

DIGEST OF COMMENTS CONTAINED IN
BRIEFS SUBMITTED IN RESPONSE TO:

"COPYRIGHT IN CANADA: PROPOSALS FOR A REVISION OF THE LAW"



Prepared by: Barry Torno and Alan MacLeod
Research and International Affairs Branch
Bureau of Intellectual Property
Consumer and Corporate Affairs Canada

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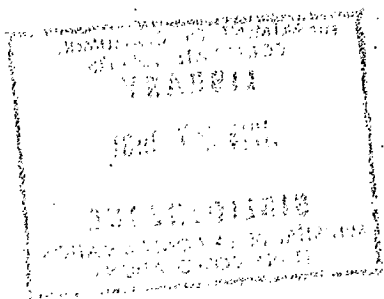
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SUBJECT

RECOMMENDATION

A. *Criteria for Determining Eligibility
of Works for Protection*

1. *Fixation*

That fixation be a mandatory requirement of protection. That the definition of fixation allow for any means capable of capturing the work fixed thereby.

COMMENTS: The briefs of two Writers, a Performing Artist, six Library Associations and four Educational Associations were in agreement with this recommendation. (17a, 25; 69; 61, 61a-61e; 56, 75, 96, 96a) Two Copyright Association briefs and one by a Literary Publisher also agreed. (51, 52; 72) The latter brief further suggested, as did one by a Copyright Association, that the recommendation be expanded to specifically provide for simultaneous fixation and ownership of copyright in both the recorded work and the recording where the fixation is done by a second party. (72; 52) One Broadcaster, while generally agreeing with the requirement for fixation, would provide an exception in the case of 'live' broadcasts. (92) The Performing Artist's brief supported providing lecturers with protection against unauthorized recordings or fixations of their extemporaneous lectures. (69)

2. *Originality*

As no change in existing law is contemplated, it being considered that a specific definition of "original" in any new Act might lead to interpretative difficulties in view of existing voluminous case law, no recommendation is made.

COMMENTS: Two briefs by Copyright Associations expressed unqualified agreement with this recommendation. (51, 52) One brief by a Writer noted that this provision should specifically state that translations are original works. (42)

3. *Qualified Persons*

That the protection of the Canadian Act be provided to the following "qualified persons":

1. *individuals:*
 - a) *Canadian nationals;*
 - b) *those domiciled or resident in Canada;*
 - c) *non-nationals whose works require protection under the Conventions to which Canada adheres;*
 - d) *nationals of those countries to which the Act may from time to time extend.*
2. *juridical persons;*
 - a) *bodies incorporated in Canada;*

NOTE: This Digest seeks to accurately reflect the full scope of the comments expressed in all briefs received by Consumer and Corporate Affairs Canada prior to October 31, 1978. However, the Digest does not purport to be an exhaustive tableau of all such comments as certain individual qualifications may be reflected within the context of statements of broader application.

The numbers cited in the Digest represent the corresponding Index Numbers assigned to each Brief upon receipt by CCAC. Refer to Appendix A.

- b) *bodies incorporated in countries signatories to the Conventions to which Canada adheres;*
- c) *bodies incorporated in countries to which the Act may from time to time extend;*
- d) *organizations (e.g.: UN and specialized agencies) to be named in appropriate orders from time to time.*

COMMENTS: General agreement with these recommendations was expressed in the briefs of two Copyright Associations, one Performing Artist, four Educational Associations and six Library Associations. (51, 52; 69; 56, 75, 96, 96a; 61, 61a-61e) A common remark in the above briefs was that 'habitual residents' should not be included. Three Literary Publishers also expressed agreement, however, all would extend the definition to include non-incorporated associations. (2a, 33, 72) The brief by one Broadcaster noted general support for Recommendations 1 and 2, but rejected the inclusion of 2 (d) due to its tendency to increase the outflow of copyright payments. (92)

