



OVER THE BORDER AND INTO THE CLUBS:

CANADA'S INDEPENDENT
MUSIC INDUSTRY AND THE US MARKET



Over the Border and into the Clubs: Canada's music industry and the US market

The Canadian Independent Music Association (CIMA) would like to acknowledge that this report would not have been possible without the support of the Ontario Media Development Corporation. The content of this report represents the opinions of the authors and does not necessarily represent the policies or the views of the Ontario Media Development Corporation.

CIMA also acknowledges the invaluable assistance of the independent music community as a whole for its cooperation, engagement and participation in the research.



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Executive Summary

Musicians intuitively understand that the creative process works best when there is a free flow of ideas, sounds, and talent. Musicians understand from experience that the more open and dynamic the creative process is, the greater the chance of success. Thus, a world without borders is good for art.

A world without borders can also be good for business. Canada, currently home to 34.8 million people, boasts a music industry that punches above its weight. The latest statistics from the International Federation of the Phonographic Industry (IFPI) place Canada as the 7th largest music market in the world, with revenues from recorded music reaching \$342.5 million in 2014. The independent Canadian-owned segment of the music industry accounts for almost one quarter of all national revenues, and a 2013 study, *Sound Analysis*, valued the independent sector's annual contribution to GDP as totaling more than \$300 million.

While Canadian-owned firms in the music industry derive the majority of their revenues here at home (73%), export to the United States is a key part of the revenue portrait. Now, three years after the publication of *Sound Analysis*, the Canadian Independent Music Association (CIMA) returns with another landmark report, this time assessing the importance of the United States music market, and providing a roadmap to understanding and navigating the treacherous terrain of visas, withholding taxes and the border.

To examine the changing border environment, CIMA commissioned the Centre for Trade Policy and Law (CTPL) at Carleton University to survey the independent music industry, build an economic argument for facilitating export of Canadian music and music business to the United States, and offer policy recommendations on how to get Canadian musicians – and Canadian-owned music businesses – over the border and into the clubs in a more timely and effective fashion.

Key findings

For the purposes of this study, CTPL surveyed 177 professionals in the Canadian music industry, including artists, artist managers, booking agents and label personnel. These survey results were supplemented by in-person

interviews with a targeted selection of CIMA members and broader industry. These survey results build a profile of the type of firms engaging in export and expansion activities to the USA, as well as provide insight on the key challenges they've been facing as they try to grow their business south of the border.

The key findings from the survey include:

- The independent music industry is increasingly interested in expanding its business activities into the United States, with 74.2% of all firms viewing the US music market as “important” or “very important” to their current and future business.
- While the data from *Sound Analysis* estimated that approximately 19% of revenues were generated from the US in 2011, this study suggests that this figure has grown. The survey results indicate that 35% of Canadian-owned businesses in the independent music sector believe they will be able to double their US business market share to 50% of overall revenues within the next five years.
- The survey also provided some important insight into the two major obstacles that Canada's independent music sector faces when attempting to cross the border for business purposes: the administrative costs associated with crossing the border, and the cost of compliance with the US withholding tax.

With this information as a baseline, CTPL set out to build a case for the economic contributions made by the Canadian independent music industry to the US economy. While we have an understanding of the importance of the US as a market for the Canadian independent music industry, understanding the impact on the US is equally important as it provides evidence in support of developing a reciprocal relationship when it comes to border crossings. This analysis suggests that the presence of Canadian music in the US music market provides a **net welfare gain** for the US economy, and as a result, the US music industry is more competitive and creative.

Finally, the report concludes with a series of priorities for engagement and recommendations for the Canadian and US governments, as well as the music industries on both sides. While the main recommendation is for reciprocity in the application of border procedures and in the taxing of foreign income to the benefit of both countries, the report identifies several areas of reform that could be targeted with the goal of facilitating trade between both music markets.

Recommendations

RECOMMENDATION #1:

Reciprocity in the treatment of Canadian musicians crossing the border to work in the United States

1. Global Affairs Canada and Heritage Canada should support CIMA in its efforts to work with A2IM to eliminate the visa requirement for Canadian artists touring the United States.
2. Immigration, Refugees and Citizenship Canada should work with USCIS to develop and implement an “express program” for both individual Canadian musicians/artists and Canadian music companies for expedited and pre-clearance service to facilitate two-way travel for business purposes. This program would be based on the experience and lessons learned from existing express programs, in consultation with CIMA, A2IM and other business associations.
3. GAC should work with CIMA, A2IM and other US arts organization supporters of the ARTS Act to reintroduce this legislation in the US Congress and advocate for its implementation.
4. GAC should work with CIMA to persuade US organization supporters of the ARTS Act to amend the legislation to exempt Canadian performing artists appearing alone or in a group in an artistic performance from the visa requirement.

RECOMMENDATION #2:

Reciprocity in the application of the withholding tax rate for Canadian musicians doing business in the United States

1. Finance Canada should work with the IRS to introduce an amendment to the Canada-US Income Tax Convention to reduce the US federal withholding tax rate to 15%, the applied Canadian rate.
2. Finance Canada should seek from the IRS an immediate administrative reduction to 15% in the applied withholding tax rate on income generated by Canadian music professionals in the United States.
3. Finance Canada and the IRS should revise the Canada-US Income Tax Convention in two respects:
 - Include the category of “music professionals” in the application of its minimum threshold for tax exempt revenue;

- Increase the minimum threshold for tax-exempt revenue on income earned by music professionals to the \$20,000 level found in the US-Germany, US-United Kingdom and other treaties.

RECOMMENDATION #3:

Promoting the Canadian independent music industry in Canada's new foreign, international cultural and trade strategies

1. The Canadian independent music industry and its stakeholders should work with Global Affairs Canada and Heritage Canada to establish with the new Administration in 2016 a bilateral agenda that includes reducing obstacles to the movement of professionals across the border.
2. The Ministers of Foreign Affairs and Canadian Heritage have been tasked by Prime Minister Trudeau to implement an export promotion strategy for Canada's cultural industries. Such a strategy should include:
 - (a) Direct engagement of members of the Canadian independent music industry and firms that work with the industry in the design and implementation of this strategy.
 - (b) The proposed cultural export strategy is expected to include the re-establishment of the Promart and Trade Routes International cultural promotion programs. These programs previously helped artists promote themselves in international markets, brought international buyers to Canada, and strengthened Canada's cultural industries. Their re-establishment should include online resources on the competitive challenges of doing business internationally and networking activities to promote the sharing of experiences and best practices to enter and succeed in the US market.
3. CIMA should advocate for any export promotion strategies to explicitly include support for:
 - (a) Training to increase the understanding of border officials of the competitive conditions of the independent music industry and the positive economic impact of temporary entry of music professionals on the domestic economy.
 - (b) Training (online and classroom-based) involving both Canadian and US border officials should be provided on a regular basis to both new and existing staff. The training should include case studies and practical exercises to illustrate the effect that delays at the border can have on the domestic industry. Other exercises should be used to encourage officials

to find practical on-the-job solutions to these and other challenges at the border.

- (c) Training to increase the effectiveness of the Trade Commissioner Service in supporting Canada's cultural industries in international markets. This training should begin with the course modules being provided to border officials. These courses should be complemented by practical training and case exercises on how to support the export strategies of independent music professionals. These courses should be offered online in order to be accessible to largest number of trade commissioners. Online courses also offer the opportunity to connect trade commissioners and music professionals during and after the training.
- (d) Increases in the number of trade commissioners in US missions engaged on Canadian music industry issues and corresponding budgetary resources.

A2IM feels strongly that Canadian artists should be given reciprocal, preferential treatment by the US over performing artists from outside of North America...(Current US visa practices) can stall tours and result in artists, US clubs and restaurants losing revenue. Relaxing Visa requirements would allow for an open exchange of ideas and cultural reciprocity between two neighbouring countries.

*May 9, 2015, press release,
American Association of Independent Musicians (A2IM)*

Introduction

Intuitively, most people understand why the United States is a major market for Canadian firms, particularly in the music industry. This report's first goal is to build an empirical understanding of the type of firms that are exporting their music to the US, and the type of challenges these firms are facing. With these obstacles and challenges in mind, this report provides a roadmap for future advocacy on opening up the border to Canada's musicians and businesses, as well as introduces a new economic metric to quantify the importance of the Canadian music industry to the US.

By way of background, the Canadian Independent Music Association (CIMA) is the not-for-profit national trade association representing the English-language, Canadian-owned sector of the music industry. CIMA represents a diverse membership of more than 250 music companies, located in every province as well as the Yukon Territory. CIMA's members are exclusively small businesses involved in every aspect of the music, sound recording and music-related industries, including record producers, record labels, recording studios, managers, agents, licensors, music video producers and directors, creative content owners, artists and others professionally involved in the sound recording industry.

Exporting is important both to CIMA's members, as well as to the Canadian music industry at large. In *Sound Analysis*, we revealed that the US accounted for 19% of the revenues associated with the Canadian independent music industry. To delve into this further, CIMA commissioned the Centre for Trade Policy and Law (CTPL) at Carleton University to survey the English-language independent music industry, build an economic argument for facilitating export of Canadian music and music business to the United States, and offer policy recommendations on how to get Canadian musicians – and Canadian-owned music businesses – over the border and into the clubs in a more timely and efficient fashion.

In this report, our findings suggest that the importance of the US music market to Canadian businesses has grown, and will continue to do so in the future. Our findings explore the many challenges that Canada's music businesses face when growing their business in the US; namely, the administrative costs involved with crossing the border as well as the cost of compliance with US withholding tax requirements.

This report argues that reciprocity in the application of border procedures and in the taxing of foreign income in the US would be beneficial for music businesses and economies on both sides of the border. Due to the **net welfare gain** that the US economy receives from the presence of Canadian music products within its borders, there is reason to believe that further legislative and regulatory change, if realized, can create drive the creation of even greater economic gains.

Understanding how Canada's independent music industry interacts with the US border, as well as how to improve and facilitate trade between both markets, will be key to unlocking additional growth potential for the Canadian music industry. This report hopes to propel the first steps towards unlocking that potential.

Report Overview

The first section of this report provides summarizes the results of a survey administered to CIMA members and broader industry by the CTPL. The results provide a comprehensive picture of the role of the US market in the sector's competitive prospects and the challenges in taking full advantage of the opportunities in the US market.

The second section examines the positive net economic gains that the US market derives from Canadian independent musicians. This section emphasizes the value created from the benefits of trade – the “value-chain” effect. This benefit results from new possibilities to develop music products and services and increased consumer choice available due to Canadian musicians' participation. While the current impact may be limited, there is tremendous potential for both countries, especially if the recommended regulatory reforms and communications campaigns can be successfully implemented.

The third section analyzes two regulatory frameworks – temporary entry for business purposes and international tax treaties – where reform would help address competitiveness issues for Canadian musicians in the US market. This section serves as background to the recommendations and action plan in the final section of this report.

Section 1: Canadian Independent Music Companies and the US Market

While there is ample anecdotal evidence testifying to the importance of the US music market for Canadian music businesses and artists, a key component of this report is the collection of data from the Canadian music industry. The findings developed through this process are integral to building a portrait of how Canada's independent music sector conducts its business in the US, as well as highlights some of the key challenges that these businesses are facing.

The data required for this portrait of the Canadian independent music sector's engagement in the US music market was collected primarily through an online survey. The survey was open to respondents in the English-language music industry through the period of February 10, 2015, and remained online and active until April 1, 2015. The last responses were received March 13, 2015. In total, CTPL received 177 responses to the survey, with 116 completing the survey in full. Demographically, 53% of the respondents self-reported as being located in Ontario, though all provinces and the Yukon Territory were represented in the responses. The largest segment of the survey respondents identified themselves as artist managers (48%), followed by artists (38%), and label/record companies (36%). To supplement the data received through the survey process, CIMA provided a list of another 21 English-language music industry professionals to complete telephone and/or email surveys.

A Demographic Portrait of Firms in the English-Language Independent Music Industry

The vast majority of respondents to the CTPL survey were very small businesses. 92% of those surveyed had less than 10 employees; and 79% of these same businesses had five or less employees. Only 2% of those interviewed had more than 100 employees.

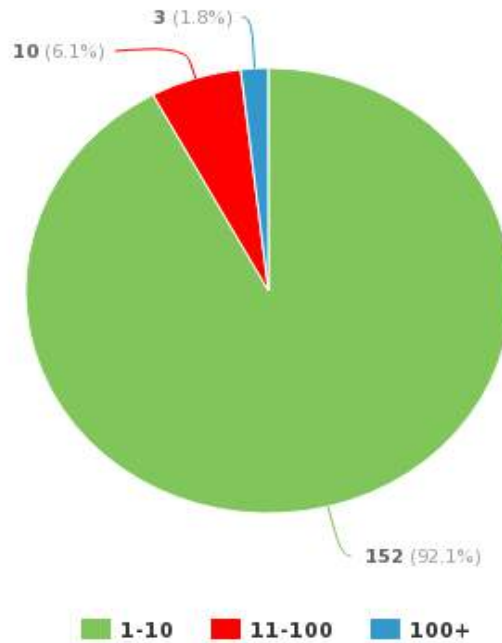


Figure 1: Size of business by number of employees

Of the firms surveyed, 55.2% generate revenues of less than \$100,000 annually, with a majority of these businesses generating less than \$50,000 in annual revenues. Less than one-third of the firms generate more than \$250,000 annually; and less than 10% have annual sales of more than \$500,000.

The average independent music firm has been operating as a business for approximately 10 years, with 80% in business for at least five years. More than a third of them have been in business for more than 20 years.

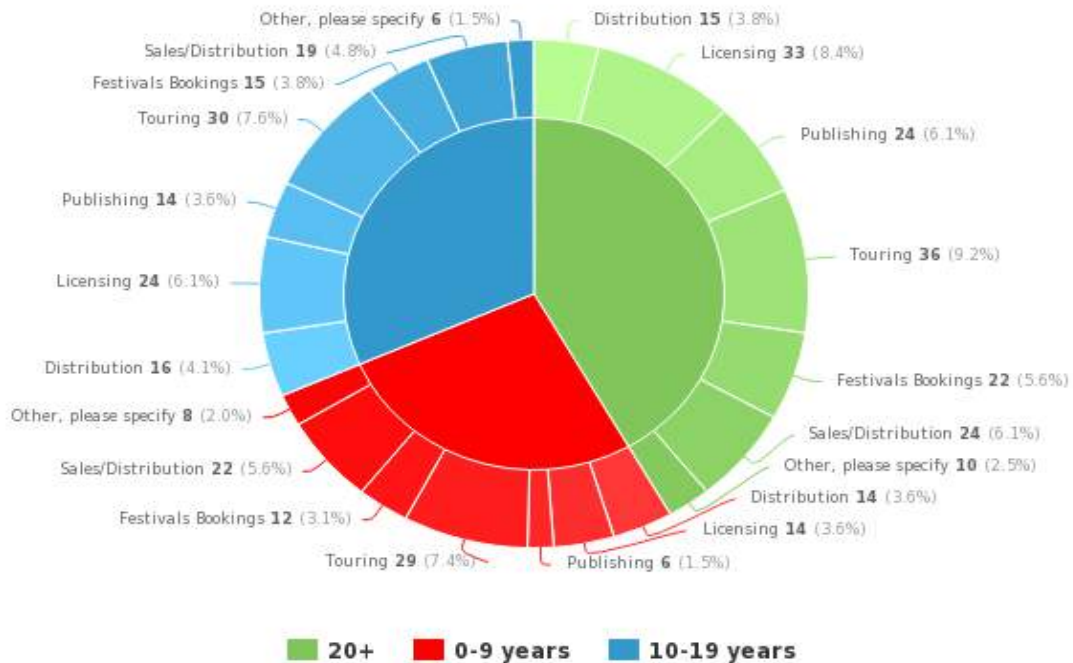


Figure 2: Years in music industry and type of activity conducted

Almost half of these firms are sole proprietorships, either generating almost full-time employment for one person or part-time employment for a few people.

