



Padlock law

On June 2, 2010, the federal government tabled Bill C-32 to amend Canada's *Copyright Act*. Unfortunately, the promised "balance between the interests of consumers and the rights of the creative community" is nowhere to be found in the proposed legislation. Under the pretext of modernizing the Act and legalizing everyday practices, the Conservative government has strayed from the basic principle of copyright that gives authors the exclusive right whether or not to authorize the reproduction or performance of their works in consideration for any applicable royalties.

Even though the government has actually introduced a few new provisions that are favourable to artists (implementing the WIPO treaties, recognizing photographers' rights, etc.), it has mainly added new exceptions for consumers, educational institutions and libraries. It is true that exceptions to copyright have previously been granted in situations where overriding interests may take precedence, but under the international treaties to which Canada is committed, such exceptions must be "special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder" (TRIPS Article 13 and Berne Convention Article 9). Since those exceptions are a form of expropriation of the creator's ownership right, they are usually offset by fair compensation. At least that is the case everywhere except in Canada.

The Canadian government has chosen another path, a distinctly "Canadian" path that is unique both in denying creators' rights and rejecting the collective licensing process. The government has decided to prioritize users' demands without trying to reconcile them with what the creative community is looking for. In the news release issued jointly with Tony Clement, Minister of Industry, James Moore, Minister of Canadian Heritage, stated that the Bill "reflects the changing behaviours of consumers..." It would seem that the Minister has forgotten the reason behind the *Copyright Act*.

A few examples provide a clearer picture of this change in direction:

- Adding the word "education" to the purposes justifying a fair-dealing exception.

Fair dealing allows a work to be used without infringing copyright and can serve as a defence against legal proceedings. The courts will be expected to rule on the actual significance of the word added in the proposed legislation. In the meantime, copyright owners and teachers will have to live with insecurity, wondering for many years which uses are covered by the provision. And yet, agreements currently exist between

copyright licensing agencies and educational institutions to provide a framework for the use of literary, artistic, dramatic and musical works. In the case of literary works and the artistic works that they incorporate, an agreement negotiated between the parties has been in effect since 1982 and is now administered by Copibec. The 175 million copies made by Quebec schools, colleges, CEGEPS and universities generate royalties of \$9 million for the authors, illustrators and other artists as well as their publishers. Why call into question a system that has proven effective for nearly 30 years?

- Allowing material that is publicly available on the Internet to be used for education purposes, i.e. works that are not protected by a technical measure such as a digital lock or that do not include a clearly visible notice prohibiting such use (simply displaying the © copyright symbol would not be sufficient).

The ministers of education of all the provinces (except Quebec) believe that a provision of that nature is necessary to avoid having children be treated as criminals when they use online content for their schoolwork. Frankly, no copyright licensing agency or copyright owner in Canada has ever taken legal action against a child, teacher, school or parent because a student copied a picture into his or her homework. This provision puts the onus on copyright owners to lock their works or add a notice, which is contrary to the standard copyright principle that unauthorized use is prohibited. With respect to this new use, that which is not prohibited is allowed. But in any other context, the standard principle would apply. This situation could create an entire generation of children with “split personalities” and, more specifically, a whole generation of new-media users who would be ignorant of the basic rules for copyright compliance and intellectual property. Is it so hard to educate our students about those rules? Do we have to force creators to lock their works when they would actually prefer to allow access to them as long as their rights are respected? Here once again, free choice seems to be the name of the game. And that choice would not penalize the education sector because copyright owners have already freely chosen to make millions of works available to schools at no charge through Creative Commons licences. Those works are easily identifiable by search engines. In this context, why create a new exception?

- Allowing legitimately acquired copyrighted content to be copied onto another device or into another format for private use.

Consumers will therefore be allowed to transfer songs from CDs to their MP3 players or reproduce books from their personal libraries onto their computer hard disks. According to the Conservative government’s philosophy, those uses must be allowed because they are non-commercial and are a widespread practice for legitimately acquired works. Of course, that philosophy applies only to intellectual property. It should be noted that consumers also legitimately acquired their first dial telephones, which they replaced with pushbutton phones, then wireless phones, cellphones, smartphones, etc. Black-and-white television sets were superseded by colour, flat-screen and high-def TVs and now 3D equipment. All those business models involve

updating communication tools. Why should poverty be the only “innovative” business model available to content creators? Another proven business model exists. Royalties for private copying already apply to cassettes and could easily be extended to all digital platforms as well as all the works that can be copied onto them, including music, text and images. Ministers Clement and Moore have refused, arguing that Canadian taxpayers are already overtaxed. But no tax is involved: Royalties would be paid in consideration for a licence from copyright owners. Those royalties -- amounting to a few cents or a few dollars depending on the medium -- would be allocated to a fund and redistributed to the creators, publishers and producers of the copied content.

