nationalized model for streaming music, with features that include: progressive rates for artists that diminish when the plays are extremely high; the courage to take on YouTube; mandatory registration of artists; and, interestingly, no recommendation algorithm. These same values motivated the Cultural Capital Project's first publication, which envisioned a more equitable streaming music service based on fair remuneration (Fauteux et al., 2013). In Cooper's proposal, "only artists will receive particular data about their listeners; music.gov will not collect any personal information itself." The system, in his view, could be maintained by a small subscription fee or, more radically, completely by government funds.

Liz Pelly (2021) compares the need for public infrastructure for music to that of a public library. Pelly asks:

What would it look like if we thought about access to music the way we thought about other important forms of culture and information—for example, books? Physical copies of music have long been available at public libraries, but we don't currently conceptualize universal access to music as a public good, to be managed in the public interest with public funding. We should.

Reconceptualizing access to (streaming) music as a public good, Pelly advocates for the development of "socialized streaming . . . something more in line with the functions of public libraries, which today remain hubs for free access to information, community space, educational programs and more, driven by [values](#) like privacy and preservation."

For many, like Pelly, libraries are one of the last public/common spaces that can be imagined. Unfortunately, the reality of libraries is that they very much represent—in their values and in their practices—our current neoliberal, colonial, and racist society (Ettarh, 2018; Popowich, 2019; Seale, 2015). Predominantly white and middle class, library work is not exempt from the same issues that plague working musicians: a lack of (or weak) union representation, the promotion of white men at nearly everyone else's expense, labour exploitation, white supremacy, and cultural biases. Libraries and those who work in them are not inherently more democratic or privacy-oriented than society at large. However, libraries do have a mission that is oriented around public access and heritage, are less immediately constrained by profit motives, and are thus more conducive spaces for fostering public infrastructure and governance of music communities.

### ***From Stewardship to Commoning***

Like many of the so-called "values" of libraries, stewardship has many of these simultaneous movements towards a false neutrality and exclusion. Increasingly, there are understandings of stewardship that take a more relational view (often borrowing

from Indigenous epistemologies without specificity or citation). Ian Dahlman (2012) considers stewardship as the management of property and encourages a view of property ownership that is not individualistic but is always in some way relational. Dahlman suggests that, rather than *librarians* as stewards, *fans* could be the stewards in a digital music “Great Library.”

This relational approach is also found in models of the commons, frequently used to describe the vast cultural “public goods” behind creative (and non-creative) production. This approach stresses governance as a key part of public commons. Samuel Moore (2018) reminds us that the commons, in its original meaning, was not necessarily about public access but was about community *management* of a space. “The commons is not a freely accessible resource, then, but a way of producing and managing shared resources” (p. 18). Commons are thus more of a set of social relationships than a resource, demonstrating why the shared governance models of Capital City Records are a key part of the endeavour. “Commoning” becomes the never-ending act of maintaining the relationships, structures, and governance of the commons—and key work for libraries. Relinquishing even more control to fans and musicians themselves in these projects, as Dahlman suggests, is a valuable next step for library music infrastructure.

Pelly similarly recognizes the need for shared governance (not always libraries’ strong suit) and the need for shifting power relations. She acknowledges there are already libraries (such as EPL) out there doing this work and that, in general, advocating for more resources for these services is fairly “risk-free.” This perception of lack of risk when it comes to advocating for increased library budgets and new projects is, of course, a view from outside, and represents the largest likely hurdle for libraries interested in replicating Capital City Record’s model.

While the honorariums at Capital City Records are not career changing, the connections, experience, and community building might just be. If done with the same amount of care and attention as at EPL, this model could be used to generate interest and support in more towns and cities, as Pelly suggests. However, most who work in libraries know that increasing budgets and proposing projects that require additional staffing and maintenance can be difficult and risky. A distinct skill set—along with community connections—means that a new hire would likely be necessary to run such a program in most library systems. Additionally, the costs for the Rabble platform and honorariums require additional budgeting. As well as starting these internal conversations (regardless of risk), it is necessary for those from outside the library, such as Pelly, to put external pressure on governments to increase library budgets and resourcing. To be able to responsibly start record labels like Capital City Records, most libraries would require secure, dedicated, on-going funding. There may be a role for CHPC and Canada Council for the Arts to directly support the role of libraries in encouraging cultural development for music by dedicating funding to this form of infrastructure and community-building, but it may be at odds with their current industry-dominated direction.

## **Conclusion**

While many of the recommendations we see from CHPC are supposedly aimed at making the music industry more lucrative, cultural economics predicts measures such as term extension and internet regulation are unlikely to have material benefits for independent musicians. The data and interviews we have collected with the Cultural Capital Project show that independent musicians are concerned with how they can make a living through music, but also that more care and community building is what truly matters to many of them. Unless something “emerges to challenge the status quo” that has made a working career as a musician so unsustainable, John K. Samson expects only “further consolidation and a narrowing of who can live as a musician.” This echoes a lamentation by media professor and musician Aram Sinnreich (2015) about the existential status of music in capitalism: “What had once been a public good and a native form of ‘ritual communication’ for our species had been successfully commodified, and then monopolized by a multibillion dollar cartel” (p. 616). In contrast, by exploring models that provide public infrastructure with shared governance and community-building aspects, such as EPL’s Capital City Records, libraries and other community-minded organizations may be well-situated to support vibrant and diverse Canadian music that resists the commodification and consolidation of music.

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