



# Strategies for Eliminating the Digital Theft of Cultural Content

CANADIAN  
**music** *week*

Global Forum Report - Submitted to Music Canada

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# Executive Summary

## **Executive Summary**

What are the tools in the battle against digital theft?

How effective can they be?

How should their impact be measured?

These were the core questions for discussion among international music industry leaders who attended the Canadian Music Week 2011 Global Forum held in March, in Toronto.

Setting the stage for a wide-ranging discussion on strategies for eliminating digital theft were Robert Levine, author of *Free Ride: How Digital Parasites are Destroying the Culture Business and How the Culture Business Can Fight Back* and Dr. Brett Danaher, a Wellesley College professor of economics who has studied the impact of France's Graduated Response anti-piracy legislation.

In *Free Ride*, Levine argues that aggregator search engines that specialize in finding downloads of copyrighted content are free ride "parasites" that profit from the work of others. Nowhere is this truer than in the music business, where for-profit companies deliberately set out to make money from music piracy.

In his insightful opening remarks to the Global Forum, Levine reflected on the history of music piracy, noting how the battle lines became both drawn and defined over time to the point where the debate today is less about theft and more about business practices and profitability. Music has economic value, but this value is not being captured by creators.

Nor is this value recognized by banks, but by traditional distributors like labels and publishers who aggregate risk to produce content for public consumption. But in the fight to preserve legitimate markets for culture, Levine pointed out that the current structure of the Internet makes this difficult, since companies like Groovespark can still sell ads in the promotion of illegal content. This means, Levine said, that different legal frameworks that provide the right disincentive to content pirates may be required.

Cue Brett Danaher, who followed Robert Levine in presenting a set of compelling findings on France's Graduated Response legislation, known as Hadopi. How effective has this "three strikes" legal protection been?

As Danaher pointed out in his presentation, *The Effect of Graduated Response Anti-piracy Laws on Music Sales: Evidence from an Event Study in France*, in the 10 years since the launch of Napster, global recorded music sales have plummeted from \$27B in 2000 to \$15B in 2010. About 20 percent of this industry contraction has been identified as the outcome of file sharing.



## Executive Summary

The question for Danaher was, how has Hadopi impacted music sales in France? What would music sales look like in the absence of Hadopi?

Examining iTunes music sales in France against a group of control countries during debate and since the passage of Hadopi, and noting an increased sensitivity on the part of the French public about piracy as a result of the legislation, Danaher found a significant difference in iTunes sales in France compared to other countries, with iTunes tracks 22 percent higher and iTunes albums 25 percent higher.

Danaher went on to explain that when controlling for music genres, increases in iTunes sales were higher for high-piracy genres like rap – roughly 30 percent. The central finding of his study: a law like Hadopi *can* affect consumer behaviour. Indeed, he said,

education, the threat of penalties and national awareness combined to create awareness about piracy, and support the effectiveness of Hadopi.

Through roundtable discussion that followed keynote remarks and a panel discussion, Global Forum participants reached consensus on the following points:

- Digital piracy continues to thrive, draining significant revenue from the music industry and other cultural industries worldwide. In the world of digital content, creators continue to struggle while distributors and platforms flourish.
- Graduated Response laws like France's Hadopi legislation are important tools in the battle against piracy, but their true value may lie in sensitizing the public to the issue.
- The Notice and Notice system used in Canada is much less effective than a Notice and Takedown system would be. In general, laws in and of themselves are not sufficient; a more complete tool kit is needed to fight piracy.
- In the battle against "free" content, convenience is an essential element that encourages consumers to purchase legal content, but price remains a key factor as well. Content should therefore be easy to purchase or access at an attractive price.

# Canadian Music Week 2012 - Global Forum Report

The Canadian Music Week Global Forum is now in its sixth consecutive year, and has established a tradition of bringing together some of the international music industry's leading thinkers for a morning of discussion about their most daunting issues – and possible solutions to those challenges.

The erosion of the music industry's economic strength – driven by digital theft, or content piracy – and the potential effectiveness of legislative solutions in addressing piracy formed the core discussion at this year's Global Forum.

The session was opened by Robert Levine, one of the world's top culture/technology writers. He is a former executive editor of *Billboard* and features editor at *New York* magazine and *Wired* and the author of *Free Ride: How Digital Parasites are Destroying the Culture Business and How the Culture Business Can Fight Back* (2011), an insightful and controversial examination of how the battleground for the cultural economy developed, and the direction it may take in the future.

He was followed by the second keynote speaker, Dr. Brett Danaher, an Assistant Professor of Economics at Wellesley College and researcher in new technology's effects on business, pricing and government policy. Professor Danaher presented his groundbreaking analysis of a key weapon in the fight against cultural piracy: legislation, specifically the Hadopi "graduated response" law in France.

Following the keynote presentations, a speaker's panel offered an opportunity for both Q&A and discussion on issues like consumer convenience and the need for further research. Once the panel concluded, 140 Forum participants were divided into 18 roundtables for discussion and debate on the issues. Each roundtable discussion was led by a music specialist facilitator.

The Canadian Music Week Global Forum 2012 Report is based on (i) keynote presentations, (ii) panel discussion with keynote speakers and (iii) scribe notes taken during roundtable discussions, along with observations of roundtable proceedings.

