



Montreal, November 30, 2010

Legislative Committee on Bill C-32

House of Commons
Sixth Floor, 131 Queen Street
Ottawa ON K1A 0A6
Canada

Re: Brief on Bill C-32

Dear Committee Members:

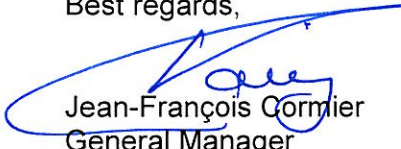
Audio Cine Films Inc. is a privately-owned Canadian rights representative and distributor for thousands of cinematographic works, and mostly deals with the education sector, which represent 80% of our business. The exceptions contained in Bill C-32 directly threaten dozens of businesses and organizations across Canada, and jeopardize hundreds, if not thousands of jobs that depend on the educational sector.

Notwithstanding our general opposition to several sections of Bill C-32, we feel that the numerous new exceptions are too vague, and will be subject to very different interpretations – the end result being that those that currently produce, represent and distribute copyrighted material to educational institutions will essentially be disenfranchised without compensation.

We therefore respectfully submit this brief in the hope that it will properly communicate our opposition to the new educational exceptions present in Bill C-32, more specifically the addition of **education** in Section 29 (Fair Dealing) and **cinematographic works** in Section 29.5 (Performances).

In addition to accepting our brief, we would appreciate being able to appear before the **Legislative Committee on Bill C-32** in order to communicate our position in person.

Best regards,



Jean-François Cormier
General Manager



Bertrand-Olivier Desmarteau
Communications Director

Audio Ciné Films Inc.

Brief on Bill C-32

“The Copyright Modernization Act”

Submitted to:

Legislative Committee on Bill C-32

House of Commons
Sixth Floor, 131 Queen Street
Ottawa ON K1A 0A6
Canada

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Brief on Bill C-32 “The Copyright Modernization Act”

Who are we?

Audio Ciné Films Inc. is a Montreal-based Canadian rights representative for thousands of cinematographic works. We license the public presentation of these cinematographic works in all types of organisations, including educational institutions. We have been in operation since 1966 and currently employ 10 people. Entirely Canadian owned, Audio Ciné Films Inc. has been a positive contributor to the Canadian economy for several decades.

The vast majority of our business is with the educational sector, in particular K-12 schools, school boards and post-secondary institutions, which license the use of cinematographic works for various purposes.

As part of our business operations, we regularly produce reference catalogues and maintain a full-time website with complete cinematographic listings, sorted by subject and theme, and teaching guides specifically adapted for hundreds of cinematographic works for use in educational institutions. We have invested hundreds of thousands of dollars over the last few years to maintain this information.

Why do we oppose Bill C-32?

As part of the Canadian Copyright Act (L.R., 1985, ch. C-42), all public presentations of cinematographic works must be authorized and licensed with the proper rights holder or representative, which confirm the right to perform cinematographic works in public without infringing the Canadian Copyright Act.

Bill C-32 proposes a number of changes and exceptions to Section 29 “Fair Dealing” as it applies to “education” and adds a specific exception for cinematographic works under Section 29.5 “Performances”, which in effect will exempt educational institutions from having to pay for the presentation of cinematographic works. This will have a direct impact on our business operations and on countless other artists, producers, distributors and organisations across Canada.

We have submitted this brief in the hope that the **Legislative Committee on Bill C-32 will realize that** although the Government claims to have consulted with “over 8000 Canadians”, no organisation or private business involved in the sectors affected by Bill C-32 have been consulted, nor has any economic impact study been done on the catastrophic effects of the exceptions contained in this bill.

Bill C-32 and the Educational Sector

The preamble to the Bill that applies to education states:

"In recognition of the potential that technology offers education, the Copyright Modernization Act greatly expands the ability of teachers and students to make use of new digital technologies and of copyrighted materials for the purpose of education and study."¹

Bill C-32 modifies and expands the exceptions that apply to teachers and students with regard to what is protected by copyrights, and it explicitly mentions (Section 29.5) cinematographic works. The preamble continues:

"The proposed Bill builds on the existing Copyright Act to grant a larger range of uses for copyrighted material by teachers, students and schools, as their pursuits promote the broader public good. In light of this contribution, the Copyright Act already recognizes certain uses by educational institutions that are permitted, in many cases, without payment to the copyright holder.

