

Modification of the Copyright Law: What Is At Stake

By Jean-Pierre Sévigny

This fall, another effort to reform the Copyright Act (C-42) began.¹ The process was launched when the Government of Canada released *A Framework for Copyright Reform*. After issuing two consultation papers on copyright issues and receiving comments from the public, the Government drafted Bill C-48, an Act to amend the Copyright Act, which received Royal Assent on December 13, 2002. The Minister of Justice was planning to send to the Senate and to Parliament a report on the copyright legislation along with suggested amendments and modifications. However, Parliament was prorogued by Prime Minister Jean Chrétien on November 12, 2003. Nevertheless, these changes remain important to a number of interest groups which have very different ideas on the scope of the copyright law, the length of protection, and the exception clause for private research and education. They will undoubtedly continue to pressure the Minister to change certain provisions of the law in their favour.

Last May a conference on the topic of copyright issues was held in Montreal. The guest speaker was Claudette Fortier of the Société du droit de reproduction des auteurs, compositeurs et éditeurs au Canada

¹For the purpose of this article, we will consider only copyright that applies to music publishing, recordings, and education.

(SODRAC), who said that creators, the record industry, and agencies are actively lobbying the Government to change the revised copyright legislation passed in 1997. The parties in the copyright debate include creators and their heirs, music corporations (Universal, BMG, Sony, etc.), collective copyright management agencies (e.g., Society of Composers, Authors and Music Publishers of Canada (SOCAN), Association québécoise de l'industrie du disque, du spectacle et de la vidéo (ADISQ), SODRAC, etc.), performers, and users.

Copyright legislation was created in the west in the late nineteenth century. The first international copyright convention for the protection of literary and artistic works was written in Berne in 1886 and revised with the Paris Act of 1971. Another convention was written for the protection of performers, record producers and broadcasters in Rome in 1961. The old Canadian copyright law, which dated from the 1920s, was amended many times, with the last modifications made in 1997. (The government's Web site for the full copyright legislation is given at <http://laws.justice.gc.ca/en/C-42/37792.html>.)

In Canada and many other common law or British Commonwealth countries, the justice system is different from countries that adopted their law from European countries like France. In Commonwealth countries the legislator strives to balance the rights of creators with the needs of users. These users are consumers,

researchers, historians, educators, and institutions or societies involved in the preservation of cultural heritage. The scope and purpose of the copyright law is on the one hand to guarantee compensation to creators, makers and producers, and, on the other hand, to make available this property, after a protection time of a number of years, for the purpose of education, preservation of heritage, and enjoyment of all. In time, all cultural works become part of the public domain.

The public domain is the final outcome of all copyright law. But there are copyright lawyers and professionals who find this objectionable, because it implies they have no control or profit over this material. They are advocating that the government adopt three modifications: to extend the copyright protection from fifty years to seventy-five years, to restrict the exception clause, and to reject the fair use concept. This lobby argues that the protection of intellectual property must be increased and strengthened, that additional powers must be given, and that provisions of the exception clause must be narrowly restricted. Although Canadian law does not recognize fair use, there is an exception which states that fees are not collected for the use of protected works in the case of private study, research, and education.

The music industry is alarmed by the impact of new technologies such as Internet file sharing and copying, which diminish revenues, and therefore seeks to recoup losses by implementing new measures to gain access to more revenues. Its model is the legislation in France, where copyright management is a

huge industry with high fees and a complex bureaucracy. Does Canada need such a system?

A different position is held by users, consumers, institutions and music societies involved in the preservation of cultural heritage. For example, André Roy, of the Montreal-based Société musicale André Turp, which is involved in the conservation, diffusion and promotion of the classical vocal repertoire, argues for a flexible law which includes a comprehensive fair use concept and a protection period of fifty years. People like Mr. Roy are content with the current legislation, seeing it as a balanced and equitable law that arbitrates between individual and collective rights, and private and public interest.

The value of intellectual property and art is at the centre of this debate. According to music scholar Philip Tagg, who teaches at the Université de Montréal, composers gather from existing materials to create new works. In fact, composing means putting together, combining parts, assembling, and organizing. Similarly, the Argentinian writer Jorge Luis Borges saw literature as one great collective book from which all writers draw inspiration and to which they contribute. No work or creation is purely and forever unique, connecting with nothing before or after it.

Musical societies, educators, librarians, archivists, heritage foundations and researchers ought to band together to create their own association to urge a compromise between copyright protection and a generous, enlarged exception clause that helps education, preservation of cultural heritage, research and

publishing. Perhaps it could be called the Canadian Association for Fair Use (CAFU). CAFU could advocate for the introduction of a broad fair use concept and a limitation of fifty years for copyright protection. This would include kits, compact discs, videos, photographs, and slides used in the classroom, libraries and research centres for educational purposes. CAFU could present its position at conferences, before committees, and by presenting briefs to government agencies. Ultimately, heritage, education, and access to culture is everyone's business. The worst case scenario would be for the government to give in to one powerful lobby. We must become

participants and not stand by and wait for a law that will affect us in the future.

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