

International Authors Forum brief on the statutory review of the Copyright Act in Canada

The International Authors Forum represents authors from the text, screenwriting and visual arts sectors and their interests in copyright. Its membership of nearly 70 organisations represents over 700,000 authors worldwide.

Copyright and authors

Article 27 of the Universal Declaration of Human Rights ensures everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits. Also that everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which they are the author. When we reward the author fairly we ensure the continued creation of the culture we value today.

In recent years, we have seen growing pressure to devalue copyright and the mechanisms by which authors are remunerated for their work. This has been argued on the basis that the author will be somehow rewarded other than financially for their work or simply because creator payments are an easy cost to cut. This ignores the long term consequences of not adequately compensating authors and other creators. In the digital-use environment free access to creative works has been prioritised, often by those who are otherwise remunerated, with no consideration for the wider long-term consequences of not compensating creators. It is more important than ever that we recognise the impact these policies can have on authors and their ability to sustain their invaluable contribution to national and international cultural landscapes.

To ensure that authors can continue to create the work that people will access, we must ensure the author is rewarded fairly and that writing as a profession is respected and properly valued. If authors are not recognised and rewarded as the one truly irreplaceable link in the value chain from creation to distribution, the diversity, quality and quantity of works created will suffer. Authors recognise that each country must aim to respond to its local needs. However, in no country are authors able to work and create effectively when they are either entirely denied remuneration or inadequately paid.

Copyright and licensing

Authors want the widest possible lawful access to their works. Authors welcome libraries, archives and educational institutions as vital points of access to authors' works, but there must be a balance of access and reward to ensure that authors can continue to create the works that educate, inform and enrich cultural life. Licensing fees paid by educational establishments offered on fair terms by rightsholders provide an economical way for many students to access works. Fees generated by such balanced licensing systems greatly

support investment within educational publishing and incentivise authors to create new works.

Research by the Authors' Licensing and Collecting Society in the UK identified that authors, particularly of educational works, would potentially stop creating these works due to declining remuneration if a licensing scheme were not in place to fairly reward them for their efforts. In many countries, there are already copyright provisions in place that establish licensing and remuneration frameworks which enable access through libraries, archives and educational institutions while ensuring fair payment to authors and respect of their rights regarding their works. In *An economic analysis of education exceptions* (2012, by PriceWaterhouseCooper) it was found that almost 25% of authors in the UK derived more than 60% of their income from secondary licensing income, while a 20% decline in authors income would lead to a near 30% drop in output, meaning that almost 3000 new textbooks would never reach the market. There is a clear case for collective management organisations and fair licensing regimes as a means to efficiently ensure the balance of access to works and reward to authors.

Canada's Copyright Modernization Act 2012 added 'education' as a permitted purpose, with the consequence that 'fair dealing' in copyright works for education could be undertaken without permission from the rightsholder and without subsequent remuneration to the creators. This move is unconventional in the treatment of authors and short-sighted in terms of the creative economy and the health of educational output in Canada. Authors make an important contribution by writing the books used in education but authors can only commit to producing the works used in education when they (and their publishers) have confidence the investment they make in their creation will be protected by copyright.

In Canada, authors have lost tens of millions of dollars to uncompensated educational copying, and the national educational content has been reduced. The Writers' Union of Canada (TWUC) released the results of its 2018 income survey report, *Diminishing Returns: Creative Culture at Risk*, which revealed an increasingly common downward trend in authors' earnings. Figures from this survey showed a 27% decrease in writers' income over the past three years and a 78% decrease over the last twenty years (taking inflation into account). Despite book publishing being a nearly \$2 billion industry in Canada, it is now almost impossible for professional writers to make a living solely from their writing.

TWUC's survey asked union members and other writers to share income realities from the last taxation year, and is a follow-up on a similar survey from 2015. Despite having invested heavily in post-secondary education (53% of respondents indicated they have a Master's degree or a PhD), Canada's writers have seen their professional incomes drop drastically as a result of free copying by universities, colleges, and school boards.

It should also be noted that the current status of copyright in Canada may not be within its international treaty obligations under article 9(2) of the Berne Convention, Article 13 of the TRIPs Agreement, and Article 10 of the WIPO Copyright Treaty. This comes from the failure to meet requirements of the "three step test" that sets reasonable limits on the scope of

exceptions. We would advise the committee refer to the study by Mihály J. Ficsor *Conflict of the Canadian legislation and case law on fair dealing for educational purposes with the international norms, in particular with the three-step test* (2018). These international agreements set a simple baseline for the protection and encouragement of cultural creation: that Canada could be considered in breach of these is concerning.

Disruption and changes to the market are challenges that writers embrace and they continue to evolve their own businesses as the sector changes. But even with the changes that writers have made, no contract works without strong copyright rules at the core of its existence.

Additional areas of authors' remuneration

It is important to preserve the diversity of culture around the world and the opportunity for authors of all nationalities to contribute their voices. To pursue this, IAF strongly supports the introduction of remuneration measures such as Public Lending Right and Artist's Resale Right, as rewarding the author will help to maintain indigenous arts, literature, language and culture.

Artist's Resale Right, through its global application, not only helps artists receive fair payment for work that will be sold before its value is known to them, but also enables artists to benefit fairly when their work is resold into an international market. We have seen ongoing progress made around the world, most notably, in the USA where there has been support across Congress to introduce the resale right.

Conclusion

For the reasons set out above, the IAF strongly recommends that the Committee reviews the impact on authors and the Canadian educational publishing industry of the unqualified designation of 'education' among the activities included within the fair dealing provisions of the Copyright Modernization Act 2012.

By rebalancing copyright and enabling licensing that ensures both fairness of reward to creators and access for users, Canada's publishing industry can prosper and some of the damage to authors' livelihoods can be repaired. We would also recommend that Canada considers further models of remuneration for its authors and artists to ensure their contribution to culture and education is always rewarded. We must move back towards creativity-centred policy and legislation.