

Art Criticism, Copyright and Bill C-32

AICA Canada is the Canadian section of the International Association of Art Critics. This non-profit, non-governmental, international organization, founded in Paris in 1951, is made up of art critics from around the world. As a member of this international association recognized by UNESCO, the Canadian section of AICA is worried, as is the Québec Bar Association, that Bill C-32 violates international agreements to which Canada is a signatory in that it breaches moral rights recognized in the Berne Convention (1928) and in later conventions by refusing reciprocity to foreign authors for certain rights accorded to its own nationals. How can Canadians pretend to be responsible citizens of the world and partners in international cooperation if they exclude non-Canadians from the rights they accord themselves? How can we ignore the moral rights that the majority of civilized nations recognize and protect in accordance with the Declaration of Human Rights of 1948? In taking this course, Canada ranks alongside totalitarian nations who ignore moral rights.

Our members are active in various ways—writing and editing books and articles on art; creating or producing or distributing films or videos on art; organizing exhibits; teaching, or broadcasting written, verbal and visual commentaries on radio, television or the Internet, but our primary objective is to promote modern and contemporary visual art. We strive to increase public understanding of the unique points of view brought to bear on the world by visual artists. Like all broadcasters and communicators, we are excited by new techniques for the distribution of art and art commentary using the Internet and other new technologies, allowing us to expand public awareness of our own work and of visual art in general. We cannot accept that this increased distribution should necessarily work to our detriment and to the detriment of the artists and works of art we defend.

How can we survive if anyone is allowed to copy our books and articles on paper or on the Internet and even imitate our exhibits without our being paid for their use? If people can afford to buy expensive new electronic gadgets in order to avoid paying royalties, which essentially amounts to stealing the wages that are due to authors and editors, they can afford to give reasonable compensation to the original creators. Shouldn't an enlightened state protect the victims (authors) rather than the thieves who infringe on their rights by breaking copyright rules and the large business interests who incite theft through their products and advertising methods? To do otherwise is to give in to the law of every man for himself, to the rule of survival of the fittest.

Why should art and art-centered literature be free for the taking when everything else in our society has a price, and when we ourselves must pay dearly to access the new technologies that are necessary for our work? Most of us are self-employed, at least in our role as art critics, and have to pay for our electronic equipment and Internet access, not to mention the cost of creating websites. Like everyone else, we expect reasonable compensation for the services we render to society when we make our work, writings, speeches and exhibits available to the public. We are not asking for charity, as in the vague compensation program currently being proposed by the Liberal Party of Canada. We are asking for the justice and dignity of fair payment for services rendered.

Enforcing copyright in all fields, including new technologies, is the only way to somewhat rebalance our earnings when our work is redistributed. We demand that the government

quickly establish adequate mechanisms for collecting payments either from individuals when they purchase any equipment whose main purpose is copying or from providers of Internet or mobile telephone services that derive their profits largely from content we produce. Existing technologies already allow advertisers to pinpoint centres of interest that attract users-consumers. That same technology could also be used to more effectively control the use of cultural products.

A link is often made between the democratization of culture and freedom of access to cultural works, but freedom is not the same as a free ride. Besides, no serious study on museum attendance, for example, has shown that free entry translates into a significant increase in attendance or, conversely, that an increase in price diminishes use. On the contrary, our society greatly values expensive items such as tickets to sporting events. We take issue when the broader dissemination of our works becomes detrimental to our interests and very survival as professionals and individuals.

Art critics in Canada are badly paid—when they are paid at all. Our work is often voluntary because our employers are underfunded. We are the poor cousins of freelance journalists and editors. We work for ridiculously low wages that barely cover our expenses. Public Lending Right payments and compensation for reproduction and photocopying have become an important source of revenue for us ever since a relatively efficient means of collectively managing them was established. We can only hope that increased use of our work on the Internet and better control of users would result in some new income to finally augment our meagre earnings. Bill C-32 threatens to eliminate all or nearly all of the photocopy and public lending rights payments we so recently begun receiving. At a time when grants are shrinking and when art critics as well as artists are asked to become more independent in their professional activities, Bill C-32 takes away an important means of achieving financial independence. We in Canada must maintain the integrity of Public Lending Right payments and of compensation for photocopying, and extend those rights to foreign authors while respecting reciprocity agreements. We must also find similar ways to compensate authors for the use of their work on the Internet and through other new technologies both current and future.

