



SERVING AUTHORS WORLDWIDE
AU SERVICE DES AUTEURS DANS LE MONDE
AL SERVICIO DE LOS AUTORES EN EL MUNDO

COU10-2151

**The Right Honourable Stephen Harper
Prime Minister of Canada
80 Wellington Street
Ottawa ON K1A 0A6
CANADA**

Neuilly-sur-Seine, November 24 2010

Re: Canada Copyright Act Amendment

Dear Prime Minister,

Please find attached the text of a resolution expressing creators' organizations' reservations concerning Bill C-32, voted by the assembly of the CIAGP (the International Council of Creators of Graphic, Plastic and Photographic Arts) during their meeting in New York on November 2&3, 2010. Chaired by Frank Stella – internationally renowned US painter – the CIAGP is a statutory body of CISAC which studies all questions concerning the moral and professional interests of creators of artistic works.

Presided by Robin Gibb – legendary singer and songwriter of the Bee Gees – and Hervé Di Rosa – French visual artist and painter, co-founder of the artistic movement "Figuration libre", CISAC – the International Confederation of Societies of Authors and Composers – aims at increasing both the recognition and protection of creators' rights worldwide. With 229 authors' societies from 121 countries as its members, CISAC indirectly represents around 3 million creators and publishers of artistic works in all genres including music, drama, literature, audiovisual, photography and the visual arts.

Yours respectfully,

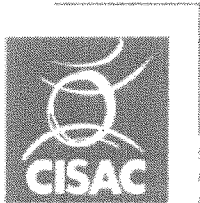
Silvina Munich
Repertoires & Creators Relations Director

Cc: The Hon. James Moore, Minister of Canadian Heritage and Official Languages
The Hon. Tony Clement, Minister of Industry
The Hon. Michael Ignatieff, House of Commons
The Hon. Jack Layton, House of Commons
The Hon. Mauril Bélanger, House of Commons
The Hon. Bob Rae, House of Commons
Mr. Gilles Duceppe, House of Commons
Mr. Pablo Rodriguez, House of Commons
Mr. Marc Garneau, House of Commons
Mr. Charlie Angus, House of Commons
Mr. Paul Dewar, House of Commons

INTERNATIONAL CONFEDERATION OF SOCIETIES OF AUTHORS AND COMPOSERS
CONFÉDÉRATION INTERNATIONALE DES SOCIÉTÉS D'AUTEURS ET COMPOSITEURS
CONFEDERACIÓN INTERNACIONAL DE SOCIEDADES DE AUTORES Y COMPOSITORES

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SERVING AUTHORS WORLDWIDE
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CIAGP10-1996

International Council of Creators of Graphic, Plastic and Photographic Arts

New York, 02/11/2010 - 03/11/2010

Source language: English

03/11/2010

Resolution: Canada

To Stephen Harper, Prime Minister of Canada, and concerned Members of Parliament:

CIAGP, International Council of Creators of Graphic, Plastic and Photographic Arts, has become aware of the tabling of Bill C-32, the Act to amend the Copyright Act. CIAGP represents collecting societies for visual artists in many countries around the world. We are concerned with the protection of the copyrights that our societies administer on the part of creators. We wish to raise the following concerns on behalf our communities:

- 1) That Bill C-32 would take the Canadian Copyright Act in directions that are counter to Canada's international agreements especially as concerns the protection of creators rights on the internet. We know that extending collective licensing measures to internet use is possible, and we would like to point out that it would be just.
- 2) That Bill C-32, with its introduction of numerous exceptions without remuneration to artists' exclusive rights, such as the addition of education to fair dealing, will erode their entitlement to much-needed income from their copyrights.
- 3) That Bill C-32 will continue the exclusion of Canadian artists from the benefits of Artists' Resale Rights (Droit-de-suite), which is enshrined in the law of some 60 countries around the world, and their exclusion from collecting such royalties in Canada as well.

CIAGP has passed a resolution, here at our meeting in New York City, today, to express our dismay at the spirit of C-32, which runs counter to the very principles of copyright. This represents a serious threat to the future of creators' rights and we urge you to take our concerns into consideration.

Signed,



Frank Stella
President
International Council of Creators of Graphic, Plastic and Photographic Arts



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COU10-2196

The Honourable James Moore, Minister of Canadian Heritage and Official Languages
Canadian Heritage and Official Languages
House of Commons
Ottawa, Ontario K1A 0A6
Canada

Email: moorej@parl.gc.ca

AND TO:

The Honourable Tony Clement, Minister of Industry
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Email: minister.industry@ic.gc.ca

With a copy to:
Office of the Prime Minister
80 Wellington Street
Ottawa, Ontario K1A 0A2
Canada

Email: pm@pm.gc.ca

Neuilly sur Seine, 06/12/2010

Dear Ministers Moore and Clement,

Re: Bill C-32 and Canada's International Obligations

CISAC, the international organization of authors' societies representing three million creators worldwide, has been made aware by our member organizations of Canada's recently tabled Bill C-32, the *Copyright Modernization Act*. Our members in Canada are:

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- Access Copyright,
- Canadian Artists Representation Copyright Collective (CARCC),
- Canadian Musical Reproduction Rights Agency (CMRRA),
- Canadian Screenwriters Collection Society (CSCS),
- Directors Rights Collective of Canada (DRCC),
- Directors Rights Collective of Canada (DGCC),
- Société des Auteurs de Radio, Télévision et Cinéma (SARTEC),
- Society of Composers, Authors and Music Publishers of Canada (SOCAN),
- Society for reproduction rights of authors, composers and publishers in Canada (SODRAC),
- Société professionnelle des auteurs et des compositeurs du Québec (SPACQ), and
- the Writers Guild of Canada (WGC).