Going international

Survey responses were also increasingly interested in international expansion—at least when it comes to the United States. They view competing successfully and consistently in the US market as critical to their long-term success. According to the survey, 33% of firms generating less than \$100,000 annually credit the US market as having been either “very important” or “important” to their business over the last five years. Looking forward, they believe that the US market will continue to be a critical component of their overall success.

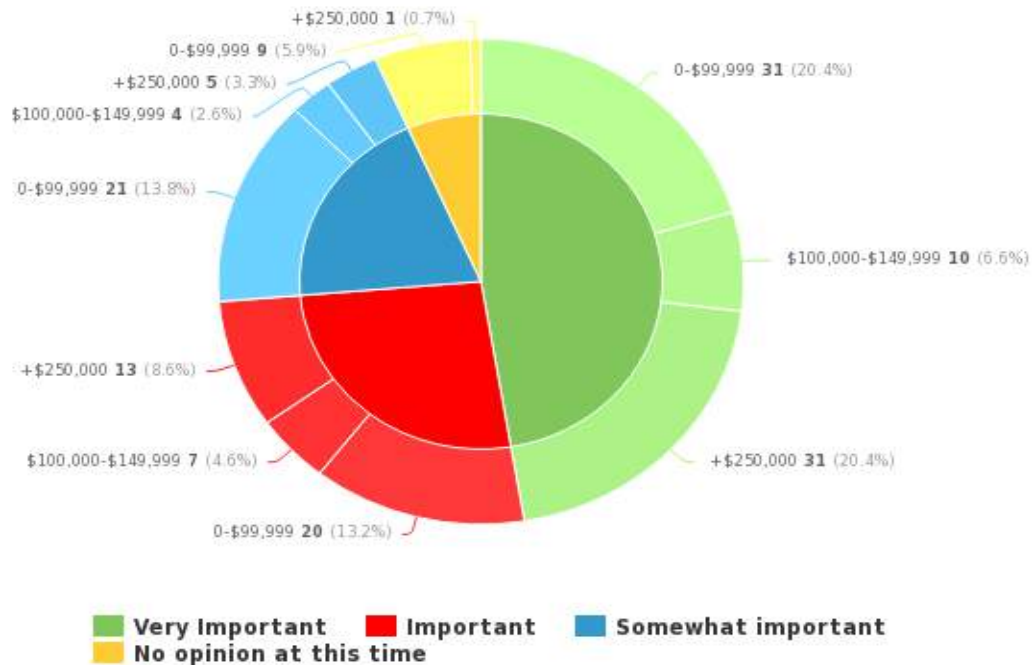


Figure 3: Importance of the US market in the past five years by annual income

When firms making more than \$100,000 in annual revenues are included, the US market is even more important to the Canadian independent music industry. **The survey results indicate that 74.2% of all Canadian independent music firms view the US market as “very important” or “important” to their current and future business.**

The importance of the US market to business growth seems to change as a company grows. Of those who said that the US market was important or very important, about half of them were firms with revenues under \$100,000. For firms generating revenues between \$100,000 and \$250,000, the same figure drops to 17%. For firms making more than \$250,000 in a given year, this percentage increases to 39%.

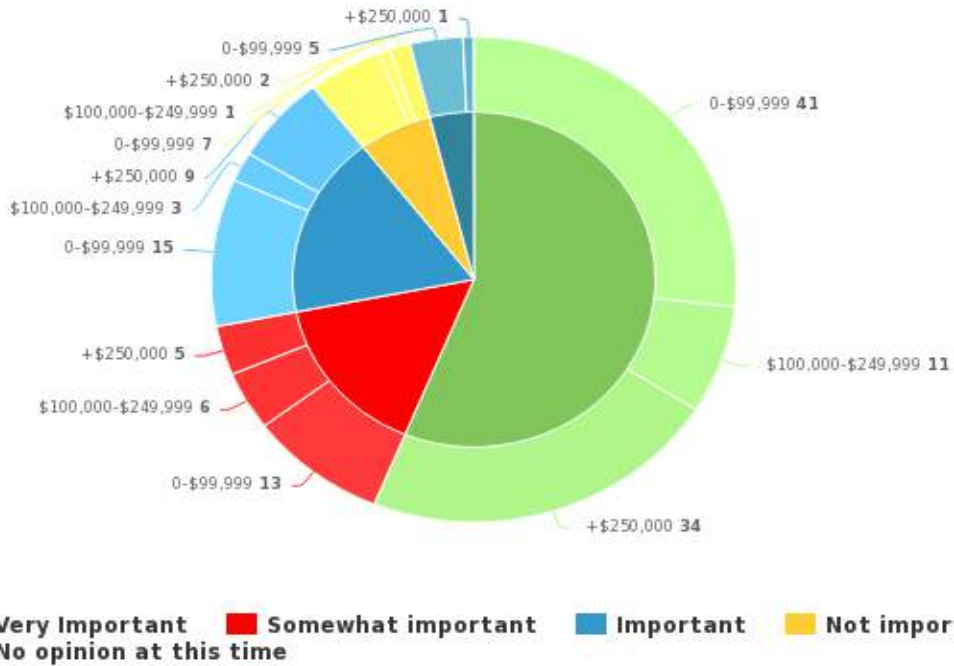


Figure 4: Importance of the US market to current business in light of annual income

Generally, the United States is becoming an important market for the Canadian independent music industry with room for growth. In this survey, 68% of respondents said that over the past five years the US market accounted for up to 30% of their business. Moreover, 16% of respondents said that the same market accounted for more 50% of more of their overall business.

Of this same sample group, 69% of respondents expect to invest up to \$50,000 – almost the industry annual sales average – in building their US business. They are doing this while recognizing that it will take at least two years before seeing a return on this investment.

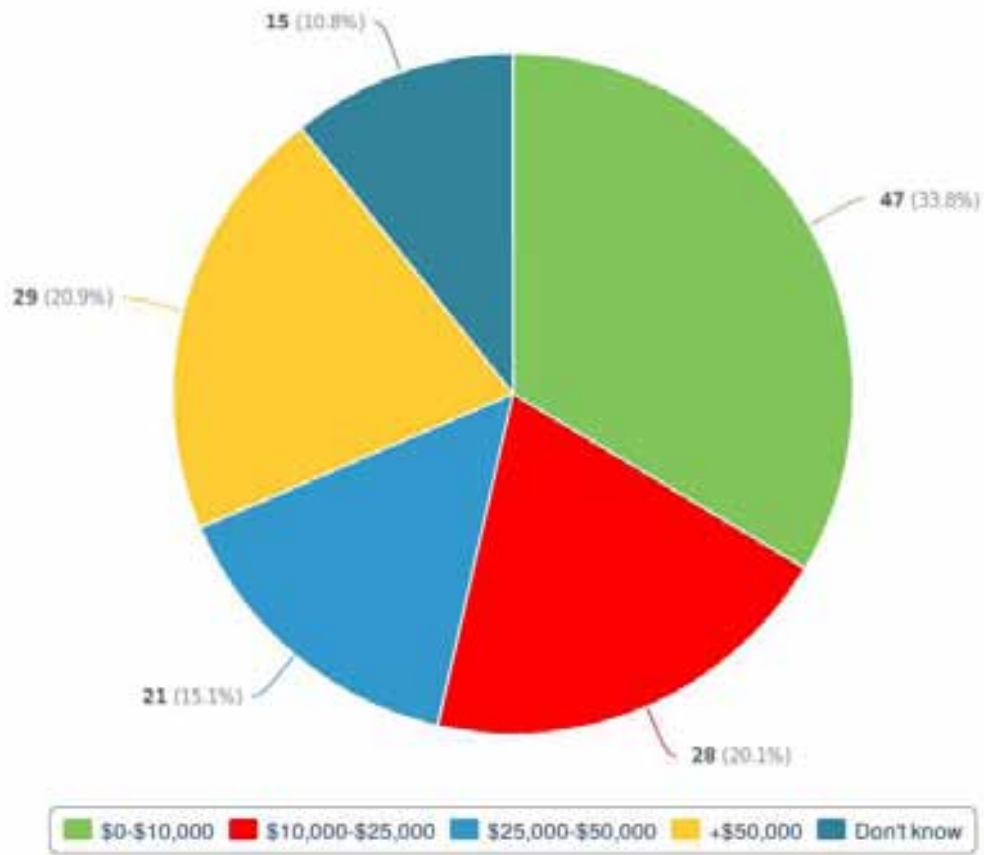


Figure 5: Amount of investment made before expected return

Who is investing and how much? According to Figure 5, whether the firm is investing less than \$10,000 or more than \$50,000, those most focused on **touring** are making the investment for the future. Those involved in publishing are also consistently among the top four in investments, followed by sales/distribution and licensing.

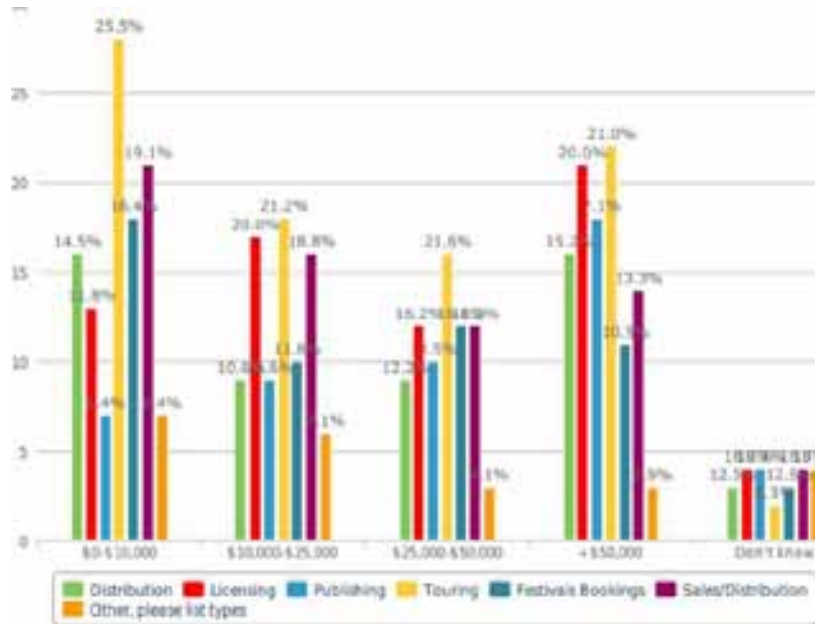


Figure 6: Amount of money invested broken down by activity

The Growth Potential of the US Market

Expectations of profitability are driving this increased interest in the US market: almost 60% of those surveyed consider the US market either “more profitable” or “a lot more profitable” than the Canadian market. Less than 15% of respondents saw the US market as less profitable than their Canadian operations.

Larger firms seem to have a different view about long-term profitability. For firms generating \$500,000 or more in sales, the US market is indeed attractive and a core part of their business strategy. They are, however, less certain about its rate of profitability. Only 35% of these firms would describe the US market as either “more profitable” or “a lot more profitable”.

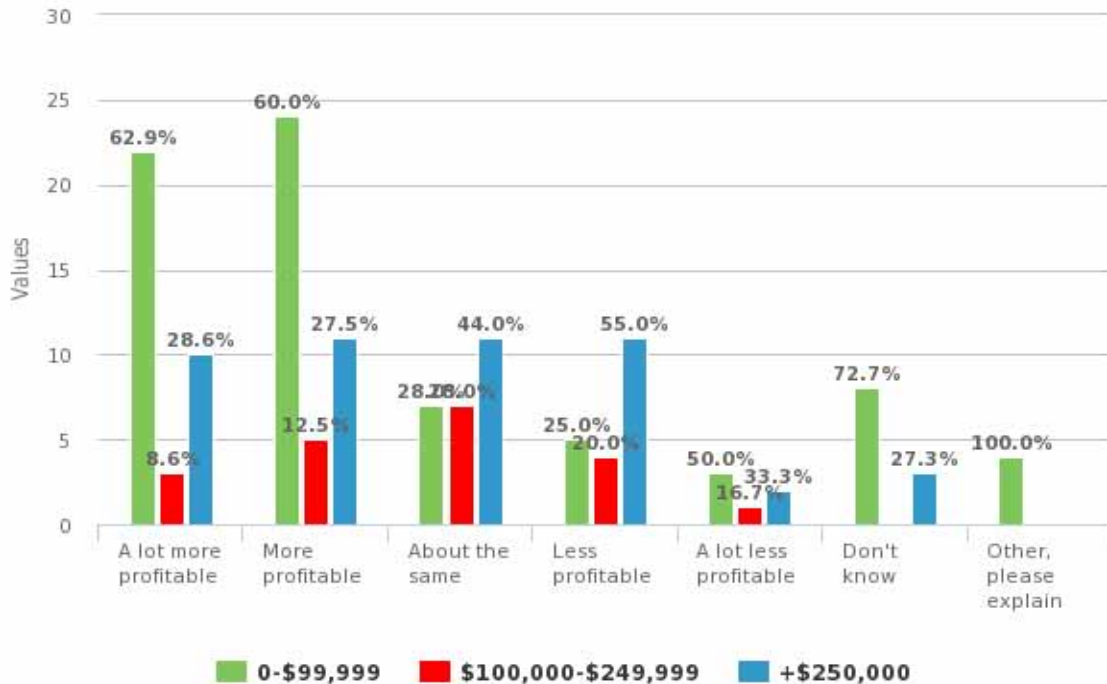


Figure 7: Profitability of the US market to your business, relative to Canada broken down by size of business by annual revenue.

The survey results also suggest that company type has an impact on perceptions about profitability. Those involved in **touring, licensing and sales** are more likely to say both that they expect a return on investment within 24 months and they see the US market as more profitable than Canada.

This is in contrast to firms involved in publishing and distribution, who tend to have a less optimistic view of the relative profitability of the US market. This perception is likely because profitability in this segment of the industry frequently has a longer-term time horizon and can be influenced by technological change.

