

February 29 2012

Dear Members of the Legislative Committee on Bill C-11 -- The Copyright Modernization Act

On behalf of the 900 members of CANSCAIP, *The Canadian Society of Children's Authors, Illustrators and Performers*, I urge you to amend Bill C-11, The Copyright Modernization Act. If Bill C-11 is not changed before it becomes law, it will have serious negative effects upon Canadian authors and illustrators, the publishing industry and Canadian culture.

CANSCAIP members create books for children. We create everything from picture books and early chapter books to Young Adult novels aimed at teenagers. We write fiction and poetry. We also produce non-fiction about the people and events that have built Canada, and also about present day issues and people who will affect our country in the future. Schools make heavy use of our creations. We write the books that are used when children learn to read. We write the books that teachers and librarians use when introducing children to the broader issues of life in Canada and the outside world.

As creators, we want our books to be used in schools as much and as often as possible. We want teachers to be able to copy certain sections of our property for use with their students.

Organizations such as Access Copyright make this possible through licensing agreements with educational institutions. Access Copyright has created a balanced "win-win-win situation for authors, teachers and students". Bill C-11 will remove that balance. Bill C-11 is heavily slanted away from creators of books, and heavily slanted toward educators, both legitimate educators and those who may claim to be educators in order to take unfair advantage of the new copyright law.

On its Balanced Copyright website, the Harper government states that "The *Copyright Modernization Act* provides copyright industries with a "**clear framework**". They make the claim that "*Fair dealing is not a blank cheque. (It) permits individuals and businesses to make certain uses of copyrighted material in ways that do **not unduly threaten the interests of copyright owners ... but only if they are fair**". They say that Bill C-11 "**promotes creativity, innovation and culture**", and that the act will "**help these people protect their work and ensure they are fairly compensated** for their efforts."*

1. A Clear Framework

Although the makers of Bill C-11 recognize the necessity of using clear and precise language, the language they have used in Bill C-11 is the true opposite of clear and precise.

A. Education

The word *education* has meanings that go far beyond the traditional classroom and lecture hall. By including *education*, Bill C-11 will permit every club, society, business and organization of any sort to reproduce copyrighted works, so long as they can point out that they are doing it to

educate others. Eventually, the Supreme Court will have to make the final ruling on what is education and what is not.

Children's authors, the lowest paid among authors, do not have the finances to fight for their rights at the lower court levels, let alone through the court system all the way to the Supreme Court of Canada.

B. “does not **unduly** threaten the interests of the copyright owners”

The word “unduly” strips the copyright owners of any powers they may possess and gives those powers to those doing the copying.

The Bill states it is legal to reproduce works even though the copyright owner might disagree, as long as the owner's interests are not threatened, *unduly*, beyond a certain mysterious amount.

Who decides what is meant by *unduly threatened*? Initially, the copier will decide the degree of threat posed by his copying. Should the creator disagree, the matter will be settled in court. Eventually, it will be the Supreme Court that must decide.

C. “does not unduly threaten the **interests** of the copyright owners”

What is meant by the *interests* of the copyright owner? Are we talking about the amount of money that the owner stands to lose when someone reproduces a work? Could *interests* refer to the owner's reputation? Again, the initial decision will be made by the person copying.

Bill C-11 gives the copier the power to decide what imposes a threat to the copyright owner's interests. Bill C-11 gives the copier the power to decide what constitutes the interests of the copyright owner.

As copyright owners and creators of our works, the members of CANSCAIP believe that we should be the ones who make the decisions regarding our interests. We believe that we should be the ones who make the decisions regarding what poses a threat to those interests.

D. “but only if they are **fair**”

Fair is a vague word. Who decides what is fair? Is it the owner of the copyright? Or is *fair* another thing decided by the one doing the copying? Is it decided by a teacher or professor? Or is it decided by a university, school board or provincial department of education? Nebulous words like *fair* are always relative. What one person sees as fair may be seen by another as very unfair.

At present, there is a case before the Supreme Court of Canada between Access Copyright and a massive conglomeration of educators, including Provincial Departments of Education, Universities, colleges, and school boards. The issue involves a disagreement about what is **fair** compensation for authors, illustrators and publishers. It has taken several years to work its way through the courts. The lower courts have all ruled in favour of Access Copyright. The educators

have appealed each decision so that the Supreme Court must now finally end this farce that parades as justice. This is clear proof that those in education intend to use the Fair Dealing clause to their fullest advantage. Fairness has nothing to do with their current action in Canada's Supreme Court, nor will it be considered in the future under the extended definition of fair dealing.

Unlike Access Copyright, CANSCAIP members lack the funds to combat "education" in court, especially if the decisions of the courts are always appealed, and especially if education attempts to prevent supporters from speaking before the court. The expansion of Fair Dealing to include education will be seen by education as a licence to copy.

Bill C-11 contains many nebulous words whose meanings will certainly lead to years of litigation.

As copyright owners, the members of CANSCAIP are threatened by the wording of Bill C-11.

