

Paris, June 13, 2018

## **BRIEF FROM THE FRENCH PUBLISHERS ASSOCIATION (SNE) TO THE STANDING COMMITTEE ON INDUSTRY, SCIENCE AND TECHNOLOGY AS PART OF ITS STUDY ON COPYRIGHT LEGISLATION**

The statutory review provided for in the 2012 Canadian *Copyright Modernization Act* is currently underway. Publishers in France would like to share their most pressing concerns about the copyright situation in Canada and call for a more balanced legal framework.

As a result of this legislation, which introduced a compensation exemption for educational purposes, Canadian educational institutions outside Quebec have stopped renewing their licences with copyright collective societies and no longer pay compensation for the use of excerpts from works. Université Laval in Quebec followed suit: it terminated its license with Copibec in 2014. Over the past five years in Canada, Access Copyright's royalty distribution has decreased by 80% since 2013. According to a study by PricewaterhouseCoopers (PwC),<sup>1</sup> only 18 months after the Act came into force, the educational exemption resulted in **lower compensation for rights-holders**, with a \$30-million decrease in licensing income, which led to a 20% drop in compensation for creators and a 16% drop in publishers' revenues. As a result, **some people have stopped producing educational content or have even left the Canadian market**. Although most educational institutions in Quebec have continued to renew their licences, royalties are also dropping as licences are negotiated for lower prices.

It must be noted that the provisions of this Act appear to be **contrary to the fundamental principles of copyright**, as set out in the Berne Convention, to which Canada is a signatory. This means a case could be brought against Canada before the World Trade Organization (WTO), and Canada would lose its standing as a champion of cultural diversity.

This situation has **significant implications for cultural diversity, freedom of expression and the quality of education. Without compensation, publishers, especially educational publishers, and authors can no longer reinvest in quality works, to the detriment of the education system**. In the United Kingdom, PwC conducted a study for the Copyright Licensing Agency (CLA)<sup>2</sup> showing how amounts redistributed by copyright collective societies for educational purposes help encourage authors to produce educational materials. In many countries, this compensation contributes to the economic balance of the sector by ensuring small companies can produce educational content, which in turn ensures that teachers have access to a wider range of national content.

If the range of Canadian-specific textbooks is reduced or even eliminated, it may mean that Canadian students will end up using American educational resources, or even standardized content provided by GAFAM, whose members invest heavily in the education sector and have

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<sup>1</sup> PricewaterhouseCoopers, *Economic Impacts of the Canadian Educational Sector's Fair Dealing Guidelines* (2015), [http://accesscopyright.ca/media/94983/access\\_copyright\\_report.pdf](http://accesscopyright.ca/media/94983/access_copyright_report.pdf).

<sup>2</sup> PricewaterhouseCoopers, *An Economic Analysis of Education Exceptions in Copyright* (2012), [http://www.pwc.co.uk/en\\_UK/uk/assets/pdf/an-economic-analysis-of-education-exceptions-in-copyright.pdf](http://www.pwc.co.uk/en_UK/uk/assets/pdf/an-economic-analysis-of-education-exceptions-in-copyright.pdf)

their own interests. Is that really the direction Canada wants to go in—one that **threatens its national sovereignty**?

The European Union is currently undertaking its own copyright reform, and we are calling on our political decision-makers to work towards a legal framework that encourages creators to innovate. **Any mandatory educational exemptions must be accompanied by safeguards** in order to preserve the textbook market, of which educational institutions are the primary market, and in order to comply with the Berne Convention:

- Unless **use is restricted to short excerpts of works**, entire works will be used, which will have an effect on sales.
- Without **mandatory compensation for all rights-holders** whose works are used, the trend will be towards unpaid use. The illusion of free access and public budget problems do not justify making adjustments to the exemption.
- Without **mandatory requirements for all licences** subject to the exemption—whether through systems based on agreements between a collective society and the Ministry of Education that work well today or licences from the publishers themselves—collective societies will no longer have the same flexibility to negotiate balanced terms and conditions, and publishers will no longer have an incentive to innovate.
- Unless **school textbooks are excluded**, there is a risk that compensation for the use of textbooks will fall sharply, with a corresponding decline in the variety and quality of the publications available.

This is the message of the **current “CONTENT FOR EDUCATION” campaign** supported by the European organizations representing rights holders in the writing sector: **IFRRO** (International Federation of Reproduction Rights Organization), **FEP** (Federation of European Publishers), **EWC** (European Writers Congress), **EVA** (European Visual Artists) and **EFJ** (European Federation of Journalists).

Lastly, it is essential to extend greater protection for authors in Canada by **increasing the term of copyright protection to 70 years after their death**, similar to the current regime in Europe. The equalization principle works for publishing houses and booksellers, and also between authors reaching niche audiences and best-selling authors. This principle also ensures there is balance over time: it sometimes takes several years before a book finds its audience—it is a gamble that the author and the publisher take together. Copyright ensures investments are made in the future.

For example, Antoine de Saint Exupéry's *Le Petit Prince* is protected in France for 88 years after the death of the author, who died fighting for France. The number of new works created each year (cartoons, plays, operas) based on the original demonstrate the value of this system. This work has stood the test of time, and it continues to support the rights-holders while also allowing the publisher to launch young authors (principle of equalization).

In conclusion, the modernization of Canadian copyright legislation in 2012 meant that creators, authors and publishers from Canada, France and around the world are no longer entitled to fair remuneration for their work and thus they no longer have an incentive to create it, which is a

loss for cultural diversity in their society. That is why we are joining with Canadian rights holders in sharing our recommendations and asking you to intervene quickly to amend the *Canadian Copyright Act*, particularly with respect to the fair dealing exemption for educational purposes. This would ensure that Canadian legislation is consistent with the Berne Convention's "Three Step Test" and that Canada maintains its leadership status on the issue of the diversity of cultural expression.

*The French Publishers Association (SNE) is France's trade association of book publishers. It represents nearly 670 publishing houses, whose combined business endeavours account for the bulk of the French publishing market, which amounted to €2.8 billion in 2016 (an estimated €3.9 billion in retail sales, before tax, at the final market level). It is a member of the International Publishers Association (IPA).*