Part I of our Report, ***The State of Music Piracy and the Impact of the "Three Strikes" Law*** summarizes the perspectives of this year's Global Forum Keynote Speakers. We first look at the remarks of Robert Levine, who examined the relentless challenge of music piracy and potential future directions for the cultural economy in general. This is followed by a summary of Professor Brett Danaher's presentation on "The Effect of Graduated Response Anti-piracy Laws on Music Sales", an economic analysis of "graduated response" legislation in France. Part I of our Report also summarizes key points raised during the speaker's panel discussion.

Part II, ***Legislating Solutions to Piracy: Breaking the Internet?*** sets out the views expressed by Global Forum participants during roundtable discussions. Reflecting on the key messages presented by our speakers and views expressed during the speaker's panel, participants provided passionate debate and perspective on the roles legislation, enforcement and alternative legal services can play in the fight against piracy. Will the enforcement of copyright laws "break the Internet?" How can legal digital music services improve what they deliver to consumers? What is the future of the "free ride" enjoyed by content distributors at the expense of content creators?

A small, dark silhouette of a police car with its red and blue emergency lights flashing, positioned in the upper right background of the main title area.

**ENDING THE FREE RIDE**

# **PART I**

**The State of Music Piracy and the Impact of the  
“Three Strikes” Law**



## **Part I – The State of Music Piracy and the Impact of the “Three Strikes” Law**

### **Robert Levine**

In the Introduction to his book, *Free Ride: How Digital Parasites are Destroying the Culture Business and How the Culture Business Can Fight Back*, Robert Levine states:

Most online companies that have built businesses based on giving away information or entertainment aren't funding the content they're distributing. In some cases, like blogs that summarize newspaper stories, this is legal; in others, it's not. But the idea is the same: in Silicon Valley, the information that wants to be free is almost always the information that belongs to someone else.

In *Free Ride*, Levine goes on to argue that such businesses – for example, aggregator search engines that specialize in finding illegal downloads for copyrighted content – are free ride “parasites” that profit from the work of others. Apologists will claim that such engines of illegally acquired content serve a useful purpose in exposing culture to the masses; in truth, however they represent competition “by selling advertising that used to go to creators.”

And, says Levine, nowhere is this truer than in the music business, where “for-profit technology companies deliberately set out to make money from (music) piracy and never came up with a workable plan to pay artists... The music business became trapped in a downward spiral.”

In his remarks to the 2012 Global Forum, Levine began by stating several reasons why it's important to understand the history of digital music piracy.

First, history explains how the battle lines came to be drawn, and therefore, what they look like today. He notes that, rather than large companies versus small, greedy companies versus generous, or old companies versus new, the piracy battle

was more about large companies on both sides battling over rights, and ultimately over money, as they developed new, and very uncertain, business models. Like many other businesses, said Levine, following the money usually tells you a story: the music industry still generates a lot of it. The question is, where is that money going?

Second, the history of music piracy is a starting point for developing a counter-narrative (as he calls *Free Ride*) to the more recent propaganda accusing the music industry of opposing the Internet, technology and free speech. On this point, Levine noted that U.S. Supreme Court Justice Sandra Day O'Connor has stated that, rather than standing in the way of free speech, copyright supports free speech.

And third, understanding the history of piracy enables one to develop strong counter-arguments to those who would suggest that piracy is positive because it provides exposure for cultural content, even if that exposure comes at the expense of creators.

Levine remarked that, at the outset of Napster in the later 1990's and into 2000, he (and others) believed that Napster would actually improve the music market. Instead, Napster had a negative market impact, and served as a flashpoint for the copyright battleground, motivating a lawsuit by Metallica, for instance, when a song the band had not yet released found its way to the popular file sharing site.

Since that time and through the past decade, Levine remarked that what was once perceived as a battle over rights and against digital theft has evolved into a business issue involving a lot of money, and a dispute about where that money goes. (He noted that the music industry “still generates lots of money”, bringing success to Apple for example, and commercial opportunities for music abound.)

## **Part I – The State of Music Piracy and the Impact of the “Three Strikes” Law**

In other words, music has economic value, but that value is not being captured by the creators.

To this end, Levine shifted his remarks to the rights of artists to the moral and material interest of their work as cited at Article 27 of the 1948 Universal Declaration of Human Rights – a declaration that opens his book. This means that creators can sell their rights – and that the rights of creators implicitly hold value. Recognizing this, industry players like book publishers and music labels invest in artists and in doing so, aggregate risk since not all projects will make money (in fact, perhaps only one of every seven or eight published books will ever turn a profit).

Aggregating risk is a critical function, Levine indicated, as banks or other lending institutions do not recognize the implicit value of creator rights and will therefore not extend credit to artists using rights – intellectual property – as collateral.

Today, of course, artists do not necessarily need labels and writers do not necessarily need publishers but the right and desire to earn money for their work may still lead them to these traditional methods of distribution. And, says Levine, Napster really just usurped a position in the traditional distribution chain: it replaced the trucks that brought CDs to stores. Napster did not invest in anything; it was just a different way of delivering content at the expense of the artist.

Noting the current lawsuit by The Temptations against a label for poor digital royalties, Levine pointed out the importance of distinguishing between copyright law and contracts between artists and labels: confusing the two can lead observers to blame “copyright” for what may be an issue about contracts.

Against all of this, through the launch of Napster to the current day Grooveshark, Levine noted that there are two possible future directions in the

battleground for creator rights.

