



## February 2010

### Quand il est mort le poète \* - Hommage à Bruno Roy (1943-2010)

We were recently saddened by the loss of Bruno Roy. He had been a Copibec board member since the beginning and helped launch the agency. He was also our friend. A man of heart, words and integrity who, by a strange coincidence, died on the day of the Epiphany. That time of year marks the arrival of longer days and it is true that the days seem longer without him. We will miss his powerful voice, his smile and his generous nature. In the words of singer Gilbert Bécaud: A poet died and all his friends wept.

*Quand il est mort le poète* – paroles Gilbert Bécaud

### Royalty distributions

Since the beginning of its fiscal year on April 1, 2009, Copibec has issued **8,881** royalty (licence fee) **cheques** for a total of **\$9,605,702**. The main sources of royalty income for copyright owners were the **education sector (\$7,121,195)**, the **Quebec government (\$725,743)**, **specific authorizations** for print and digital format copying (**\$666,435**), **other copyright licensing agencies (\$494,573)**, the reserve for **visual artists (\$443,366)** and **miscellaneous sources (\$154,390)**.

For the education sector alone, we analyzed nearly **205,000 copy log forms** so that the amounts collected could be distributed to copyright owners whose works were copied.

### New licensees

During the past four months, Copibec's licensing team has been active in many sectors and has concluded 37 new agreements with various organizations, including 10 dioceses and 8 childcare centres.

Print format copying licences were also issued to the Quebec National Assembly, *Services Québec*, *Centre des services partagés du Québec*, *Financière agricole*, *Agence de la santé et des services sociaux de la Mauricie*, *Association des directeurs municipaux du Québec*, *Chambre de l'Assurance de dommages*, *Association paritaire pour la santé et la sécurité au travail* and *Medplan Communications*.

In the education sector, several new organizations and a number of private schools have made their copying activities legal by becoming licensees. They include *Centre francophone d'informatisation des organisations (CEFRIO)*, *École de massothérapie Coeur de l'Abitibi*, *Centre d'étude et de recherche en autorééducation neuromusculaire (CERA)*, *Centre de ressourcement et de massothérapie* and *École de massage Claude Delisle*.

In addition, Copibec concluded a pilot digital copying agreement with LaSalle College and issued two licences to the *Ordre des psychologues du Québec*: one for print format copying and another for digital format copying.

### **First royalties received from Australia**

In late 2009, Copibec received its first royalty payment from Australia. The \$70,000 amount covered excerpts copied in digital format from Quebec works. Under Australian legislation, the Copyright Agency Limited (CAL) – Australia's copyright licensing agency – is responsible for administering the statutory licences granted to schools and governments. Those licences allow excerpts from works anywhere in the world to be copied in digital format without prior consent from copyright owners.

Last fall, CAL sent Copibec its first data report on the excerpts from Quebec works copied in Australia. Among the titles copied were various literary classics, specialized works and educational material. Some of the data collected by CAL also identified website pages. The Australian royalties will be distributed this spring after we have identified and located most of the copyright owners concerned.

Copibec also receives royalties for print format and digital format copying of Quebec works from other Canadian provinces (Access Copyright), France (Centre français d'exploitation du droit de copie), the United Kingdom (Newspaper Licensing Agency, Copyright Licensing Agency), the United States (Copyright Clearance Center), Norway (Kopinor), Belgium (Reprobel), Switzerland (Pro Litteris), the Netherlands (Stichting Reprorecht), Spain (CEDRO) and New Zealand (Copyright Licensing Ltd). We will soon be receiving royalties from Italy (SIAE) as well.

The royalties remitted by other licensing agencies are paid out to Quebec copyright owners several times a year based on the data provided to Copibec by our partners. If the data received does not allow the works and their copyright owners to be identified, the royalties paid by other provinces and countries are added to our general lump sum (repertoire) payments.

### **School data collection period and tour**

The 350 public and private schools at the elementary and high school levels that are participating in the 2009-2010 data collection process have sent us their copy log forms

for the period from August to November 2009. The participation rate for this first phase of the school year was 76%.

A total of 8,576 copy log forms were submitted to Copibec, with 2,773 of them (32%) reporting copies of copyright protected works in our repertoire. In the other cases, the teachers indicated that they had used only reproducible material sold by publishers or had not made any copies. In general, users in schools have complied with the copying limits set out in the agreement between Copibec and the Quebec ministry of education, recreation and sports.