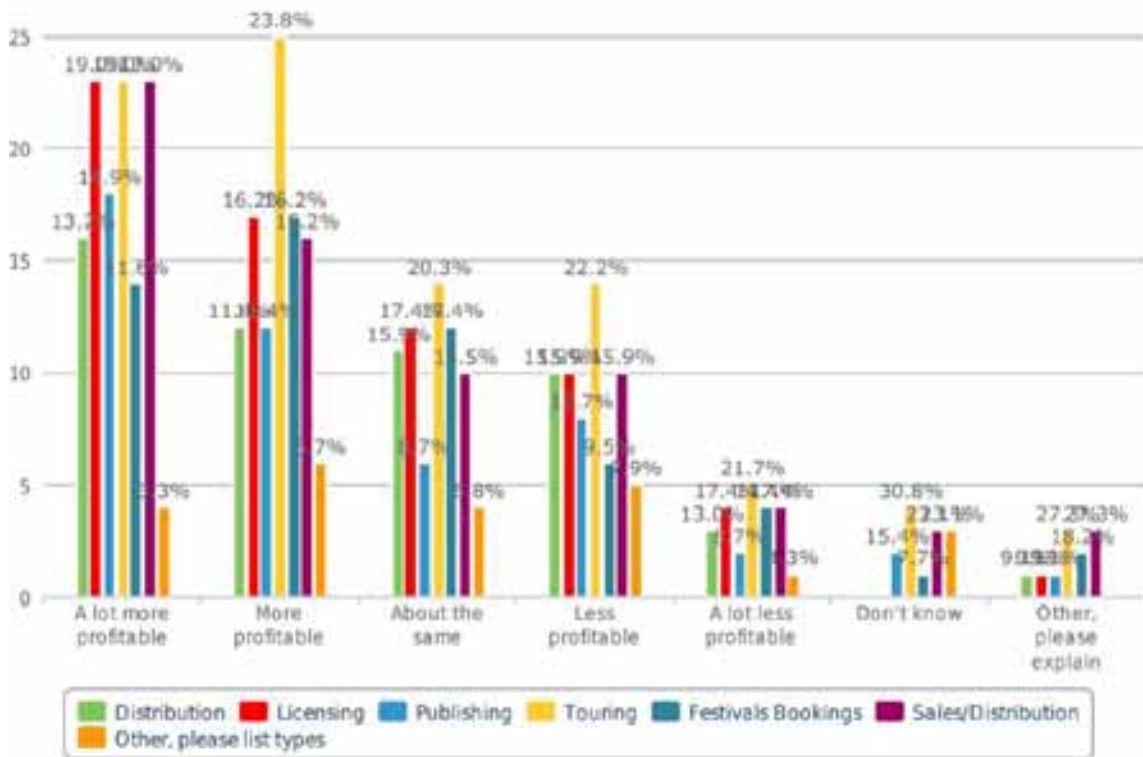


Figure 8: Profitability of the US market compared to the Canadian market

Size of the Firm Can Affect Its US strategy

The size of a firm influences perceptions about profitability. For the majority of independent music businesses employing one or a few people, overhead costs are relatively low. Revenues are also relatively low, but profit margins can be positive because of the limited overhead costs. If the firm can generate a positive return on a tour of several cities, as well as some additional revenue through music sales and merchandise, then the revenue impact is positive.

The survey findings demonstrated that firms that focused more on distribution, publishing and festival bookings tended to invest less in business development and were more measured in their expectation about the relative profitability of the US market. These firms also tend to be larger than those that focus mainly on touring, sales and licensing.

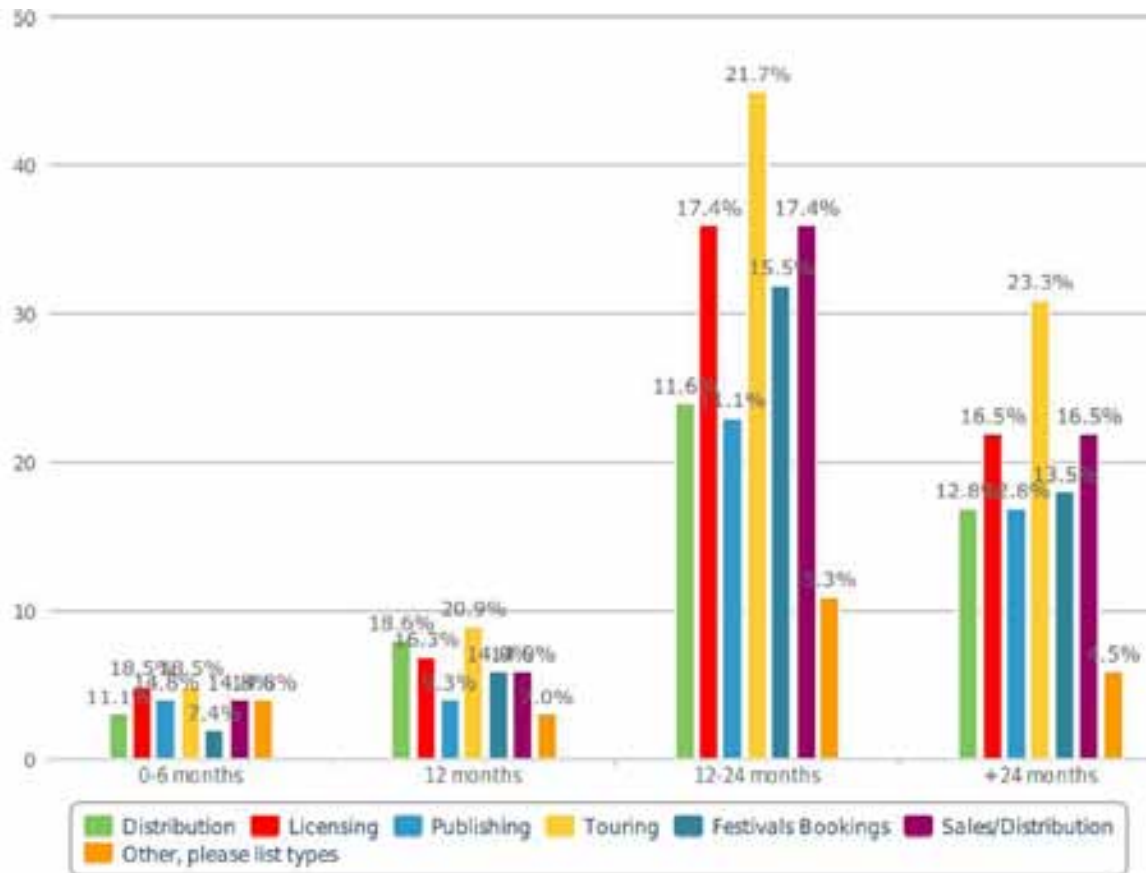


Figure 8: Anticipated time required to see a return on investment, by type of activity

Those involved in distribution, publishing and festival bookings segments of the independent music industry also tend to have relatively more experience in the US market. This is often related to the average age of the company.

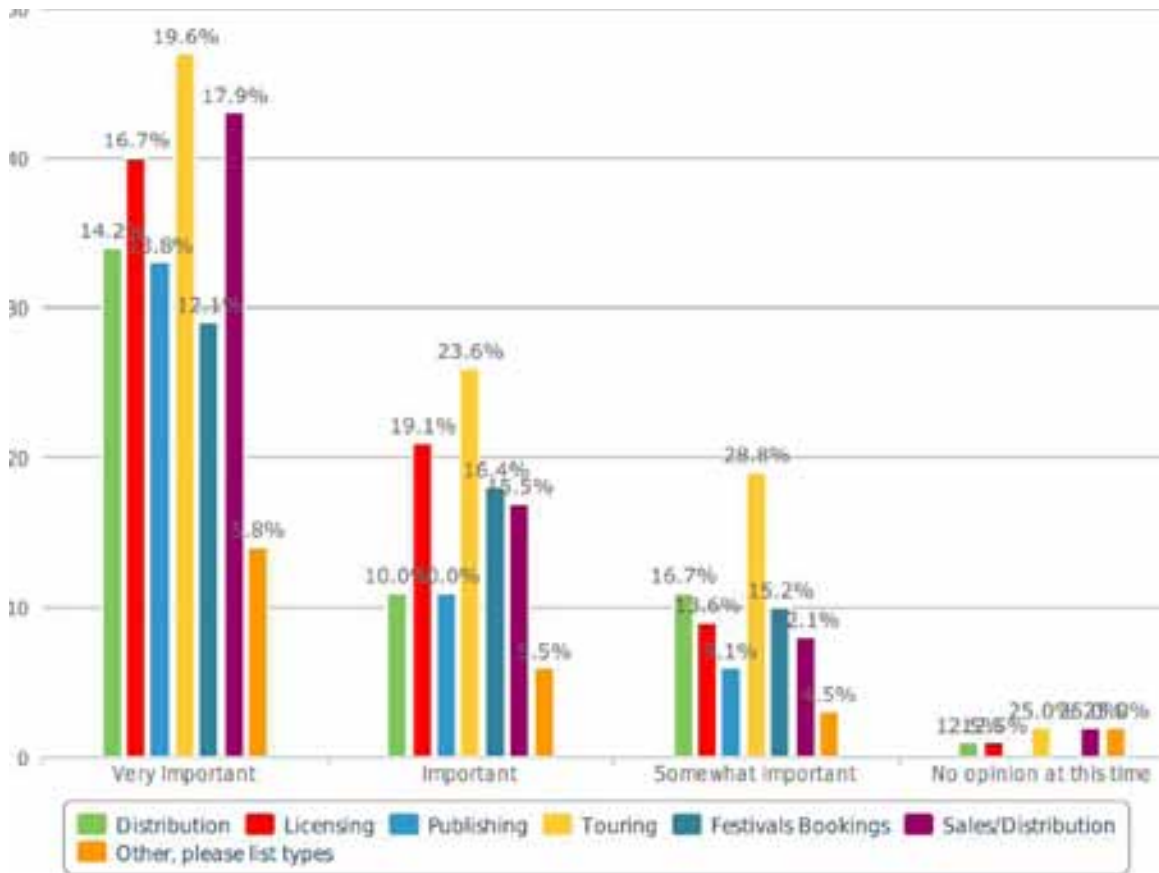


Figure 9: Importance of US market in the last 5 years

The experience gained over their company's lifetime offers a better insight into the real costs of being competitive and successful in the US market, which may be a factor in their relatively more modest profit projections.

Obstacles and Challenges

While opinions may differ on the relative profitability of the US market across different firms, the survey highlighted a consensus about the major obstacle to continued success and growth in the US market: the administrative costs associated with successfully crossing the border. **More than 60% of respondents saw time and money spent on completing border-related and immigration information as a significant challenge.**

Border Costs as a Barrier to US Expansion

The cost issue at the border is multi-faceted. The top cost issue for those surveyed was associated with obtaining the **required work permits** and the burden of both the **time and money required to comply with visa and other entry requirements**. More than 57% of respondents said making work permit regulations easier to understand would help. Almost half of respondents said guidelines at the border to address perceived “discretion” of border officials would also help them get into the US market more quickly.

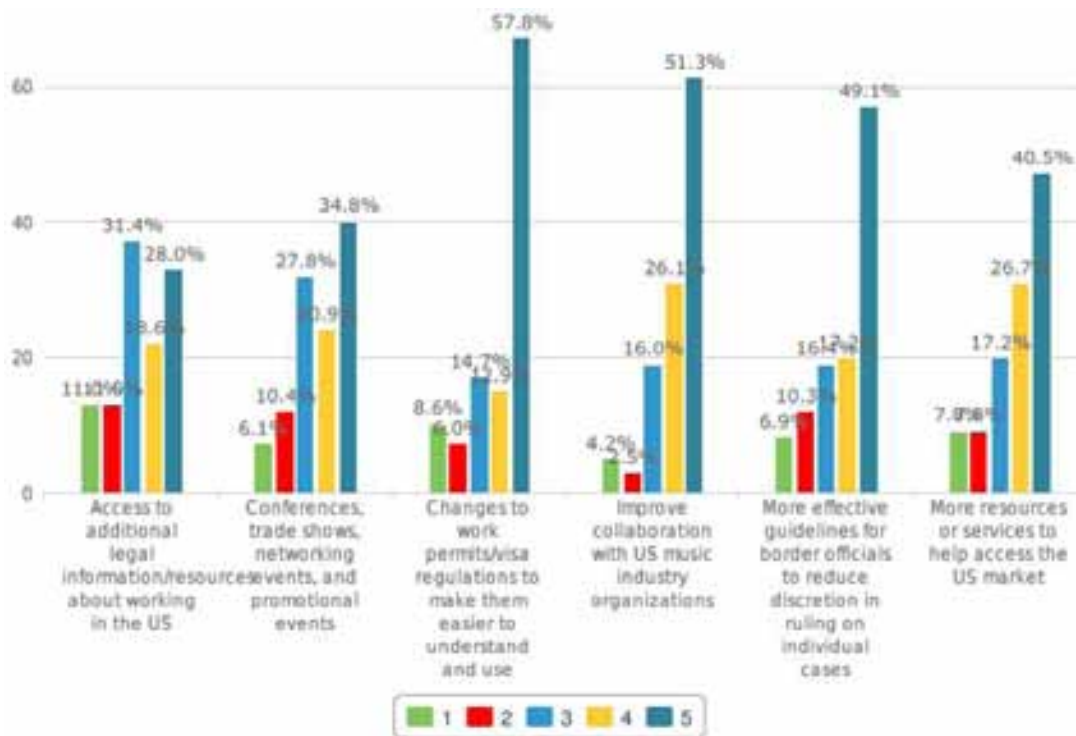


Figure 10: Measures that would be effective to enhance ease of accessing the US market, 1 being least helpful and 5 the most helpful.

Similar to the perceptions about relative profitability of the US market, those in **touring, sales and licensing** – and especially those with five or less employees – tended to be the individuals having the most difficulty at the border.

The next most important cost issue for CIMA members is an issue that emerges once the artist or professional has entered the US for business purposes: **compliance with the withholding tax requirements on foreign artists**. The survey results indicate that 43% of survey respondents believed the cash flow implications of the withholding tax were an impediment to their ability to compete in the US market.

