



UNION DES ÉCRIVAINES  
ET DES ÉCRIVAINS QUÉBÉCOIS

**Report to the House of Commons Standing Committee on Industry, Science and  
Technology (April 23, 2018)**

**Preface**

The Union des écrivaines et des écrivains québécois (UNEQ) is a professional union founded in Montreal on 21 March 1977. It brings together more than 1,600 writers and works to promote and disseminate Québécois literature in Quebec, elsewhere in Canada and abroad, as well as to defend the socio-economic rights of writers.

According to the *Act regarding the professional status of artists in the visual arts, crafts and literature and their contracts with distributors (R.S.Q., chapter S-32.01)*, the UNEQ was recognised, in 1999 as the most representative association of artists in the field of literature. Therefore, the UNEQ speaks on behalf of all Québécois writers.

In 1996, the UNEQ was also authorised by the Canadian Artists and Producers Professional Relations Tribunal to negotiate exclusively with producers under federal jurisdiction in order to conclude framework agreements.

**Introduction**

A copyright law should be part of a broad political vision with clear goals.

Does the government want to foster Canadian cultural expression, encourage creativity, offer its citizens access to a rich, diverse, and a creative culture that contributes to enhancing the quality of life of Canadians, their independence of thought and their understanding of the world?

Or would the government rather reduce the quality of writing to the lowest common denominator, and let Canadians believe that they can access all cultural content free of charge, modify them in the way they want, and allow Hollywood, Silicon Valley and GAFAs to take over and dictate to us their commercial laws by impoverishing local artists?

All these questions should inform the review of the *Copyright Act*. This is a unique opportunity to encourage economic growth in the cultural industry while making users more responsible.

Therefore, it is a **question of defining a society project** whose laws reflect legal rules and are not an end in themselves.

It is important to remember that the concept of copyright includes the idea of economic rights, which grants the right holder a payment for authorised use of his/her materials. It also includes the idea of moral rights, which confers the right on the creator to protect the way in which his/her work is used.

In the course of this report, we will present the changes and adjustments we feel are essential for artists to lead decent lives, for users to profit and for Canadian culture to shine.

### **Are Professional Writers an Endangered Species?**

The 2012 *Act*, with its many exceptions that do not provide remuneration for artists and writers, unfairly stripped creators of their income.

Writers have been particularly affected and one should stress that they are experiencing quite disturbing instability. To live by one's pen is now an achievement in Canada, and the number of writers who are able to work without anxiety, knowing that they will receive fair compensation for their creations, is unusually low. In Canada, writers earn 27% less from their literary work than they did in 1998. The average income they earned from their writing in 2015 was \$12,879 and the median was less than \$5000.<sup>6</sup> In Quebec, the median income of French-language writers was \$2,450 in 2008.<sup>7</sup>

If this situation continues, it is likely that writing as a profession will be limited to a few popular authors. This would deprive the public of cultural diversity, which is essential to a society that sees itself as open.

### **Education: 'The' Importance Issue**

Writers provide a significant part of the raw material for the education system, a raw material which Stephen Harper's Conservative government wanted to make available to users, free of charge, based on the so called 'fair dealing' defined by the Supreme Court in 2004 in the CCH ruling.<sup>8</sup> The absence of a clear requirement for educational institutions to remunerate authors for the use of their works had been unprecedented.

According to Section 29, it is legal to use a copyrighted work provided that it is used for purposes mentioned in this Section: 'for the purposes of private study, research, education, parody or satire', and that it should be 'fair'. **The section fails to indicate, however, how much of the work can be used without infringement of copyright.**

As expected, this loose wording has led to a judicialization of the relationship between creators and users: a conflict between the management company Access Copyright and York University; lawsuits by all school boards in Ontario as well as the Ministries of Education in all the provinces (except in Quebec and Ontario) against Access Copyright;

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<sup>6</sup> The Writers' Union of Canada, *Devaluing Creators, Endangering Creativity*, May 2015, [www.writersunion.ca/sites/all/files/DevaluingCreatorsEndangeringCreativity\\_0.pdf](http://www.writersunion.ca/sites/all/files/DevaluingCreatorsEndangeringCreativity_0.pdf)

<sup>7</sup> Observatoire de la culture et des communications du Québec. *Les écrivains québécois. Portrait des conditions de pratique de la profession littéraire au Québec 2010*, 13 septembre 2011, [www.stat.gouv.qc.ca/statistiques/culture/livre/ecrivains/ecrivains.pdf](http://www.stat.gouv.qc.ca/statistiques/culture/livre/ecrivains/ecrivains.pdf)

<sup>8</sup> *CCH Canadian Ltd. v. Law Society of Upper Canada*, [2004] 1 R.C.S. 339.

and Copibec's collective action against Université Laval, which has decided, on its own initiative and without the approval of the courts or the I, that fair dealing allows the reproduction of a 'short excerpt' of up to 10% of the work or chapter. In its stated policy, 'every time one intends to use a short excerpt, it is important to take the greatest advantage of the possibilities on offer'.

The far too many and imprecise exceptions have reduced collective management revenues for writers and publishers by \$30 million since 2012.<sup>9</sup> Payments from secondary licences were up to 20% of the writers' income before the introduction of the educational exception.<sup>10</sup>

Introducing specific measures to the education sector into the *Act* could seem commendable; however, the vague concept of 'fair dealing' has weakened the publishing industry and its clientele. In the long term, this will undoubtedly damage the quality of educational materials.