Those are just a few of the exceptions in Bill C-32 but they are representative of the viewpoint of the current government, which purports to legalize everyday activities and penalize the real “pirates” doing business in counterfeit works. Nevertheless, activities by well-intentioned individuals also negatively impact our country's culture and creative community. The government is trying to get consumers and the education sector onside by granting them numerous exceptions without any monetary compensation for creators. That very short-sighted policy will weaken our culture and harm our cultural diversity. Canada’s creators will find it increasingly difficult to earn a living from their art. Those who believe in them enough to invest in producing cultural products will find that copyright no longer includes what it takes to protect their investments. The government is proposing that copyright owners develop business models based on digital locks but has not made it clear that the legislation’s regulatory powers enable many users to be exempted from such locks. In addition, the padlock strategy no longer meets copyright owners’ needs. Only a few industries still rely on that model and most of them are in the game or software sectors where creators are employees who do not hold any copyright. Entrepreneurial creators – individuals who are the first link in the cultural industries’ production process and who assume risk by creating content without compensation in the hopes that they will find an audience – are sorely neglected in this proposed legislation. If they are overlooked, we will all lose out.

The federal government has ignored the impact of its proposed copyright legislation on the future of Canada’s creative community and culture. To save money for consumers, it could have given G8 and G20 attendees a box set of works produced by local artists to showcase our country rather than building an artificial lake and barricading the security perimeters. Once again, fences are the preferred approach: let’s hope that the locks are worth it. The *Copyright Act* should not be a padlock law and instead should be the cornerstone of a cultural development policy.

Hélène Messier

Board of Directors for 2010-2011

At the Annual General Meeting held on June 10, the delegates from Copibec’s eight member associations elected a new Board of Directors for 2010-2011. Gaston Bellemare

(Association nationale des éditeurs de livres) will act as Chair and Danièle Simpson (*Union des écrivaines et écrivains québécois*) will be Vice-Chair. Jean Lachapelle (ANEL) will serve as Secretary and François Coderre (UNEQ) has been appointed Treasurer. The other members of the Board are André Roy (UNEQ), Nicolas Langelier (*Association des journalistes indépendants du Québec*) and Lise Létourneau (*Regroupement des artistes en arts visuels*), representing the author segment, as well as Yann Pineau (*Les Quotidiens du Québec*), Luc Garneau (ANEL) and Francine Bergeron (*Société de développement des périodiques culturels québécois*), representing the publisher segment.

During her report on Copibec's operations, Hélène Messier, Executive Director, indicated that \$13,691,000 in royalties (licence fees) had been collected in 2009-2010 from users who made copies of copyrighted publications, which was slightly higher than in the previous year. She also confirmed that \$10,256,000 had been paid out to Copibec's various rightsholders based on the 290,000 copy log entries submitted by users.

After a decade as a member of the Board, the Executive Office, and the Audit and Finance Committee, Philippe-Denis Richard has left Copibec. Hélène Mercier paid homage to Mr. Richard by saying that he had helped professionalize Copibec's work and had always promoted best governance practices. She added that he would be missed and thanked him warmly for all the work he had done.

Royalty distributions

During the 2009-2010 fiscal year, Copibec issued **9,734** royalty cheques for a total of almost **\$10,256,000**. The main sources of royalty income for copyright owners were the **education sector** (\$7,578,062), the **Quebec government** (\$755,997), **specific authorizations** (\$634,485), **other copyright licensing agencies** (\$539,330), **amounts set aside for visual artists** (\$365,564), and **miscellaneous sources** (\$382,348).

In the coming months, we will be distributing the amounts collected from **private businesses** between 2005 and 2009. It will be our second lump sum (repertoire) payment for that sector.

Our analysis of the copy logs submitted by **universities** for copying done in 2008 is well under way, and the payments to copyright owners will be made this summer.

Record year for our online copyright licensing system!

Between April 2009 and March 2010, Copibec's online copyright licensing system (often referred to as DCF-WEB) received 24,829 requests, an increase of 3,800 or 18% over the previous year. As these figures confirm, more and more institutions at the college and university levels are using the online system to submit their copy log entries to us.

CEGEPs and private colleges accounted for 72.3% of the requests while universities originated the other 22.7%.

Our online system automatically processed over 83% of the requests received. The remainder had to be handled by Copibec employees because bibliographic references were incomplete or the number of pages to be copied required us to contact the copyright owners for permission.

