

Quebec City, March 7, 2012

The Honourable James Moore
Minister of Canadian Heritage and Official Languages
15 Eddy Street, 12th Floor
Gatineau, Quebec K1A 0M5

The Honourable Christian Paradis
Minister of Industry and Minister of State (Agriculture)
C.D. Howe Building
235 Queen Street
Ottawa, Ontario K1A 0H5

Dear Sirs:

On October 28, 2010, the Minister of Culture, Communications and the Status of Women, Christine St-Pierre, wrote to the Minister of Canadian Heritage and Official Languages to share her concerns about Bill C-32 on the modernization of copyright; the bill is now called C-11. We have had several opportunities to discuss those concerns, in particular during a telephone conversation on February 2, 2012, in which Ms. St-Pierre got the impression that your government was prepared to consider a number of changes to this important legislation.

Moreover, following recent discussions between Quebec government employees and staff at the Department of Industry regarding issues raised by the impact on Quebec of the application of certain provisions of the bill, the Minister of Industry and Minister of State (Agriculture) wrote to Ms. St-Pierre with information on two of the issues identified by Quebec, namely extension of the exemption for equitable use for educational purposes, and technical protection measures (digital locks). We have enclosed with this letter proposals that could help defend the interests of creators.

Bill C-11 has passed second reading and is currently being studied by a legislative committee. We would like to seize this opportunity to point out that many representatives of the arts and culture sector will be appearing before the committee to expand on the positions stated in the October 2010 letter, in particular with regard to extension of the exemption for equitable use for educational purposes, the fact that the private copying system has not been updated to broaden the scope of new digital audio media, and the role of Internet service providers. We would like to add that other issues, such as the widespread use of digital locks on broadcast works and increased performance rights for broadcasters, were specifically identified by artists and creators as problematic in that they have a great deal of impact on their royalties. The financial losses resulting from application of the new exemptions from and limitations to the exclusive right of authors are estimated to be in the millions of dollars and represent revenue currently being received by creators.

Quebec has established broad consensus on the issue of recognizing compensation for works used in an educational setting and has proven that effective tools can make it possible to manage

those works without violating the creators' rights and without incurring recriminations from educational institutions. In the education sector, where Quebec has exclusive jurisdiction, it is surprising that the proposed legislation does not respect this broad social consensus when we proposed to you solutions that would allow you to do that.

Because this new education exemption is not accompanied by a compensation mechanism, the Government of Quebec reiterates its disagreement and requests that this measure be revamped as stated in the appendix to this letter. For more than 30 years, the current broad licensing system, through agreements with collective societies responsible for distributing royalties to rights holders for the use of their works, has ensured that artists are fairly compensated. In a spirit of equity, the system meets Quebec's objectives that help improve artists' socio-economic conditions so that they can devote more time to their art, mainly by giving them access to the substantial market that is the Quebec education system.

Our government fully supports the overall objective of modernizing federal copyright legislation in order to bring it in line with World Intellectual Property Organization (WIPO) treaties and international intellectual property standards in order to give holders of intellectual property rights legal tools that provide them with effective protection. We realize that technological change and the imperatives of a knowledge-based society make it necessary for us to adapt copyright to new realities. We remind you also that this modernization must be carried out with respect for the rights of creators and their ability to be fairly compensated for those rights.

It is important to realize that the difference in the size and structure of the English- and French-language markets is a major consideration for artists working in those two very different worlds. Because the French-language market is considerably more limited than its English-language counterpart, even in Canada as a whole, artists in Quebec must have technical and legal tools that are tailored to their needs. The proposed legislation has the potential to tip the balance in the Quebec arts community by reducing creators' income at the source. I add that one statute which falls under the authority of Canadian Heritage, the *Broadcasting Act*, formally acknowledges that the French-language broadcasting system is different from the English-language system and can be regulated using different parameters.

Finally, we remind you that in November 2006, at the instigation of your government, the House of Commons recognized the existence of the Québécois nation. Artistic creation is a fundamental component of a nation's vitality. That vitality also depends on the ability of Quebec artists to earn a living from their art. Because Quebec is a French-speaking island in the middle of a primarily English cultural environment, any changes to arts legislation must have a spinoff effect in the province.

It would be useful to reopen a dialogue and come to an agreement on culture and communications. In that spirit, we request that you designate a contact person to facilitate the attainment of that objective.