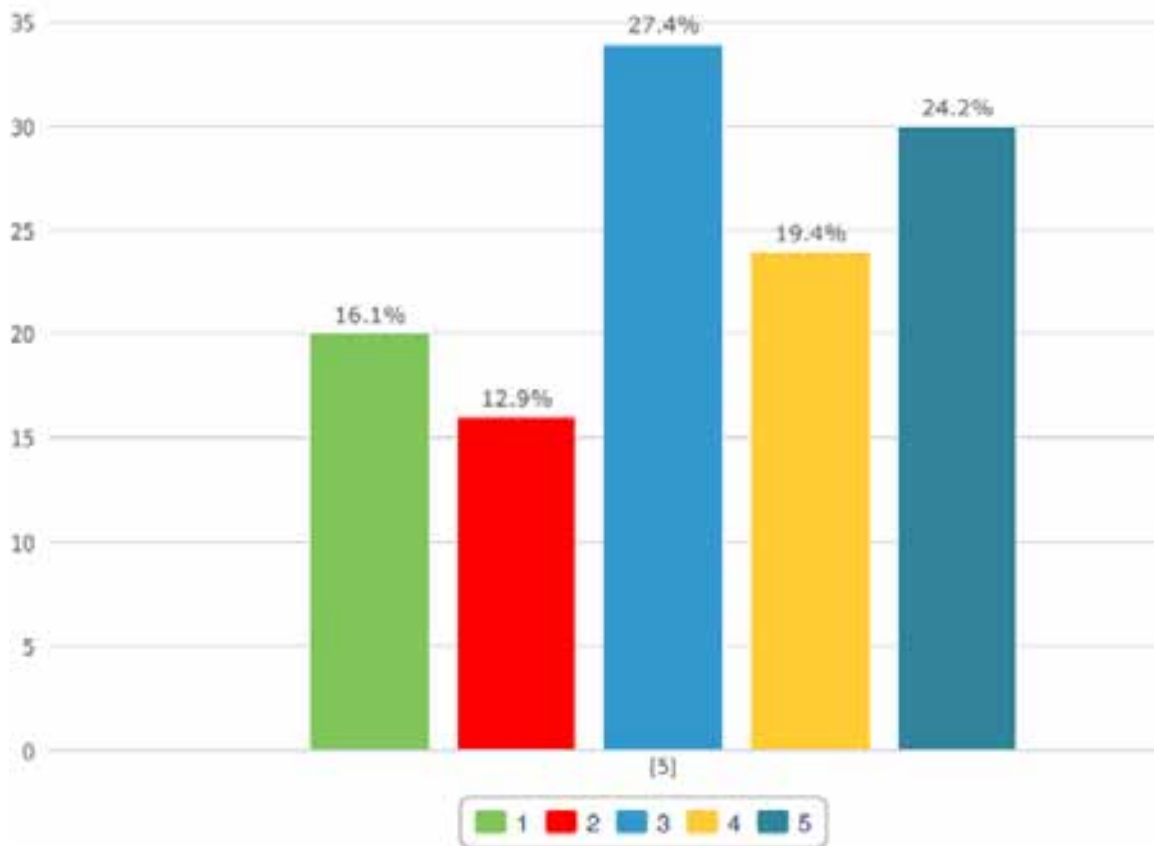


Figure 12: US tax law as a challenge to accessing the US market, with one being the least important and 5 being the most important.

These findings aren't unique to professionals and companies in the music industry either. The Canadian Manufacturers and Exporters Association (CME) released a report in 2013 on the obstacles to global trade for their members. For businesses with five or less employees, the Association found that their top obstacles to exporting related to knowledge and understanding of the market,

lack of internal expertise, and a host of cost-related issues (i.e. managing exchange rates, accessing credit, export insurance).

General Conclusions

These survey results, on aggregate, demonstrate that nearly half of the firms surveyed are sole proprietorships, either generating almost full-time employment for one person or part-time employment for a few people. Companies do see opportunity for growth, and the survey results revealed that that **74.2% of Canadian independent music firms view the US market as “very important” or “important” to their current and future business.** There is an expectation that the US market is more profitable than the Canadian market, with almost 60% of those surveyed consider the US market either “more profitable” or “a lot more profitable” than the Canadian market.

Given the above findings, the Canadian independent music industry must grow beyond Canada’s borders to grow their companies. As the survey results illustrate, the primary obstacle to conducting business in the United States is obtaining a **work permit**. The system is perceived to be an overly complicated, expensive and unpredictable. **Tax regimes** were also seen to represent a barrier to conducting business in the US market.

The survey results also gave an indication of what knowledge gaps currently exist, and potential solutions could be developed to address these issues. The survey respondents indicated that there was a need for government intervention to address rising costs associated with crossing the border, a reduction on withholding taxes, and increased support for export development.

Section 2: The Impact of the Canadian Independent Music Industry on the US Economy

The survey results clearly indicated that the United States is an important and growing market for the Canadian independent music industry. Does the presence of Canadian artists and firms also benefit the US music industry, as well as the US economy?

The second section of this report involves developing an economic argument in support of facilitating access and trade between the Canadian and American (music) markets. Defining the contribution that Canadian artists and music companies make to the growth of the US music market and economic is an important part of making the case to for changes to the current border entry framework.

Methodology

Measuring the exact impact of imported goods and services from the Canadian independent music industry on the US economy is difficult. Direct sales of products and services are quantifiable and can be measured. Calculating the economic impact of those sales, however, is less precise for several reasons.

First, a large proportion of the money generated in international trade, through contracts and other sales, returns back to the origin country of the individual or business that is selling the product in question. This is the case for goods, but especially so for industries like music, where a majority of the revenues go back to the performers and their various business representatives in the form of performance fees, royalties, licensing, and other forms of revenue and profit.

Tracking all of these transactions across the variety of firms of different sizes involved in this chain, and then assessing their relative impact on the US economy would require detailed time-series analysis of company

Calculating the net benefits of Canadian Independent Music to the US economy

In 2014, the Canadian independent music industry generated approximately US \$30 million in revenues from US sales of physical recordings, digital recordings, performance rights and synchronization. On average, 60% of those revenues returned to Canada as fees to performers, wages to employees, royalties and profit. Without trade, all of the revenues would have stayed in the United States. Does this mean that the US should close its borders to Canadian musicians so that more money is spent in the domestic economy?

No. In fact, the United States should take the advice of the American Association of Independent Music (A2IM) and make it easier for Canadian music professionals to cross the border.

Why? Because US club owners, festival organizers, other contractors of Canadian independent music professionals, and US music

financial statements and other data. Such data would be very expensive and time consuming to collect, and would ultimately have little predictive value.

Nordicity's calculations (in *Sound Analysis*) suggest that employee wages and related costs, royalties, and profit account for 25%, 13% and 10% respectively of all Canadian music industry expenditures, which in turn represents a total of 48% of revenues. These revenues would generally stay in Canada whether the good or service was provided in Canada or in a foreign market such as the United States. The only difference if the sale takes place in the United States is that the money would be transferred out of the US economy and into Canada.

Tracking these transactions and transfers would be difficult enough. They would be even more complicated when trying to track the impact of the remaining 62% of the contract value. *Sound Analysis* estimated that non-employee labour costs (i.e. contracting of services) can represent an additional 12% of industry expenditures. Some of this contracting could be done in the US (e.g. hiring local musicians and/or local managers), but could also involve Canadian providers (e.g. hiring Canadian musicians to join the tour). These, and other related issues, would increase the complexity of generating accurate data, and particularly data that could assist in predicting future activity with a strong level of precision.

A second complicating factor in determining the economic impact is that the level of activity of Canadian independent music providers is not concentrated in any one city or region. As the survey results suggest, Canadian music providers find business opportunities across the United States and where they do business can change from year to year. Calculating the precise economic impact on each of these submarkets and then projecting forward to estimate future impact would be quite challenging.

A third issue in assessing economic impact is determining what the clients of Canadian music providers would do if the US border suddenly closed and they couldn't hire Canadians. Would economic activity

professionals themselves make more money and US consumers have more choice available in the music marketplace the greater the presence of Canadian music in the US market.

How? Sales of products and services of Canadian music professionals is not a one-time transaction. For example, if a Canadian band plays a club, and the patrons have a good time, they may come back, download their album or stream their songs. This may happen the next day or the next year. The band may also meet other musicians and agree to think about collaborating. That's the real value of trade: it creates new opportunities to make money and provides new choices for consumers.

What the analysis suggests is that the monetary value of these and related interactions that lead to future sales more than compensates for any loss to the domestic economy from trade. These interactions should be encouraged because they create more opportunities for future sales and therefore contribute even more value to the domestic economy.

decrease? Or would they find other providers, either within the United States or from another country whose providers did not have the same restrictions on their movement than Canadians?

A closed border would, in the short and medium term, not likely diminish the demand for music services. Instead, bars, studios, festivals and other consumers of Canadian music services would rely more heavily on domestic suppliers. Given this ability to adapt, the economic impact of the hotels, meals, and other expenses that Canadian independent music providers may incur in the US is not a relevant measure. At the current level of US market penetration, there would likely be no discernable difference in economic impact. Realistically, given the large transfers back to Canada on these transactions, it is more likely that the actual economic impact would be negative relative to closing the border and sourcing music products and services domestically.

Measuring the Impact of Canada's Music Industry through Welfare Gain

As a result, a measure of economic impact other than gross domestic product (GDP), employment, or government revenues is required when international trade is involved. International trade produces **welfare gains** by increasing business opportunities for firms and increasing choices for consumers in the domestic market. These welfare gains are monetized through economic models that estimate the gains from trade to the domestic economy. A thorough explanation of this economic modeling can be found in Annex 1.

The main conclusion of that analysis is that the economic impact of Canadian sales in the US market is currently modest at 0.58% of the US music industry, but positive and growing. More importantly, the numbers suggest that a Canadian presence is good for business not only for the Canadian independent music industry, but also for US firms. Furthermore, Canadian music is good for business: producers and consumers of music products and services (i.e. physical music recordings, digital recordings, performance rights and synchronization) in the United States both welcome Canadian independent providers, and want more of the goods and services that they produce.

Indeed, a strong case can be made that the US music industry is more competitive and creative with a Canadian presence in the market. Opening up the US market further will only increase the net benefits of Canadian independent music industry in what is already the most competitive arts market in the world.

On the reasonable assumption that Canadian musical products are distinctive and capture market share in the United States, access by US consumers and downstream producers using Canadian music providers is significant compared to the level of overall sales. We believe a figure on the order of **US \$25-30 million** is a “best guess” at the Canadian music industry’s annual economic value to the US economy. This figure may be interpreted as the boost to US economic welfare as commonly cited from empirical studies of trade agreements.

The estimate is in the form of a range – between US \$25-30 million annually – for several reasons. First, the economic modeling done for this study looked at the latest (2014) figures. US music sector sales have dropped by almost 60% to US \$4.9 billion over the 2010-2014 period, due to the state of the overall economy, competitive pressures, new technologies, and other factors.

Second, as the analysis in Section 3 of this report states, Canadian independent music providers face a number of obstacles to business success in the US market. Based on the survey results, we can surmise that if these obstacles were removed, more Canadian music companies would increase their presence in the US market. Depending on the extent to which these barriers can be eliminated and translated into increased business, this would very likely have an even greater positive impact on the US economy.

Third, the survey confirmed that the Canadian music industry has been slow to realize gains in the US market. Almost half of respondents said they were considering investing more than \$50,000 to grow the US share of their overall business. That represents a sizeable investment, especially when those same respondents said they anticipated that it would take two years to realize a return on investment similar to what they currently realize in Canada (i.e. 9-12% per annum, according to Nordicity’s research in *Sound Analysis*).

Finally, while the current economic impact, as measured by the welfare gain, may be modest, there is reason to believe that this number can grow. **Over the next 20 years, for example, if the current policy regime with respect to temporary entry of Canadian musicians into the US market is maintained, the economic impact of this contribution in today's dollars is US \$412 million. And if Canadian musicians are able to increase their sales in the US market (10%+ per year) as they say they are planning, the economic impact over 20 years in today's dollars increases to almost US \$450 million.**

Conclusion

While tracking all transactions and transfers related to the activities of Canadian independent music professionals in the US market is challenging, we can draw out some trends from the available data.

We know that international trade produces welfare gains, and that this happens through the creation of increased business opportunities for firms, as well as increased choice for consumers in the domestic market. These welfare gains are monetized through economic models that estimate the gains from trade to the domestic economy.

Our main conclusion is that the economic impact of Canadian sales in the US market is presently modest, but positive and growing: 0.58% of the US music industry. Moreover, a strong case can be made that the US music industry is more competitive and creative with a Canadian presence in the market.

Although Canadians currently face a number of obstacles when it comes to accessing the US market, this hasn't significantly diminished their ambition to grow their US market presence. Over the next 20 years, if the current policy regime with respect to temporary entry of Canadian musicians into the US market is maintained, the economic impact of this contribution in today's dollars is US \$412 million. We can also make the assumption that if some of the barriers to accessing the US market were lifted, the economic impact would be even greater.

Section 3: Addressing the costs and related challenges of entering the US market for Canadian music providers

The survey results strongly indicate that **cost of crossing the border**, both in terms of time and money, is a significant barrier to competing in the lucrative US market, and growing their market presence there. What the Canadian music industry is looking for is **fairness** – essentially, Canadian music companies expect to receive the same treatment that American artists and music companies receive when attempting to enter Canada.

This section examines the temporary entry policy framework from both a Canadian and US perspective. This will then be followed by a more detailed examination of the regulatory regime created to implement this policy regime. This analysis will provide the context and the prospects for change in the regime that serve as background to the recommendations in the final section of this report.

Canadian Trade Policy and Temporary Entry

Canada has a modern, industrialized economy and a small domestic market. As a result, Canada is heavily reliant on foreign markets for its economic prosperity. As explained in the December 4, 2015 *Speech from the Throne*, trade is a priority. Creating economic opportunities for Canadians, through trade, is one of the policy objectives of the Government of Canada. In his mandate letter to the Trade Minister, the Prime Minister requested a focus on work to “implement and expand Canada’s Free Trade Agreements globally.” The mandate letter further demonstrates a commitment to trade and export of cultural services, asking the Trade Minister to “Support the Minister of Canadian Heritage to restore the Trade Routes and PromArt international cultural promotion programs.” The government’s agenda includes the negotiation of new free trade agreements. Among ongoing negotiations is the Trans-Pacific Partnership (TPP), a negotiation with 11 Asia-Pacific countries, including the United States.

While Canada’s first generation of trade agreements were limited to goods trade, most recent agreements cover a more comprehensive list of issues, to reflect modern global commerce. This includes trade in services, whether delivered electronically across the border; to a consumer who travels abroad to acquire the service; by investing to establishing a permanent presence in another country to offer services; or through the temporary entry of professionals into the country to perform the service. As noted above, trade agreements provide for exemptions to the labour market test (LMIA).

The policy objective of such temporary entry in trade agreements is not to fill local labour shortages, but rather to facilitate trade. Importantly, in bilateral trade agreements, this temporary entry is provided on a reciprocal basis - that is, Canada only removes its labour market test requirement where the other party is willing to remove any similar requirement for Canadians. The exemption is provided for a negotiated list of categories of businesspersons and occupations. Generally, Canada's trade agreements cover temporary entry for intra-corporate transferees (executives and employees with "specialized knowledge"), business visitors, traders and investors, and independent professionals. Spouses of covered businesspersons are also granted open work permits during the period of the entry. An open work permit allows the holder to seek any job in the Canadian market, while the work permit under all other temporary entry rules are specific to a single employer or contract.

Business persons covered by Canada's free trade agreements are exclusively in high-skilled occupations, particularly in the National Occupation Classification (NOC) Levels O and A. In the case of technicians, NOC Level B is included. Some agreements require that fees charged for work permits not exceed the cost of providing the service, while other agreements require that the fee not unduly impair trade. Agreements include service standards - a prescribed period of time for the granting of the work permit.

The GATS and NAFTA

Canada's two international trade agreements relevant to this study are the multilateral *General Agreement on Trade in Services* (GATS), at the World Trade Organization, and the trilateral *North American Free Trade Agreement* (NAFTA). These are the agreements that govern trade between Canada and the United States.

GATS commitments are based on a positive list (only listed service sectors and levels of commitment are covered). While different countries have taken different levels of commitments and in different service sectors, the overall exchange of commitments remains reciprocal – a balance of concessions. In the NAFTA, a list of 63 professions is granted reciprocal access into Canada, the United States and Mexico. This list was negotiated by the three NAFTA countries based on their priority commercial interests and sensitivities.