Summary:

Bill C-32 was introduced in order to modernize Canadian copyright law for the digital age. However, as drafted, it seems to have the opposite effect. The Bill would expropriate rights from creators by extinguishing both existing and future sources of revenue derived from the exploitation of their works. By creating numerous and broad new exceptions, this Bill tips the balance in favour of the "rights" of users and will thereby cause unjustified damage to the legitimate interest of creators, especially in the following areas:

- reproduction for private purposes
- fair dealing for the purposes of education
- temporary and ephemeral reproduction
- user-generated content
- use of work available through the Internet

We have had the opportunity to review Bill C-32 and wish to express our concerns about some of the provisions raised in this Bill.

The proposed Bill introduces a myriad of new exceptions without any compensation for authors and publishers. If passed, the Bill will deprive rights holders of important revenues. The Bill affects authors and publishers not only in Canada but worldwide because Canadian collectives, through reciprocal agreements, represent works published in virtually every country throughout the world.

While CISAC recognizes the vital importance of ensuring broad public access to copyright works, we believe that there are better ways to achieve this than by creating uncompensated exceptions. Collective management and blanket licensing are the best practical solution to offer access to protected works. This solution benefits both rights holders and users and ensures that rights holders are fairly compensated when their works are used. Rather than creating new opportunities for progressive licensing schemes, however, Bill C-32 would create exceptions that would do away with existing ones. With respect, this is not "modernization" of copyright.

We are also concerned that some provisions of the Bill do not meet Canada's international obligations with respect to the Berne Convention and the TRIPS Agreement. The three-step test – which is restated in both the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty – states that members shall confine limitations and exceptions to exclusive rights to (1) certain special cases which (2) do not conflict with a normal exploitation of the work and (3) do not unreasonably prejudice the legitimate interests of the rights holder.

The exception for **Reproduction for Private Purposes [s. 29.22]** goes far beyond mere format shifting. Copying of musical works for private purposes is currently remunerated in Canada and is effectively collectively managed around the world. Not to extend the existing private copying regime to digital audio recorders, and to other types of works, deprives creators of fair and reasonable remuneration for the extensive use of their works by these new means, and ignores the Bill's stated intent to be "technologically neutral".

Fair Dealing for the Purposes of Education [s. 29] is too broad in scope and reach to define a special case and therefore fails to meet Canada's international obligations under the three-step test. This exception will certainly create legal uncertainties, encourage litigation and discriminate against content creators who are already receiving remuneration through collective licensing for the use of their works in the education field.

The exception for so-called **Temporary Reproduction [s. 30.71]** is drafted so broadly that litigation will be the norm on these questions as well, especially in the digital world where most every reproduction increases efficiency and is therefore valuable to the user.

The expansion of the existing exception for **Ephemeral Recordings [s. 30.9]** to apply even where a licence for the use is available from a collective society fails to take into account previous Copyright Board of Canada decisions that such reproductions made by broadcasters create significant economic value. Radio stations realize significant benefits from the storage of musical works on a central server, in terms of efficiency, control, quality, flexibility and cost. Rights holders are entitled to share in those benefits, which could not exist absent the use of the reproduction right.

With the exception for **Non-Commercial User Generated Content [s. 29.21]**, Bill C-32 permits the use of any copyright protected work in order to create a new work for "non-commercial" purposes (an undefined and overly broad term) as long as the use does not have a "substantial adverse effect, financial or otherwise" on the exploitation of the original work. By exempting these uses, Bill C-32 deprives rights holders of potential and actual economic gains and therefore conflicts with the normal exploitation of the work. It also appears to permit commercial intermediaries to profit from the dissemination of content created without compensation to the underlying rights holders.

Bill C-32 allows **Work Available Through the Internet [s. 30.04]** to be used by educational institutions for educational purposes without compensation to the rights owner. However, 18 collective management organizations around the world are already licensing the use of such material from the Internet. Again, collective solutions already exist to pay for content valuable enough to be used in teaching. Bill C-32 should encourage the adoption of those solutions in Canada rather than depriving rights holders of the right to be compensated for educational uses.

In our view, Bill C-32 encourages individual legal recourse and litigation rather than the collective management approach.

Bill C-32 also fails to include a resale right on artworks, a right that would give artists a small percentage from the resale of their work— a right that 59 countries have already adopted. Without such a right, visual artists are left with few options for the monetization of their works, even when their own reputations and artistic prowess result in significant increases in the value of those works when resold. Furthermore, Bill C-32 also fails to clarify the authorship of audio-visual works, which is necessary in order to permit screenwriters and directors to benefit from collective licensing as authors in Canada and around the world. Both provisions should be included in future amendments of the Copyright Act.

For these reasons and others, we are concerned that, far from achieving its goal of compliance with Canada's international obligations, Bill C-32 will actually push Canada further offside its commitments to its trading partners.

While we applaud your government's commitment to updating Canada's copyright laws, we also sincerely hope that your government will undertake changes to Bill C-32 in committee that will ensure that Canada's copyright regime is not detrimental to authors and publishers and is ultimately in line with international standards and obligations.

Sincerely,

A handwritten signature in cursive script, appearing to read "Kenth Muldin".

Kenth Muldin
Chair of the CISAC Board of Directors