First, there has always been a market for creative work, and the idea of a right to one’s creative work precedes the institutionalization of copyright law. There is a great need, noted Levine, to preserve this market – that is, “a market for culture, which involves buying and selling stuff, with laws [that provide a framework for these transactions]”.

Second, Levine stated, the current structure of the Internet makes the market for culture difficult to preserve. People will say, why not publish the song first and ask questions later? This is the model followed by companies like Grooveshark, where music is uploaded on the assumption that it is legal and legitimate to do so. Consequently, Grooveshark has been issued 800,000 DMCA takedown notices by Warner Music alone for a small selection of popular artists over the past eight months.

The Grooveshark issue points to several flaws in the current system, Levine stated. Under the status quo, Grooveshark has little motivation to “do the right thing” because they can still sell ads in the promotion of illegal content. Only when they are unable to sell advertising against what they do will they have an incentive to stop.

Levine suggested that the Grooveshark situation points to the necessity for a *different* type of legislation that will provide the right type of incentive to content pirates. As Levine suggested, “traditional norms are great and efforts to work out problems are great”, but creative businesses need an effective law that will defend their rights. And as Robert Levine, himself a creator, stated in concluding his remarks, “I don’t mind saying ‘please’...but I would hate to think that this is the only tool I had to prevent people from selling my book without my permission.”



## Part I – The State of Music Piracy and the Impact of the “Three Strikes” Law

### Brett Danaher

The theme of legal protection for artists in the prevention of digital piracy was then taken up by Professor Brett Danaher in his presentation to the 2012 Global Forum on the effectiveness of France’s “Creation and Internet Law” or Hadopi (the acronym for the French agency that administers the law, *Haute Autorité pour la diffusion des oeuvres et la protection des droits sur internet*).

As Danaher pointed out at the beginning of his presentation, *The Effect of Graduated Response Anti-piracy Laws on Music Sales: Evidence from an Event Study in France*, his approach to this research was focused on the collection and analysis of evidence about a specific impact of a specific law, and lessons that might be learned from this.

Setting the context for his research, Danaher reviewed the facts about digital music piracy: in the 10 years since the launch of Napster, global recorded music sales have nosedived from \$27B in 2000 to \$15B in 2010. About 20 percent of this industry contraction has been identified as the outcome of file sharing.

As one type of government intervention used to combat this situation, Hadopi is a French law that came into force in 2009 following a lengthy legislative passage. It is known as a “graduated response” law and often referred to as France’s “three strikes” law in that those identified as music pirates are first sent an email to cease their actions, then sent a registered letter to cease their actions, and then can be charged with copyright violations that might result in the temporary removal of their Internet access.

Danaher went on to explain that the third strike – potential revocation of Internet access – was a main reason why the draft law received significant media attention and generated no shortage of

controversy, with some observers suggesting that Hadopi violated the principle of net neutrality and thus constrained the free flow of information. There were also suggestions, more or less inaccurately noted by Danaher, that the United Nations had previously identified Internet access as a human right.

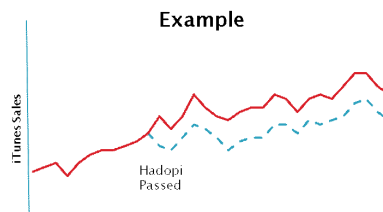
Danaher indicated that his research was motivated by claims from detractors that Hadopi would have no effect whatsoever on file sharing behaviour or on improving sales by reducing file sharing. As an economist, Danaher noted his interest was in testing two key questions:

What is the effect of Hadopi on French music sales?  
What would French music sales look like if Hadopi had not been passed?

### Question

What is the effect of Hadopi on French music sales?

- Simulating the counterfactual is challenging...
- And, when is the “treatment date?”



In the above graphic, Danaher noted that the gap between the red line and the dashed blue line is equivalent to the actual effect of the law on sales; this constitutes the hypothesis to be tested.

With respect to methodology, Danaher and his colleagues used a difference-in-difference model that made use of a group of control countries (Belgium, Germany, Spain, Italy and the U.K.) against which trends in music sales in France would

## Part I – The State of Music Piracy and the Impact of the “Three Strikes” Law

be mapped over a specific period of time. iTunes was selected as the measure for music sales, given its availability in all countries tested, and based on the assumption that a music pirate would be more likely to buy digital music than CDs, if pirating behaviour ceased.