4. *Published and Unpublished Works*

- 1. *That unpublished works be protected only if created by qualified persons.*
- 2. *That published works be protected only if:*
 - a) *first published in Canada; or*
 - b) *first published in a country signatory to a Convention to which Canada has adhered; or*
 - c) *first published in a country to which the Act extends; or*
 - d) *created by Canadians or by nationals of a country that has adhered to the 1952 Text of the Universal Copyright Convention, irrespective of country of first publication.*

COMMENTS: Two briefs by Copyright Associations, one by a Performing Artist, and four by Educational Associations concurred with the first of the above recommendations. (51, 52; 69; 56, 75, 96, 96a) One of the Copyright Association briefs, as well as the Educational Association briefs and one by a Performing Artist further agreed with the second recommendation. (51; 56, 75, 96, 96a; 69) One brief by a Broadcaster, six by Library Associations and one Writer's brief noted full support for both recommendations. (92; 61, 61a-61e; 17a)

- 3. *That Canada not go beyond its present international commitments and protect works in situations not envisaged by the Conventions.*
- 4. *That simultaneous publication be defined as a subsequent publication occurring within 30 days of first publication.*

COMMENTS: Recommendation 3 received support in briefs by one Performing Artist, two Copyright Associations, one Public Advocacy Organization, four Educational Associations, one University, two Broadcasters, six Library Associations and one Literary Publisher. (69; 51, 52; 93; 56, 75, 96, 96a; 91; 81, 92; 61, 61a-61e; 72) The last brief noted that if other

countries increased their international commitments, while Canada maintained the status quo. Canada might become less attractive as a centre for initial publication. One Writer's brief submitted that although Recommendation 3 may be to Canada's advantage, it is unacceptable due to international considerations. (14) One other Writer's brief stated that Canada should accede to the Stockholm Convention.

One Broadcaster, four Educational Associations, six Library Associations, one Performing Artist and one Copyright Association also concurred with Recommendation 4. (92; 56, 75, 96, 96a; 61, 61a-61e; 69; 52) Additionally, one other Writer's brief expressed agreement with both the above recommendations. (17a)

SUBJECT

RECOMMENDATION

B. *Categories of Works and Definitions*

1. *That the general categorization of literary, dramatic, musical and artistic works, be retained.*

COMMENTS: The briefs by two Copyright Associations, four Educational Associations, one Writer, one Broadcaster and six Library Associations agreed with this proposal. (51, 52; 56, 75, 96, 96a; 17a; 92; 61, 61a-61e) One Copyright Association submitted that these categories of "works" should be defined in terms of whether or not a requisite level of 'creativity' was present. (38)

2. *That the categories be broadly defined, bearing the following in mind:*
- a) *"literary works" should not include maps, charts or plans;*
 - b) *"musical works" should recognise the contemporary nature of these works, and any definition should encompass words associated with the music;*
 - c) *"dramatic works" should not include motion picture film or videotape, but should include choreography;*
 - d) *"artistic works"*
 - 1) *should be protected irrespectively of artistic quality; to include maps, charts and plans;*
 - 2) *that the definition of photograph include any work expressed by a process analogous to photography.*

COMMENTS: Overall agreement with this recommendation was noted in the briefs by three Copyright Associations and two Writers. (38, 51, 52; 14, 17a) Specifically one Library Association, four Educational Associations and one Archive concurred with Recommendation 2a. (34; 56, 75, 96, 96a; 47) The brief by one Writer suggested that "literary works" expressly include translations and one Broadcaster's brief, while expressing general satisfaction, noted that "musical works" can be created in conjunction by composers and lyricists, each holding separate rights. This could lead to possible problems in delineating differing terms of protection for each creator. (42; 92) One other Writer's brief indicated that there

should be specific inclusion of indexes and abstracts as "literary works". (26)

One Performing Artist's brief urged that the definition of "dramatic works" should expressly include screenplays. (69) The briefs by one Writer, one Library Association, one Archive and a Copyright Association agreed with Recommendation 2d, however, six Library Associations noted that a clearer definition of "photograph" is required to distinguish it from photocopying, as a "process analogous to photography". (17a; 34; 47; 51; 61, 61a-61e)

