



## **It's time to mobilize against Bill C-32**

Now that the House of Commons is back in session, Bill C-32 aimed at modernizing the *Copyright Act* should be given second reading in the weeks ahead. It will then be referred to a special committee for study. The committee will hold hearings, propose amendments and submit a report to the House, which may or may not take the recommendations into account before proceeding with the Bill's third reading. Once it is adopted by the House of Commons, the Bill will be given three readings in the Senate.

This is therefore a very active, crucial period for anyone who has interests that they want to defend concerning copyright. There are many stakeholders, including consumer groups who believe that the technological locks hamper their access to works, videogame and software industry players who are pushing the government to take vigorous measures against pirating, beneficiaries of the 17 new exceptions who think that the accompanying conditions are too restrictive, and Internet service providers who are thrilled that they will be allowed to continue raking in enormous profits without being held liable for infractions committed using the services they provide. In other words, everyone will be lining up in front of the legislative committee members to defend their point of view in the hopes that their complaints will be heard and that their concerns will be reflected in the Bill's amendments.

Creators, performers, publishers and the associations that represent them will not be on the sidelines because they are of course the big losers in this reform featuring a multitude of exceptions without compensation. More than \$9 million collected annually by Copibec is in danger and a similar impact will be felt in the music, dramatic works and artistic sectors. The consequences will be immediate for certain exceptions while for others, both users and copyright owners will have to wait years before the courts define the exceptions' scope.

What is the motivation behind it all? To offer access to works? False. That access already exists, in particular through licences provided by collective licensing agencies such as Copibec, SoQAD, SODRAC and ARTISTI (to name but a few) or under the Creative Commons model. To make works available free of charge? In that case, why is content alone being targeted? In our technological universe, we are expected to pay a high price for the hardware, access and numerous gadgets that are becoming increasingly multifunctional. Why then refuse to recognize the value of the content running on them? Is it another sign of the Conservative government's "love" of culture? You may recall the

cuts made in the fall of 2008 to various cultural programs, including tours. They love culture so much that they are giving it to you free. Tough luck for the creators. We thought that the Conservative government had a right-wing ideology but we were wrong. They are so left-wing that they have decided to abolish private ownership of intellectual property by nationalizing creators' work and making it a collective good.

In the opinion of Copibec's member associations, that is a strange way to show love. Copyright enables culture to emerge and take root. It is why there should be widespread demonstrations against Bill C-32. Our associations encourage authors, publishers and everyone who supports them to write to Mr. Clement, Minister of Industry, and Mr. Moore, Minister of Canadian Heritage, as well as Prime Minister Harper and their local MPs to express their concerns about this Bill. A postcard campaign is also getting under way. We will send out cards to authors and publishers with the upcoming royalty payments. You can email us at [info@copibec.gc.ca](mailto:info@copibec.gc.ca) to request additional postcards. Ask for a supply and hand them out around you. It is important to let our politicians know that modernizing the *Copyright Act* is definitely important but should not be done at the expense of the creators who have the right to be compensated for their work. Your support can make a difference.

Hélène Messier

## **Copibec's member associations react to Bill C-32**

The **Union des écrivaines et écrivains québécois** (UNEQ) held a special meeting on September 25 to explain Bill C-32 and its impact on writers. Postcards and letters denouncing the Bill's contents were signed by the attendees. UNEQ's website contains [media releases](#) and [model letters](#) in French that can be sent to ministers, MPs, and national and regional media outlets.

The **Association des éditeurs de livres** issued a strongly-worded [media release](#) in reaction to the Bill's introduction.

An [entire section](#) of the website of the **Regroupement des artistes en arts visuels du Québec** (RAAV) is devoted to Bill C-32. In particular, it contains a document outlining the joint position of RAAV and Canadian Artists' Representation (CARFAC).

The **Association des journalistes indépendants du Québec** will discuss Bill C-32 in the next issue of its newsletter [L'Indépendant](#).

## **Bill C-32 at the international level**

The International Federation of Reproduction Rights Organisations (IFRRO), which represents more than 120 organizations from around the world including Copibec, sent a [letter](#) to Ministers Moore and Clement stating that the Bill does not respect the international treaties that Canada has signed.

## Overview of Bill C-32

The Bill contains 17 new exceptions, most of which do not provide compensation for authors. Writers, visual artists and publishers will be especially hard hit because their works are the main content copied by users in educational institutions, and many exceptions are proposed for those users. Nevertheless, there are various exceptions of a more general nature. Here is an overview of the Bill's exceptions.