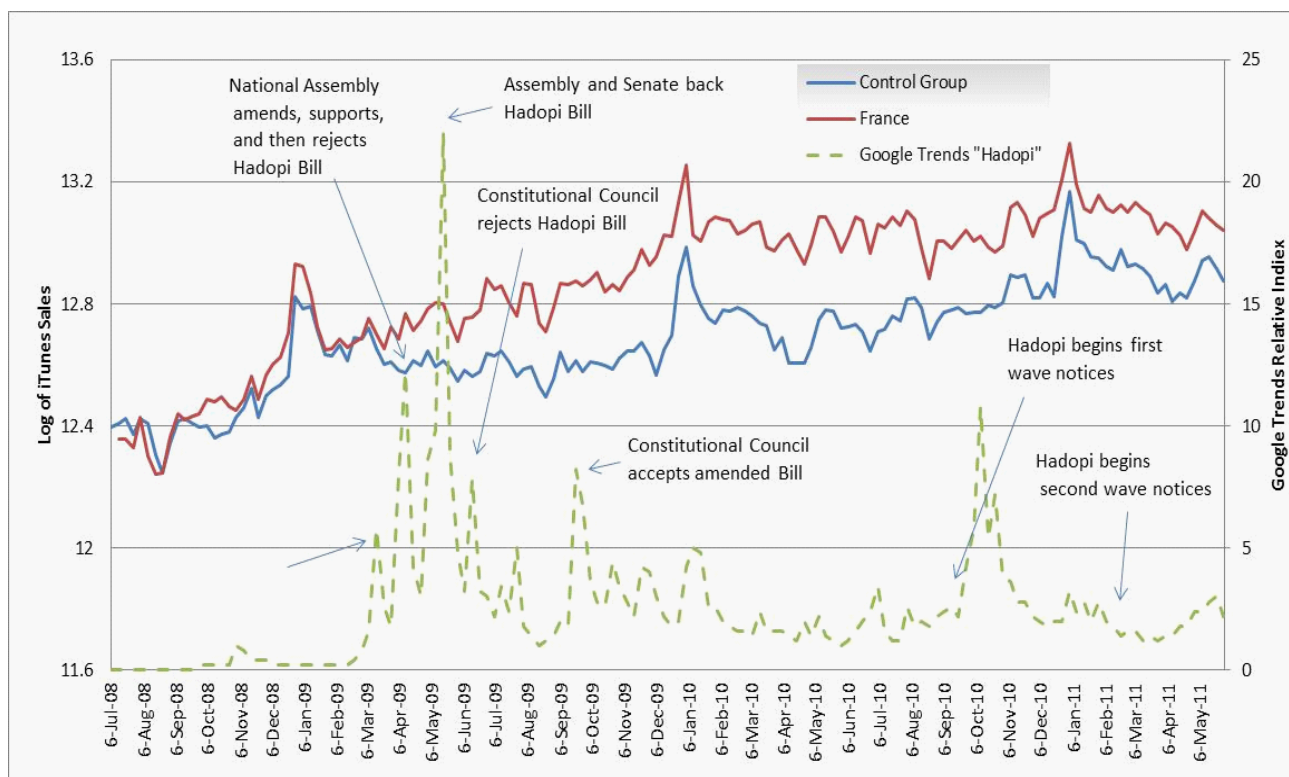
Given this approach, the research question became narrowed to,

- What is the effect of Hadopi on one type of media (music) in one sales channel (iTunes)?

To identify the point at which the French public would have become more aware of, or sensitized to, Hadopi, Danaher employed the Google Trends Relative Index, which reveals search trends on specific topics of interest. Understanding the point at which awareness about Hadopi spiked was an important consideration in the overall analysis.

Danaher then took iTunes sales data in France and the control group of countries, and identified the percentage change over time for each country, revealing the following pattern.

### French iTunes Track Sales\* vs. Non-Hadopi Control Group



\*Total iTunes track sales units for the four majors



## **Part I – The State of Music Piracy and the Impact of the “Three Strikes” Law**

Several findings are indicated in the previous graphic.

First, in the period of July 2008 to March 2009, France and the control group countries display identical trends in iTunes sales. Until March 2009, the pattern of peaks and valleys remains the same for France and the other countries but a gap between the two appears at April 2009, and persists from that point forward.

Second, when Google Trends data for Hadopi awareness is overlaid, it is evident that the gap in iTunes sales between France and the control group countries coincides with awareness about Hadopi and Hadopi's passage in France. At that point, April 2009, France's iTunes sales rise above the control group and stay there.

Danaher was thus able to conclude that iTunes sales were positively impacted by public awareness of Hadopi and passage of the Hadopi law. And the differences in sales became significant: throughout the period of the study, Danaher noted that sales of iTunes tracks were 22 percent higher as a result of Hadopi, and sales of iTunes albums were 25 percent higher as a result of Hadopi.

Moreover, these increased sales took place prior to the issuance of any third notice to music pirates that would potentially revoke Internet access. Delving further into the data set, Danaher pointed out that a further question emerged:

- If the effect of Hadopi is to increase sales, then wouldn't the gap between France and the control group be even higher for genres of music that traditionally experience higher rates of piracy?
- In other words, do these findings hold up when controlling for music genre?

Danaher noted that his analysis revealed that for low piracy genres, iTunes sales increases were about 8 percent; for medium piracy genres, sales increases were about 22 percent; and for high piracy genres like rap, sales increases were the highest, roughly 30 percent. Danaher indicated that this pattern across genres was what one would expect if the effect of Hadopi was to stop some people from file sharing.

Still, detractors attempted to debunk the study by suggesting that the growing popularity of iPhones were behind the sales increases in France (an assertion highlighted in an article appearing in *Le Monde*). Danaher noted that their research found that iPhone sales spiked in all countries, and was in fact much higher in Spain (which was one of the countries in the control group) than in France.

The central finding of this study, noted Danaher, is that a law like Hadopi *can* affect consumer behaviour. That is, government intervention, plus media attention, plus a certain amount of controversy, resulted in a 25 percent increase in iTunes album sales before any third wave notices were issued or before anyone lost access to the Internet.

Concluding his presentation, Danaher pointed out the effectiveness of Hadopi may be its “carrot and stick” approach that combines warnings and sanctions with education campaigns and ad campaigns launched to build awareness. While the effects of the carrot “cannot be disentangled” from the effects of the stick, Danaher concluded that education, the threat of penalties and national awareness “create a continued awareness that RIAA lawsuits were unable to create, which may explain the prolonged effectiveness of Hadopi.”