3. *That mechanical contrivances be the subject of an independent category of other protected material.*

COMMENTS: This proposal received support in the briefs of four Educational Associations, six Library Associations, one Writer, and two Copyright Associations. (56, 75, 96, 96a; 61, 61a-61e; 17a; 15, 51) One Literary Publisher's brief stated that a definition of what constitutes a "mechanical contrivance" is required. (72) One brief by a Broadcaster also agreed with the creation of a separate category so long as the public utilization and broadcasting of these contrivances do not give rise to an exclusive right. (92) One Copyright Association expressed the view that since mechanical contrivances, as well as other special classes of works, are merely 'fixations' of composite works and thus need not be separately defined and protected. (38)

SUBJECT

RECOMMENDATION

C. *Rights of Authors*

1. *Pecuniary Rights*

1. *That the pecuniary rights of authors in respect of their literary, dramatic, musical and artistic works be reformulated as explicit rights in accordance with the methodology outlined.*
2. *That references to the rights attaching to subject matter other than literary, dramatic, musical and artistic works such as motion picture films, sound recordings, be deleted.*

COMMENTS: The briefs by four Educational Associations, six Library Associations, one Writer, one Performing Artist agreed with the above. (56, 75, 96, 96a; 61, 61a-61e; 17a; 69) The briefs by two Copyright Associations indicated a qualified support, premised on the proviso that the rights protecting the works referred to in Recommendation 2 be specifically enumerated elsewhere. (51, 52) One Literary Publisher supported Recommendation 1, but submitted that Recommendation 2 needed clarification, to ensure that rights protecting motion pictures are provided for elsewhere. (5)

3. *That to ensure clarity and certainty, the exclusive rights of authors in literary, dramatic, musical and artistic works, be formulated so as to provide that in respect of:*
 - a) *The right to reproduce: it include reproduction of a two dimensional work in three dimensions, or vice versa.*

- b) The right to perform in public: it include delivery in the case of lectures and similar works; and the presentation of a work by the operation of wireless telegraph apparatus, exhibition of a film, playing of a record or by any other means.
- c) The right to publish: it include making copies of any published work available to the public.
- d) The right to adapt: it include the right to make a version in which the story or action is conveyed wholly or mainly by means of pictures in a form suitable for reproduction in a book, newspaper, magazine or similar periodical.
- e) The right to broadcast: the definition of radiocommunication be that used in the Broadcasting Act.
- f) The right to authorize: that it mean the right to authorize the exercising of any of the rights reserved to authors.

COMMENTS: Two briefs by Copyright Associations, one by a Performing Artist, four by Educational Associations, six by Library Associations and one by a Literary Publisher indicated agreement with the above enumeration of an author's exclusive rights. (51, 52; 69; 56, 75, 96, 96a; 61, 61a-61e; 33) One Broadcaster's brief also concurred with the recommendations, however, it was suggested that it be clearly stated that these rights only apply to the whole work or a substantial portion thereof. (92)

The six Library Association briefs and two by Writers further noted that the right to authorize and to publish translations should be expressly included. (61, 61a-61e; 17a, 42) The Writers' briefs also stated that the right to authorize should specifically include the right to licence. (17a, 42) The briefs by a Literary Publisher and two Copyright Associations suggested the addition of a specific "right to reproduce" by specific means, i.e. reprography. (33; 51; 52) One Writer's brief shared this viewpoint and would add reproduction by computers. (25) The brief by a Broadcaster pointed out that the example in Recommendation 3a really involved an "adaptation" of a work and therefore, should be included in 3d. Further, this brief added that publication rights are implicit in reproduction rights. (92)

One Music Publisher's brief, in expressing concern over the current lack of respect for synchronization rights, would ensure that the rights to perform and/or broadcast specifically include synchronization rights. (48) One Copyright Association brief also recommended formulation of an author's right to "embrace the input into a computer of a copyrighted work, whether it involves a 'translation' or 'reproduction' under the present law". (52)

