

**Joint Declaration of the
Creators' Copyright Coalition and DAMI©
On the Process of Revision of the Copyright Act**

April 2005

The Creators' Copyright Coalition (CCC) is an alliance of the following associations and collective rights societies : ACTRA Performers Guild; American Federation of Musicians (A.F.of M); Canadian Association of Photographers and Illustrators in Communications (CAPIC); Canadian Artists Representation/Front des artistes canadiens (CAR/FAC); the CAR/FAC Collective; Canadian League of Composers; Canadian Music Centre; Canadian Actors Equity Association; Directors Guild of Canada; Guild of Canadian Film Composers; League of Canadian Poets; Periodical Writers Association of Canada (PWAC); Playwrights Guild of Canada; Professional Photographers of Canada (PPOC); Society of Composers, Authors and Music Publishers of Canada (SOCAN); Songwriters Association of Canada (SAC); Translators Association of Canada; Writers Guild of Canada; The Writers' Union of Canada.

DAMI© is an alliance of the following associations, and collective rights societies : Association québécoise des auteurs dramatiques (AQAD); Conseil des métiers d'art du Québec (CMA); Regroupement des artistes en arts visuels (RAAV); Société des auteurs de radio, de télévision et de cinéma (SARTEC); Société professionnelle des auteurs et des compositeurs du Québec (SPACQ); l'Union des artistes (UDA); Union des écrivaines et écrivains québécois (UNEQ); Société de droits d'auteur en arts visuels (SODART); Société du droit de reproduction des auteurs, compositeurs et éditeurs du Canada (SODRAC); Société de gestion collective de l'Union des artistes (ARTISTI); Société québécoise de gestion collective des droits de reproduction (COPIBEC); Société québécoise des auteurs dramatiques (SoQAD).

1. As artists and performers we wish to register our growing lack of confidence in the process now underway for the reform of the Copyright Act.
2. We have grave concerns that the approach taken by the Federal Government which has divided up the project into short term and long term phases has meant that the big picture is lost in the details. We are concerned that precedents are being set on fundamental issues without adequate research or impartial consideration and, as a result, irrevocable decisions are about to be made which will have an impact on the ability of practising artists to produce work and bring it to the public.
3. We specifically reject the manner in which our rights are being subjected to bargaining between the departments of Industry and Canadian Heritage in the process of revision of the Copyright Act. It is not acceptable that provisions for the eventual ratification of the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT), which will provide protection for certain rights of performers, be tied to the acceptance of new exemptions for users of works protected by copyright.

4. There is a need to acknowledge the gravity and complexity of this undertaking, and to ensure that fundamental principles are recognized and maintained. Our first priority for the reform of the Copyright law in Canada is for it to be returned to the people and the activity it was originally intended to protect. This is to say to the creation of art and individual creators, whose rights are being overshadowed and sacrificed to the interests of new categories of works such as software and databases. The fact that copyright benefits creators last and least must be taken into account in this round of reform. This primary imbalance of the law has yet to be recognized by the government and the courts.
5. As a fundamental rule, it should also be recognized that exemptions to the Copyright Act should only be introduced as a last resort. We refute the current trend to deal with access issues by way of exemptions, apparently the preferred solution of the Department of Industry, which rides roughshod over moral rights.
6. For many years, Canadian creators have been committed to ensuring that their creative works are included in the curriculums of Canadian schools and universities. Considerable efforts have been made to develop simple, efficient copyright licensing systems for that purpose. Creators are now very much in favour of allowing easy access to their works on the Internet through the use of an extended collective licensing system as recommended by the Standing Committee on Canadian Heritage.

Consequently, we are against the idea of adding new exceptions to legislation so that schools, universities and researchers can have free electronic access to copyrighted works even though alternative solutions have been proposed that would meet users' needs while respecting creators' rights. It is important to note that this is not an issue of access to works because the works are already available in paper format. Instead, the issue centres on the fact that the government is proposing to give users a new way to access creators' works but is not taking into account the financial impact on copyright holders and their ability to actually control and authorize the electronic distribution of their copyrighted creations. Moreover, we condemn the government's bias in considering creators collectively as the only group that is expected to work for free in order to benefit the education and research sectors.

7. Canadian creators have worked long and hard to get their work into Canadian schools onto Canadian curricula and university courses. We have put huge efforts into creating licensing systems that would work simply and efficiently, even situations where no fees are charged. We are, moreover, willing to make our works available on the Internet through a system of extended licenses such as recommended by the Standing Committee of Canadian Heritage in its report originally issued in May 2004 and re-issued without changes in November 2004.

We therefore reject the idea that exceptions constitute the *sine qua non* for schools, universities and researchers to gain access to our work at a reasonable price. And we reject the government's proclivity for singling out artists as the only group to be required by law to supply work to the education sector without remuneration. (We note further that software, although covered under copyright, is not subject to exemptions as is artistic expression.) There is no good public policy reason for resorting to exemptions in the field of education. It will result in further imbalances in the copyright regime to the continued disadvantage of artists and freelancers who will continue to have to pay for access to the work of academics while the well-paid academics will have statutory free access to the work of creators.

8. In recent years, the Supreme Court of Canada has rendered decisions in the Th  berge, Desputeaux, CCH and SOCAN cases that have established new jurisprudence that seriously

limits the rights of creators. This includes a restrictive definition of the notion of reproduction of a work; a theory of balance between creators and users of copyright protected works; the emergence of new rights conferred on users by the Copyright Act; an expanded interpretation of the fair dealing provision; relief for Internet service providers who will not be held responsible for works circulating on their networks.

The Supreme Court has nonetheless stated that it can only interpret the law such as it is, and that it is up to Parliament to amend the law if this is what is desired.

The ministers of Canadian Heritage and Industry have recently announced their intention to introduce legislation this June that, if adopted, will further modify the Canadian Copyright Act.

In this context, the CCC and DAMI© are obliged once again to:

1. object:

- to those who affirm that copyright is an obstacle to the free flow of information and a limitation on the public's right to education;
- to those who equate the accessibility of works with their being free-of-charge;
- to those who cry urgency in order to subvert the democratic process of negotiation between creators, and the rights societies that represent them and users;
- to those who demand ever more numerous exemptions which erode the power of creators to control the ways and the means by which their work is presented to the public.

2. reaffirm:

- that creators want their work to be distributed as widely as possible and recognized through a respect for the creator's rights;
- that respect for creators' rights is the best way to ensure the existence of a strong and diverse Canadian culture;
- that current legislation needs no exceptions in order to adapt to the new digital environment;

3. and, consequently, to demand that the ministers of Heritage and Industry act on the Interim Report on Copyright Reform prepared by the Standing Committee of Canadian Heritage, and incorporate in the new legislation only the following changes:

- Ratification of the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT);
- Amendments to grant photographers the same authorship right as other creators.

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