Canada's GATS commitments and the list of professions covered under the NAFTA do not include cultural occupations. The reasons for this are found in Canada's cultural policies.

Canadian Cultural Policy and Temporary Entry in Trade Agreements

Canadian cultural policy has always been about ensuring that Canadians know their own stories, history, institutions and values - that is, about ensuring “Canadian content” in cultural products.

This focus on ensuring Canadian content is present in each of the touchstone policy documents of the last century. The Aird Commission of 1929 targeted radio broadcasting, concluding, “Canadian voices must be heard.” The government mandate to the 1951 Massey-Levesque Commission on “National Development in the Arts, Letters and Sciences” was founded on the belief that “... it is desirable that the Canadian people should know as much as possible about their country, its history and traditions, and about their national life and common achievements.” The 1982 report of the Applebaum-Hébert Committee focused on the cultural industries. Taking Canadian content to be a public good, the Committee described a market failure in providing those goods and recommended government support to Canadian-owned companies that produce, distribute and market Canadian content in films, television programs, books, magazines and sound recordings.

For the same reasons, Canada has taken a cautious approach to the treatment of cultural goods and services in trade negotiations. Canada negotiated an exemption for the cultural industries in the 1988 Canada-US Free Trade Agreement, grandfathering all existing measures and preserving the right to take new measures, subject to retaliation of equivalent commercial effect. These provisions were later incorporated into the NAFTA in 1995. All subsequent trade agreements have taken the same approach, while eliminating the right of retaliation, until the recent Canada-EU Comprehensive Economic and Trade Agreement (CETA).

Similarly, at the multilateral level, Canada took no market access commitments in the cultural industries in the GATS and took a “reservation” (an exception) to its Most Favoured Nation obligations for culture, to protect the right to maintain bilateral audio-visual co-production agreements.

The Cultural Industries Sectoral Advisory Group (SAGIT) on International Trade best articulated the blanket exemption policy in its 1999 statement, a consultative mechanism established to advise the Ministers for International Trade and Canadian Heritage. Their report, *New Strategies for Culture and Trade - Canadian Culture in a Global World*, argued that cultural products play an essential role in society and should be treated the same as other goods and services. The Advisory Group recommended maintaining the full exemption policy, taking culture “off the table” in international trade negotiations. In addition,

they proposed that the Canadian government should initiate the development and negotiation of “a new international instrument that would specifically address cultural diversity, and acknowledge the legitimate role of domestic cultural policies in ensuring cultural diversity.”

In response to this advice, Canada led an international coalition to establish the 2005 UNESCO *Convention on the Protection and Promotion of the Diversity of Cultural Expressions*, which recognizes the special nature of cultural goods and services and protects the rights of governments to take measures to protect and promote these products.

This approach has evolved in the treatment of cultural industries in the CETA. Rather than seeking a blanket exception for the cultural industries, this agreement takes a more targeted approach. The agreement makes specific reference to the UNESCO Convention and exempts cultural industries from the obligations in five chapters - relating to subsidies, investment, cross-border trade in services, domestic regulations and government procurement.

It is not known whether an identical approach is being pursued by Canada in other, ongoing trade negotiations, including the TPP, in which Canada is engaged directly with the United States. However, it is clear that, with the support of cultural stakeholders, Canada is in the process of adapting its approach to the realities of the rapidly changing global environment. These changes include: the dramatic impact of digital technologies on the traditional business models of cultural industries; the dramatic decline in revenues from the sale of hard copy sound recordings; the limited revenues from digital distribution; and the increasing importance of revenues from touring, merchandising and publishing.

Canada’s Temporary Entry Regime

With Canada’s cultural policy exemption from trade agreements, the policy framework for the temporary entry of foreign workers, including music professionals, is fully governed by the *Immigration and Refugee Protection Act* and the *Immigration and Refugee Protection Regulations* (IRPR), administered through the *Temporary Foreign Worker Program* (TFWP), jointly managed by Immigration, Refugees and Citizenship Canada (IRCC) and the Department of Employment and Social Development (ESDC). The underlying policy objective of the Act, the Regulations and the TFWP is to balance the protection of the domestic labour market with the need to fill temporary labour shortages.

The mechanism used to strike this balance is the Labour Market Impact Assessment (LMIA), which is conducted by ESDC in response to applications from Canadian employers. The assessment determines whether the employment

of a foreign worker will have a positive, neutral or negative impact on the Canadian labour market. ESDC will consider whether there are labour shortages in the occupation for which the application is made and such other factors as the efforts made by the employer to recruit and train Canadians, or whether the proposed wage is comparable to the prevailing local wage.

Work Without a Permit

In some cases, the requirement for a work permit is waived (Section 186 of the IRPR) for categories of work where the employment of foreign workers is deemed, unless otherwise proven, not to have a negative impact on the Canadian labour market. This includes:

- (g) as a performing artist appearing alone or in a group in an artistic performance — other than a performance that is primarily for a film production or a television or radio broadcast — or as a member of the staff of such a performing artist or group who is integral to the artistic performance, if*
 - (i) they are part of a foreign production or group, or are a guest artist in a Canadian production or group, performing a time-limited engagement, and*
 - (ii) they are not in an employment relationship with the organization or business in Canada that is contracting for their services; (Section 186 (g)).*

This exemption was deemed reasonable because these performing artists enter Canada for a limited period of time and are not entering the Canadian labour market. Artists performing in bars and restaurants were not included in this exemption, on the basis that entertainment is not the primary business of such establishments. However, in response to an appeal by the music industry, supported by bar and restaurant owners, the exemption was amended last year to include artists performing in these venues. According to the *Canada Gazette* notice of the proposed change in regulations, the rationale for the amendment was:

The regulatory amendment is a facilitative measure that provides consistent treatment of foreign artists performing in Canada for time-limited engagements, regardless of the type of venue.

Canadian musicians rely on live performances, including touring abroad, and gain exposure through multiple-act performances that include known performers from outside Canada, especially since Canada is considered a relatively small market. In this way, Canadian and foreign entertainers do

not necessarily displace each other at performance venues. Instead, they perform jointly on the same bill, with lesser known acts benefiting from the exposure and enhancement in stature of sharing a bill with a more established act.

Thus, the proposed change will bring the following benefits to society and culture as well as the economy, business and trade:

Canadian cultural experience will benefit from maintaining opportunities to enjoy live international music outside of festivals; and Smaller Canadian venues will remain economically viable and continue to provide opportunities for Canadian performing artists.

The Gazette notice includes additional arguments for the amendment, noting that “the venue-based distinction is not achieving its intended policy purpose” and the nature of the entertainment business made the administration of the regulation difficult.

Work Permits Not Requiring the Labour Market Test

In other cases, the requirement for the Labour Market Impact Assessment is waived. These exceptions include reciprocal access commitments Canada has negotiated with other countries in international trade agreements; other reciprocal agreements, such as youth exchange programs; charitable or religious work; and where the access of foreign workers is deemed to provide Canada with significant benefits.

If the LMIA is positive, or not required as described above, IRCC approves the work permit application submitted by the foreign worker. It should be noted that Canada treats entry visas and work permits as separate, unlike many other countries in which a work permit is a category of visa (including the United States). In all cases, IRCC must be satisfied that there is a genuine job offer and that the applicant has a demonstrated ability to meet the job requirements.

The US Regulatory Framework for Temporary Entry of Professionals

The survey results clearly indicated that one of the key regulatory obstacles to Canadian music industry market opportunities in the US comes from immigration/customs (border) measures. As US security measures multiply, immigration procedures have become increasingly complex and more strictly

enforced. Fiscal policies directed to greater tax compliance and enforcement have both similarly impacted opportunities for Canadians seeking to enter the US for promotional, professional and performing reasons.

□

“Between the requirements, and the cost, it creates a lot of headaches, especially for emerging artists, trying to build their careers. It is a hassle for these artists to get the required signed contracts from promoters so far in advance. The P2 package and forms are ridiculous. It’s a labour intensive process and it is a burden. The process is flawed...emerging bands going to the States are not making money they are investing in their career, and also spending money in the US. Acts that aren’t well established or well-known are added by promoters at the very last moment, which makes it very difficult to obtain all the required documents in time.”

Text box 1: Person engaged in the Canadian music industry, interviewed in March 2015

Ultimately, as highlighted in text box 1, those in the Canadian music industry accessing the US market, wish to do so in a hassle-free, effective and fair manner.

Section 4: Overview of Border Issues

Increased Canada–US border security measures have resulted in greater vigilance by US Citizenship and Immigration Services of non-residents entering the US, whether entering for compensation or not. Authorization to travel or work in the US is subject to the combined oversight of Citizenship and Immigration Services, State and the Department of Homeland Security. Over the last decade, these developments have also increased the cost and complexity of determining, applying for, and obtaining the appropriate authorization for the intended entry purposes. In addition, the discretion afforded to consular officials in granting or denying an authorization results in potentially inconsistent treatment from different officials or offices, adding to uncertainty of outcome. Determination of the appropriate visa category, petitioning requirements and lengthening processing times have all combined to operate as a de facto barrier to entry.

CIS And State – Visas and Work Permits

This section describes the varieties of visa categories and permits available to Canadian musicians, crew and technical personnel authorizing entry into the US, including procedures, costs, obstacles, advantages and disadvantages of each. Guidance is given to increase the likelihood of success and minimize the considerable delays and expense involved. It is worth noting that Canadian citizens enjoy a slightly more favourable, and relatively preferential, treatment in relation to non-immigrant professional travel to the US, compared to others. In particular, Canadians do not require an actual visa; permanent residents and most third country nationals do – see:

<http://travel.state.gov/content/visas/english/visit/canada-bermuda.html>.

The process can be summarized as follows: a Canadian who proposes to work or perform in the US must be approved under the appropriate visa category (generally O or P), by application (called a petition) made to one of the two USCIS service centres. It is up to the applicant, who cannot be the Canadian and must be a US person, to choose the correct visa category, prepare the forms in the correct number of copies, obtain and include the result of union consultations if required, include the fee, and leave enough time for the processing and approval of the application.

Petition Pre-Requirements and Security Checks

Where security checks are deemed necessary, considerable delays in obtaining approval can ensue. This can occur, for example where the names or dates (including errors arising from date format conventions) on the USCIS approval document (I-797) do not precisely match the corresponding data on passports. Any discrepancy on the approval document should be immediately notified to USCIS by phone to the National Customer Service Center <http://www.uscis.gov/about-us/contact-us/national-customer-service-center> at [800-375-5283](tel:800-375-5283) from inside the US, or through a US consulate or Embassy if from within Canada.

Potential delays in processing approval of applications/petitions means that application ought to be made as soon as possible. Notwithstanding the lobbying efforts by the CFM/AFM and other industry organizations for adherence to two week processing times for P applications, average delays can significantly exceed that estimate.

□ *“These [visas] are very expensive and take a lot of time to process. Many times I've seen artists not receive the documents [sic.] they need to cross the border because they didn't receive the documents in time. But sometimes it's hard to make the deadline since a lot of shows are confirmed very close to their dates. The bigger issue though is that most independent bands can't afford to pay for the visas and therefore can't access the market.”*

Text box 2: Survey respondent

The application process involves filing an I-129 Petition. Since particulars vary over time and requirements can change, it is always advisable to check the USCIS site at the time the application is to be made – for forms, checklists, current fees and other instructions, see: <http://www.uscis.gov/i-129>. The application form itself was changed as recently as October 23, 2014. The I-129 Petition is a necessary application for non-immigrant worker visas H-1B, H-1C, H-2A, H-2B, H-3, L-1, O-1, O-2, O-3, P-1, P-1S, P-2, P-2S, P-3, P-3S, and P-4. More detail regarding application for these visa categories is set out below.

Any US employer, agent, manager, sponsor or organizer can file the Petition. Non-US based applicants cannot file on their own or others' behalf.

Multiple Venue Petitions

Where a performer is seeking to enter the US for a series of engagements at multiple venues, it may not be necessary for each “employer” or other US sponsor to apply separately in relation to each distinct venue. Instead, the venues can nominate one agent or employer to act as “agent” for all of them. This must be done by each venue in writing, by stating for example that the applicant petitioner is authorized to be the agent for the venue for the purpose of the I-129 application only.

Performance at venues additional to those listed in the I-129 petition is not authorized, and would constitute a breach of the terms of admission to the US under a P classification, unless the additional performance(s) is for the same employer as specified in the original petition. A new employer would require a new petition in relation to that employer. More flexibility exists to add performances under the O classification, as described below.

USCIS has clarified by formal memorandum that there is no particular maximum gap between engagements in an itinerary – see: http://www.uscis.gov/sites/default/files/USCIS/New/Structure/Laws_and_Regulations/Memoranda/2009/o-p-visa-agents-11-20-2009.pdf. That said, gaps of greater than 45-60 days will raise the question of how the traveler will support him/herself in the gaps between performances or engagements so applicants are well advised to describe the activities to be undertaken in longer gap periods, e.g. performances outside the country.

Demonstrating Approval

As previously mentioned, Canadian citizens do not require a visa to enter and work in the US, but do need to obtain approval for the visa category under which they are authorized to enter. Specifically, a Canadian citizen must obtain authorization to enter on the basis of documented proof that (normally an O or P) visa classification approval has been obtained from USCIS. This will normally be demonstrated on the basis of an I-797 Notice of Action – Approval received from USCIS. Non-citizens of Canada would use the I-797 as the approval document to establish eligibility for a required visa, but Canadians may enter the US on the strength of the I-797 document (plus passport and ideally other documentation as well, described below) without a visa.

- *“In short, in my experience most of the confusion comes about when USCIS policy makers, USCIS adjudicators and Border Officers are not all on the same page.”*

Once approval is granted, an indication of that approval is in theory entered into the Customs and Border Protection (CBP) computer system accessible by any CBP officer, but the safest course is for the traveler to obtain and carry a copy of the I-797 Approval, as well as a copy of the underlying I-129 petition submitted to obtain that Approval. The traveler's passport stamp by CBP on entry will constitute the official acknowledgment of legitimate entry into the US.

Labour Consultations

All O and P visa category applications require either a labour advisory opinion or "no objection" letter for both principal and support personnel applications. This is obtained by sending to the appropriate union a virtually complete copy of the I-129 petition. A union objection is not necessarily fatal to a petition, as the union's view is not binding on the USCIS. That said, however, an applicant is well advised to rebut a union's objection with as much evidence as possible. For example, a union may dispute the non-availability of US persons to perform the support position, may object to the adequacy of the compensation, or may dispute the degree of international recognition claimed. If the union's objection(s) can be rebutted by additional information in support when the I-129 petition is actually filed, USCIS will more likely approve the application. For P-2 classification, application through the AGM/CFM of course obviates this issue. Petitions filed on behalf of Canadian musicians who will be performing for 1 month or less within 50 miles of the US-Canadian border do not require a temporary labor certification.