- 4. *That any new Act provide for a specific right to exhibit an artistic work in public.*

COMMENTS: Agreement with this recommendation was indicated in the briefs by four Educational Associations, one Performing Artist and one Copyright Association, however, the latter expressed concern that there might be a potential conflict with the Report's later recommendation to provide an exception for "certain works permanently situated in a public place". (56, 75, 96, 96a; 69; 52) One Archive brief submitted that such a right

be expressly granted to the owner of the work unless there was an agreement with the author to the contrary. (95)

The briefs by six Library Associations disagreed with this proposal as it would prohibit the public exhibition by libraries and bookstores of artistic works contained in books, posters and other publications. (61, 61a-61e) One Broadcaster's brief indicated disagreement as the recommendation would tend to increase the outflow of copyright royalties. (92) This brief questioned whether the right to exhibit would have priority over the right of ownership. If the author is the owner, then, the brief submits, the recommendation is superfluous.

2. Moral Rights

1. That the following moral rights be provided in Canadian Copyright law:
 - a) the author's right to enjoy respect for his authorship, including a right to restrain false attribution of authorship and a right to restrain the circulation of copies of the work under his real name where he has chosen to use a pseudonym or to remain anonymous;
 - b) the author's right to restrain any distortion, mutilation or other modification of his work, or any action in relation to the said work, which would be prejudicial to his honour or reputation;

COMMENTS: General approval of the Report's approach to moral rights was expressed in the briefs of one Writer, two Copyright Associations, four Educational Associations, one Literary Publisher, one Performing Artist and one Federal Government department. (14; 51, 52; 56, 75, 96, 96a; 33; 69; 6) One other Writer's brief, while expressing agreement, stated that such rights be specifically attributed to translators as "authors". (42) The brief by one Copyright Association agreed to the "right to restrain circulation" but only in the situation where the work was circulated without the prior permission of the author. (52) Six Library Associations supported Recommendation 1a only if the word "circulation" refers solely to the first sale and distribution of copies of the work and not to the resale or lending of such works by libraries. (61, 61a-61e) The brief by one Broadcaster pointed out that in the case of continuous broadcasting it would be difficult to always attribute authorship, therefore, an exception should be included to legitimize such practices. (92) Two Copyright Association briefs submitted that the expansion of moral rights, in general, was "unnecessary and incompatible with the historic position taken in the common law world", and because of the applicable remedies, such expansion would transmute the "colossal scope" of the expanded moral rights into pecuniary rights, resulting in the creator being heavily favored. (11, 11a)

With respect to Recommendation 1b, the briefs by a Performing Artist and a Writer would amend the wording to restrict the requirement of prejudice to honour or reputation to "any action" and not require that "any distortion, mutilation, or other modification of his work" be so qualified. (69; 17a) If this were done then Recommendation 1c would be unnecessary. Two Literary Publisher's briefs and one by a Broadcaster noted concern for the phrase "any action" and the possible consequences if it was to be liberally interpreted. (33, 72; 92)

- c) *the author's right to restrain any distortion, mutilation, modification or any other action in relation to the original of an artistic work in the nature of a sculpture, a painting, a drawing or an engraving;*
- d) *as corollaries to the right to publish: the author's right to stop a publication, despite previous authorization, provided that the publisher receives compensation; and a right, after publication, to withdraw the work from circulation by having the first option to buy back copies available for sale.*

COMMENTS: As with the above comments, the briefs by one Performing Artist and one Writer proposed an expansion of the scope of an author's right to restrain circulation. (69; 17a) One Copyright Association's brief would restrict Recommendation 1c by the addition of the "honour or reputation" clause as in 1b. (52) One Visual Artist's brief recommended that 1c also apply to all artistic works, including photographs and illustrations. (24) Again, the briefs by two Literary Publishers questioned the inclusion of the phrase, "any action".

