



January 11, 2011.

Legislative Committee on Bill C-32
House of Commons
Ottawa, Canada
K1A 0A6

Re: Bill C-32, An Act to amend the Copyright Act.

We appreciate this opportunity to comment on the proposed changes to the Copyright Act.

The **Association of Canadian Advertisers (ACA)** is the only association solely representing the interests of *advertisers* in this country in their marketing communications activities. Our members, over 200 companies and divisions, represent a wide range of industry sectors, including manufacturing, retail, packaged goods, financial services and communications. They are the top advertisers in Canada with estimated annual sales of close to \$350 billion. Advertising represents an annual \$13.4 billion investment in the Canadian economy. It employs directly and indirectly many thousands of creative people, including many independent and freelance artists and photographers necessary for the creation and production of advertising materials.

Under the current Act, those who commission photographs are the original owners of the copyright in such works. This particular section of the Act has served our industry and photographers very well.

While we appreciate and understand the notion of fairness behind the concept that an artist should own the rights to their artistic creations, we would contend that there is a very distinct difference between the creation of fine art and commercial art, and that this difference should continue to be reflected in any amendments to this Act.

Photography is a standard creative representation in many forms of commercial advertising, commonly used to visually illustrate a product or service, and usually accompanied by written copy or narration. Many independent and freelance photographers are currently and regularly commissioned by advertisers to do this type of work in a strict business transaction.

This work is not the nuanced portraiture type of fine art that someone like world-renowned photographer Yousuf Karsh might have done, but rather very commercial assignments such as a photo of a new automobile, a certain hair style, a cold beverage, a food item, etc.

Further, these are not artistic creations conceived or initiated by the artist and then selected by companies to illustrate their advertisements, but rather specific contracts from advertiser companies prescribed in exact detail and stipulation. It might be different if these photo artists created their photo art first and then shopped it around, or if a unique non-commissioned work was specially selected by an advertiser for use in an ad. As it stands, though, the process as it operates in the advertising business more closely resembles contractual photo manufacturing rather than art creation.

If this proposed change in the Act is passed, and advertisers no longer have the option of retaining the copyright of commissioned photos for their ads, they will increasingly prefer to use staff photographers and commercial advertising work for independent freelance photographers will surely diminish. This is clearly not what the changes to this Act were designed to do, but it will certainly be an unintended consequence.

We would suggest that instead of inserting section 7 revoking subsection 13 (2) of the Act, that an amendment “exempting commercial photography for the purposes of advertising” be inserted in 13 (2).

We appreciate the opportunity to provide our comments on the proposed changes to the Act, and we would be very happy to provide any further information that you might require.

Sincerely,

A handwritten signature in black ink that reads "B Reaume". The signature is written in a cursive, slightly slanted style.

Robert Reaume
VP Policy & Research