Logistics – When and Where to File

The USCIS maintains two service centers for the processing of petitions relevant here, in California for Ohio and states west, and in Vermont, for Kentucky, Tennessee and states south and east. The Centre to which the petition should be sent is determined by the state where the activity is to occur. If performances at multiple addresses are being applied for the petition should be sent to the Centre that covers the state in which the petitioner is located. The Centre corresponding to specific states, including contact information, addresses can be confirmed here: <http://www.uscis.gov/i-129-addresses>.

The petitions discussed here cannot be emailed, and must be filed by mail or courier. As previously noted, the statutory 14 day requirement for USCIS to process the petition is more honoured in the breach, although CIS has more recently reported average processing times of that duration. It should also be noted that processing time does not include handling time within CIS after online

posting of the approval, or mailing time to the petitioner (who should then of course notify the artist!).

The standard fee for the I-129 petition is currently US \$325, which does not include labour certification or CFM/AFM fees. Where time does not permit the 45-day lead time for application, expedited treatment within a 25-day lead time is available as “premium processing” for an additional US \$1225 per person, along with an additional form I-907. The usual route is for a petitioner to file optimistically under the regular processing route, and if processing delay proves excessive, the petitioner can upgrade the application to Premium Processing by e-filing a form I-907 Request and submitting the additional fees.

Visa Categories – O and P

As noted, Canadian artists will typically apply for approval under the O or P visa categories. These are:

- O-1B classification for artists of extraordinary ability;
- O-2 classification for support personnel accompanying an O-1B artist;
- P-1B classification for internationally recognized performing groups and support personnel; and, for individual foreign artists performing as a member of a US-based internationally recognized performing group;
- P-2 classification for reciprocal exchange institutions; and
- P-3 classification for culturally unique performers or groups, teachers and coaches, and support personnel.

The P-1 classification is intended to cover internationally recognized entertainment groups, with a degree of recognition defined as “a high level of achievement in a field evidenced by a degree of skill and recognition substantially above that ordinarily encountered to the extent that the person is renowned, leading or well-known in more than one country.” This standard is somewhat similar to the O-1 “extraordinary ability” standard, defined as follows: “extraordinary ability in the field of arts means distinction. Distinction means a high level of achievement in the field of arts evidenced by a degree of skill and recognition substantially above that ordinarily encountered to the extent that a person described as prominent is renowned, leading, or well-known in the field of arts.” Extraordinary ability is established by demonstrating either award of a significant prize for participation in a performance (e.g. Juno Award), or published critical acclaim for performances, national or international recognition, a central role in critically successful performances, evidence of extraordinary commercial success and like indicators.

It is a condition of eligibility under this category that 75% of the group's members were associated and performing together for at least one year, and therefore a petition should include enough information on the group's history, with specific dates, to establish this.

Beginning in 2012, USCIS expanded the P-1 category to permit Canadian and other non-US performers to enter the US to perform with a US based group under a P-1B visa. This allows Canadian performers to apply for a visa on the strength of the US based group's international recognition. The individual applicant need not demonstrate separate national or international recognition. Under the P-1B visa, however, the Canadian individual may not also perform solo or with other US based groups than the one for which the approval was obtained.

The typical visa category for Canadian performers and artists is the P-2 classification. The sole remaining "reciprocal exchange institution" for which the P-2 category was designed is the AFM/CFM (the AGMA formerly had a similar Canada-US reciprocal arrangement), and application for Canadian artists is therefore typically made through the AFM/CFM, and thus requires a membership in the AFM to access this service.

The CFM website (<http://cfmusicians.org/services/work-permits>) contains the required procedures and documentation, probably the least costly and most straightforward means of obtaining authorization to perform for compensation in the US. As detailed on the CFM site, petitions will include an application for each individual, contracts, itineraries, an alphabetical list of applicant individuals, passport copies, and fees.

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"Generally speaking, obtaining P2 visas through the AFM has been a positive experience and the AFM has been incredibly helpful with information and cutting through the red tape. The problems usually arise in the practical application, i.e. the individuals at US Immigration who are the gatekeepers for gaining access to the US. The experience of my artists has been that often these individuals are not familiar with their own regulations and whatever decision they make is final regardless of whether it's the right one or not. In other instances, they may be knowledgeable, but have a negative impact because of prejudice or discrimination."

Text box 4: Survey respondent

The P-3 visa category is relatively new, and is intended to capture performers who meet the following definition of "culturally unique": "a style of artistic

expression, methodology, or medium which is unique to a particular country, nation, society, class, ethnicity, religion, tribe, or other group of persons." This includes unique art forms that may be less well known to the public because, by their nature, they do not ordinarily receive the same widespread acclaim and recognition as mainstream events.

To qualify for P3 visa status, artists or entertainers must be coming to the United States primarily for cultural events to further the understanding or development of the culturally unique art form. Performances may be commercial or non-commercial, and teachers and coaches of the culturally unique art are also eligible for P-3 status to encourage them to disseminate their knowledge. P-3 approvals are initially valid to a maximum of one year, and require a labor advisory opinion or letter of no objection, as well as objective documentation (e.g. expert letters, newspaper reviews) establishing the cultural uniqueness of the performer or group. The standard applied to such evidence has to date not been stringent. However, a petition should state that all performances, at all venues or events, will be culturally unique.

As in the case of the P-2 category, support personnel may also be admitted under a simultaneous or subsequent application, using the same criteria as support personnel for P-2 support applicants: appropriate qualifications, critical knowledge of the support functions and experience in doing so. As for other O and P visa categories, a labour consultation or "no objection" is required, unless a previous advisory or "no objection" letter was submitted within two years previous.

The visa categories O-3 and P-4 are intended for accompanying or following spouses and dependents, and are subject to the same time periods and limitations as the approval of the primary applicant. The maximum length of stay period for an O authorization is 3 years; for a P authorization, one year. Both are renewable for one year at a time, by request of the same original petitioner, if the traveler is in the US at the time of the request. Provision for extension requests is made on the I-129 form, and should be supported by all CIS documents issued to the traveler under the original authorization – I-797, I-94, and original labor certification. If the traveler leaves the US after the initial I-94 expires, s/he must wait for approval of the extension request before re-entering the US.

B-1 Category – Business Visitors

In appropriate, and very narrow, circumstances certain kinds of professional music activities can be carried out under the B-1 business visitor visa category, commonly referred to as showcase activities. Its greatest advantages are its cost (free) and ease of obtaining: no advance application to USCIS or other

government agency is required, and on presentation of adequate information, it is issued to the traveler at POEs and PFIs.

The CFM/AFM provides a letter of support to members for B-1 classification provided the purpose of travel is not for compensated performance, is to meet with other industry professionals, to participate in competitions, or is fully sponsored and paid for by a foreign government entity pursuant to a foreign-sponsored cultural event in the US. Professional meetings under the B-1 category can also include recording at a US studio or a songwriting collaboration (again always uncompensated, and provided resulting recordings are sold outside the US). Where the purpose of travel may include both showcase and promotional performance, a B-1 visa is not appropriate and an O or P visa will be required. This applies as well for showcase events involving public performances even where not compensated, if for example expenses or event passes are supplied, or the public is admitted for an entrance fee.

This existing visa category holds significant potential for facilitating US entry for Canadian music industry professionals. Survey respondents indicated that for certain events (e.g. SXSW) the B-1 visa category was legally sufficient, but many Canadians out of an abundance of caution go through the additional effort and expense of obtaining P-2 approval in the event that border officials are unaware of the adequacy of the B-1 for the stated purpose of entry. A concerted information advisory by CBP and CIS to advise POE and PFI officials of the validity of the B-1 category for these purposes, (preferably periodically repeated), would go a long way to reducing both the administrative burden on US Service Centers and Canadian musicians by clarifying the legitimate uses of the B-1 visa category.

Section 5: US Tax Policy and Prospects for Reciprocity in Treatment

The survey results also highlighted significant concern about the impacts of US tax policy on cash flow and, in particular, over the relatively high (30%) withholding tax imposed on gross earnings and reimbursements of expenses from US performances. Survey respondents noted that the withholding tax serves to discourage smaller businesses from accessing the US market, as it becomes a cash-flow issue, especially for small businesses.

In tax policy matters, as in immigration, policy at the highest level is established by legislation developed and enacted by Congress, signed into law by the President and implemented by government agencies - in this case the Department of the Treasury and its Internal Revenue Service (IRS) agency. Within the administration, the Office of Tax Policy within the Department of the Treasury develops policy advice. The same Office is responsible for international tax policy and the negotiation of international tax treaties.

International tax treaties provide for the host country to charge tax on the earnings of foreign nationals within the country, while avoiding double taxation in the home country. The *US-Canada Income Tax Convention* of 1980, as amended in 1983, 1984, 1995, 1997 and 2007, sets out these rules, including special provisions (at Article 16) for entertainers and athletes. The treaty includes a minimum threshold under which the host country will not tax. Gross receipts from fees and expense reimbursements of less than \$15,000 (US) shall not be taxed by the host country. A number of US tax treaties with other countries provide the same exemption, but at a \$20,000 threshold level. At Article 17, now repealed, the Convention provided that the withholding tax on the first \$5,000 paid as remuneration could not exceed 10%.

IRS – Withholding Tax, Tax Returns and Mitigation Measures

Fiscal policies directed to greater tax compliance and enforcement have impacted opportunities for Canadians seeking to enter the US for promotional, professional and performing reasons. Numerous anecdotal accounts of experiences with IRS inquiries indicate an increased interest by the IRS in enforcing US tax laws against foreign performers. As highlighted in section 1, the US tax system is seen as one of the primary challenges to accessing the US market, and one survey respondent described it as “*complicated, dense and punitive.*” This section describes the US federal, state and local taxes that may be applicable to Canadian musicians performing in the US.

Payments Subject to Withholding

As a general rule, all payments made to non-residents for services in the US are subject to withholding by the payor as a guarantee that taxes owing to the US, if any, are paid. The rate of withholding is 30% of gross income paid, which in the case of performers and support personnel usually amounts to an overestimate of actual taxes eventually payable. Failure to withhold renders the payor, be it agent, employer, organizer or manager liable for the amount that should have been withheld. The withholding requirement applies whether the payment is a flat fee, is a function of door receipts, is a prize awarded through a competition, or virtually any other kind of payment.

The Canadian withholding rate for US performers is 15% (24% in Quebec). The 30% rate is the general rate of withholding tax. The Canada-US Tax Treaty enshrines reduced rates of withholding for certain other income categories, but not for performers. Since the Treaty does not stipulate withholding tax rates, which are prescribed by US law, the US is entitled, but not obligated, to prescribe the general 30% withholding rate for performers.

Although the Canada-US Tax Treaty provides for certain minimum thresholds from the withholding requirement, these are generally not available for performers. For example, some other service providers in the US can benefit from exemption from withholding for the first \$15,000 in US-source income, but this does not currently apply to musicians or other entertainers. The IRS position on these is that because of the nature of the employment of performers, their eligibility for exemption from withholding cannot usually be established until the end of the year, when the total amount of their US source income for the year will be known. The performer should provide IRS form W8BEN to the payor (Form W8BEN-E if the payment is to be made to a corporation), which the payor will use to document the withholding.

Treatment of Expenses

Where the performer's fee is supplemented by a payment meant to reimburse for expenses incurred by the performer, the entire amount paid, fee plus expense reimbursement, is subject to the 30% withholding requirement.

An exception to the withholding requirement against expense reimbursement is available if the reimbursement can be characterized as an Accountable Plan. To meet the regulatory test for an Accountable Plan, the expense must be reasonable and referable to the engagement, must be supported by receipts, and reimbursement must not be in excess of substantiated expenses.

Commissions, Agents and Managers

Where payment is to be made to a manager or agent of the performer, who in turn is to pay the performer from that payment, the 30% withholding rule still applies to the total payment even where amounts included in the payment are a commission payable to the agent/manager. If the 30% has been withheld by the payor, there is no need for the agent manager to withhold any amount from the performer (except, presumably, his/her commission). If the agent or manager is also based outside of the US, that agent or manager should provide IRS Form W8-IMY to the payor.

Incorporated and Unincorporated Performers

The Canada-US Tax Treaty provides for a tax exemption, and reduced rates of withholding tax, for “business profits” of a corporation providing services in the US. However, the IRS applies a strict test on whether a corporation is a “business” entitled to the exemption, by looking at whether the performers participate in the profits of the corporation. In cases where they do, the IRS deems the performers the beneficial owners of the income and denies the business withholding exemption. The exemption on payment to the business will apply, for example, in the case of a group of salaried performers (e.g. an orchestra) compensated at rates not related to the fees collected for a particular set of performances. The foreign business, however, remains liable to withhold from its performers, either at 30% if they are independent contractors, or at rates varying from 15 to 35% if they are employees. This is because although the business profits are exempt by treaty, the US tax status of the individuals involved is not necessarily so.

Central Withholding Agreements

Central Withholding Agreements exist as a mechanism to better estimate individual performers’ US tax liability and therefore to more closely estimate the amount of tax to be withheld, rather than the blanket 30 amount otherwise applied. It is essentially an agreement between the IRS, a US withholding agent and the Canadian performer. The IRS has published detailed instructions on the application procedure. In summary, application on Form 13930 must be made at least 45 days before the provision of the service in the US that the agreement is intended to cover; applications must include contracts and expense estimates in sufficient detail to permit estimation of the performer’s tax liability; and the performer’s US tax filings from prior years, if any, must be filed.

The application must also designate a withholding agent, who will also enter into the Central Withholding Agreement. A withholding agent must be independent of the performer, must provide a final accounting of the income and expenses set out in the agreement, must have a US bank account and must be enrolled in the US Electronic Federal Tax Payment System. Given the complexities and administrative burden on the parties of a CWA, it is unlikely to represent a significant source of tax relief for all but the largest players.

US Tax Filing Requirements for Canadians

Once tax is withheld, it is the responsibility of the performer (taxpayer) to file a US tax return. This will enable the performer to claim back from the IRS the difference between the amount withheld (30% of fees and possibly expenses) and the likely lesser amount of tax owing. The first requirement for filing a US tax return is obtaining from the IRS a Social Security Number (SSN), or failing eligibility for a SSN, a Taxpayer Identification Number. A SSN is applied for in person at a Social Security Administration office within the US. If the performer is travelling under an O or P visa classification, and therefore is authorized to work in the US, s/he is eligible for a SSN. The SSN which takes three or more weeks to issue need not be picked up in person, but will only be given directly to the Applicant or mailed to a US address.

In the event that a SSN is denied, the applicant will receive a rejection letter, which is an essential document to support application for a Taxpayer Identification Number (TIN). This is done using an application to IRS for that purpose on Form W7. Recent changes to the TIN application procedure should be reviewed to ensure the procedures used are up-to-date and documentary requirements are met – see: <http://www.irs.gov/Individuals/2013-ITIN-Updated-Procedures-Frequently-Asked-Questions>.

Canadians who earn income working in the US are required by US law to file tax returns with the IRS, regardless of whether the income is exempt. This is done using IRS Form 1040NR, or if no dependent claims are to be made, Form 1040-NR-EZ.

Section 6: Recommendations and Action Plan for Improved Access to the US Market for the Canadian Music Industry

The following are recommendations and an action plan for administrative and regulatory changes and trade development support to help firms in the Canadian music sector maintain and expand their business in the US market. The recommendations are based on the analysis from the previous sections and address directly the priority issues identified by CIMA members.

