

SUBMISSION OF THE WRITERS' UNION OF CANADA IN RESPONSE TO THE CONSULTATION PAPER ON A DIGITAL ECONOMY STRATEGY FOR CANADA

*“The Government of Canada’s role is to put in place a marketplace framework in which our creators, inventors and entrepreneurs have the incentives to innovate, the confidence to take risks and the tools to succeed.” **Improving Canada’s Digital Advantage** (page 25).*

SUMMARY

Whether to thrive or survive in the digital environment and to be able to continue to produce content that finds domestic and international markets, Canadian writers need fair remuneration for their work and they need an environment in which their works can be distributed safely online. This will enable Canada’s writers to continue to compete with the world’s best and to contribute more to the Canadian and global digital economies.

We want stronger copyright laws that will protect our works from circulating on the Internet without our authorization and without appropriate payment or attribution. The challenge to copyright in the digital age is better met by legislative measures that support collective administration of copyright than by exceptions. Collective societies provide easy access to consumers while ensuring rightsholders of fair payment. Collective societies can also act as digital repositories for the rightsholders they represent and in doing so play an important role in preserving investment made in digitizing rightsholders’ works and in keeping them available for long-term access.

We want a supportive financial infrastructure that will raise writers’ incomes above the subsistence levels at which a great many of us now live. This should include taxation measures that do not penalize writers because of their low and frequently fluctuating

incomes, for example, a copyright-income deduction for writers and other creators and increased access to government grants, including direct access to money for writers' digitization and online initiatives and conditions on grants to publishers that will increase the royalties that they pay to writers. Additional money should be allocated to Public Lending Right specifically to provide payment for electronic books. We also want government to consider making legislative changes that will encourage collective bargaining for minimum terms agreements between creators and producers, including writers and publishers, who are not covered by the federal *Status of the Artist Act*. Without financial security, writers have to take on other employment and write less.

We want foreign ownership restrictions to be maintained to ensure that there will continue to be space for our voices in the crowded Canadian marketplace, which has always been dominated by English language books imported from the United States and the United Kingdom.

WHO ARE WE?

The Writers' Union of Canada, founded in 1973 by writers for writers, represents approximately 2000 writers who live in every region of the country. Our members earn their living by writing books. We create the content that is the foundation of a vibrant book publishing industry that reflects the culture of Canada.

We welcome the development of a digital economy strategy for Canada. Twenty-five years ago writers were among the first to adopt word processing and online research. Today new technologies are having a major impact on the production, distribution and marketing of what we write as well as on how we write and research.

The Internet, which is the most significant innovation to affect writers since the invention of the printing press using moveable type, is also dramatically changing the way books are delivered to and read by a rapidly increasing number of readers. Many writers have their own websites to promote, market and sell their own books. Blurring the

line between author and publisher, others have converted out-of-print books into electronic formats in order to make them available again, either as print books using print-on-demand technology or as electronic books (“e-books”). The value of a thriving digital marketplace to writers cannot therefore be overstated.

WHAT DO WE NEED TO WORK EFFECTIVELY IN THE DIGITAL ECONOMY?

Improving Canada’s Digital Advantage acknowledges that “fair and appropriate remuneration for creators is essential to the growth of digital media content in Canada” and that “the online marketplace needs to be a safe and reliable environment that encourages citizens, content providers, governments and businesses to engage in online transactions and electronic commerce.” We agree strongly with both of these statements. We should not have to fear that pirated copies will circulate on the Internet if we authorize online uses of our works, and we should receive fair compensation for the use of our works when they are communicated via the Internet.

Writers need “fair and appropriate remuneration”.

Low incomes plague most Canadian writers, particularly the authors of books, whose earnings from their writing average less than \$12,000 per year, considerably less than the average income of freelancers who write for corporations as well as the print media. We see the Internet as a great opportunity to increase earnings from our books in several different ways.

Bookselling has become much more efficient as print publishers sell their print books through online retailers. In the words of the consultation paper, print publishers are the “legacy players” whose task includes “meeting consumer demand for their established products”. We need also to be able to license our works for sale to consumers who want to read them in electronic format, either through traditional or legacy publishers or directly ourselves as individual entrepreneurs, with an online retail bookseller very possibly involved in either instance.

In addition to exercising this primary right to publish and sell our books, we also need to be able to collect payment for secondary uses of our books, frequently through our book publishers, but also often through collective societies or rights management agencies, for example, when our material appears on the Internet with or without our permission. We would like to see legislation that requires a collective representing collective societies and Internet Service Providers to negotiate copyright levies on ISP accounts, with these payments collected by the ISPs from their customers to be distributed by the collective societies to rightsholders whose works are used online.