We reiterate that we are willing to cooperate in ensuring that this necessary modernization of the Act takes place. However, we urge you to proceed with the open mind needed to take the interests of creators into account.

Yours truly,

[signed]

Christine St-Pierre
Minister of Culture,
Communications and the
Status of Women

[signed]

Line Beauchamp
Deputy Premier, Minister of
Education, Recreation and Sport

cc: Yvon Vallières, Minister responsible for Canadian Intergovernmental Affairs and the
Canadian Francophonie
Members of Legislative Committee C11

Encl.: Appendix
Copy of October 28, 2010, letter

APPENDIX

1. Concerning expansion of the exemption for equitable use for educational purposes

The Government of Quebec is opposed to expansion of the exemption for equitable use for educational purposes, the introduction of which, unless accompanied by a compensation mechanism, would cause artists and creators to lose income. Quebec's traditional position is that new exemptions should not be added to the Act if they are likely to prevent creators from obtaining their fair share for allowing third parties to use their works.

Quebec therefore suggests that the current broad licence system, which permits agreements with collective societies responsible for distributing royalties to rights holders for the use of their works, be preserved. If the federal government opts for an exemption rather than broad licences, the Act could:

- stipulate that the exemption applies to educational institutions for teaching purposes, provided those institutions sign agreements with the collective societies concerned;
- limit the exemption for equitable use for educational purposes to carefully targeted allowable teaching exemptions and regulate in a specific way the mechanisms used to apply these targeted exemptions so that creators do not sustain substantial losses. Canada is already doing that in the case of record keeping for the exemptions in place now for educational institutions, libraries, museums and archives, and also in the case of management of the rebroadcasting system.

This approach would allay the fears of many rights holders and make it possible to modulate users' rights so as to ensure that they target specific property and have as little adverse impact as possible on authors' rights. It would also have a greater chance of meeting the three-step test set out in WIPO's treaties, with which Canada wants to comply.

Regarding content on the Internet that could be used in the classroom, the solution Quebec proposes is to create in the Act a collective society company that would have the authority to collect royalties from users (educational institutions) at a rate approved by the Copyright Board of Canada. The Act would require users to join the collective in order to get the exemption. The royalties collected would then be distributed to registered Canadian and foreign collective societies. This solution would support the efforts of various collective societies to obtain mandates from creators (rights holders) in order to manage the new digital rights, which are problematic because the repertoires held by these societies rarely cover all works in Quebec and the rest of Canada, not to mention works from around the world, which can circulate on the Internet. A collective society of this type already exists under the *Copyright Act* as part of the private copying regime: the Canadian Private Copying Collective (CPCC) distributes to registered collectives royalties from different types of blank audio media.

2. Concerning technical protection measures or TPM (digital locks)

This provision as defined in Bill C-11 is dangerous for authors and the publishing industry in general, because in order to be protected, authors must put a digital lock on their works or add warnings, when all they want is to allow access provided their rights are respected. This is contrary to the existing standard, which is that use that is not permitted is prohibited, and is not in line with publishers' practices. Consequently, Canadian and international publishers and creators who wish to market works in digital format would face the risk of not being compensated for their work – and thus left uninterested in pursuing their craft, which would be detrimental to society in general – and would be prevented from distributing works in the normal manner. In so doing, this practice would make the measure incompatible with the three-step test set out in WIPO's Internet treaties; failure to use that test could result in complaints being made about Canada to the World Trade Organization's Dispute Settlement Body.

In order to meet the requirements of these treaties, the TPMs provided for in Bill C-11 should be limited to TPMs that are part of the exercise of copyright and preserve the necessary balance between the rights of copyright holders and the rights of users, because they do not prevent the operation of reading devices or services, nor do they interfere with the normal activity of those devices and services or with the legitimate use of works.

The Government of Quebec does not believe that digital locks would be effective. Witness the fact that the music industry has by and large done away with TPMs that are now obsolete and unproductive, and the effects of this provision could be limited other than for video game and software publishers who still use them. The same effects might be felt in the audio-visual sector. However, Quebec is hoping for a ban on TPM bypass devices when they are used to violate copyright and hopes also that the use of these TPMs solely for the purpose of equitable use will not be criminalized.