RECOMMENDATION #1:

Reciprocity in the treatment of Canadian musicians crossing the border to work in the United States

1. Global Affairs Canada (GAC) and Heritage Canada should support CIMA in its efforts to work with A2IM to eliminate the visa requirement for Canadian artists touring the United States.

CIMA members interested in working in the United States on a temporary basis have a simple request: treat Canadian musicians at the US border the same way as US musicians are treated when they enter Canada on a temporary basis. This can be achieved by implementing the proposal from the American Association of Independent Musicians (A2IM) to eliminate visa requirements for Canadian artists touring in the United States. The rationale for this recommendation is stated clearly in A2IM's statement in May 2015:

The Canadian government eliminated both its Labor Market Opinion fees and Visa requirements in 2014, removing all barriers for American artists to tour in Canada. A2IM feels strongly that Canadian artists should be given reciprocal, preferential treatment by the US over performing artists from outside of North America.

Under current legislation, Canadian artists are only able to tour within the US after securing a P Visa, a practice that is mandated to be processed in two weeks but can often stretch to six months' time. This can stall tours and result in artists, US clubs and restaurants losing revenue. Relaxing Visa requirements would allow for an open exchange of ideas and cultural reciprocity between two neighbouring countries.

By implementing this recommendation, Canadian musicians and their sponsors in the US will benefit from the corresponding cost reductions in time and money crossing the US border. US and Canadian musicians will benefit from increased opportunities to work together and collaborate on existing and future projects.

The US consumer will benefit from increased choice in music and other services available to them in the US market. The US sponsors will benefit from the increased revenue generated at clubs, restaurants, and festival and other venues as a result of the increased availability of Canadian talent for their customers. With reduced administrative costs associated with entry to the US, Canadian companies will have more resources to spend on artist and career development opportunities in the US.

2. IRCC should work with USCIS to develop and implement an “express program” for both individual Canadian musicians/artists and Canadian music companies for expedited and pre-clearance service to facilitate two-way travel for business purposes. This program would be based on the experience and lessons learned from existing express programs, in consultation with CIMA, A2IM and other business associations.

Outcomes:

- Reduction in the time spent from visa application to visa approval as an interim measure until the visa requirement is eliminated
 - A bilateral mechanism to submit recommendations directly to USCIS to improve operational efficiencies (e.g. increased use of online forms for work permit applications) based on feedback from the users of their services
 - A bilateral mechanism to address Canadian interests on any new measure that the US may introduce at the border that has a negative effect on the ability of Canadian musicians to do business in the US
3. GAC should work with CIMA, A2IM and other US arts organization supporters of the ARTS Act to reintroduce this legislation in the US Congress and advocate for its implementation.

Outcome: A more permanent and predictable reduction in the time and cost of compliance with current and any future changes in US visa procedures.

4. GAC should work with CIMA to persuade US organization supporters of the ARTS Act to amend the legislation to exempt Canadian performing artists appearing alone or in a group in an artistic performance from the visa requirement.

Outcome: A more permanent exemption of Canadian performing artists from US visa requirements.

RECOMMENDATION #2:

Reciprocity in the application of the withholding tax rate for Canadian musicians doing business in the United States

ACTION PLAN

1. Finance Canada should work with the IRS to introduce an amendment to the Canada-US Income Tax Convention to reduce the US federal withholding tax rate to 15%, the applied Canadian rate.

Outcome: A reduction of up to 50% in the amount of annual US income of Canadian music professionals held up at the border.

2. Finance Canada should seek from the IRS an immediate administrative reduction to 15% in the applied withholding tax rate on income generated by Canadian music professionals in the United States.

Outcome: An interim solution in the absence of agreement to amend the Canada-US Income Tax Convention to reflect this new withholding tax rate.

3. Finance Canada and the IRS should revise the Canada-US Income Tax Convention in two respects:

- First, include the category of “music professionals” in the application of its minimum threshold for tax exempt revenue;

Outcome:

A more permanent status for “music professionals” in the category of Canadian professionals to which the minimum threshold for tax exempt revenue applies.

- Second, increase the minimum threshold for tax-exempt revenue on income earned by music professionals to the \$20,000 level found in the US-Germany, US-United Kingdom and other treaties.

Outcome: A more permanent increase in the amount of annual revenue to which the minimum tax exemption threshold is applied for Canadian music professionals.

RECOMMENDATION #3:

Promoting the Canadian independent music industry in Canada's new foreign, international cultural and trade strategies

The mandate letters from the Prime Minister to the Ministers of Foreign Affairs and International Trade include measures to be enacted that could have a positive impact on the international expansion plans of Canadian independent music industry.

According to his mandate letter, Foreign Affairs Minister Dion's first priority is to improve Canada's relations with the United States. This includes making "substantial progress on reducing impediments to trade and commerce...(including) facilitating the movement of people" between Canada and the United States. CIMA members consider reducing such obstacles as the single most effective way to help increase their presence in the US market.

Given that this will be the last year of President Obama's presidency, the more significant opening for a new approach arises from the US presidential election in November 2016. This election will produce a new Administration and a new Congress that provide a once in eight-year opportunity to recalibrate the Canada-US relationship. Effective reduction in the impediments to trade and commerce between Canada and the United States requires high-level engagement.

ACTION PLAN

1. The Canadian independent music industry and its stakeholders should work with Global Affairs Canada and Heritage Canada to establish with the new Administration in 2016 a bilateral agenda that includes reducing obstacles to the movement of professionals across the border.

Outcome: An agreed-upon bilateral agenda that includes addressing obstacles to the movement of professionals could increase the probability of implementing Recommendations 1 and 2 of this report.

Promoting Canadian cultural products and services abroad is also a priority for Minister Dion. Prime Minister Trudeau has mandated him to "increase Canada's...cultural interaction with the world." Such a strategy should include working with the Minister of Canadian Heritage "to restore the Promart and Trade Routes International cultural promotion programs, update their design, and increase related funding."

2. The Ministers of Foreign Affairs and Canadian Heritage have been tasked by Prime Minister Trudeau to implement an export promotion strategy for Canada's cultural industries. Such a strategy should include:

- Direct engagement of members of the Canadian independent music industry and firms that work with the industry in the design and implementation of this strategy.

Outcome: The competitiveness issues facing independent music professionals in the international markets are reflected and prioritized in Canada's new cultural industries' export strategy.

- The proposed cultural export strategy is expected to include the re-establishment of the Promart and Trade Routes International cultural promotion programs. These programs previously helped artists promote themselves in international markets, brought international buyers to Canada, and strengthened Canada's cultural industries. Their re-establishment should include online resources on the competitive challenges of doing business internationally and networking activities to promote the sharing of experiences and best practices to enter and succeed in the US market.

Outcome: An increase in the number of informed music professionals who can manage effectively through the technical, logistical, administrative and competitive challenges they face when doing business internationally.

3. Given the particular issues and challenges facing Canada's independent music community, CIMA should advocate for any official export promotion strategies, programs and tools to include support for the following initiatives:

- Training to increase the understanding of border officials of the competitive conditions of the independent music industry and the positive economic impact of temporary entry of music professionals on the domestic economy.
- Training (online and classroom-based) involving both Canadian and US border officials should be provided on a regular basis to both new and existing staff. The training should include case studies and practical exercises to illustrate the effect that delays at the border can have on the domestic industry. Other exercises should be used to encourage officials to find practical on-the-job solutions to these and other challenges at the border.

Outcome: Having border officials who are better informed about the nature of the independent music industry and the benefits of trade to the domestic economy will lead to more informed decisions when assessing border-crossing applications from Canadian music professionals.

- Training to increase the effectiveness of the Trade Commissioner Service in supporting Canada's cultural industries in international markets. This training should begin with the course modules being provided to border officials. These courses should be complemented by practical training and case exercises on how to support the export strategies of independent music professionals. These courses should be offered online in order to be accessible to largest number of trade commissioners. Online courses also offer the opportunity to connect trade commissioners and music professionals during and after the training.

Outcome: Increased awareness of Trade Commissioners in Canadian missions in the United States and other key international markets about the interests of the Canadian music industry and how best to support them in their international expansion plans.

- More Trade Commissioners in US missions who are sensitive to Canadian music industry issues and corresponding budgetary resources.

Outcome: Increased engagement and support of trade commissioners in helping Canadian music professionals and firms seek business opportunities and address the challenges of doing business in the US market, their primary export market.

Annex 1

Theoretical Background

Formally, across a widely used class of theoretical trade models, the gains from trade can be evaluated based on the share of imports in total domestic expenditure and the trade elasticity.¹ Arkolakis et al. (2012) show that the real income gains from moving from autarky to an observed level of import penetration under widely used applied trade models can be calculated by the following expression: $1 - \lambda^{-1/\varepsilon}$, where λ is the share of domestic goods in domestic expenditure and ε is the elasticity which measures the degree of substitutability of imports for domestic production.

Based on this equation, the gains from trade are greater: (a) the higher the share of imports in domestic final expenditure; and (b) the less that domestic production is substitutable for imports (i.e. the lower the trade elasticity).

The intuition is straightforward: the United States, while a major global producer of goods and services, accounting for 24.3% of global GDP in 2015 based on the April 2015 IMF World Economic Outlook data, nonetheless produces only a fraction of all the varieties of goods and services produced in the world, including intermediate production inputs. The more differentiated is Canadian-produced music compared to domestic US product, the greater the welfare gain to the US economy from access to Canadian-produced music.

Arkolakis et al. (2012) evaluate the gains from trade for the United States at 0.7% to 1.4% range for the United States. However, Ossa (2012), in his paper entitled “Why Trade Matters After All”, applies the same approach but disaggregates imports across sectors and takes into account that some goods and services are non-traded and that in some industries critical inputs must be imported (i.e. there is no domestic supply and as a result the trade elasticity falls to near zero). Using 2000 data, he estimates the US welfare gains from trade at between 23.5 and 42% of GDP. As the title of his article states, trade is important after all.

Costinot and Rodriguez-Clare (2013) develop this point further; they provide estimates of the income gains from trade for the United States under various theoretical models; these estimates range from 1.8% in the simplest one-sector model to 10.3% in a Melitz-type model with imperfect competition. Melitz and

¹ Note: the trade elasticity has different structural interpretations in the various models. This affects how we understand the gains to arise but not affect the size of the gains in these models.

Redding (2014) show that, when productivity of firms is increased by trade, the gains from trade expand as the stages of production in a sequential production model increase. Accordingly, insofar as Canadian music serves as an intermediate input into US-produced cultural products, access to this music drives US economic welfare gains.

To summarize, a theoretically rigorous estimate of the economic welfare gains for the United States from the Canadian music industry can be developed based on the sales of the Canadian industry to the United States, the total domestic expenditures of the United States on music, and trade elasticity developed in the economic literature.

Quantification

The global music industry is worth about US \$15 billion. The United States accounts for almost one-third of this at US \$4.9 billion. This total includes the major modes of music sales, namely physical music recordings, digital recordings, performance rights, and synchronization. While precise estimates of the share of Canadian sales captured by Canadian industry are not readily available, a reasonable approximation based on various occasional studies for different segments is about 25%; this percentage was confirmed as reasonable by music industry reviewers.

Estimates of the export orientation of the Canadian music industry are likewise not readily available. Different analytical studies conducted for different segments and survey information, suggest that about 25% of industry revenues are derived from sales to the United States.

Armed with these estimates, we can calculate an approximation of the Canadian share of the US market. These calculations are shown below in Table 1. The upper panel shows the calculation of Canadian and US global market shares based on IFPI annual reports; the lower panel walks through the calculation of the implied share of the US market captured by the Canadian music industry, based on the assumptions described above.

Table 1: Estimation of Canadian share of the US music market.

	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	Ave
US and Canadian Global Market Shares												
US Market	12,153	11,195	9,651	7,986	5,977	4,562	3,635	4,373	4,482	4,474	4,898	
Canadian Market	694	708	668	562	530	402	343	434	454	424	343	
Global Total	33,614	31,595	28,121	25,258	23,490	18,606	16,147	16,646	16,481	15,030	14,966	
US Share	36%	35%	34%	32%	25%	25%	23%	26%	27%	30%	33%	30%
Canadian Share	2.1%	2.2%	2.4%	2.2%	2.3%	2.2%	2.1%	2.6%	2.8%	2.8%	2.3%	2.4%

Estimates of Canadian Market share in the United States												
Canadian Industry Domestic Sales (@ 25% of the market)	173	177	167	140	133	100	86	109	113	106	86	
Canadian Industry total sales	231	236	223	187	177	134	114	145	151	141	114	
Canadian Industry Exports to US (@ 25% of sales)	58	59	56	47	44	33	29	36	38	35	29	
Estimated US market import share of Cdn music	0.48 %	0.53 %	0.58 %	0.59 %	0.74 %	0.73 %	0.79 %	0.83 %	0.84 %	0.79 %	0.58 %	0.68 %

Source: International Federation of the Phonographic Industry (IFPI) Annual Reports and calculations by the author.

For trade elasticities, we draw on commonly cited recent estimates from Simonovska and Waugh (2014), which place this elasticity in a range from 2.81 to 5.21, with a mean of 3.91, depending on the underlying theoretical model. Since this elasticity is developed for aggregate trade, it might however overstate the elasticity for more highly differentiated products. Noting that the elasticity of substitution in the widely used GTAP data set for services is 1.9, compared to an average of 3.4 across goods sectors, or about 54% of the size of the goods sector estimate, it is reasonable to conclude that appropriate range for the music industry is wider.

Armed with the estimated share of the US market captured by the Canadian music industry of 0.68%, and with the alternative estimates of the trade elasticity, we can calculate the economic benefits to the United States from access to Canadian music production, following Arkolakis et al. (2012) as described above. We estimate the gains for four estimates of the trade elasticity, three taken from Simonovska and Waugh (S&W), and one inferring a lower estimate for music based on higher product differentiation.

Table 2: Estimated US income gains from access to Canadian music

A	Upper Bound (=0.54 times S&@ lowest estimate)	$\epsilon = 1.53$	US \$22 million
B	S&W lowest estimate	$\epsilon = 2.81$	US \$12 million
C	S&W mean estimate	$\epsilon = 3.91$	US \$9 million
D	S&W highest estimate	$\epsilon = 5.21$	US \$6 million

Source: calculations by the author

As can be seen from Table 1, the sales of the Canadian music industry in the United States are limited. Nonetheless, on the reasonable assumption that Canadian musical products are distinctive and capture market share in the

United States because they do not have close generic substitutes, the access by US consumers and downstream producers of cultural products using Canadian music are significant compared to the level of overall sales. We believe a figure on the order of US \$25-30 million is a “best guess” at the value that the Canadian music industry contributes annually to the US economy. This figure may be interpreted as the boost to US economic welfare as commonly cited from empirical studies of trade agreements.