### ***Part I – The State of Music Piracy and the Impact of the “Three Strikes” Law***

Following Professor Danaher’s presentation, the Q&A panel discussion with Robert Levine and Brett Danaher pointed to a number of other interesting factors in the battle lines between piracy and legislative counterattack.

Danaher pointed out, for example, that his study is worth expanding to determine the effectiveness of Hadopi once third wave notices are issued.

In answer to a question about whether there is a way to ameliorate the situation, Levine stated that the debate often comes down to whether there is a need for better, more effective laws or better, more effective business models. The answer, he said, is both.

This means that there needs to be an implicit awareness that consumers are “convenience-sensitive” more than they are “price-sensitive”. People want content more quickly and conveniently – as in the simplicity of Apple TV over the complications of Google TV.

With respect to legal remedies or approaches, Levine suggested that while suing distributors of illegal content is always an option, it may be more effective to put pressure on corporations that do business with those distributors, such as credit card companies. He noted that some people will never stop pirating because it’s “an ideology for them”. But “a lot of people in the middle will do what’s easy.” This means that we should not underestimate the importance of law enforcement; it should make things inconvenient enough that people in the middle will do the right thing, because what they did before is now inconvenient.

In answer to a question about “how creators can win the PR battle about rights”, Danaher noted that, as a researcher, he has been cast as both the “enemy of all free culture” and champion of independent

study. Levine stated that creators must do a number of things in telling a different story than “our opponents” – a story about the principles of a fair market for creative work and the need to be fairly paid for that work, and a story that copyright is the “sensible regulation” to support this market.

He further noted that artists need to speak out about the damage that piracy can do to creators indirectly. For example, stealing a book from a publisher may serve as a disincentive for publishing more creative works which in turn damages the ability of artists to make a living.

A small, dark silhouette of a police car with its red and blue emergency lights flashing, positioned in the upper right background of the main title area.

**ENDING THE FREE RIDE**

## **PART II**

**Legislating Solutions to Piracy?  
Breaking the Internet?**

## ***Part II – Legislating Solutions to Piracy? Breaking the Internet?***

The balance of the 2012 Global Forum focused on a number of key questions for facilitated discussion roundtables, based on the works of Robert Levine and Professor Brett Danaher and their presentations to Forum participants.

***The first question looked at a key argument made by Levine in Free Ride, that the so-called “information economy” has led to an unequal distribution of benefit: those who move information around are thriving while those who create information are struggling. Do you agree with this statement? Why or why not?***

***If so, what could or should be done to correct this imbalance?***

Participants at the 2012 Global Forum were near-unanimous in their agreement with Levine’s view. As noted by one participant and echoed by several others, “A few people get rich (in the Canadian music industry)...but not very many”. Some noted that fewer people seem to be getting compensated, and less compensation is paid; overall, there was a general sense that artists, never well off in the first place, are doing even worse now than in years past.

Moreover, several participants noted the effect of the current environment on younger artists, some of whom evidently believe that they should give their music away online and that this will somehow create revenue for them.

Others disagreed slightly with the suggestion that telcos, Google and Apple are “information movers” as described by Levine, although they tend to thrive in the current environment. One participant suggested that “it’s more about educated versus non-educated than big versus small, since some people can creatively take advantage of technology”.

Debate about ways of correcting this imbalance was lively and provocative.

A number of participants noted the need for the “three strikes, carrot and stick” educational approach taken in France, persuaded by Professor Danaher’s numbers that Hadopi is having a positive effect on (at least) iTunes sales. But several participants noted that in France, the law was first recognized as “the right thing to do...recouping money came second”. There was some doubt among participants about the same moral suasion taking root in Canada.

While the education element was noted as key, the collective effort required to push Hadopi through legislative channels was not lost on participants. And to this end, a number of participants suggested that in Canada the industry itself has difficulty in agreeing on a unified approach; as stated by one participant, “We don’t make it easy as an industry.”

A number of participants suggested that, while copyright law is essential, the imbalance noted by Levine will not be remedied without new and better business models that focus on revenue sharing. Models such as “Audible Magic” used by Facebook and Soundcloud allow for file sharing and purchasing online. Still, the “will to use this type of software must be fostered among companies”. There was a prevailing sense that such will is not yet in place.

Others voiced their agreement with Levine’s assessment about convenience; as stated by one participant, “If legal is easier than illegal, then people will use legal means”. Several participants suggested that the type of awareness created by Hadopi was important because it demonstrated the difficulties faced by artists and provided valuable information about rights to the uninitiated.



## **Part II – Legislating Solutions to Piracy? Breaking the Internet?**

Participants also noted that the Canadian music industry is growing in size and accumulating more power all the time. Aligning with other cultural industries that face comparable issues of revenue loss due to piracy – such as film and television – might be a worthwhile strategy. This was tempered by the reality that other cultural industries like books and newspapers provide a lot of content for free, using alternative revenue streams not available to music artists. Further, some participants noted that individual cultural industries differ widely in their philosophy, approach and even lexicon when it comes to rights; working together may prove more difficult than it seems.

Several participants echoed the comments of both Levine and Danaher in suggesting that there are too many corporations willing to turn a blind eye to the abuse of rights, such as credit card companies that provide services to illegal lockers like Megaupload. For some, this was identified as the forgotten element of any debate about correcting the imbalance identified by Levine in *Free Ride*.