### General exceptions:

- **Expansion of the concept of fair dealing for education, parody and satire:** The courts will have to define the actual scope of this exception, which could compromise the amounts collected by Copibec for works copied in educational institutions. In its 2004 CCH ruling, the Supreme Court stated that exceptions were user rights and that they should be interpreted broadly. Since the term "education" is not defined in the Bill, this new exception could apply to any form of educational activities, not only those taking place in a school context.
- **Non-commercial user-generated content (the "YouTube" exception):** Individuals will be able to create new works by using existing works free of charge for non-commercial purposes. They could distribute them on networks such as YouTube and will have to indicate the sources used "if it is reasonable in the circumstances to do so". This exception exists nowhere else in the world and is very broad in scope. It will become very difficult to trace the original works that undergo multiple modifications each time they are reused.
- **Reproduction for private purposes:** Individuals will be able to reproduce entire works on any other medium or device if they legally own the works. They can then provide access "for private purposes". It will therefore be possible to digitize all the books in a person's library or copy songs from a CD to an iPod. The government could have decided to extend the existing compensation regime for transferring audio recordings to blank media such as cassettes – which is what artists and performers are asking for – but has instead opted for free access.
- **Backup copies:** The owner of a work will be able to make backup copies and use them to replace an original work rendered unusable. Devices that can no longer be used will therefore have to be repurchased, but not the content.

### Specific exceptions:

- **Communication by telecommunication:** Educational institutions will be able to communicate lessons containing copyrighted works to students by telecommunication. The institution will have to take measures "that can reasonably be expected" to limit the distribution of the work and will also have to destroy the copy within 30 days of the date on which the students receive their

final evaluations. However, no penalties are proposed if the institution fails to take the necessary measures.

**Extension of the photocopying licence:** Institutions that have been issued a photocopying licence by Copibec will be able to make digital copies and communicate them to students by telecommunication. The photocopying licence's provisions will apply to that type of use, and the royalties will be calculated the same way. How will fair dealing for educational purposes be reconciled with this exception? Nobody knows.

- **Works available through Internet:** For educational or training purposes, educational institutions will be able to use works available through the Internet. This exception will not apply to works that are protected by a technological measure or that display a clearly visible notice (not merely the © symbol) prohibiting the use of the work. This reverses the longstanding principle that a work is copyrighted as soon as it exists in any material form, without any further formalities. Copyright owners who do not want to allow free access to their works will be required to padlock them or add a “clearly visible” notice.
- **Reproduction for visual display or exams:** The current legislation allows works to be manually reproduced and presented by means of an overhead projector. The Bill will allow works to be copied and visually displayed on any medium or by any technical means such as USB flash drives, interactive whiteboards or computer screens. This exception will not apply if the works are commercially available in Canada. However, the government has removed the option of obtaining a licence from a licensing agency, considering that it would hamper the application of the exception. This would translate into an anticipated loss of half a million dollars for the copyright owners represented by Copibec.
- **Inter-library lending:** In the context of an inter-library loan, libraries will now be able to give users periodical articles in digital format for research or private study. They will have to take measures to prevent users from printing more than one copy or communicating them to another person.
- **Statutory damages:** Since it is sometimes difficult to prove the damages incurred, the *Copyright Act* gives copyright owners the option of claiming statutory damages. The amount of those damages currently ranges from \$500 to \$20,000 for all infringements concerning a single work. The Bill lowers those amounts to \$100 and \$5,000 for infringements committed for non-commercial purposes with respect to all of the copyright owner's works.
- **Technological protection measures:** Circumventing a technological protection measure that restricts access to or the use of a work or offering a service, technology or device that allows such technological protection measures to be circumvented will be subject to criminal sanctions including a maximum fine of \$1 million and five years' imprisonment. Technological protection measures are

prevalent in the audiovisual, software and videogame sectors – dominated by U.S. products – but are very rarely used in other cultural sectors.

- **Internet service providers:** ISPs will be subject to a notification system that requires them to send a notice to anyone who has committed a claimed infringement and to retain records so that the person can be identified in the event of legal proceedings by the copyright owner. This is a far cry from the illegal activity filtering regimes or notification and withdrawal systems applied in the U.S. and Europe or the participation in a compensatory fund suggested by stakeholders in the music industry.

To view [Bill C-32](#).

The Ogilvy Renault law firm has prepared a version of the [Copyright Act including the proposed amendments](#) as well as an [information bulletin](#).

## **Royalty distributions**

In our last newsletter, we mentioned that we would be distributing the royalties collected from **private businesses between 2005 and 2009**. An amount of **\$615,333** has been paid out to copyright owners for works copied in that sector. Our analysis of the data from a number of businesses, private training centres, daycare centres, professional associations and document centres showed that **61% of the copies made** by private-sector licensees were **magazine articles, 29% were book excerpts and 10% were newspaper articles**.

Copibec also distributed the royalties for copying done by **universities in 2008**. After analyzing the **120,658** copy log entries submitted, we divided the total amount of **\$3,439,800** among the approximately **42,500 Canadian and foreign works** copied. Based on the university copy logs analyzed, the breakdown of copying by category was as follows: **72.66% books, 26.74% magazines, 0.57% newspapers and 0.03% CD-ROMs**.

The royalties paid by **Quebec government ministries and budgetary organizations** enabled us to distribute a total of **\$584,670 for newspaper articles copied and \$49,178 for magazine articles**.

