



## **Amendments to Bill C-32 can help Canada get copyright right.**

**27 October 2010**

The Association of Canadian Publishers (ACP) represents Canada's independent English-language book publishing industry. Our 127 members are small- and medium-sized Canadian-owned businesses, located in every province and Nunavut. Ours is truly a national voice.

The ACP applauds the government for tabling this long-awaited legislation. We wish to acknowledge the significant progress represented by many of its provisions, and also to express our concerns over others that could prove damaging to the revenues of small- and medium-sized publishers and, ultimately, to their viability. We look forward to discussing ways in which Bill C-32 can be clarified and amended to ensure a positive climate for the production and dissemination of Canadian cultural and educational content.

Canadian publishers are pleased with the bill's standardization of authorship rights for photographers, and its recognition of performers' moral rights. As members of Canada's cultural sector, we acknowledge the importance of these measures in reinforcing respect for the rights of creators.

As leaders in promoting freedom of expression, we applaud the bill's extension of fair dealing to parody and satire. We recognize the contribution that these two forms of commentary make to civil discourse and artistic expression, and we support their inclusion in the category of fair dealing.

As an industry built on the right of creators and producers to safeguard their intellectual property, we endorse the bill's acknowledgment of the appropriateness of technological protection measures (TPMs).

As key partners in the education of children and students of all ages, we understand the government's interest in making educational materials more widely available. We believe, however, that extension of the fair dealing exception to education as articulated in the bill, as well as the provisions for digital interlibrary loan, will result in minimal benefit to the education system in the short term, and perhaps a detrimental effect over the long term, if educational publishers are no longer willing to produce content in the face of inadequate compensations. In both instances, the effect would be disproportionately severe damage to authors and publishers, both by reducing their revenues and by eroding respect for intellectual property in the education system.

## Some Possible Solutions

Recent experience tells us that the education community will use an expanded fair dealing provision aggressively. Until settled by the courts, fair dealing claims will result in an unsettled copyright law in the education sector. Our members do not have access to large funds to underwrite legal challenges to their rights. For this reason, we think that problems with the bill need to be addressed through amendments before the bill is passed.

1. The bill does not define or limit the term “education”. We believe that the intent of the government was to limit this term to education “in a structured context” – that is, a school, university or college – and we recommend that the bill be amended accordingly. This would prevent private businesses whose mandate is not education from claiming, for example, that staff training qualifies as education, and therefore entitles them to free use of copyrighted works.
2. Damage to the market for a work is not given sufficient force in limiting the fair dealing exception. We believe that market damage and harm to the legitimate rights holder must be given priority in the bill as a limitation to the fair dealing exception for education. The reduction of statutory damages compounds this problem.
3. The existence of a license should be added as a consideration in deciding if a dealing is fair. This will help protect the principle of collective licensing, which provides revenue on which our members depend, and which serves to reinforce respect for the principle of intellectual property.
4. Any system of digital interlibrary loan should be recognized as a scale of reproduction that falls beyond the scope of fair dealing, and should be subjected to a license administered by Access Copyright or Copibec. This would increase the capacity of libraries to digitally distribute material without depriving authors and publishers of their right to derive revenue from their investment.

We believe that simple amendments such as these can go a long way towards satisfying our members’ concerns about the fair dealing exemption.

As publishers, we want our books read by as many people as possible. In that spirit, many of us welcome some “fair use” of our publications for educational purposes. We don’t need or expect to be paid every time one of our books is read, or every time a journal is cited. Today, that doesn’t happen. We don’t need it to happen tomorrow either. We do need to insure the ongoing stability of the foundations on which are businesses are built: respect for the value of copyright, and fair compensation for use of the works to which it applies.

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