During the course of discussion on this first question, a number of Global Forum participants were highly critical of the Canadian federal government's passing of Bill C-11, *The Copyright Modernization Act*, stating "it's a bad law that reduces rights of creators" with "no real provisions regarding the enforcement of rights via ISPs". In some ways, noted one participant, we are living in and dealing with "a very anti-rights environment".

***The second question for the roundtables noted that the findings presented by Brett Danaher demonstrate that in France, the rule of law and publicity surrounding it, caused iTunes sales to increase. Given the evidence he presented, do you agree with this conclusion?***

***Should the success of a Graduated Response system be measured by a decline in piracy or an increase in online sales of music?***

***Do you think alternate laws, like the "Notice and Notice" system adopted in Canada or laws in the country where you live, are likely to have similar results?***

Participants generally viewed Danaher's findings as compelling, although some suggested that measuring the impact on iTunes sales alone was not sufficient to identify the overall impact of Hadopi on artists, since artists depend on many sources for revenue. Other participants noted that in Canada, iTunes sales have increased without a law like Hadopi and iTunes may be less available in some parts of Europe than was implied by the Danaher study. Many participants suggested that the true value of Hadopi is the awareness it has generated about piracy, by educating the public in a clear and persuasive manner.

While the second question concerning the best way of measuring a Graduated Response system did not generate a great deal of discussion, those participants who did comment suggested that a decline in piracy would be a better approach (or at the very least, evidence of increased sales should be accompanied by evidence of decreased piracy). This is because increases in online sales of music might indicate an overall increase in demand rather than a reduction of the piracy problem itself. Some identified the cost of implementing a Graduated Response system as prohibitive, which was part of the debate prior to the passing of the legislation in France. As noted by one participant, "\$25M for 10 third-level notices so far does not seem worth it".

## ***Part II – Legislating Solutions to Piracy? Breaking the Internet?***

Reviews of the Canadian Notice and Notice system were generally negative and some were outright dismissive. While a few participants suggested Notice and Notice attempts to serve the right purpose, many more stated a belief that it is “thin”, “weak” or “useless” and that “Notice and Takedown” would be more forceful and effective. Some suggested that our laws will be much less effective than Hadopi and that Hadopi itself is not particularly effective.

A number of participants were of the view that ISPs will resist any further strengthening of Notice and Notice. Others noted that the approach is weakened by the fact that the same signals about piracy are not being sent to consumers. In focusing on consumers, and only consumers, Hadopi has succeeded in changing demand, not supply.

It was noted by one participant that the U.K. had used Notice and Notice without Graduated Response, and this approach has evidently had little impact (based on Danaher’s data that the U.K. track with other countries on iTunes sales).

On the subject of legislative alternatives, several participants noted that the business model for music has shifted; for example, the Internet has facilitated an easier flow of content and revenues among those in the value chain. Because this has been achieved outside of legislation, this means that other measures, “a complete tool kit”, will be needed, not just laws.

***Third, opponents of Internet regulations like HADOPI or DNS blocking often say that these measures will “Break the Internet”. Do you think that enforcing copyright laws online will “break the Internet”?***

***What does “break the Internet” mean to you?***

Participants noted that “breaking the Internet” typically refers to an undesirable outcome of legislation or regulation: that the free flow of information will be inhibited or disrupted. Some noted that criminal code provisions are in place to sanction content such as child pornography, and privacy laws are in place for personal protection. But there seems to be much less agreement about (and attention paid to) the harm created when copyright laws are broken.

At the same time, participants suggested that monetizing the Internet inevitably leads to regulation for the protection of consumers, distributors and others in the value chain – but this does not seem to include artists.

While participants generally agreed that regulations will not “break the Internet”, many pointed to a deeper concern: it is becoming increasingly obvious that additional forms of regulation are needed for the Internet, but who will regulate, and how? This uncertainty is compounded by the “emotional connection” the public might have with the notion of “breaking the Internet”: the reaction can be negative and visceral.

A number of participants also noted that the notion of “breaking the Internet” is not far removed from debates about freedom of speech; others suggested it is merely a scare tactic with little meaning behind it. Still others thought the notion should be dismissed altogether.

Participants also stated that when free content sites are taken down, others spring up in their place. In other words, the convenience of “free” outpaces the inconvenience of “pay”, echoing the importance of consumer convenience highlighted by Robert Levine.



## **Part II – Legislating Solutions to Piracy? Breaking the Internet?**

***As a final question for the roundtables, Robert Levine suggests in his book that entertainment companies must compete with piracy on both price and convenience but since pirate sites usually offer content for free, he says that it's really only possible to compete on convenience.***

***Do you think the current variety of legal digital music services in your jurisdiction is able to give consumers what they're looking for in terms of convenience? If not, how can they improve?***

Participants fully supported Levine's contention that convenience is an essential element of the competitive landscape. But there were also suggestions that price remains a key component for attracting consumers; as noted by one participant, subscribers left Netflix in large numbers when the price of its service increased, despite better quality and more content.

A number of participants suggested that convenience should go beyond ease of use to include variety, e.g. the types of social networking opportunities offered by legal streaming services like Slacker and Radio. This can be exploited as a point of differentiation between pirate sites and legal sites, and pirate sites cannot offer social networking because those sites need to maintain anonymity. Spotify was noted by several participants as a service that works well, but is not yet available in Canada.