An important aspect of these changes is the addition of education as a purpose under Canada's fair dealing provisions. Fair dealing permits individuals and businesses to make certain uses of copyrighted material in ways that do not unduly threaten the legitimate interests of copyright owners, but which could have important economic, societal and cultural benefits. Extending this provision to education will reduce administrative and financial costs for users of copyrighted materials that enrich the educational environment."²

The specific sections of Bill C-32 that refer to the above are:

"C-32 - 21. Section 29 "Fair Dealing" of the Act is replaced by the following"

*"29. Fair dealing for the purpose of research, private study, **education**, parody or satire does not infringe copyright."³*

Bill C-32 further modifies Section 29.5 "Performances" as follows:

Original Text (L.R., 1985, ch. C-42)

***29.5** It is not an infringement of copyright for an educational institution or a person acting under its authority to do the following acts if they are done on the premises of an educational institution for educational or training purposes and not for profit, before an audience consisting primarily of students of the educational institution, instructors acting under the authority of the educational institution or any person who is directly responsible for setting a curriculum for the educational institution:"*

¹ *Balanced Copyright* (<http://www.ic.gc.ca/eic/site/crp-prda.nsf/eng/rp01185.html>) on November 30, 2010.

² *Balanced Copyright* (<http://www.ic.gc.ca/eic/site/crp-prda.nsf/eng/rp01185.html>) on November 30, 2010.

³ *The Copyright Modernization Act*.

(<http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=4580265&Mode=1&Language=E&File=36#4>) on November 30, 2010.

- (a) the live performance in public, primarily by students of the educational institution, of a work;*
(b) the performance in public of a sound recording or of a work or performer's performance that is embodied in a sound recording; and
(c) the performance in public of a work or other subject-matter at the time of its communication to the public by telecommunication.”⁴

Proposed Modifications by Bill C-32

“(2) Section 29.5 of the Act is amended by adding “and” at the end of paragraph (c) and by adding the following after that paragraph:

(d) the performance in public of a cinematographic work, as long as the work is not an infringing copy or the person responsible for the performance has no reasonable grounds to believe that it is an infringing copy”⁵

Based on these statements, we can clearly assume the following objectives:

- 1) Exempt educational institutions from having to pay fair compensation for the use of copyrighted works, with a specific mention applying to cinematographic works, through the addition of exceptions under *Section 29 “Fair Dealing”* and *Section 29.5 “Performances”*.
- 2) Reduce expenses in the educational sector by eliminating costs associated with the use of copyrighted works.

In light of the objectives stated in Bill C-32, it is clear that an immediate and debilitating loss of revenue is on the horizon for any public and private entity that produces and licenses copyrighted materials in educational institutions. This is particularly worrisome for the Quebec cultural sector, which depends greatly on copyrights in order to protect its small market.

For Audio Ciné Films Inc., this means that under the proposed amendments to 29.5 “Performances”⁵, any educational institution that presents cinematographic works for “education” will no longer need to obtain a copyright license from the rights holder or representative, even if these cinematographic works are commercial and essentially non-educational in nature. Since educational institutions comprise nearly 80% of our clientele, this means the end of a business serving elementary & high schools, colleges and universities across the country since 1966.

⁴ Copyright Act (R.S., 1985, c. C-42)
<http://laws.justice.gc.ca/eng/C-42/page-3.html>, section 29.5, on November 30, 2010.

⁵ The Copyright Modernization Act, item 24 (2)
<http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=4580265&Mode=1&Language=E&File=45> on November 30, 2010.

Let us examine points 1) and 2) in greater details:

- 1) **Exempt educational institutions from having to pay fair compensation for the use of commercially copyrighted works, with a specific mention applying to cinematographic works, the addition of exceptions under *Section 29 "Fair Dealing"* and *Section 29.5 "Performances"*.**

It is clear that this government measure will act as a *de facto* expropriation, without compensation, of clearly established ownership, representative, and distribution rights held by countless businesses, artists, and organisations.