E-books published by traditional or legacy publishers present a particular problem which arises from the unequal bargaining power of writers and print publishers. It has become common in recent years for print publishers to refuse to conclude book publishing contracts with writers who decline to grant them electronic rights as well as print rights. The major publishers also uniformly offer the same royalty on their sales of e-books – one that we believe is unfairly low. There is little or no negotiation on the contract clauses dealing with e-books since very few writers have significant bargaining power. We are mindful that other provinces have failed over more than two decades to follow the lead of Quebec and the federal government by enacting “status of the artist” legislation with a collective bargaining component that would allow the negotiation of minimum terms contracts between producers and organizations representing creators. We therefore ask the Government to consider amendments to competition laws to permit such collective bargaining or to extend the federal *Status of the Artist Act* to cover more producers. We believe that this could be done in a manner that would not encroach on provincial jurisdiction.

“...the online marketplace needs to be a safe and reliable environment...”

Following extensive consultations last summer, the current government recently introduced Bill C-32 to modernize the *Copyright Act*. The Government intends to deal separately with copyright issues, so we will say little about them in this submission. However, we will observe generally that, while some provisions of Bill C-32 will help to establish a “safe” environment for creators’ copyright-protected works in certain respects,

other proposed amendments introduce exceptions from copyright that will make the environment for creators much more dangerous in other respects and definitely less conducive to earning a living and risk-taking by developing new business models.

WHAT ARE THE TOOLS THAT WILL HELP WRITERS ACHIEVE THE SECURITY NEEDED TO SUCCEED IN THE DIGITAL ENVIRONMENT?

Copyright

A writer's fundamental tool is the copyright in his or her work. It is our copyrights that give us the opportunity to control our work, to benefit from its commercial exploitation and to make a living as professional writers. Copyright laws should support the right of creators to benefit from their works.

Minimizing exceptions. If Bill C-32 becomes law without revision, there will be new exceptions from copyright that will permit uses without payment for creators. These exceptions include a number of brand new exceptions, extensions of existing exceptions from analog to digital uses, and elimination of some exceptions previously administered by collective societies. Most startling among these exceptions and most damaging to writers are an expansion of "fair dealing" to include educational purposes, a badly worded mash-up provision that could destroy the market for an existing work, and an "interlibrary loan" system that could provide an electronic copy of an article from a journal or magazine or material from a book, held only in a single library, to every library user in Canada who might request it. Implementation of these exceptions would have a disastrous effect on our income from writing. Professional writers cannot afford to lose essential income because of more exceptions.

Supporting collective administration. Collective administration goes hand in hand with copyright where it is not practicable for individual creators to license and collect revenues for certain uses of their own works. Collective societies have enabled creators to meet some challenges of new technologies by licensing (either through agreements with users or by filing tariffs with the Copyright Board for certain uses),

monitoring licensed use, and collecting revenues in situations where an individual creator cannot do so. Access Copyright, a collective society representing publishers and creators, mostly writers, licenses copying of our works by photocopying, but now we need legislation that encourages and supports collective licensing of reproduction by digital scanning and online communication of our writing.

Collective administration makes copyright exceptions unnecessary and is part of an infrastructure that affects our ability, as writers, to participate effectively in the digital economy and to earn our living by making our works easily accessible to the public. Although not part of either the physical communications infrastructure or the digital media, referred to in the consultation paper as “soft infrastructure”, collective administration is nevertheless an essential aspect of the infrastructure of the book publishing business.

Trusted Digital Repositories. We support the role that some collective societies, including Access Copyright and the Playwrights Guild of Canada, are already playing as digital repositories for some published copyright works controlled by individual rightsholders. Repositories are an important part of the “soft infrastructure”. We applaud the Government’s interest in exploring whether investments already made in digitizing content can be leveraged for long-term access and use through a network of “trusted digital repositories” and wish to be involved in further discussion of this.

Taxation

Taxation is a tool that government can use to support particular activities that further the national interest, including the advancement of Canadian culture. In the words of the consultation paper, “For generations, we have sought as a country, through appropriate market frameworks and policies, to promote the creation of and access to Canadian creative content made by Canadians, designed to inform, enlighten and entertain....” To encourage self-employed creators to concentrate on creating new works instead of taking on other jobs to provide the income necessary to have more time to create, the Government should consider the following tax measures:

Copyright-income deduction. Quebec has a copyright-income deduction that benefits self-employed writers and other creators by exempting, up to a certain limit, their copyright earnings from provincial income tax. For a number of years we have asked the federal government to institute a similar deduction for creators that would exempt copyright earnings from federal taxation. Many creators pull together a living from a variety of sources, but it is the royalties from their copyright works that cause peaks and valleys in annual income and result in tax inequities. A deduction of this sort largely removes these wild fluctuations from creators' incomes.

