



Modernizing the *Copyright Act*

Bill C-32 reborn

In recent months, Copibec has closely monitored developments concerning Bill C-32, which was intended to modernize the *Copyright Act*. When the federal election was called last March, Bill C-32 died on the Order Paper. On September 29, it was reborn as the Conservative government's new Bill C-11. Although the number has changed, Bill C-11 is identical to the former Bill C-32 and contains the same injustices for copyright owners and the same dangers for our culture. Despite the dozens of witnesses who appeared before the Legislative Committee, not a single line of the bill has been modified.

All the recent developments in this file are covered on the French-language website [Culture équitable](#) launched by Copibec and its partners. Be sure to [sign the petition](#) that was started online when C-32 was introduced. It is not too late if you have not already signed it because the bill remains the same; only the number has changed. As well, you can [send a letter to your MP](#) to remind him/her that our culture is worth protecting.

Copibec and its member associations will continue the fight to preserve the rights of authors and publishers. As part of that effort, the *Association nationale des éditeurs de livres* (ANEL) and the *Union des écrivaines et écrivains québécois* (UNEQ) issued media releases following the introduction of Bill C-11.

Read the ANEL release [here](#).

Read the UNEQ release [here](#).

Royalty distributions

Since the beginning of its fiscal year last April, Copibec has made various royalty (licence fee) payments. We started with general lump sum (repertoire) payments for visual artists (\$66,401) and freelance contributors to newspapers and magazines (\$811,663).

That was followed by \$3,616,679 in royalties for copies made by universities in 2009 and \$653,863 for newspaper and magazine articles copied by Quebec government ministries and budgetary organizations in 2009-2010.

A total of nearly \$1,440,659 was paid out to rightsholders for pay-per-use licences (requests for specific authorization) issued to users in a variety of sectors as well as ministry exams at the elementary and high school levels.

Including \$118,983 in miscellaneous payments, a grand total of \$6,708,248 was therefore paid out to rightsholders.

In the coming months, Copibec will distribute royalties for copies made in elementary and high schools and colleges during 2010.

Copibec on tour!

Preschool, elementary and high schools

Since the start of the 2011 school year, Émilie McAll Pinard, Simon Éthier and Frédérique Couette have visited over 50 schools and school boards in a number of Quebec regions (Montreal, Montérégie, Central Quebec, Saguenay/Lac-St-Jean, Quebec City, Laval and Lanaudière). The meetings enabled teachers and management personnel to gain a better understanding of certain aspects of the *Copyright Act* and the various provisions of the copying agreement between Copibec and the Quebec ministry of education, recreation and sports. The purpose and procedures for our data collection process were also covered.

In addition, Copibec has prepared three video clips to provide background information to anyone working in preschool, elementary and high school institutions:

[General information](#)

[Copibec/MÉLS agreement](#)

[Data collection process](#)

Colleges

Following the renewal of the copying agreement with college-level institutions, Copibec and the *Fédération des cégeps* held half-day information sessions in Montreal and Quebec City. The sessions were designed to explain the terms and conditions of the new college agreement, in particular the provisions concerning digital copying and the obligation to report copied works (in print and digital formats) to Copibec.

About 75 people attended the sessions during which Copibec presented its online reporting system (DCF-WEB). The participants also received a copy of our new pamphlet called *Nourish the creative spirit: Respect copyright!* Claude Robinson did the illustration for this new information tool. We would like to thank the *Fédération des cégeps* for its cooperation as well as CEGEP de Limoilou, which hosted the Quebec City event.

In a similar vein, Nicolas Boudreault, Licensing and User Services Officer, met with representatives from Collège Lionel-Groulx and CEGEP St-Jean-sur-Richelieu to provide more personalized training and answer their questions. By the end of the year, Nicolas is scheduled to meet with teachers and personnel from other institutions in order to talk to them about the new copying licence, digital copying and online reporting.