Bill C-32 goes even further in depriving authors and artists of their rights. The broadening of the provision on fair dealing for the purpose of education is no less detrimental than the liberalization of distribution through new technologies. In fact, it is an even greater threat because our audience and that of visual artists is small. Our works tend to circulate in an educational setting. Universities and museums are the primary distributors of our works and of the works of art we critique. Museums are increasingly claiming the status of educational institutions and many are establishing departments that are specifically dedicated to public education. With the development of television, educational websites, and the iPad, the education community has become borderless. Why should artists and art critics provide their services for free in an educational context while other education workers such as teachers, psychologists, librarians, musicologists, organizers, administrators, secretaries, webmasters, caretakers, principals, rectors, civil servants, and government ministers are all paid more than the creators of the knowledge that is the very foundation of the institutions in which they work? Why do museums pay premium wages to specialists in advertising and communications, framers, conservationists, printers and photographers, while ignoring the copyright entitlements of the art critics and artists on whom they depend?

The mission of AICA is to advance the profession of art criticism and, in so doing, to protect and defend critics' moral and professional interests. Art critics are not involved in the business activities. Such involvement is not permitted for obvious ethical reasons. We need to make a reasonable living from our professional activity. The organizations that use our services already have tight budgets, especially after recent government cuts to cultural funding. In addition, our wage scale has increased very little over the past thirty years. The result has been a progressive devaluation of the work of art critics. For us, copyright revenues are crucial earnings we cannot afford to be deprived of for humanitarian reasons. To accept a law that would essentially deprive us of our copyright revenues would be an act of collective suicide. That is why we emphatically reject this expropriation (ostensibly for educational reasons) of our writings, our exhibits, our art films, our websites, our works of any kind, as well as artists' works without which we would not exist as art critics.

The proposed changes to the *Copyright Act* also worry us because they practically abolish moral rights. Under the proposed legislation, our works and the work of visual artists could be carved up, taken out of context and digitally distorted, and we would have no recourse. Under the false pretext of respecting the freedom of expression of users we can even be denied original authorship, never mind the right to demand even minimal compensation. The argument is that these kinds of free usage pay tribute to admired works of art and serve to promote them. It's a strange kind of tribute that swallows up what it admires to more effectively eliminate it by appropriation without permission and without offering monetary compensation. Even if the legislation were to reveal a weakness that could be challenged in a court of law, it would do us little good as we don't have the financial means to contest such misuse.

The contractual relations (often prejudicial to authors) that we have traditionally had with our employers or publishers will remain unchanged in the proposed legislation, despite the challenges arising from new technologies. In Canada the right of repentance is still not recognized. This causes problems for art journalists in the case of second publications that are non-approved or taken out of socio-historical context (e.g., long, unauthorized quotations appearing on the Internet). Similarly, the abolition of the right to protect the integrity of a work or the right of original authorship could be very detrimental to us. Because of its flaws, Bill C-32 would constantly force authors to take legal action to defend their rights. In many cases, our financially precarious status as freelance writers will prevent us from effectively defending our honour and reputation, as well as the integrity of our works before the courts. In fact, this will be the case for most authors, whatever their discipline. The moral rights of authors, including the protection of works produced under contract or employment, must be maintained.