Some participants pointed to the failure of record labels and Napster to enter into a licence agreement from the outset – a turn of events that would have enabled the labels to offer convenience to consumers early on, a "historical mistake we're still paying for". For some, this remains a defining moment that the music

industry needs to determine what consumers want and "work with it, rather than against it".

So far as existing services are concerned, many participants said that iTunes is "hugely convenient", but subscription models in Canada are generally underdeveloped. As noted by one participant, "We have a long way to go" on a model of convenience in Canada. Others suggested that services in Canada are excellent, but under-promoted – and there are not enough of them, a situation that some attributed to the barriers of our legal system and the poor track record of the Copyright Board of Canada (with respect to how slowly decisions are made on tariffs).

One participant suggested that a study on the successes, failure and best practices of "convenient" systems versus standard, traditional approaches might be useful. User interfaces were noted as especially important to convenience for consumers.



A small, dark silhouette of a police car with its red and blue emergency lights flashing, positioned in the upper right background of the central text area.

ENDING THE FREE RIDE

CONCLUSION

## Conclusion

Content piracy continues as a daunting challenge for the music industry, in Canada and internationally. As Robert Levine notes in *Free Ride*,

The tough decisions about the future of online media don't involve the development of technology; it's inevitable that computers, bandwidth and storage will all get faster, cheaper and more accessible. What's not inevitable is how that technology is used. In 2010, technology executives started saying that anyone who wanted to limit piracy was trying to "break the Internet". But the truth is that it's breaking already. Now – and perhaps not for too much longer – we have a chance to fix it.

The question debated at this year's Global Forum was, how such a fix might be achieved. Consensus among participants was evident on the following points:

- Digital piracy continues to thrive, draining significant revenue from the music industry and other cultural industries worldwide. In the world of digital content, creators continue to struggle as distributors and platforms flourish.
- Graduated Response laws like France's Hadopi legislation are important tools in the battle against piracy, but their true value may lie sensitizing the public to the issue.
- The Notice and Notice system used in Canada is much less effective than a Notice and Takedown system would be. In general, laws in and of themselves are not sufficient; a more complete tool kit is needed to fight piracy.
- In the battle against "free" content, convenience is an essential element that encourages consumers to purchase legal content, but price remains a key factor as well. Content should therefore be easy to purchase at an attractive price.

Participants also expressed disappointment that little progress has been made with respect to recommendations that emerged from last year's Global Forum. These recommendations included calls for key players such as ad service providers, financial institutions, search engines and ISPs to be prohibited by law from offering their services to websites hosting content that infringes on copyright.

The prevailing view at the 2012 Global Forum is that legal remedies can be effective, but a stronger level of will, and subsequent action, is required on the part of government, ISPs and the music industry to eradicate digital theft. The experience of Hadopi in France also points to the need for a significant education campaign to galvanize public awareness and support.



ENDING THE FREE RIDE

A small, dark police car with flashing red and blue lights is positioned in the background, slightly to the right of the center, behind the large 3D text.

APPENDIX



## Appendix – 2012 Global Forum Attendee List

Susan Abramovitch Gowlings, Canada	Christian Castle Christian L. Castle Attorneys, USA	Brett Danaher Wellesely College, USA
Arif Ahman Re:Sound, Canada	Lynne Cavanagh Music Yukon, Canada	Susan deCartier Starfish Entertainment, Canada
Eric Albert Stingray Digital, Canada	Richard Cavanaugh Connectus Consulting, Canada	John Degen Ontario Arts Council, Canada
Niko Alm Vice, Austria	Dave Charles Media Results, Canada	Adam Del Gobbo Scribe, Canada
Joe Arnold ANR Worldwide, USA	Sundeeep Chauhan Gilbert's LLP, Canada	Marcel Deluca Warner Music, Canada
Grimur Atlason Iceland Airwaves, Iceland	Caroline Chia EastWest Entertainment, Tawian	Carlos Garcia Doval ProMusicae, Spain
Eric Baptiste SOCAN, Canada	Casey Chisick Cassells Brock & Blackwell LLP, Canada	Christine Duplessis Heritage Canada, Canada
Vivian Barclay Warner Chappell, Canada	Lisa Clarkson CBC, Canada	Jennifer Edgar Sony Music, Canada
David Basskin CMRRA -Canadian Musical Reproduction Rights Agency, Canada	Ted Cohen TAG Strategic, USA	Jennifer Ekin Scribe, Canada
Sat Bisla A&R Worldwide, USA	Margriet Colenbrander Double Vee Concerts, Netherlands	Martin Elbourne Glastonbury Festival / The Great Escape, UK
Mary An Blom Sony Music, Canada	Kim Cooke Revolution Recording Inc., Canada	Rebecca Elliott Scribe, Canada
Rob Bolton Warner Music, Canada	Angela Coombes Canada	Isabel Espuelas ICEX, Spanish Institute For Foreign Trade, Spain
Steve Bootland ThePortugalMusicScene, Portugal	Brenda Crerar-Lowen Music NWT, Canada	Nathan Fan Scribe, Canada
Todd Brabec Music Money and Success, USA	Alan Cross Alan Cross, Canada	Matthew Fortier Re:Sound, Canada
Quentin Burgess Music Canada, Canada	Damian Cunningham Peats Ridge Festival, Australia	Martin Gangnier Re:Sound, Canada
Deane Cameron EMI Music Canada, Canada	Justin D'Aloisio Scribe, Canada	Javier Tena Garcia Trade Commission, Spanish Embassy, Canada
Anne Campbell Scribe, Canada	Bob D'Eith Music BC Industry Association, Canada	Douglas Gibson Independent Author, Canada