Daycare centres

In late September, Rose-Marie Lafrance, Licensing Services Director, travelled to Rimouski to meet with daycare centre management personnel from across Eastern Quebec during the convention of the *Réseau des services à la petite enfance de l'Est du Québec*. The participants wanted to know more about the *Copyright Act* and the copying licence issued to daycare centres by Copibec. To date, we have issued copying licences to 33 daycare centres and nine daycare centre associations.

Convention

Copibec was an exhibitor at the convention of the *Association pour l'enseignement de la science et de la technologie au Québec*, which was held in Laval in early October.

Summertime licensing

During the past summer, our Licensing Services team was as busy as ever. Licences to redistribute electronic media reviews were negotiated with 28 administrative departments and boroughs of the City of Montreal. The licences enable approximately 170 employees to access the media reviews distributed by Communication Démo to the City's communications division. Only articles from *The Gazette* are covered. The other newspapers included in the media reviews received by the City are represented by Cédrom-SNI or Sun Media for digital format copying purposes.

Copibec also contacted the various non-budgetary organizations of the Quebec government to renew their print format copying licence agreements. So far, 28 non-budgetary organizations have signed new agreements, including the National Assembly, *Régie des rentes*, CSST and *Conseil des arts et des lettres du Québec*.

Since the start of 2011, *Coaching de gestion*, the *École Trilingue*, *Maison de musique* and *Clinique Kiné-Spa* have also become Copibec licensees for their photocopying needs. In all, Copibec manages over 700 print and/or digital format copying licences.

Legal Update

Orphan works

On September 12, the Authors Guild, Australian Society of Authors, *Union des écrivaines et écrivains québécois* (UNEQ) and a number of individual authors filed a copyright infringement complaint in U.S. Federal Court against HathiTrust and five U.S. universities (Michigan, California, Wisconsin, Indiana and Cornell).

Recently, the U.K. Authors' Licensing and Collecting Society, the Norwegian Nonfiction Writer and Translators Association, the Swedish Writers Union and the Writers Union of Canada as well as four new authors joined the proceedings against HathiTrust and the designated universities.

The legal action came in response to last June's announcement by the University of Michigan that it would launch a digital library of works that were still protected by copyright but were deemed orphan works by the universities, i.e. works whose copyright owners were known but could not be located by the universities. The universities maintained that the digitizations and overall project complied with the fair use provisions of U.S. copyright legislation.

The complaint involved about seven million copyright protected works from various countries. The digital files of the works were provided to the universities by Google under agreements to digitize their collections and were stored on the servers of HathiTrust. The so-called orphan works were to be made available to students and professors of the universities so that they could be downloaded, for example. The project was scheduled to be launched online on October 13, 2011.

On September 14, the Authors Guild published an article on its website explaining how it had quite easily traced an author whose book was considered an orphan work by the universities and HathiTrust. That case was obviously not unique because on September 16, the University of Michigan announced that it was [suspending the project](#) to correct the errors – some of them serious, in the university's opinion – identified following closer scrutiny.

For more information on this case, you can visit the site of the [Authors Guild](#). UNEQ has also issued a [media release](#).

Claude Robinson

In our October 2009 newsletter, we reported on the ruling made by Justice Auclair of the Quebec Superior Court on August 26, 2009 (*Robinson et al. v. Les Films CINAR Inc et al.*, [2009] QCSC 3793 -- August 26, 2009).

The decision was part of a long legal battle by Claude Robinson to have defendants Charest, Weinberg, CINAR, Izard, Davin and France Animation convicted of plagiarizing his work entitled *Les aventures de Robinson Curiosité*.

In his October 2009 ruling, Justice Auclair found defendants Charest, Weinberg, CINAR, Izard, Davin and France Animation guilty of copyright infringement under the *Copyright Act*. The judge also decided that CINAR, Charest and Weinberg had committed a serious offence creating liability under the Civil Code of Quebec for having failed in their obligation to act faithfully towards the plaintiff. He therefore sentenced the guilty parties to jointly and severally pay more than \$5 million in damages, including \$1 million in exemplary damages and \$1.5 million to cover legal costs.