The brief by one Writer supported the inclusion of Recommendation 1d, if it is restricted to the "right to withdraw...by having the first option to buy back copies and the right to withdraw authorization for subsequent editions, provided that adequate compensation is paid". (17a) The briefs by two Literary Publishers, one Music Publisher, three Copyright Associations and one Broadcaster expressed strong disagreement with this recommendation, citing the very real potential for abuse. (33, 72; 43; 38, 51, 52; 81)

- 2. *That moral rights be attached to the person of an author, but that they may be transmitted on the death of the author to his heirs or, through testamentary disposition, to a third party.*
- 3. *That the term of protection for moral rights be the same as for pecuniary rights, and accorded to original literary, dramatic, musical and artistic works.*
- 4. *That remedies for infringement of moral rights be the same as those granted for the protection of pecuniary rights, including injunction and damages.*

COMMENTS: Three briefs by Copyright Associations addressed remarks to Recommendation 2. (38, 51, 52) One expressed overall general support while another would limit the protection for moral rights to the life of the author. (52, 38). Two of the briefs would restrict the operation of this provision to exclude an employee-author. (51, 52). The brief by one Broadcaster shared the above view on limiting the protection to life of the author as only the author can judge to what extent harm has been done to his works or reputation. (92) One of the Copyright Association briefs also noted that provision should be made to allow for the alienability of moral rights so that an assignee of the pecuniary rights might also acquire the moral rights in order to avoid any possible conflicts. (52) Four briefs by Educational

Associations also rejected the proposal for the transmission of moral rights on the death of an author, as being inconsistent with various provincial statutes which prohibit such actions with regard to protection against defamation. (56, 75, 96, 96a)

The briefs by two Copyright Associations, six Library Associations and one Performing Artist agreed, without further elaboration, with Recommendations 3 and 4. (51, 52; 61, 61a-61e; 86) One Copyright Association would restrict the term of protection for moral rights to the life of the author. (38) One Writer's brief fully supported Recommendation 4 whereas one Educational Association brief would protect moral rights for as long as the work is in existence except that after 50 years after the author's death only damages would be available as a remedy for infringement. (17a; 36)

SUBJECT

RECOMMENDATION

D. *Term of Protection*

1. *Works Published During Author's Lifetime*

1. *That the general term of protection remain life of the author plus 50 years, for all published original works.*
2. *That relevant variations of the rule be made to clarify cases where the original owner is a corporation. This variation would also apply to situations where, by virtue of an employment relationship, copyright originally vests with the employer.*

COMMENTS: General support for Recommendation 1 was expressed in the briefs of four Educational Associations, one University, one Performing Artist, two Writers, one Archive, six Library Associations, two Copyright Associations and one Broadcaster. (56, 75, 96, 96a; 91; 69; 14, 17a; 47; 61, 61a-61e; 51, 52; 92) The brief by one Copyright Association would reduce the term of protection to the life of the author plus 25 years. (38) One Literary Publisher's brief noted general agreement with "life + 25" and all of the following recommendations concerning "term of protection". (72)

Agreement with Recommendation 2 was indicated in the briefs by one Copyright Association, four Educational Associations, six Library Associations, one Performing Artist, and one Writer. (51; 56, 75, 96, 96a; 61, 61a-61e; 69; 17a) Two other briefs by Copyright Associations stated that, if the author is known, the term of protection for "all published original works" should be life of the author plus 50 years. (15, 52) One of these briefs added that the sole variation should be in the case where a corporation is the "maker". (15) One Visual Artist's brief stated that clarification of who is the "author" is required. (24)

Additionally, the briefs by one Library Association, one Archive, one University and one Broadcaster would restrict the term of protection for corporate works to no more than 50 years after publication. (34; 47; 91; 92)

2. Unpublished Works

(a) general

That the term of protection provided to literary, dramatic and musical works unpublished at the author's death be until publication or public performance and for 50 years thereafter, but that the total term of protection not exceed 75 years after the death of the author, or 100 years after his death where the work has been deposited in an archives.