In the past year, 3,438 of the specific authorizations (pay-per-use licences) processed by employees were approved, while 431 were rejected (because the excerpt was too long for a work available for sale, the copyright owner refused, or the title was not covered by collective licensing) and another 302 were eventually cancelled by the requesting party. The total number of requests processed by Copibec employees was therefore 4,000.

The online system's busiest day was August 21, 2009 when 453 requests were submitted!

New licensees

During the past four months, Copibec concluded 27 new copying agreements with users. Half of those agreements enabled daycare centres to make print format copies of copyrighted works. The *Association québécoise de prévention du suicide* and the *Service bénévole de l'Est de Montréal* also became licensees.

A master agreement was concluded with the *Table nationale des corporations de développement communautaire*. As a result, 51 member organizations are now licensed for print format copying.

Three non-subsidized private schools (*Académie Marie-Claire*, *Institut québécois pour la santé intégrale*, *Kiné-Concept inc.*) were also issued their first copying licences to legalize their use of copyrighted material. Negotiations are under way with other schools.

The *Ordre des comptables en management accrédités du Québec* and the *Fédération des médecins spécialistes du Québec* concluded agreements with Copibec covering both print and digital format copying. A new agreement was also negotiated with the City of Montreal concerning media monitoring activities.

We are currently conducting a survey in the 99 *Carrefour jeunesse-emploi* centres throughout Quebec in order to gather information about their copying habits, the types of works used, and the volume of copies made. The data obtained will be used to negotiate a master licence that will apply to all the centres.

Copibec currently manages about 650 copying licences issued to the education sector, government departments and agencies, the healthcare sector, private businesses, professional orders, libraries, document centres, and not-for-profit organizations.

One-year agreement for CEGEPs

Copibec and Quebec's college level educational institutions have agreed to a one-year renewal (July 2010 to June 2011) of their agreement governing the reproduction of copyrighted works. The new agreement includes a slight rise in the licensing cost from \$10.00 to \$10.25 per full time student as well as an increase in the fee for specific authorizations (pay-per-use licences) from 8¢ to 9¢ per print format copy. The copying limits at the college level remain the same, i.e. the lesser of 10% of the work or 25 pages.

During the 2010-2011 school year, Copibec and the educational institutions will work together to compile data on digital copying. The information obtained will be used to negotiate a future agreement that could encompass both print and digital format copying.

Currently, CEGEPs and colleges that want to digitize an article or book excerpt have to request specific authorization from Copibec or obtain a pilot licence covering that type of copying. Only a few colleges have obtained pilot digital copying licences, with most opting for pay-per-use licensing.

Data collection among schools

A large number of elementary and high schools participated in the first two data collection periods of the school year. To date, 93% of the surveyed schools have submitted copy log forms to identify the titles copied.

For the two periods from August 2009 to March 2010, we received 19,203 copy logs. Most of the teachers (73%) indicated that they had used only material sold by publishers with a copying licence or had not made copies of copyrighted material. However, approximately 5,000 logs indicated that articles or book excerpts had been copied. The material copied was mainly from Quebec and, in the vast majority of cases, the limits set out in Copibec's copying licence were respected.

So far, 13,674 copy log entries have been recorded in preparation for December's scheduled payment to copyright owners. The data from the third collection period of the 2009-2010 school year was transmitted to Copibec at the end of June. We are already preparing to send out information kits, posters and forms to the 350 schools selected for the 2010-2011 data collection process. Our calendar is filling up fast! Various meetings with teachers, management personnel and school boards have already been planned for the back-to-school season. In October, Copibec will also participate in the convention of the *Association québécoise des enseignantes et des enseignants du primaire*.

Updated fees

Many publishers and freelance journalists now rely on Copibec to negotiate the republication of their previously published book excerpts or articles that will be included in new works available for sale. The requests that we process relate mainly to anthologies and educational material (teacher's guides, student's manuals, online complements to books already purchased by schools). The excerpts are taken from various sources such as youth fiction, poems and news articles.

Since the beginning of this year, we have handled requests involving 86 excerpts, 30 publishers and about 50 authors. Copyright owners have the option of setting their own fees or allowing Copibec to apply its own rate schedule and terms of use. The royalties (licence fees) for the copied excerpts are paid directly to copyright owners by Copibec.

Our republication rates were recently updated in order to reflect the increase in the royalties collected under all our licences, the commercial nature of most of the new publications, the material sold with copying licences, and the growing popularity of works sold in digital format. We take into consideration the fact that some educational material is now sold both in print and digital formats (restricted-access websites, USB flash drives, CD-ROMs). The royalties are calculated according to the number of excerpts copied and the print run (or the number of times the website is accessed for digital format material). Depending on the use, the royalties range from \$15 to approximately \$600 per page copied.