Annex 2

CIMA Accessing the US Market – 2015 Questionnaire

General Information

<p>1. Province/Territory where company is headquartered</p> <ul style="list-style-type: none">• Alberta• British Columbia• Manitoba• New Brunswick• Newfoundland and Labrador• Northwest Territories• Nova Scotia• Nunavut• Ontario• Prince Edward Island• Quebec• Saskatchewan• Yukon• US based company• Other (please specify)
<p>2. For the following questions, please indicate your company/organization's activities.</p> <ul style="list-style-type: none">• Artist• Artist management• Booking Agency• Concert/Festival/Event Promoter• Digital Application/Development• Digital Content Aggregator• Distributor• Label/Record Company• Producer• Publisher• Other (please specify)
<p>3. Size of your business (# of employees)</p> <ul style="list-style-type: none">• 1-5• 6-10• 11-25• 25+• 100+

4. Size of your business (by annual revenues)

- 0-\$49,999
- \$50,000 – \$99,999
- 100,000 – 149,999
- 150,000 – 249,999
- +\$250,000

5. Years in the music industry

- 0-4
- 5-9
- 10-14
- 15-19
- 20+

Previous experience in doing business in the United States

6. Over the last five years, how important has the US market been to your business?

- Very important
- Somewhat important
- Important
- Not important (please go to Question 9)
- No opinion at this time (please go to Question 9)

7. Over the last five years, what kind of business activity have you been conducting in the US (check all that apply)?

- Distribution
- Licensing
- Publishing
- Touring
- Festivals Booking
- Sales/Distribution
- Other (please specify)

8. Over the last five years, what percentage of your overall business did the US market represent?

- 0-10%
- 11-20%
- 21-30%
- 31-40%
- 41-50%
- 50+%

Current experience in the US market

9. How important is the US market to your current business?

- Very important
- Somewhat important
- Important
- Not important
- No opinion at this time

10. What kind of business activity are you currently conducting in the US (check all that apply)?

- Distribution
- Licensing
- Publishing
- Touring
- Festivals Booking
- Sales/Distribution
- Other (please list types)

11. What % of your business does the US market currently represent?

- 0-10%
- 11-20%
- 21-30%
- 31-40%
- 41-50%
- 50+%

Importance of the US market to the future growth of your business

12. How important is the US market to your future business?

- Very important
- Somewhat important
- Important
- Not important
- No opinion at this time

13. What do you see as the potential growth areas for your business in the US market (check all that apply)?

- Distribution
- Licensing
- Publishing
- Touring
- Festivals Booking
- Sales/Distribution
- Other (please list types)

14. How important is the US market in your business development strategy going forward?

- Very important
- Somewhat important
- Important
- Not important
- No opinion at this time

15. What percentage of your overall business do you hope that the US market will represent within the next five years?

- 0-10%
- 11-20%
- 21-30%
- 31-40%
- 41-50%
- 50+%

Understanding your current business strategy for the US market

16. What top US cities do you do business / have an office set up in?

- New York City
- Nashville
- Los Angeles
- Chicago
- Other (please specify)

17. In general terms, what is your overall business objective(s) in the US market (check all that apply)?

- open new sales territory
- establish new business contacts
- license your masters
- license foreign masters
- licensing your publishing rights
- establishing new distribution networks for physical and digital goods
- importing foreign finished goods
- gaining a better understanding of the US music marketplace
- gaining a better understanding of the US digital marketplace
- strengthen relationships with established contacts
- exploiting opportunities for live booking for your artists
- showcasing opportunities
- establish more touring opportunities
- Signing with a US label
- Establish new business contacts with artists or new talent
- Other (please specify)

18. How long are you estimating it will take to achieve these objectives?

- 0-6 months
- 12 months
- 12-24 months
- +24 months

19. How much money do you estimate you invested in your US business strategy before generating the first revenues from these efforts?

- \$0-\$5,000
- \$5,001-7,500
- \$7,501-10,000
- +10,000

20. When did you make or expect a return on your investment in the US market?

- Immediately
- Within the first 12 months
- Within the first 24 months
- More than 24 months
- Don't expect a return
- Don't know
- Other (please explain)

21. In general, from your experience how profitable is the US market to your business, relative to Canada?

- A lot more profitable
- More profitable
- About the same
- Less profitable
- A lot less profitable

Challenges in doing business in the United States

22. To what extent is doing business in the United States different from doing business in Canada? Please rate how the challenges below impact your ability to do business in the United States with 1 being least important and 5 being most important.

- Time and money spent finding sufficiently good opportunities to consider the US market seriously
- Time and money spent developing an appropriate business strategy for the US market
- Time and money spent preparing documentation prior to US visit
- Time and money spent completing border-related documentation
- Time and money spent before you began to generate revenues from your business development efforts
- Access to financing for your US business strategy
- US tax law
- If US-tax law presents a challenge, please describe how.
- State-specific laws
- If State-specific laws present a challenge, please describe how.

23. Which if any of the following governmental, professional, personal or commercial resources have you been able to rely on to enable or improve US business opportunities (check all that apply)?

- Government resources: websites, publications, consulates, conferences
- Industry resources: websites, publications, conferences
- US agent
- Employer
- Accountant
- Lawyer
- Professional advisor
- Industry network
- Personal contact
- Union/Federation
- Music Industry Association
- Other
- None (no particular resources are needed)

27. The following are common reasons cited by Canadian businesses for not pursuing opportunities in the US market. Please rate the following on a scale of 1-5 (with 5 being very important) as factors in your decision to not pursue business opportunities in the US at this time:

- Lack of significant opportunities for your business at this time
- Access to information about business opportunities

- Access to sufficient financing to pursue business opportunities
- Border-related issues related to visas/work permits
- Other border requirements
- Incorrect application of work permit/visa regulations by border officials
- Inconsistent application of work permit/visa regulations by border officials
- Tax laws, state employment laws and related domestic regulations
- Other (please specify)

• **Which of the following measures do you believe would most effectively reduce obstacles to pursuing music industry opportunities in the US market (with 1 being least helpful and 5 being most helpful)?**

- Access to additional legal information/resources about working in the US
- Conferences, trade shows, networking events, and promotional events
- Changes to work permits/visa regulations
- Improve collaboration with US music industry organizations
- More effective guidelines for border officials to reduce discretion in ruling on individual cases
- More resources or services to help access the US market

Final Comments

Any final comments?

Annex 3

FORMS

- All CIS Forms: <http://www.uscis.gov/forms>
- Petition for Visa Approval Form I-129: <http://www.uscis.gov/i-129>
- Canadian Chamber of Commerce ATA Carnet application forms: <http://www.chamber.ca/carnet/forms/>
- IRS Forms W8BEN and W8BEN-E: http://apps.irs.gov/app/picklist/list/formsPublications.html;jsessionid=d-1uDUotLybVoCqHzoWTeA_?value=w8ben&criteria=formNumber&submitSearch=Find
- IRS Form W8IMY: <http://apps.irs.gov/app/picklist/list/formsPublications.html?value=w8IMY&criteria=formNumber&submitSearch=Find>
- IRS Application for Individual taxpayer Identification Number: <http://www.irs.gov/pub/irs-pdf/fw7.pdf>
- IRS Instructions for Tax Return Form 1040-NR: <http://www.irs.gov/pub/irs-pdf/i1040nr.pdf>
- IRS Instructions for Tax Return Form 1040-NR-EZ: <http://www.irs.gov/pub/irs-pdf/i1040nre.pdf>
- IRS Tax Return Form 1040NR: <http://www.irs.gov/pub/irs-pdf/f1040nr.pdf>
- IRS Tax Return Form 1040NR-EZ: <http://www.irs.gov/pub/irs-pdf/f1040nre.pdf>
- IRS Non-Resident Tax Materials: <http://www.irs.gov/uac/Form-1040NR-Other-Related-Items>

WEBLINKS TO LAW, GUIDELINES and POLICY

- Visa information at US Embassy in Ottawa: <http://canada.usembassy.gov/visas.html>
- List of US Consulates: <http://www.usembassy.gov/>
- AFM/CFM P-2 Visa application procedures: <http://cfmusicians.org/services/work-permits>

- B-1 Visa information in US Foreign Affairs Manual:
<http://www.state.gov/documents/organization/87206.pdf>
- Online entry authorization record by US CBP: www.cbp.gov/l94
- US CIS Policy Memorandum on O visa validity period:
http://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2010/July/guidance-O-petition-gap_memo-07-20-10.pdf
- US CIS Multiple employer O and P visa policy:
[http://www.uscis.gov/sites/default/files/USCIS/New/Structure/Laws and Regulations/Memoranda/2009/o-p-visa-agents-11-20-2009.pdf](http://www.uscis.gov/sites/default/files/USCIS/New/Structure/Laws%20and%20Regulations/Memoranda/2009/o-p-visa-agents-11-20-2009.pdf)
- CBSA Policy on ATA Carnets: <http://www.cbsa-asfc.gc.ca/publications/dm-md/d8/d8-1-7-eng.html>
- IRS Accountable Plan Regulations: <http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&sid=dd8843dd9b03892bed2a32155316a5dd&rgn=div8&view=text&node=26:2.0.1.1.1.0.2.21&idno=26>
- IRS Policy Memo on Withholding Tax for Nonresident Aliens:
<http://www.irs.gov/pub/irs-pdf/p515.pdf>
- IRS Instructions on How to Apply for a Central Withholding Agreement: <http://www.irs.gov/pub/irs-pdf/f13930.pdf>

Annex 4

GLOSSARY OF USCIS, CBP and IRS TERMINOLOGY

Alien: An alien can be a beneficiary of a petition filed by a petitioner with US Citizenship and Immigration Services (USCIS) for an immigration benefit or an applicant to USCIS for related benefits. An alien can also be an applicant to a US consulate for a visa, and an applicant to US Customs and Border Protection (CBP) for entry.

AFM: American Federation of Musicians

AGMA: American Guild of Musical Artists

AGVA: American Guild of Variety Artists

CBSA: Canada Border Services Agency

CBP: US Customs and Border Protection, part of the Department of Homeland Security (DHS). CBP conducts inspections at all US POEs and PFIs and determines whether to admit travelers and, if so, in what status and for how long.

CFM: Canadian Federation of Musicians, the Canadian office of the AFM.

Classification: A non-immigrant visa classification or status such as O or P, meaning a particular legal category that permits a traveler temporarily to engage in defined activities in the US per USCIS regulations, as disclosed in an underlying petition to USCIS for classification in a particular status.

Consular Section, Consular Post, Consulate: Each US embassy abroad has an independent consular section responsible for issuing visas, among other things. Consular posts, or consulates, perform the same functions but are located elsewhere than the Embassy.

Counterfoil: The receipt portions of the carnet document that are used as official confirmation that goods exported match the goods returned, and are turned over with the Carnet cover pages to the Canadian Chamber of Commerce on cancellation of the Carnet.

CSC: California Service Center, one of two US Citizenship and Immigration Services (USCIS) Service Centers that process I-129 petitions and I-539 applications.

DOS: US Department of State

EAD: Employment Authorization Document, issued by USCIS service centers

ESTA: Electronic System of Travel Authorization. Registration in ESTA is required before nationals of 36 countries may participate in the Visa Waiver Program.

I-129 Petition: used to apply for the O and P work-related non-immigrant classifications, among others.

I-539 Application: used to extend the stay and/or change the status of spouses and dependents (unmarried children under age 21) of travelers already in the US in a non-immigrant status (such as O or P).

I-797: The document USCIS generates when it acts on a petition or application, such as by issuing a filing receipt, a Request for Evidence (RFE) or an approval or denial notice.

I-94: If CBP admits a traveler at an airport PFI or POE, it will stamp the traveler's passport with the visa classification and length of time for which the traveler is admitted. The CBP online database will be updated with the information in an I-94 record of admission. Starting in 2013, CBP began recording the I-94 record online at www.cbp.gov/I94. Once in the US, the I-94 record is the traveler's key record. It is the departure date on the I-94 that governs the legality of the stay, not the expiration of the visa. Notwithstanding everything being in order, CBP inspectors at Points Of Entry have discretion to ignore a prior approval by USCIS of a petition or visa if they suspect error, fraud, or misrepresentation, and if so, will deny the traveler an I-94 record, preventing lawful entry.

Non-immigrant: A traveler admitted to the US temporarily, in either a work-related or non-work-related visa classification who does not intend to remain permanently. "Non-immigrant intent," i.e. absence of an intention to immigrate to the US, is a necessary consideration for all travelers seeking O-2 and any P status, and their dependents.

NCSC: National Customer Service Center (part of USCIS), the toll-free number for most forms of assistance from USCIS, 1-800-375-5283.

Petitioner: The individual (US citizen or permanent resident), entity, employer, agent, sponsor or other party who files a petition on behalf of an traveler for a visa.

PFI: Pre-Flight Inspection facility, where travelers are inspected by CBP prior to boarding flights to the US.

POE: Port of Entry (air, land or sea)

RFE: Request for Evidence (referenced in definition of I-797 above)

USCIS: US Citizenship and Immigration Services, part of the Department of Homeland Security.

Visa: A physical item embossed in a passport that contains a biometric data, including the non-immigrant classification authorized. A visa does not in itself impart right or status of any kind; rather, it is a travel document establishing USCIS approval the traveler to present himself/herself at a POE or PFI for admission as specifically authorized. A traveler can apply for entry at any point during the visa's validity. That the visa may expire while the traveler is in the US is irrelevant to the duration of legal stay, which is governed by the expiration date on the I-94 form issued by CBP to the traveler on entry. The I-94 departure date is supposed to be on, or no more than 10 days after, the expiration date of the underlying visa, as it is the I-94 date, not the visa expiration date, to which CBP is supposed to admit the traveler. In general, all travelers require visas to enter the US. The visa requirement is waived for certain travelers, including those entering in Visa Waiver Program and Canadian citizens. ***Visas can last for varying periods of time, depending on a variety of factors.*** Work-related visas, such as Os and Ps, expire at the end of the approved classification period.

VO: Visa Office of the Department of State

Voucher: Pages of an ATA Carnet completed and removed from the carnet package by the CBSA to evidence inspection of the equipment exported and re-imported.

VSC: Vermont Service Center is one of two US Citizenship and Immigration Services (USCIS) Service Centers that process I-129 petitions and I-539 applications.

Work-related: The category in question permits the traveler to work in the US. Travelers in the US on B visas cannot work in the US, except in very narrow circumstances. Travelers in the employer-specific classifications such as O and P may work only in accordance with the itinerary, venues or activities specified in the petition.

References:

- Arkolakis, Costas, Arnaud Costinot and Andrés Rodríguez-Clare. 2012. "New Trade Models, Same Old Gains?" *American Economic Review* 2012, 102(1): 94–130.
- Costinot, Arnaud and Andrés Rodríguez-Clare. 2013. "Trade Theory with Numbers: Quantifying the Consequences of Globalization," *Handbook of International Economics*, Volume 4, edited by Gita Gopinath, Elhanan Helpman, and Kenneth Rogoff, North Holland.
- Melitz, Marc J. and Stephen J. Redding. 2014. "Missing Gains from Trade?" NBER Working Paper No. 19810, January 2014.
- Ossa, Ralph. 2012. "Why Trade Matters After All," NBER Working Paper No. 18113.
- Simonovska, Ina and Michael E. Waugh. 2013. "Different Trade Models, Different Trade Elasticities," *Journal of International Economics* 92(1), January: 34–50.

