



Brief submitted to the Standing Committee on Industry, Science and Technology regarding the Statutory Review of the *Copyright Act*

December 10, 2018

The *Association acadienne des artistes professionnel.le.s du Nouveau-Brunswick* (AAAPNB) is an arts service organization that represents more than 250 professional artists working primarily in New Brunswick. Its mission is to protect the rights and represent the interests of artists, and to foster recognition of their contributions to society. As the representative and forum for professional artists from New Brunswick, the AAAPNB is involved in consolidating artistic disciplines and contributes more broadly to creating an environment that supports artistic development and influence.

Background

Maintaining copyright is essential to encourage innovation and the creation of new Canadian works. Copyright is a source of income for artists and must remain so. The *Copyright Act* (the Act) must stay focused on this purpose and ensure that the professional life of authors and creators is not adversely affected.

Numerous exceptions

When the Act was updated in 2012, the number of fair dealing exceptions went from about 50 (in 1997) to approximately 85.¹

These exceptions constitute ways to avoid paying fees to rights holders.

In the field of education, some institutions have tried to avoid paying for the use of copyright-protected works. Recent Federal Court decisions, such as *Access Copyright v. York University*, and the agreement between Copibec and Laval University show that post-secondary institutions cannot be exempt from tariffs imposed by the Copyright Board.

Do not restrict the digital economy

The Act must protect the digital economy by enabling copyright holders to protect their works and be compensated for the use of their works. Some of the briefs filed and interventions heard as part of this study (such as Microsoft) request additional copyright exemptions for technical innovation and artificial intelligence.

Why do the companies involved in technological innovation need additional exceptions to finance the research and the development of new products? Authors do not benefit from a similar exception from digital technology companies. Artists and authors also need to finance innovation and the development of new works.

Recommendations

- The AAAPNB is calling for the **presumption of copyright ownership of film works for directors and scriptwriters** as the co-creators of these works.

As explained by Mylène Cyr, Executive Director of the Association des réalisateurs et réalisatrices du Québec: "We find that it would be appropriate, as part of the review of the act, to clarify any ambiguity concerning the status and rights of the director and scriptwriter when it comes to film works in Canada. The ARRQ is proposing a simple amendment to the act that does not call into question the principles of the act or the current method of compensation, but that would resolve any ambiguity regarding the rights of freelance directors. We're submitting an amendment of

¹ Érika Bergeron-Drolet, "Les exceptions de la Loi sur le droit d'auteur: rétrospective et état des lieux," *Les Cahiers de la propriété intellectuelle*, Montreal, 2016. [In French only]

section 34.1, which introduces presumptions respecting the copyright ownership of film works for the director and scriptwriter as co-creators of the film works. This proposal, which the ARRQ supports, has been agreed upon by the SARTEC, WGC and DGC artists' associations. It also fulfills the objectives of the SADC-SCAM collective society.”²

- The AAAPNB wants the **artist’s resale right to be extended to visual artists** when their works are resold in the secondary market; in other words, when a work is sold and purchased after its original sale by the artist. The AAAPNB supports CARFAC’s proposal on this issue.
- The AAAPNB believes that the **ministries of Education across the country should be required to negotiate with copyright collectives and to pay the established tariffs**. The AAAPNB does not support the recommendation by the Council of Ministers of Education, Canada (CMEC) Copyright Consortium that Access Copyright tariffs not be made mandatory. When educational institutions pay tariffs, Canadians are able create works for young people that can be used in the classroom. The financial incentive to create these works will be reduced.
- Revenues from the private copying scheme have dropped in Canada. According to a survey by the World Intellectual Property Organization,³ revenues from private copying in Canada have dropped from slightly more than 20 million Euros in 2007 to slightly less than 2.5 million Euros in 2015. The AAAPNB is calling for **the private copying scheme to be technologically neutral (technological neutrality) by extending it to new electronic formats like touchscreen telephones and tablets**. The AAAPNB supports the recommendation in this regard by the Canadian Private Copying Collective. The AAAPNB also asks that **e-books and audiovisual works be added to the list of works in the Act** that can be copied for private use.⁴
- The AAAPNB believes that, although fair dealing exists for education, the country’s **ministries of Education** should be required to negotiate with collective societies and to pay the established tariffs.
- The AAAPNB believes that, to ensure Internet neutrality, the Act should prohibit copyright-protected works from being made available to the public without the permission of rights holders. In the brief presented as part of the Committee’s study, the Coalition for culture and media stated as follows:

“Why do we allow the reproduction of protected Canadian works by foreign online services serving the Canadian population to be, under certain conditions, exempted from the application of the Copyright Law? Such an aberration must be fixed by simply identifying the final user and

² Presentation to the Standing Committee on Industry, Science and Technology, INDO-129, p. 6, October 1, 2018, <http://www.ourcommons.ca/DocumentViewer/en/42-1/INDU/meeting-129/evidence>.

³ Hester Wijminga, Wouter Klomp, Marije van der Jaft and Joost Poort, “International Survey on Private Copying, Law & Practice 2016,” World Intellectual Property Organization and Stichting de ThuisKopie, 2017.

⁴ S. 81(1) Subject to and in accordance with this Part, eligible authors, eligible performers and eligible makers have a right to receive remuneration from manufacturers and importers of blank audio recording media in respect of the reproduction for private use of (a) a musical work embodied in a sound recording; (b) a performer’s performance of a musical work embodied in a sound recording; or (c) a sound recording in which a musical work, or a performer’s performance of a musical work, is embodied.

country of destination as factors for being attached to our Law. This way, the Law will apply, without a doubt, to situations which occur in Canada and will truly protect copyrights.”

- The AAAPNB supports the recommendation by the Canadian Federation of Musicians to urge “the government to work with the music community to transition content quotas and MAPL designation from an analog to a digital world so that we can regulate the streaming industry.”⁵

⁵ Alan Willaert, Vice-President from Canada (American Federation of Musicians), Canadian Federation of Musicians. Presentation to the Standing Committee on Industry, Science and Technology, INDU-120, p. 1, June 5, 2018.