## Exceptions

**Section 29: 'The fair use of a work or any other copyrighted subject-matter for the purpose of private study, research, education, parody or satire does not infringe copyright.'** The absence of a definition of the term 'education' allows all organizations offering training of any sort to claim to be educational institutions and to avail themselves of the right to 'fair' use without remunerating the right holders.

According to **Section 30.04 (1) to (6), 'Work Available through the Internet'**, educational institutions may, for educational purposes, reproduce, communicate at a distance and perform in public a work accessible on the Internet if the source is mentioned and if there are no technical protection measures. This exception contradicts a basic copyright principle: **a work is copyrighted as soon as it exists in any material form (which includes digital), without further formalities.** This exception abolishes copyright, in an educational context, to the benefit of violators, and obliges artists and writers to use technical protection measures. The author's responsibility to protect his work is disproportionate since one person alone has no control over the Internet.

**Section 30.01 (6) c):** For distance learning purposes, an educational institution may transfer a copyrighted work to a student as part of a 'class', whose precise connotation remains vague. The institution must take measures 'which, one expects, might reasonably' prevent 'students from changing, reproducing or communicating a copyrighted work'. However, infringements are not punished unless stipulated by the institution.

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<sup>9</sup> Heather Menzies, 'The Copyright Act Needs to be Edited for Writers' Survival', *The Globe and Mail*, 15 January 2016, [www.theglobeandmail.com/opinion/f/article28197828](http://www.theglobeandmail.com/opinion/f/article28197828)

<sup>10</sup> The Writers' Union of Canada, Union des écrivaines et des écrivains québécois. *La rémunération des écrivains canadiens pour leurs œuvres littéraires : étude comparative*, 27 septembre 2017.

**Section 29.21**, exceptions for ‘**non-commercial user-generated content**’, legalises the use of copyrighted contents by users who wish to use or even modify them in order to create a new work to disseminate in digital form and ‘for non-commercial purposes’. It should be noted that this practice was common on the Internet prior to the 2012 amendments to the *Act*. The overall wording of Section 29.21 is a problem: it allows anyone to create on the Internet (or elsewhere) any new work derived from an earlier work, and this includes through translation, adaptation, etc. It completely ignores the idea of moral rights. Indeed, many user-generated contents distort and betray the spirit of the works used; referencing the source or sources does not compensate the artists. Such an exception abolishes the author’s right to preserve the integrity of his/her work, which is the essence of his/her moral rights. It also encourages piracy. Moreover, the user-generated content exception also denies suitable remuneration for the right holder for the use of their copyright while benefitting third parties like YouTube, Facebook and other multinational corporations.

**Section 29.22**, on ‘**Reproduction for Private Purposes**’, legalises different reproductions of the whole or of a substantial part of a work for private purposes, **without defining them**. The wording of the conditions is unclear and still requires the intervention of the courts to obtain legal stability.

**In sections 79 to 88**, on **private copying**, the absence of extending private copying royalties to new digital media, including personal music players, hard drives, USB sticks, e-readers, etc., contradicts one of the legislator’s objectives in 2012, that of **modernising and bringing up to date the Act to meet the challenges of digital technology**. Since the courts have already established that, according to them, the new digital media are not included, the legislator must take its responsibilities and clearly add in the Act that the purchase of these digital media must result in compensation for the artists.

## **Sanctions**

The provisions for damages and compensations in the *Act* are negligible and have no preventive effect: ‘in the case of infringement for non-commercial purposes, for all infringements - whether in respect of any particular work or other copyrighted subject matters - compensations are of not less than \$100 nor more than \$5,000, the amount to be decided as the court considers fair in the circumstances.’ (Section 38.1 b)

This, in effect, means that a writer whose work has been reproduced and used without his/her consent and without compensating the author may receive at most \$5,000, after having paid legal fees that most likely significantly exceed this amount. This does not encourage artists to defend their rights and encourages forgery.

## **Conclusion**

The amendments to the *Copyright Act* in 2012 increased the exceptions and did not write in a compensation for artists and writers. This denies them their right to authorise or

refuse the use of their works, undermines their moral rights, and sets insignificant fines that do not even cover legal costs. The *Act* contains loose wordings which have led to lawsuits, since they have to be left to the courts to interpret them. The *Act* also puts at risk the negotiating process successfully carried out for years by copyright collectives and weakens the book industry.

### **The UNEQ Recommendations**

- That Canadian Heritage, which is on the rise, define precisely in which political and social project the *Act* falls under to thus measure more accurately the impacts.
- That Canadian Heritage be more closely involved in the reviewing process of the *Act*.
- That the word ‘education’ in Section 29 be more clearly defined so that it leaves no room for the unfair use of the works.
- That the *Act* provide for fair use in case of borrowing works for parody or satire so as to restrict how much is borrowed and ensure that moral rights are respected.
- Repeal sections 29.21, 29.22, 30.04 and 30.06.
- Define and circumscribe other exceptions according to the following: an exception should be allowed only in cases where access to works is otherwise impossible. Exceptions to this rule should remain rare.
- Extend private copying royalties to new digital media.
- Compensation for damages should be commensurate with the violations committed and have a deterrent effect.