The defendants appealed the ruling and the Quebec Court of Appeal rendered its decision on July 26, 2011. The Court maintained the conclusions of Justice Auclair concerning the originality of Mr. Robinson's work and the existence of plagiarism by the appellants. It also confirmed Justice Auclair's analysis of a substantial borrowing based on the resemblances between the two works in question. The Court noted that the analysis was essentially a matter of facts that could not be reduced to a simple comparison of the works in terms of the percentage reproduced. In addition, the existence of differences between the works did not necessarily mean that plagiarism could be ruled out.

However, the Court of Appeal did not retain all of Justice Auclair's conclusions.

In particular, owing to the lack of relevant facts supporting the trial judge's conclusions, the Court did not find Christian Davin, CEO of France Animation, liable. Mr. Davin was considered to be acting on behalf of his company rather than on a personal basis. All convictions against him were therefore annulled.

Most importantly, the Court of Appeal reduced the amount of damages granted to Mr. Robinson by nearly half, to \$2.7 million including \$1.5 million for legal fees. This substantial reduction was based mainly on the Court's conclusions concerning the compensation for lost profits, psychological harm and punitive damages.

With respect to the allocation of profits earned on the plagiarized work, the Court lowered the amount of the profits to \$521,155 from \$3,433,608, accepting in particular the appellants' claims for a reduction in the profits on music rights. Since the music in *Robinson Sucroé* was not deemed to have been copied from the original work, Mr. Robinson could share only in the profits that were directly linked to that work. As a result, he received 50% of the profits, as determined by Justice Auclair's ruling, i.e. \$260,577.

In terms of the evaluation of Mr. Robinson's psychological harm, for which Justice Auclair had awarded \$400,000 in damages, the Court of Appeal ruled that the Superior Court judge had erred in basing his decision on a precedent focusing on reputation. The evidence showed that there was in fact psychological harm, i.e. bodily harm of a non-monetary nature. The indemnification should have been evaluated according to the

criteria defined for such cases by the Supreme Court, i.e. a maximum of \$242,700. The Court concluded that the harm to Mr. Robinson was not at the high end of the spectrum, that there had not been physical injury and that he could continue to enjoy life normally. The Court therefore granted him \$121,350, representing 50% of the maximum amount.

With respect to the punitive damages, the Court of Appeal identified an error on the part of Justice Auclair who, in his decision, had mainly relied on facts that were not related to copyright infringement. In addition, the Superior Court judge had not taken into consideration the exceptional nature and ultimate purpose of that type of damages, namely to punish the defendant rather than indemnify the plaintiff. The Court considered that punitive damages should be granted to Mr. Robinson but that they should be assessed using the principle of moderation. The Court took into account the fact that the appellants had presented a reasonable defence, that the respondents were generously compensated for legal costs and that the amount of compensatory damages and profit sharing also served to punish the appellants and create a deterrent effect. The Court of Appeal therefore reduced the punitive damages to a total of \$250,000.

In addition, the Court re-examined the solidarity of the convictions in terms of profit sharing: It decided that only CINAR, France Animation, Ravensberger and RVB should be convicted because they were the ones that benefited from the profits.

Lastly, the Court rejected Mr. Robinson's request to obtain extrajudicial fees for the appeal since the appeal was not unfounded.

The case will be appealed to the Supreme Court.

To find out more about this case or to give financial support to Claude Robinson, go to [Operation Claude Robinson](#).

Annual Report

Copibec's review of its operations for fiscal 2010-2011 is now available [online](#). In addition to the report from Copibec's outgoing Chair of the Board Gaston Bellemare and Executive Director H el ene Messier, the Annual Report contains the financial statements (in French) for the past year.

A departure...

Pascal Campeau has left us to pursue his career as an archivist. We wish him best of luck in his new endeavours.

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