Digital Locks and Books

The publishing industry is vastly different from the music and film industry. Digital locks may have some benefits for those producing music and other types of entertainment, but they are all but useless when it comes to preventing the reproduction of printed material.

A robot book scanner, such as the Treventus ScanRobot can automatically copy a 250 page book in just 6 minutes. A few years ago, the Google corporation scanned entire university libraries in just a few months.

The new copyright act must contain protection against the reproduction and distribution of entire books. The amendments recently proposed by the group organizations headed by The Writers Union of Canada, if included in Bill C-11, will be effective in protecting the rights of Canadian creators.

The Cost of Education

In the 1970s, the United Kingdom wrestled with this same problem: Should education be included in the exemptions to copyright? In 1977, the issue was put to rest in the Whitford Report. The Whitford Committee's conclusion was that *governments should resist the temptation to save on education funding by draining the resources of publishers and authors*. The committee decided that it was a self-defeating exercise. "Education is equally dependent upon the work of the publishers who first produced the material which the authorities want to copy for educational purposes."

(Report of the Committee to consider the Law on Copyright and Designs (London: Her Majesty's Stationery Office, 1977) at paras. 254-56, 268-69)

More recently, the tribunal investigating copyright issues in the UK reaffirmed the findings of the Whitford Report. It found that a healthy publishing industry is of particular importance to those in education. It stated that wholesale exemption from the copyright laws for educational establishments would damage the publishing industry, and in consequence damage education. It found *that exempting education would have a monumental impact upon the publishing industry*. Fewer publishers meant fewer authors and fewer books. With fewer books being published, education would suffer.

Education is a Worthy Cause

It might be argued that since education is a worthy cause, it should be included in Fair Dealing. The same argument could be made for the manufacturers and suppliers of desks, calculators, rulers, chairs, even the buildings themselves. Why should education have to pay for anything?

The education budget is huge. But why is the Harper government allowing education to create its savings out of the pockets of those suppliers who actually make the smallest amount of money from their products? Children's authors, in a survey done by Canscaip a few years ago, earn an average of less than \$7000 per year. If professors and others are truly interested in reducing the education budget, would it not make more sense to take the savings from those who earn the largest amount of money annually, the professors and other teaching staff?

Why have children's authors, illustrators and performers been singled out? Where is the justice in taking the property of an author and giving it to a university, elementary school or high school? How is that a "Fair Deal"? Where is the balance?

Sadly, in any argument between an author and a school board, the decision will go to the one who has hired the best lawyer. Is this what Canada needs, to spend large amounts of money and time in court because those charged with creating a good, clear and balanced law have created the opposite?

As an author and book illustrator, I am filled with fear that Bill C-11, unchanged, will become law. What is the point of continuing to create books for children if every book can be scanned by someone and shared with everyone else? I would rather use my skills in some other project where my property is truly protected.

On behalf of the members of CANSCAIP, I implore you.

Please, do not take our property from us.

Please, do not let the Harper government go down in history as the government that took everything from its authors and illustrators in order to save a few dollars in education. The price paid will be much higher than the savings made.

Bill C-11, if it becomes law as it is written, will not protect the works of the creators. Worse than that, the new copyright act will rob authors and illustrators of their property and give it away for others to use and reproduce free of charge.

The members of The Canadian Society of Children's Authors, Illustrators and Performers believe that the inclusion of *education* in Fair Dealing renders the Copyright Modernization Act **unbalanced**. The Act **destroys creativity and innovation and culture. It robs creators of their personal intellectual property and gives educational institutions permission to copy as much as they wish**. After carefully reading Bill C-11, we believe that it would be naïve to think otherwise.

We urge the committee to do that which is wise and just. Do not strip authors and illustrators of our property. The coalition of writers' organizations headed by The Writers' Union has proposed a series of amendments to Bill C-11. The Members of CANSCAIP beg you to include those amendments in Bill C-11 before it becomes law. Those amendments provide authors with the same protection that digital locks give to musicians.

The only place where we can hope for a fair deal is here, with you, when you create the new copyright law.

Summary:

- The members of CANSCAIP – The Canadian Association of Children's Authors, Illustrators and Performers – create the books that are most used in schools.
- Bill C-11, if not amended, will have serious negative effects upon the members of CANSCAIP.
- Education in Fair Dealing must be amended in order to avoid litigation.
- CANSCAIP supports the amendments proposed by The Writers' Union of Canada.
- Bill C-11 contains vague language that will lead to litigation.
- Bill C-11 strips the creators of any power over copyright because the initial interpretation of its terms will rest solely with those doing the copying.
- Although it may be tempting to save educational dollars by extending Fair Dealing to include education, studies in the UK have concluded that to do so would be a grave error. It would have a disastrous effect upon the publishing industry and upon education itself.
- Digital locks are useless in preventing the reproduction of books and other printed material.

- Bill C-11 is unbalanced. It robs creators of their property and permits educational institutions to copy as much as they wish.

Thank you,

Sean Cassidy

CANSCAIP Past President