



## **Canadian Photographers Coalition (CPC)** **on *An Act to Amend the Copyright Act***

Professional Photographers of Canada (PPOC)  
Canadian Association of Professional Image Creators (CAPIC)

### **Canadian Photographers Are Small Business Owners**

The Canadian Photographers Coalition (CPC) was formed to support the extension of copyright fairness to Canada's working professional photographers.

Our Coalition represents the interests of two professional associations – the Professional Photographers of Canada (PPOC) and the Canadian Association of Professional Image Creators (CAPIC).

Together our groups represent professional photographers working in all aspects of our craft and in all regions of the country. There are over 15,000 professional photographers working and living in Canadian communities from coast to coast to coast. Over 95% of professional photographers are small business people, owning, operating and working in their own businesses and dependent on sales of their work to support their families. Like all small business people, photographers are part of the engine that drives the Canadian economy.

### **Canadian Photographers Are at a Disadvantage**

The CPC's primary concern is how the current Copyright Act, exacerbated by the emergence of digital imaging technology, places Canadian photographers at a disadvantage relative to our international peers and other Canadian creators. Specifically, there are two sections of the Copyright Act which reflect an outdated and discriminatory view of photography: Section 13(2), which deals with commissioned photographs, and Section 10(2), which defines the author of a photograph for the purposes of awarding copyright as well as the terms of copyright protection in works, including photographs.

Like most international copyright laws, Canada's generally awards the first ownership of a work's copyright to its author. This principal is laid out in Section 13(1) of the Act, which states: "*Subject to this Act, the author of a work shall be the first owner of copyright therein.*"

Unlike most other creations, however, commissioned photographs are specifically exempted from this section of the Act. Section 13(2) deems the commissioner, not the author, as the owner of the copyright of the image, absent any agreement to the contrary.

This provision contrasts sharply with most other works – such as literary pieces or musical performances – where ownership of first copyright rests with the author, even in cases where the work was commissioned by someone else.

This provision has led to inequitable treatment of photographers in Canada. Consider the following example. Canadian magazine publishers routinely commission freelance journalists to write stories

for publication and freelance illustrators and photographers to illustrate them. In this situation the writer and the illustrator would own the copyright in the story but the photographer would not own the copyright in the photographs unless he negotiates it back from the magazine publisher.

Perhaps even more disconcerting, Section 13(2) of the Act places Canadian photographers at a disadvantage to their international peers. In virtually every other industrialized country, including the United Kingdom, France, Australia and the United States, photographers retain first ownership of copyright in commissioned works – just like any other creator.

## **Bill C-11 and Photography**

The Government of Canada introduced Bill C-11, *An Act to amend the Copyright Act*. Under Bill C-11 the Government proposed to repeal Sections 10(2) and Subsection 13(2) of the *Copyright Act*. The CPC strongly supported these amendments and congratulated the Government for introducing this legislation.

However, at the same time that the Government removed Section 13(2) it proposed to introduce a new Section 32.2(1) that allows:

*(f) for an individual to use for private or non-commercial purposes, or permit the use of for those purposes, a photograph or portrait that was commissioned by the individual for personal purposes and made for valuable consideration, unless the individual and the owner of the copyright in the photograph or portrait have agreed otherwise.*

This wording in Section 32.2(1) allowed an exception to copyright ownership by the commissioner for “private or non-commercial purposes, **or permit the use of for those purposes**”; the latter of which was not included in Bills C-60 or C-61. The CPC is concerned that without defining the term “non-commercial” this wording may be too broad, and permits unlimited use of commissioned photographs that are considered non-commercial by the user but have commercial implications for the photographer.

We understand the Government’s intention to permit use of private commissioned photos, such as social networks, and wish to respect the spirit of the Bill. With that, we recommend that a technical amendment be made to Section 32.2(1), an amendment that would define the term “non-commercial”:

*(f) for an individual to use for private or non-commercial purposes, or permit the use of for those purposes, a photograph or portrait that was commissioned by the individual for personal purposes and made for valuable consideration, **if that use of the photograph or portrait does not have a substantial adverse effect, financial or otherwise, on the exploitation or potential exploitation of the photograph or portrait or copy of them, or an existing or potential market for it**, unless the individual and the owner of the copyright in the photograph or portrait have agreed otherwise.*

Such addition would allow use of commissioned photographs within reason. The term “substantial adverse impact” would limit types of violations to only the most egregious uses.

## **Moving Forward**

The CPC is pleased by the precedent set by Bill C-11 to give photographers the copyright protection they enjoy in the rest of the world and that is offered to other creators; however, ask that our technical amendment be considered and included in the law. We welcome the reintroduction of the Bill and thank the Government for again recognizing photographers as equals among their creative peers.