The publishers and authors who have given Copibec authority to manage their reproduction rights can also appoint us to process requests concerning the republication of their works. For more information, please contact **Isabelle Billeau**, Communications and Rightsholder Services Officer, at i.billeau@copibec.qc.ca or 1-800-717-2022 or 514-288-1664 ext. 235.

Reminders to publishers

Take advantage of the summer season to register your titles!

In preparation for the 2011 lump sum (repertoire) payment, make sure that all your titles have been entered in the Copibec repertoire. Online registration is the fast, effective way to manage your publications catalogue!

During the fiscal year that ended on March 31, 2010, our online copyright licensing system was used to register 6,414 titles in the Copibec repertoire. If you have not already registered your titles online, we encourage you do so. Our online system is an easy and effective way to **consult, register and update** information about your titles in the Copibec repertoire. Important: To avoid errors when royalties are distributed, be sure to notify us if any rights have reverted to authors or if collections have been sold.

In order to be eligible for the lump sum payment, authors who hold **all** their reproduction rights should register their titles themselves by completing our print format registration form.

Are your rights managed by Copibec? Don't forget to register your titles!

More than 40 publishers who have given Copibec authority to manage their reproduction rights have not yet registered any titles in our repertoire. Please note that the registration process is essential. If you do not register your titles, we are unable to pay the royalties to you and your authors.

Royalties cannot be distributed as long as copy log entries remain incomplete.

It is important for publishers to follow up our requests for information concerning incomplete copy log entries submitted by users. We cannot distribute royalties for those copies because we do not have all the necessary information (bibliographic references, author's name and contact information).

There is a fast and easy way to ensure that copy log entries are complete! Register your titles immediately by using the Publishers module of our online copyright licensing system.

Your titles have been entered but are still pending: Did you click "Submit"?

Certain titles have been entered in our online copyright licensing system but do not yet appear in our repertoire. In some cases, the publishers entered the data online but did not submit the titles to Copibec. In other cases, they modified the data but left the titles in "modification" mode. Don't forget to click the orange "Submit to Copibec" button.

What if Copibec doesn't manage your rights?

Only publishers who have given Copibec authority to manage their reproduction rights and whose titles are registered in our repertoire are eligible to receive the lump sum (repertoire) payment that will be made in 2011.

If you have any questions about using the Publishers module and registering titles online, please contact **Isabelle Billeau**, Communications and Rightsholder Services Officer, at i.billeau@copibec.qc.ca or 1-800-717-2022 or 514-288-1664 ext. 235. She will be pleased to provide any information you need.

Are you moving this summer?

Whether you're a writer, a freelance contributor to newspapers and magazines, or a visual artist, it only takes a few minutes to [update your address](#) online so that you can continue

to receive royalties when your works are copied. At the same time, you can check that all your titles have been registered by your publisher.

What if one of your titles doesn't appear in our repertoire? If a title is missing, contact your publisher directly to have the title added. If you hold the reproduction rights to your works, you can register your titles yourself.

What if you haven't registered with Copibec yet? It's easy. [Register online](#) now.

What if you have questions?

- **Writers and freelance contributors to newspapers and magazines** should contact **Anouk Pérusse**, Communications and Rightsholder Services Officer, at a.perusse@copibec.qc.ca or 1-800-717-2022 or 514-288-1664 ext. 228.
- **Visual artists** should contact **Isabelle Billeau**, Communications and Rightsholder Services Officer, at i.billeau@copibec.qc.ca or 1-800-717-2022 or 514-288-1664 ext. 235.

People on the move at Copibec

Licensing Services

Marie-Josée Goyette has transferred from reception to the copy log team, where she now holds the position of Research and Data Entry Assistant. Simon Éthier has also joined that team. The two new recruits will help their colleagues analyze the thousands of copy log entries transmitted to Copibec every year.

Communications

Émily Patry is now in charge of greeting Copibec phone users as Receptionist/Communications and Rightsholders Services Assistant. Caroline Lacroix has taken over the duties of Francine Perrault as Communications Coordinator.

We wish them much success in their new positions.

Enjoy your summer!

Coordinator: Caroline Lacroix

Contributors: Hélène Messier, Rose-Marie Lafrance, Cécile Gascon and Nicolas Boudreault

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To send us your questions or comments or to have your name removed from our newsletter subscription list, please contact c.lacroix@copibec.qc.ca

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