Copyright as it applies to an exhibit is a relatively new concept, and is not yet recognized in current Canadian law or in Bill C-32. Authors have no rights if the project is not fully completed at the time they sign a contract or become an employee of a museum. At this stage, the museum can appropriate the project without compensation. In fact, only the concrete realization of a project is protected by copyright; a concept is not. All it takes is for the plan to be insufficiently completed, materially, or for the project to be slightly modified, as with the addition of an artist or a minor substitution of art works, and the curator of the exhibit can be deprived of any recourse and even any revenue, since the payment of stipends is often conditional on the complete realization of the project. Serious consideration of this issue is necessary, especially now that museums and galleries increasingly hire guest

curators on contract. This trend could further increase the job insecurity of future generations of art critics.

The problem with contractual relations between art critics and publishers of books or periodicals (and the problem of financing this sector of the publishing business) does not directly impact our thoughts on Bill C-32 because, contrary to the situation in certain European countries such as France, these relations are not regulated at all in Canada, nor are they linked to copyright. The pressure tactics available to publishers and other distributors, however modest, are disproportionately greater than those available to authors. Under the pretext that art publications are poorly funded, art critics are underpaid compared to journalists and other writers. In fact, they are often not paid at all, working simply for passion or fame. This is also often the case for artists, who are forced to graciously waive reproduction rights if they want to have their work shown. Funding for this sector of the publishing industry must be reconsidered. It is, after all, essential to ensuring that the work of our artists becomes known and recognized.

Given existing conditions, it is unfair to automatically give reproduction rights to publishers and make art critics bear the burden of proving authorship. This can prevent authors from republishing their works separately or in anthologies through another publisher or on the Internet, or from collecting royalties from a second printing or a publication on the Internet by the first publisher. The situation is further complicated by the fact that companies publishing art books and magazines often have a short lifespan. Bill C-32 must be modified so that the publisher, rather than the author, bears the burden of proof of copyright ownership, and the author is presumed to be the first owner of copyright for his own works unless there exists a freely negotiated and signed contract between the two parties.

Art critics obviously use works of art extensively in their work, so copyright issues are also of concern to us. We are dependent on artists. Without their art, there would be no art commentary. We need to make or use reproductions of works of art as visual tools in order to be able to write relevant critiques. The provision governing fair use for the purpose of criticism allows us to do this and is necessary under these circumstances. In this particular field, the provisions governing copying for private use and on fair dealing must be maintained.

In this era of images, it is unthinkable not to associate our words with reproductions of art. When it come to art exhibits, the artists' creations are essential to our discourse, which cannot exist without them. Tempting though it may be to echo the comments of certain users and support Bill C-32 to justify ridding ourselves of the financial burden of paying reproduction fees for the works of art we discuss, we too are creators and it would be hypocritical of us to deny artists what we demand for ourselves. Thus, we unhesitatingly affirm our solidarity with visual artists and their current demands. Canada must develop new funding mechanisms that will allow publishers to assume their responsibilities as regards the payment of copyright royalties to artists as well as art critics.

It is urgent and crucial that funding mechanisms for royalties be found other than shamelessly depriving authors of their rights. We need a significant increase in cultural funding from all levels of government, particularly for modern and contemporary visual arts. The payment of government grants to institutions and agencies must be systematically linked to the payment of royalties to which the authors whose services and works they employ are rightfully entitled. Other means of covering the cost of royalties payable by institutions and

non-profit organizations could also be considered, including donations from individuals, businesses or foundations. We must also find ways of encouraging private users, including businesses, to pay royalties when using artists' work. The Government of Canada and its institutions must commit fully to this process while we still have creators and critics of visual art.

It is difficult to be creative on an empty stomach. Impoverishing copyright legislation, as Bill C-32 proposes to do, will force authors to provide certain services without remuneration. This is a form of slavery. In ancient Greece and Rome, slaves who showed signs of creativity were freed. In Canada, in 2011, the government is trying to impose slave labour on artists. By following in the footsteps of Beaumarchais and defending this right, authors are the torchbearers for freedom of expression. Infringing on the moral rights of authors is tantamount to infringing on their creative freedom. In the long run, it infringes on the freedom of all citizens.