In preparation for next spring's lump sum (repertoire) payment, the Copibec team has released the amounts set aside for 2005 and 2006. Thanks to our stepped-up tracing efforts, various authors and publishers were issued royalty cheques.

We will also be making two major payments before the end of this year: one for copying done by the elementary and high school sector in 2009 and one for the amounts set aside for visual artists.

The initiatives taken by Copibec have ensured that royalty payments to copyright owners can now be made more rapidly.

## **Fall tour and data collection**

Since the start of the 2010 school year, Copibec representatives Camille Tougas and Roseline Hébert have visited 23 schools located mainly in the following administrative regions: Montreal, Laval, Outaouais, Quebec City, Eastern Townships and Central Quebec. By year end, they will have met with teachers and management personnel from about 50 schools and at least five school boards in order to “talk copyright” and explain the provisions of the agreement between Copibec and the Quebec ministry of education, recreation and sports.

During the data collection process for the 2009-2010 school year, the 350 selected schools completed 28,444 copy logs, with close to 20% reporting excerpts copied from works in the Copibec repertoire. Over 95% of the targeted schools sent in their copy logs. Copibec personnel are currently completing the analysis of the approximately 20,000 copy log entries submitted by public and private schools. Royalties for the copied works will be distributed to authors and publishers in the coming weeks.

In late November, Copibec will receive data from the first collection period of the 2010-2011 year and will begin analyzing the copy log entries.

## **See us onscreen!**

### **Information videos for the elementary and high school sector**

Three short videos have been produced so that Copibec can inform teachers at the preschool, elementary and high school levels about the provisions of the agreement with the Quebec ministry of education, recreation and sports. Our visits to schools throughout the province have shown that teachers have many questions about the agreement, the *Copyright Act* and data collection. Each video runs about four or five minutes, addressing those topics in a fun, informative way.

Want to know more about Copibec and the *Copyright Act*? The [General Information](#) video is where to look.

What can teachers copy? The [Copibec/MÉLS Agreement](#) video has the answers.

What is the purpose of the copy logs and how should they be completed? The [Data Collection Process](#) video outlines what to do and explains how the collected information is used.

## **Payment to visual artists**

This fall, Copibec will be distributing the amounts set aside for visual artists. Creators who are already registered with Copibec as well as various associations representing artists have been contacted for that purpose. In order to be eligible for the payment, artists must declare their works that were copied in a Quebec publication (magazine, newspaper, book, exhibition catalogue) between January 1, 2006 and December 31, 2009.

The deadline for registration is **October 22, 2010**.

If you have not already done so, [register online](#) now by going to the Authors/Registration section of our website.

**What if you have questions?** Contact **Isabelle Billeau**, Communications and Rightsholder Services Officer, at [i.billeau@copibec.qc.ca](mailto:i.billeau@copibec.qc.ca) or 514-288-1664 or 1-800-717-2022 ext. 235.

## **New licensees and licensing negotiations**

This past summer, Copibec concluded an agreement with the *Fédération des établissements d'enseignement privés* (FEEP) so that the federation could digitize excerpts from copyright protected works in order to develop learning opportunities and exams. The two-year agreement enables member schools to access and make print format copies of learning opportunities and exams developed by FEEP. The copies made must be reported to Copibec by using the form that accompanies each of the FEEP documents.

Various other organizations, including a few daycare centres, also obtained copying licences this past summer. The *Chambre de la sécurité financière*, AIMTC Louise Tremblay, *École sur mesure*, *Autisme-Québec* and *Séminaire Baptiste Évangélique du Québec* are among the organizations and training centres that recently became Copibec licensees.

In the coming weeks, the *Fédération des cégeps*, in collaboration with Copibec, will launch a consultation process among Directors of Studies and teachers from CEGEPs and colleges. The information gathered will provide a clearer picture of current copying habits and future needs, especially concerning digital copying. It will also be used to negotiate the renewal of the college-level agreement.

Copibec and the Quebec government will be meeting this fall to discuss the renewal of the agreement authorizing personnel to make print format copies as well as the agreement allowing digital format press reviews to be compiled and distributed.

As always, we have a variety of other licensing negotiations under way, with projects involving pharmaceutical companies, training centres, school board groups and healthcare network organizations.

## **Copibec 2.0**

Reflecting our ongoing commitment to stay in close touch with our members and licensees, we have entered the world of social media. Are you on Facebook? Be sure to visit our new [Facebook page](#) and click the “Like” button to keep up to date on the latest developments such as changes to the *Copyright Act* or news about upcoming payments.

You can even hear from us on [Twitter](#) where we will be tweeting our breaking news in a shorter format (maximum 140 characters).

The power of social networking comes from the people who take part in it. We therefore encourage all of you to join us.

In addition, be sure to check out our future newsletters. We will be announcing the launch of our updated website offering numerous features!

### **New recruit in the reporting team**

Pascal Campeau is our newest Copibec recruit. He will be responsible for helping his colleagues analyze the thousands of copy log entries submitted by licensees each year. We would like to welcome him to our team.

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