



A COPYRIGHT BILL FOR THE CREATIVE DIGITAL ECONOMY

Revisions to the *Copyright Act* are essential to Canada's digital economy strategy as incentive to move the creative economy forward, and also to satisfy demands by its trading partners that Canada implement the WIPO "Internet Treaties". Bill C-32, which died with the election call, included many new exceptions from infringement and some confusing language that would have led to costly litigation. It was clear that many proposed changes, some unintentionally, eroded creators' rights.

Arts and culture industries provide over 630,000 jobs and contribute \$46 billion to Canada's economy. Copyright revision should be supportive of these industries, big and small, and encourage their growth. The works of creators are the foundation of all such industries. A bill like C-32 would make it significantly more difficult for creators to carry on their copyright-reliant businesses, cause them significant income losses, and be a real barrier to the continuing growth of Canadian digital content and Canada's digital economy.

While recognizing the pressures on the Government from various stakeholders, we, the Creators Copyright Coalition, urge the Government to pay attention to the needs of Canadian creators as it prepares an improved piece of legislation that will support the digital economy.

Core Principles

Here are the core principles that we believe should shape new copyright legislation:

- **Payment for use.** In the Bill C-32 debate, virtually everyone agreed with this principle, but the bill contained provisions that would have removed some payments that creators now receive.
- **"Hand-outs" must not replace legal rights.** A system of grants for individual creators helps some, but all creators need predictable incomes based on business models that are supported by copyright. The primary principle that should guide copyright law is "payment for use".
- **Collective rights management is good for creators and consumers.** It is often impracticable or impossible for creators as individuals to grant licences and to collect payment. By inserting a myriad of new exceptions, Bill C-32 would have weakened the management of rights by collective societies – removing some rights that are currently collectively administered and pre-empting other opportunities before creators could develop business models for new digital uses. An improved bill should reverse Bill C-32's trend away from collective management.
- **Collective licensing and tariffs, supervised by the Copyright Board, are a better solution than exceptions from copyright infringement.** Collective management gives users the same easy access to copyright works as exceptions do, with the advantage that access can be broader and more flexible, and it also provides reasonable payment to the creators whose work is used.
- **Copyright laws must be clear in order to avoid excessive litigation.** The imprecision of some provisions in C-32 would have led to frequent and costly litigation, most notably to determine the meaning of "fair dealing" for education. We recognize that there will always be legal challenges to new measures, but clarity of language is essential.

- **There must be effective remedies against pirating.** The effect of pirating on the music industry is well known. Movies, documentary films and other audiovisual works are also widely “shared” electronically, and as electronic books increase their market share, they have become vulnerable to illegal copying and sharing. Infringements are causing greater harm to more and more creators. Copyright law must provide penalties that are equitable yet sufficient to deter infringers, including non-commercial infringers, both big non-profit users and individuals whose minor infringements may cumulatively damage a work’s market.

New copyright legislation must support the above principles in order for creators to contribute as much as possible to the digital economy – enriching Canada economically and providing social and cultural wellsprings for the future.

The way to a better piece of legislation

We offer some practical suggestions to remedy the defects of the previously proposed revision to the *Copyright Act*:

- Introduce the 3-step test based on the Berne Convention to help interpret exceptions in Part III.
- Expand and strengthen collective management in order to increase inexpensive and easy access for consumers to works that are protected by copyright. Ensure that income continues to flow to creators, regardless of how digital media develop, through licensing, tariffs, levies or new mechanisms.
 - Ensure that the communication of user-generated content to the public on the Internet does not conflict with creators’ economic and moral rights.
 - Implement a regime that provides payment for any private uses of works, with royalties collected and distributed through collective societies.
 - Provide payment for private copying of sound recordings of music irrespective of the technology used.
- Maintain the *Copyright Act*’s existing remedies, including statutory damages, for non-commercial as well as commercial infringements.
- Remove the proposed fair dealing exception for education.
- Implement a “graduated response” or another collaborative system in co-operation with ISPs.
- Identify the authors of an audiovisual work as its screenwriter(s) and director.
- Introduce the resale right for visual artists.

The Works of Creators in the Digital World

We are ready and willing to work with the Government to modernize Canada’s *Copyright Act* in ways that allow creators to prosper and build businesses that will continue to flourish and contribute to the Canadian economy. This would benefit creators and consumers and be an essential part of the strategy needed to make Canada a leader in the new digital economy.

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