The United Nations Educational, Scientific and Cultural Organization (UNESCO) produced a paper in 2000 that clearly underscores the benefits of the collective administration of copyrights.

"The collective administration of authors' rights is generally intended to facilitate the effective execution of these rights by the authors themselves and to favour the lawful exploitation of works and cultural productions. It is seen in modern society as one of the most appropriate means of assuring respect for exploited works and a fair remuneration for creative effort of cultural wealth, while permitting rapid access by the public to a constantly enriched living culture.

The industrialized countries have used it widely, particularly in the field of music, and the developing countries, and those in transition to a market economy, are attaching more and more importance to its establishment and promotion.

*UNESCO has regularly encouraged the Member States, notably the developing countries, to organize and develop the collective administration of rights by authors and other rights holders as an essential element in the construction of a modern national system of protection of copyright which would effectively promote a dynamic cultural development."*⁶

Licensing revenues obtained through well-established educational licensing collectives form a major part of the revenues for many producers and distributors; these will be substantially affected by the measures in Bill C-32. Also, the production and distribution business model of numerous private businesses that depend on the educational sector will become untenable, therefore disrupting any future investment in cultural products. Although the proposed changes in Bill C-32 are vast and far-reaching, no studies on its impacts have been done.

Furthermore, the educational exceptions in Section 29 "Fair Dealing" and the cinematographic exceptions in Section 29.5 "Performances" are very vague, and will be interpreted in many different ways. The Quebec Bar Association is quoted as saying:

*"The addition of the term « education » in Section 29 as a permissible use under the fair dealing concept, gives this section a much too vast and imprecise scope, especially in regards to the numerous other exceptions being given to educational institutions"*⁷

⁶ UNESCO: Guide to the Collective Administration of Authors' Rights, p.9
<http://unesdoc.unesco.org/images/0012/001206/120677e.pdf> on November 30, 2010.

⁷ Barreau du Québec. *Projet de loi C-32 « Loi modifiant la Loi sur le droit d'auteur »*. Original French Version (http://www.barreau.qc.ca/recherche/index.html?cx=008549593081485323798%3Av9sy_lp1v2i&cof=FORID%3A9&ie=ISO-8859-1&q=c-32&sa=Rechercher#967) on November 30, 2010.

In the Government's own "Copyright Modernization Act – Background" ⁸, the word "classroom" is prominently mentioned in regards to Section 29.5. Without such a clarification (at the very least), we anticipate numerous legal battles with educational institutions on the precise definition of the term "*education*" as it applies to this section.

With specific reference to the mention of cinematographic works in *Section 29.5 "Performances"*, many educational institutions present films for purposes that do not qualify under any commonly accepted notion of "education", these presentations are chiefly "entertainment" or "leisure" in nature, and may occur during recess, lunch breaks, periods of inclement weather, kindergarten, special student activities, holiday presentations, school-community activities, fundraisers, etc...

It is safe to assume that both Section 29 and 29.5 of Bill C-32 will be used to justify numerous infringing activities, and that important revenue will be lost, resulting in unending legal battles about the precise context of presentations.

Another key argument for the inclusion of "education" under *Section 29 and "cinematographic works"* under section 29.5 is that these exceptions will bring greater and easier access to copyrighted material for educational institutions. Nothing could be further from the truth. There are currently tens of thousands of works (literary, musical, audiovisual, cinematographic) that are available to educational institutions at very reasonable licensing rates. It is in large part thanks to collectives that educational institutions have access to such a wealth of resources.

We fail to see how adding a specific exception for cinematographic works under Section 29.5 "Performances" will help "education", it will instead simply disenfranchise producers, rights holders and representatives such as Audio Ciné Films Inc. Every copyright representative and collective right society across Canada is constantly in search of new works that can be offered to educational institutions. These works are either created to fill present needs, or obtained from foreign sources. Should Bill C-32 pass in its current form, the ability of many distributors and collectives to offer new works to educational institutions will be seriously compromised, and the variety and number of works available to educational institutions will inevitably suffer.

2) Reduce expenses in the educational sector by eliminating costs associated with the use of copyrighted works.