Burt Gidaro  
EMI Music Canada, Canada

Richard Glasser  
The Weinstein Company, USA

Harvey Goldsmith  
Artist Promotion Management, UK

Leanne Gosse  
Music NWT, Canada

Jim Griffin  
Onehouse LLC, USA

Jennifer Hardy  
Music Canada, Canada

Nathan Harland  
EMI Music, Canada

Thomas Heher  
Waves Vienna, Austria

Graham Henderson  
Music Canada, Canada

Roni Hoffman  
Scribe, Canada

Don Hogarth  
Hogarth Communications Inc., Canada

Sacha Isaacksz  
AVLA, Canada

Peter Jenner  
Sincere Management, UK

Stuart Johnston  
Canadian Independent Music Association,  
Canada

Virginia Jones  
Motion Picture Assn - Canada, Canada

Anthony Jouet  
Fource Entertainment S.R.O, Czech Republic

Sheila Kay  
Random House, Canada

Erica Keating  
Scribe, Canada

Jason Kee  
Entertainment Software Association of  
Canada , Canada

Geoff Kulawick  
Linus Entertainment, Canada

Mabel Kyei  
Scribe, Canada

Jennifer Laengert  
Scribe, Canada

Mathieu-Gilles Lanciault  
Cirque du Soleil, Canada

Patrik Larsson  
Uniform Beat, Sweden

Robert Levine  
Free Ride, Canada

Robin Levine  
Warner Music, Canada

Erica Lewin  
Scribe, Canada

Andrew Lindsay  
Sony Music, Canada

Ulrika Lindwall  
Spotify, Canada

Faye Ling  
Scribe, Canada

Ian MacKay  
Re:Sound, Canada

Rafe Malach  
Scribe, Canada

Andrew May  
BAFIM - Coordinador Opción Música, Argentina

Chris McCluskey  
Ministry of National Defence, Canada

Allan McGowan  
VIP BOOKING, UK

Duncan McKie  
FACTOR, Canada

Erica McLachlin  
Scribe, Canada

David McLoughlin  
BM&A (Brasil Musica & Artes), Brazil

Mark Meharry  
Music Glue/The Great Escape, UK

Charlie Miller  
Warner , Canada

Rishi Mirchandani  
Turntable.fm, USA

Meghan Morrison  
Scribe, Canada

Vickie Nauman  
7 Digital , USA

Janis Nixon  
Universal Music, Canada

Rachel Noonan  
Rdio Canada, Canada

Wendy Noss  
Motion Picture Assn, Canada

Dan O'Brien  
Motion Picture Association, Canada

Dan Panaitescu  
Sziget Festival, Hungary

Crispin Parry  
British Underground, UK

Luciana Pegorers  
Brazilian Independent Music Association,  
Brazil

Graham Perkins  
Singapore Music Society, Canada

Richard Pfohl  
Music Canada, Canada

Johanna Pinzon  
Instituto Distrital de la Artes, Colombia

Laine Pond  
Warner Music, Canada

Olis Protsidym  
 Pro Music Enterprises, Brazil

Chad Rogers  
 Crestview, Canada

Jeff Rogers  
 Handsome Boy Records, Canada

Jorge Sadi  
 Farolatino Music & Video, Argentina

Christian Sarrazin  
 SOCAN, Canada

Catharine Saxberg  
 Canadian Music Publishers Association,  
 Canada

Dirk Schade  
 Pankow Entertainment - Brasil Music  
 Exchange, Germany-Brazil

Victoria Shepherd  
 AVLA, Canada

Tom Silverman  
 Tommy Bay Records, USA

Sara Simoes  
 Produtores Associados, Portugal

Robert Singerman  
 Brasil Music Exchange, USA

Barry Sookman  
 McCarthy Tétrault, Canada

Paul Spurgeon  
 SOCAN, Canada

Andre Stapleton  
 Sony Music, USA

Dan Steinberg  
 Square Peg Concerts, USA

Stephen Stohn  
 Epitome Pictures, Canada

Natalia Talayero  
 Dejame Decirte, Spain

Chris Taylor  
 Last Gang Records, Canada

Amy Terrill  
 Music Canada, Canada

Tony Tobias  
 Pangaea Music House, Canada

Steve Tustin  
 Globe and Mail, Canada

Jacco Van Lanen  
 Double Vee Concerts, Netherlands

Iman Wain  
 Scribe, Canada

Kate Ward  
 Motion Picture Assn - Canada, Canada

Katie Wei  
 Scribe, Canada

Katherine Welsh  
 Scribe, Canada

Amanda Wilcox  
 Fanan Group, Canada

Barbara Zack  
 Nielsen, Canada

The Canadian Music Week 2012 Global Forum Summary and Analysis was compiled and written by Richard Cavanagh, Partner, CONNECTUS Consulting Inc. He has extensively researched and analyzed issues in the Canadian and international music industry, and has recently completed a major year-long study on the impact of digital technology on the value networks of the arts and cultural industries in Canada.