Quebec City, October 28, 2010

The Honourable James Moore
Minister of Canadian Heritage and Official Languages
15 Eddy Street, 12th Floor
Gatineau, Quebec K1A 0M5

Dear Sir:

The Government of Quebec has been concerned about copyright for many years and has had the opportunity to express its opinion during review of the federal *Copyright Act* several times over the past three decades.

Our government fully supports the overall objective of bringing federal copyright legislation in line with World Intellectual Property Organization (WIPO) treaties and international intellectual property standards in order to give holders of intellectual property rights legal tools that provide them with effective protection. Quebec believes it is necessary to make it easy for users to access works, but not to the detriment of creators, who must be paid fairly for the use of their works.

That said, the Government of Quebec is deeply concerned about some of the provisions in Bill C-32, because if the objective is to foster access to content and disseminate knowledge, introducing new provisions intended to help creators of content protect their works may in fact deal them a hard blow.

These provisions pertain specifically to expansion of the notion of equitable use for educational purposes, the fact that the private copying regime has not been updated to broaden its scope to include new digital audio media, and the role of Internet service providers. These provisions do not meet the objectives of protecting and providing fair compensation for creative works, even less so the objectives of Quebec policies in this area that help improve the socio-economic conditions of artists so that they earn a better living from their art.

Expanding the notion of equitable use for educational purposes

Expanding equitable use for educational purposes is a departure from the basic principles of copyright, which are the exclusive right of the author of a work to authorize reproduction and performance in return for royalties. Introducing this new exemption to the exclusive right of authors without an accompanying mechanism for compensating the creator would not only lead to substantial loss of income for artists and creators, but would violate international treaties with which Canada would rightly wish to comply. There are currently agreements between collective societies and educational institutions that contain guidelines for the use of works and thus ensure that creators are fairly compensated. This system, which has been in place for almost 30 years and has stood the test, is simply being called into question by this provision, which leans toward making collective societies less important when they are still the solution to access to works that is combined with compensation.

Quebec's traditional position on this matter is that new exemptions should not be added to the Act if they are likely to prevent creators from obtaining their fair share for allowing third parties to use their works. **To that end, the Government of Quebec asks that the plan to expand this exemption be scrapped and suggests that the broad licence system, which allows agreements to be signed with collective societies responsible for distributing royalties to rights holders for the use of their works, be preserved.** If the federal government were to opt for the exemption rather than the broad licence system, the Act would have to stipulate that the exemption applies to educational institutions for teaching purposes, provided those institutions sign agreements with the collective societies concerned.

Private copying regime not updated

The bill considerably weakens the ability of creators to be compensated for the use of their works and undermines creativity and cultural diversity by not expanding the private copying regime to new digital audio media. The cultural use model on which this measure is based is the copy, where every individual tries to get his or own copy of the work. The public is making ever-growing use of digital audio players, which dematerialize media, and abandoning traditional media, which are now obsolete. It is right to expect that Parliament take note of this shift without calling into question the rights of creators or at least their ability to receive compensation. The issue here is not subsidizing creators, nor is it taxing consumers, but rather setting rules for a business transaction. Collective societies, which include most rights holders, are still full partners in this scenario. **The Government of Quebec therefore requests that the private copying regime be updated to broaden its scope to include new digital audio media, such as MP3 players, iPods and smart phones.**

Role of Internet service providers

As far as Internet service providers (ISP) are concerned, the bill does not offer anything new in terms of the role of these major players in the digital world, although they could be more active in sharing the revenue generated by the digital economy. The business transaction that establishes copyright has historically centred around the principle whereby authors are given an exclusive proprietary right which they use to authorize the use of their works. The bill should therefore increase the responsibilities of ISPs by allowing them to target enablers of the violation of copyright over their networks. **The Government of Quebec requests that the bill strengthen the role of ISPs.**

The bill should also provide for an alternative to unauthorized downloading of protected content, primarily by making all players in the knowledge-based economy responsible for encouraging the lawful use of protected works and promoting measures designed to foster the diversified and attractive legal supply of protected content on electronic telecommunication networks that meet the needs of consumers.

Further, in order to prevent legislative conflict, Quebec requests that the legislative amendments take into account the provisions of *An Act to establish a legal framework for information technology* (RSQ, c. C-1.1, ss. 22 , 26, 36 and 37), which make "service providers" responsible for the storage, custody and transmission of "technology-based documents".

Yours truly,

[signed]

Christine St-Pierre

cc: Tony Clement
Minister of Industry of Canada