Income averaging. A deduction for the purchase of an income averaging annuity for creators, which could be modelled on Quebec's existing income averaging provisions, is another way government can smooth out the frequently fluctuating annual incomes of creators and consequently reduce tax inequities.

Tax-exempt subsistence grants. Subsistence grants to writers and artists, unlike similar grants to athletes, are taxable. These grants provide minimal stipends for writers and artists to live on for a few months while they work on a project. We have asked that these grants, for which full-time employees are ineligible, be exempted from taxation. In our submission to the Government's pre-tax budget consultations for 2010, we wrote:

For years creators have been subsidizing innovation through this unfair tax penalty. It is time now for the Government of Canada to encourage the creators of this country -- not only to ensure an uninterrupted flow of creative content for the burgeoning technology of the new economy, but also to signal to the nation and to the world that Canada values creative work -- by making subsistence grants tax-exempt.

Access to Grants

Grants are government tools to encourage activities that government considers desirable, including the advancement of Canadian culture. The consultation paper makes reference to five funding programs in digital media and content, including the Canada Book Fund, formerly the Book Publishing Industry Development Program (BPIDIP), which will now place an emphasis on supporting "the creation of digital content and will encourage new

approaches to reaching readers on digital platforms”. We ask that some such funds be made available to writers as well as to the legacy publishers and producers for whom the programs are primarily designed. In the new digital environment, writers engage with the new media in a variety of different ways: writing, designing their books, promoting and marketing their work by means of their websites, and sometimes making their writing available directly to consumers in electronic form.

Public Lending Right should be extended to include e-books, with an additional allocation of funds to cover them, and the hit rate on all books should be raised to a level more aligned with the hit rate established almost two decades ago.

We ask that the funding provided by the Department of Canadian Heritage directly to individual writers be increased. That the trickle-down effect does not work in the book publishing business is apparent from the fact that the average income of book writers from their writing - less than \$12,000 annually – is insufficient to live on. As well as asking for more direct grants to support our writing, we propose that conditions be placed on all government grants to print publishers for digitization and online initiatives so that writers receive royalties and other payments that are more commensurate with their essential role in providing the content.

Protection from publishers’ insolvency

The publishing business is a risky one and increasingly so as new technologies bring challenges to existing ways of doing business. The publishing industry is currently facing hard times and has been instituting cutbacks, including to staffing. At the same time, new media publishers are beginning to establish themselves. Over the years, we have seen many publishing houses fail to pay their royalties or disappear. The existing law – both legislation and case law – does very little to protect writers and often leaves their rights in limbo when publishers fail. The *Companies Creditors Arrangement Act* does nothing to protect authors and the *Bankruptcy and Insolvency Act* less frequently applies and it rarely applies initially.

Insolvency legislation is a tool that government can use to make it less risky for writers to publish with emerging new media publishers who do not have a track record, as well as with legacy publishers facing financial challenges. We have previously asked governments to consider a number of legislative reforms that would go some way to protect authors when their publisher becomes insolvent, including treating authors as preferred creditors who are entitled to receive their unpaid royalties on an equal footing with the unpaid wages of employees, and reversion of rights in both published and unpublished works from a bankrupt publisher without delay or buy back.

Foreign ownership restrictions

The consultation paper identifies foreign ownership restrictions as an issue. We urge extreme caution in changing such restrictions. Several foreign-owned publishing houses that were grandfathered when restrictions on Canadian ownership were introduced have published many important Canadian books. However, as the publishing world becomes more and more digital, we fear, if the major publishing and bookselling channels are dominated or controlled by corporations located outside Canada, that ultimately, especially in hard economic times, there will be fewer opportunities for Canadian writers to tell Canadian stories.

CONCLUDING COMMENTS

The Writers' Union of Canada appreciates the opportunity to participate in this consultation. Writers are at the very centre of a knowledge-based economy. Canada's cultural sector, which according to the consultation paper employs between 3.9% of the Canadian labour force (but as much as 8% by other calculations) and generates about \$46 billion dollars of Canada's GDP, is built on the literary and artistic works of Canada's writers and other creators. Its world-class writers give Canada greater visibility on the world stage. At the same time most writers and other creators in Canada lead precarious

lives, and their incomes do not often reflect this essential contribution to Canada's economy. Canada's writers have shown their willingness to seize the opportunities of the new digital world both individually and through their collective societies, although in many respects writers are economically disadvantaged. Government support is needed for writers to thrive and not merely to survive in the digital environment, and to fulfil their potential to be key players in Canada's success in the global economy.

**RESPECTFULLY SUBMITTED
BY THE WRITERS' UNION OF CANADA**

Alan Cumyn
Chair, The Writers' Union of Canada

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