

TWUC Brief for the Copyright Consultations

The Writers' Union of Canada has a membership of approximately 1,800 book writers who live in every region of the country. Our members earn their living by writing books and are the basis of a flourishing publishing industry that reflects the culture of our country but they face significant difficulties. The average net professional income of a freelance book and periodical writer in Canada was under \$12,000 in 1998. It has changed little since that time.

Copyright is the legal foundation that permits creators to control the use of their work, but unfortunately creators benefit much less from its commercial exploitation than this suggests. If culture is to be encouraged in this country, then copyright legislation must be strengthened in a way that improves and enhances the rights of creators. That will be an important first step in improving the incomes of authors.

We have four general comments about copyright and some specific recommendations.

The Internet is the most significant innovation affecting writers since the printing press, and it will change the way books are produced, distributed and read. This is already underway. The Government has urged Canadians to adopt the Internet, but if the works of authors are not given sufficient protection on the Internet, professional writers will lose substantial income and will resist publishing electronically. When our works are published on the Internet, we should be fairly compensated for their use and our moral rights must be respected. Without our works or with our works misused, the cultural life of this country will be harmed.

Collective Societies, such as Access Copyright, play an important role in protecting the rights of authors, increasing incomes and helping to make material accessible to the public. The new copyright legislation must be designed to strengthen the position of collectives and facilitate their ability to collect payment for uses of authors' works.

Exceptions in the *Copyright Act* have been granted by federal legislators to the education sector at the expense of Canadian authors. Provincial ministries of education continue to mount arguments for more free uses of creators' works for educational purposes. The educational sector is an important market for rightsholders, and if writers cannot earn a reasonable living writing for that market, then the supply of Canadian books and stories available to educators and students will shrink. In general we consider that the creation of new exceptions is unnecessary and we oppose them. If the Copyright Act becomes riddled with further exemptions from copyright, it will not work in a fair and balanced way.

Fair Dealing works most of the time but it is probably the most controversial issue in copyright reform. There are those who advocate that everything on the Internet should be free, and that fair dealing should be expanded to allow copyright material to be distributed free of charge. Some educators and researchers want to broaden fair dealing to cover education and other purposes that it does not now cover. They want free access

to books and articles written by others, including the works of professional writers. However, the economic interests of academics are very different from those of professional writers. Academics receive their income from salaries from universities and most have little or no interest in royalties. The more a book enhances the reputation of the academic, the more he or she tends to be rewarded financially and otherwise by the university. Professional writers, on the other hand, cannot afford to give away their writings because it will mean loss of essential income. Fair dealing as it is presently legislated already achieves a balance between creators and users and should be retained. The government should reject American-style revisions to it and instead bring in legislation that will strengthen collective licensing. Collective licensing will ensure that writers get paid and academics and students have easy access to copyright material.

Specific Recommendations:

- The Internet makes the moral rights of authors more vulnerable to abuse. Moral rights are currently unassignable but they are waivable. We believe that they should ideally be both inalienable and unwaivable, but at the very least the legislation should require any waiver of moral rights to be delineated explicitly in writing.
- Copyright legislation in many continental European countries is generally more author-friendly. Like copyright laws in those countries, Canada's *Copyright Act* should require contracts offered to creators by publishers and other producers to specify clearly each specific right granted by licence or assignment and its extent, purpose, place and duration. Authors should be able to revert rights that they have granted if they are never or no longer being used or where the publisher fails to provide an accounting. The *Copyright Act* should prohibit the granting of rights for exploitation by means not known or reasonably foreseeable and also prohibit assignment of rights granted without the author's consent.
- Internet Service Providers (ISPs) claim that they are just a conduit, or a pipe, and should have no responsibility for the works they distribute, and yet they are making huge profits on the distribution of those works. Bills C-60 and C-61 would have legislated a system called "notice and notice", requiring an ISP to notify a subscriber if there is a complaint that copyright material is on its website illegally. Notice and notice promises to be practically useless for creators. Canada needs a "notice and takedown" system requiring the ISP both to notify the subscriber and to take down or disable material that violates copyright. (The system should have checks and balances including sanctions for misuse by rightsholders.) Notice and takedown systems exist in the European Union, Australia and the United States. Canada's creators should have this type of recourse against online copyright infringement of their works.
- We believe that the copyright legislation should be revised to provide a narrow exception that would make parody easier. This exception is justifiable because

parody is a legitimate art form and a rightsholder is likely to refuse permission to parody his or her own work.

- We deplore the single copy exception for periodical articles which already exists in the present *Copyright Act*. Bills C-60 and 61 proposed to extend this exemption by allowing a system of inter-library “loan” which would allow a single library to supply copies of an article to every person across Canada who might choose to order it from his or her local library. We strongly oppose any extension of this library exception to allow digital delivery to library patrons in their own homes without payment.
- The present *Copyright Act* provides an exception for the reading or recitation in public of a “reasonable extract” of a published work. Because what is “reasonable” is ambiguous, often this provision is abused and authors are not paid for commercial performances of large parts of their works. This provision should be struck from the *Copyright Act* so that authors can license this use of their works and receive fair remuneration.
- The present *Copyright Act* stipulates that a live public performance of a work in an educational institution does not constitute an infringement of copyright. This exception has caused a major loss of income to playwrights and other creators whose works are performed in schools other than by students within their own classroom. This provision should be amended so that these authors receive fair compensation for their works.
- Collective licensing needs to be encouraged and expanded. One excellent way of doing this would be to amend the *Copyright Act* to institute an “extended collective licensing regime”, a system common in Scandinavian countries. This method of licensing was recommended in 2004 by the Canadian Heritage Committee, a parliamentary committee composed of members of Parliament from all parties. It is a system that would be particularly well suited to make copyright material easily accessible legally on the Internet. We ask that the Government adopt a system of collective licensing that would cover all works except those explicitly withdrawn.
- We would like to see a *Copyright Act* that would allow collective societies to negotiate agreements with ISP providers for levies on ISP accounts and to distribute the money collected to copyright owners whose works are used online.
- Low incomes continue to plague Canadian writers, particularly the authors of books. Other countries have included provisions in their copyright legislation which make it easier for authors to negotiate fair contracts and for collective societies to negotiate blanket licences. Canada should institute similar provisions in the *Copyright Act*.

Concluding Comments:

Over the past four decades there has been a great flowering of literature in this country. All Canadians take pride in the accomplishments of our writers whose works play a large role in creating our cultural identity. Copyright legislation must provide the legal protection for our works and allow us to earn a reasonable income from those works. Other countries have recognized the importance of creators by keeping them at the centre of their Copyright Acts. Canada should do the same, because creators are the engine that drives Canada's cultural industries and the income that copyright generates is their fuel. When creators receive recognition for their works along with adequate compensation, they will be encouraged to even greater achievements and that will benefit all Canadians.