Reducing costs for educational institutions is a noble cause, and we applaud the efficient use of resources, which ultimately represent public funds. However, taking into consideration the minuscule proportion of educational budgets currently dedicated to copyright use, we question the pertinence of specifically targeting this expense, as it will result in imperceptible savings. Savings in education should be achieved through increased efficiencies in the use of existing resources, and not by disenfranchising legitimate rights holders.

The total amount of funds allotted to copyright licensing collectives in Canada represents about 50 million dollars, or about one hundredth of one percent, or 0.01% of overall educational budgets. This pales in comparison to the **78 billion** of dollars (5.25% of Canada's 1.5 trillion GDP) ⁹ currently spent in the educational sector across Canada. The question arises as to why the Canadian Government fails to enact educational exemptions concerning costs related to electricity,

⁸ *Balanced copyright* (http://www.ic.gc.ca/eic/site/crp-prda.nsf/eng/h_rp01151.html), on November 30, 2010.

⁹ Numbers taken from *31st General Conference of The International Association for Research in Income and Wealth* (<http://www.iarw.org/papers/2010/poster1Gu.pdf>), on November 30, 2010.

heating, or Internet access. These expenses no doubt represent a much greater proportion of educational budgets across the country.

It is certain that without a tightening of key definitions, Section (s) 29 and 29.5 of Bill C-32 will be used to justify uses and performances of questionable educational value, especially as they relate to cinematographic works.

In conclusion

Although concise, this brief seeks to outline the detrimental effects of Bill C-32 on numerous sectors of the Canadian economy, especially for many small businesses such as Audio Ciné Films Inc.

In the name of accessibility and questionable financial savings, Bill C-32 imperils an entire industry that already strives to bring as much access to teachers and students as possible. Although the Government claims to have consulted with "over 8000 Canadians", no organisation or private business involved in the sectors affected by Bill C-32 have been consulted, nor has any economic impact study been done on the catastrophic effects of the exceptions contained in this bill.

We are obviously in favour of any efforts that seek to improve the Canadian educational sector, but it is important that these efforts be carried out in respect of certain basic principles of fairness and legitimate rights. Quite simply, the expropriation of rights without compensation that C-32 proposes goes against every principle that Canadian society stands for.

Therefore, Audio Ciné Films Inc. opposes Bill C-32 in its current form, and respectfully requests that the educational exemptions mentioned in Section 29, and the addition of an exception for "cinematographic works" in Section 29.5, be either removed, or at the very least modified, as to protect the legitimate business rights of producers and distributors within the Canadian educational sector. Without such modifications, Bill C-32 will have the net effect of seriously damaging an entire segment of the Canadian economy and will surely contribute to hundreds, if not thousands of layoffs across the Canadian cultural sector.

Jean-François Cormier

Bertrand-Olivier Desmarteau

For Audio Cine Films Inc.

ANNEX 1 – Pertinent links

Balanced Copyrights

<http://www.ic.gc.ca/eic/site/crp-prda.nsf/eng/home>

Copibec - Société québécoise de gestion collective des droits de reproduction

http://www1.copibec.qc.ca/?action=pr_accueil&langue=a

Guide to the collective administration of authors' rights

<http://unesdoc.unesco.org/images/0012/001206/120677e.pdf>

Groups against Bill C-32

Coalition of English-language national writers' organization against C-32

<http://www.pwac.ca/files/PDF/WritersRightstoMinistersBrief.pdf>

Culture Équitable – Quebec's licensing collectives against C-32

<http://www.cultureequitable.org/>

Published in newspapers

« Pas de culture sans auteurs » (lettre ouverte). FRULLA, Lisa. *Le Devoir*. November 30, 2010.

<http://www.ledevoir.com/culture/actualites-culturelles/311992/libre-opinion-pas-de-culture-sans-auteurs>

« This updated copyright bill guts Canadian culture ». RICCI, Nino. *The Globe and Mail*

<http://www.theglobeandmail.com/news/opinions/opinion/this-updated-copyright-bill-guts-canadian-culture/article1786068/>

« Creators push for amendments to planned copyright legislation. TAYLOR, Kate. *The Globe and Mail*. November 16, 2010.

<http://www.theglobeandmail.com/news/politics/creators-push-for-amendments-to-planned-copyright-legislation/article1801449/>