While the data collection process was under way, we continued our tour of schools and school boards. Since last August, our team has met with teachers and management personnel from 107 schools as well as representatives from 14 school boards in the Montreal, Lanaudière, Quebec City, Eastern Townships, Outaouais, Laval and Montérégie regions.

In December, Copibec was an exhibitor at the convention of the *Association québécoise des enseignantes et des enseignants du primaire*. More recently, our Liaison Officer Camille Tougas had the opportunity to meet with students in the education faculty of *Université du Québec à Montréal* in order to inform them about copyright compliance and outline the contents of our copying licenses. Around that time, her colleague Nicolas Boudreault was in the Lower St. Lawrence region meeting with teachers from *CÉGEP de Rivière-du-Loup*.

## **Latest news about the Google Book Settlement**

In our previous newsletter, we reported on the many questions, criticisms and objections raised by rightsholders, the U.S. government (Justice Department) and governments elsewhere in the world concerning the November 2008 Google Book Search settlement agreement. In light of the abundant criticism, the judge presiding over the case postponed the preliminary settlement approval hearing to November 19, 2009 and asked the parties to revise the settlement to take into account the comments received, especially those from the Justice Department.

On November 13, 2009, the parties filed a draft Amended Settlement Agreement. The main amendments to the initial agreement are summarized below but Copibec nevertheless strongly encourages rightsholders to review all the proposed changes by referring to the Amended Settlement on the Google Book Settlement site at [www.googlebooksettlement.com](http://www.googlebooksettlement.com).

The geographic scope of the Google agreement has been reduced so that only books published in the United States, Canada, Australia and the United Kingdom up to January 5, 2009 are now included. However, books registered with the U.S. Copyright Office are covered by the Amended Settlement, regardless of their country of publication.

Comic books, works used mainly for playing music, illustrations in children's books, and sheet music are excluded.

The Amended Settlement specifies that a book is considered “commercially available” if a new copy can be purchased in the United States, Canada, Australia or the United Kingdom.

Under the agreement, at least one representative of the publisher sub-class and one representative of the author sub-class from each of the countries covered by the settlement will sit on the Registry’s board of directors. The rightsholders for unclaimed (“orphan”) works will also be represented.

Google will now be limited to developing only three revenue models, namely Print on Demand (POD) for out-of-print books only, File Download in formats such as PDF, and Consumer Subscription.

This new version of the settlement has still been strongly criticized by a large number of rightsholders, especially as regards the opt-out provisions. Critics note that the opt-out system does not comply with core copyright principles and that Google should be responsible for obtaining the necessary permissions. The straightforward exclusion of works published outside the U.S., Canada, Australia and the U.K. has also been widely criticized. Opponents consider the exclusion unfair without further negotiation. The inclusion of foreign works that are registered with the U.S. Copyright Office has also raised major concerns because it is difficult for foreign rightsholders to identify the works. The questions about Google’s dominant position and competitive advantage following the approval of the Amended Settlement, particularly for unclaimed works, is still the subject of much criticism. Lastly, it should be noted that on February 5, 2010 the U.S. Justice Department recommended against approving the Amended Settlement.

The approval hearing for the Amended Settlement was held on February 18, 2010. The judge heard testimony from those in favour and those against the agreement but did not render a ruling. The final ruling on whether the Amended Settlement will be approved has therefore been postponed indefinitely.

You can view the Amended Settlement Agreement by visiting the Google Book Settlement website at [www.googlebooksettlement.com](http://www.googlebooksettlement.com).

Rust Consulting, the Settlement Administrator, can be contacted at [BookSettlement@RustConsulting.com](mailto:BookSettlement@RustConsulting.com) or 1-888-356-0248.

Copibec is also available to answer questions from rightsholders. However, since Copibec is not a party to the settlement, we cannot take a position regarding its contents. Nor can we advise rightsholders about their decision whether or not to participate in the settlement. As a result, we can only provide factual information about the settlement and will continue to keep Quebec authors and publishers informed about future developments in this file.

## **Upcoming retirement**

Francine Perrault, Communications and Rightsholder Services Coordinator, will be retiring on April 30 after more than 12 years as a member of the Copibec team. Prior to taking on her current role, she was a copyright licensing officer for the education sector. Since she will be Copibec's first retiree, she has caused quite a commotion – as well as a stirring of emotions -- among her colleagues. In addition to her generosity and professionalism, her enthusiasm in readily taking on challenges over the years will be sorely missed.

Happy retirement Francine! Best wishes in this new phase of your life.

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