COMMENTS: Agreement with this recommendation was indicated in the briefs of four Educational Associations, two Writers and two Copyright Associations. (56, 75, 96, 96a; 14, 17a; 51, 52) One brief of the latter group would add the proviso that the publication or public performance be done with the consent of the author's legal representative in order for the term to commence. (51)

The briefs by two Copyright Associations, one University, one Archive, and one Performing Artist recommended that the term be the same as that for published works. (15, 38; 77; 39; 69) One Broadcaster's brief also disagreed with the Report and noted that all works of an author should enter the public domain at the same time, therefore, this provision is unnecessary. (92) Thus, "artistic works" could be included under the general term of protection.

One other Archive brief rejected the additional 25 years protection for deposited works and briefs by two Archives, one Performing Artist and one Copyright Association would eliminate the "deposit" clause altogether. (47, 39; 69; 38) Generally, the briefs by eight Library Associations indicated that the term was too long and the brief by one University agreed with this view suggesting a 30 year term. (58, 61, 61a-61e; 62; 91)

Regarding unpublished corporate records, two Archive briefs and one by a Performing Artist would support a 100 year term of protection. (39, 47; 69) Six Library Association briefs suggested 50 years as the length of the term of protection, while one University brief would not provide any protection for such material at all. (61, 61a-61e; 77)

(b) exceptions

i) *photographs and engravings*

That photographs and engravings enjoy the same term of protection as all other artistic works: 50 years after the death of the author.

COMMENTS: This recommendation received support in briefs by two Copyright Associations, four Educational Associations, one Writer, one Visual Artist, one Performing Artist and one Broadcaster. (51, 52; 56, 75, 96, 96a; 17a; 24; 69; 92) Two briefs by Archives indicated that the present term of 50 years after the taking of the photograph should be retained. (39, 47)

ii) *anonymous or pseudonymous works*

1. *That published anonymous or pseudonymous works be protected for a period of 50 years from publication; but that where the author's identity is not in doubt or where he discloses his identity during the period, the ordinary term of protection apply.*

COMMENTS: The agreements noted in the previous Comments also apply to this recommendation, although one of the Copyright Association briefs would alter "50 years from publication" to include 'or performance in public' and would also exclude "artistic works" entirely. (51) The other Copyright Association brief noted potential problems of conflict with the expanded moral rights and with the ambiguity of to "whom" disclosure should be made. (52) Finally, the Broadcaster's brief would substitute "made lawfully available to the public" for the date of "publication" to avoid artificial prolongation of the term of protection. (92)

2. *That a publication under two or more names not be considered pseudonymous unless all names are pseudonymous.*
3. *That the known author of a pseudonymous work be deemed the sole author of that work.*

COMMENTS: These recommendations received support, without further elaboration, in the briefs of two Copyright Associations, four Education Associations, one Performing Artist, one Broadcaster and one Writer. (51, 52; 56, 75, 96, 96a; 69; 92; 17a)

4. *That an anonymous or pseudonymous work, unpublished at the time of the author's death, be protected until publication and for 50 years thereafter, provided that the total term of protection not exceed 75 years from the date of creation of the work, or 100 years from the date of creation in the case of a work deposited in an archives.*

COMMENTS: Recommendation 4 was supported in the briefs of two Copyright Associations, one Performing Artist, one Writer and four Educational Associations. (51, 52; 69; 17a; 56, 75, 96, 96a) The brief by one of the Copyright Associations pointed out that the "date of creation" should be clearly defined. (52) The briefs by one Archive and one Visual Artist strongly opposed the provision for the extra protection for "deposited works". (47; 23)

Referring to the previous recommendations for "published works", one Broadcaster's brief submitted that there should not be any distinction in the term of protection between published or unpublished works. (92)

iii) joint works

That term of protection for joint works be life plus 50 years calculated from the death of the last surviving author, subject to the recommendations governing anonymous and pseudonymous works.

iv) reversionary interest

That s.12(5), which limits the rights of an author to assign any interest beyond the 25 year period following his death, be repealed.

COMMENTS: Two briefs by Copyright Associations, four by Educational Associations, one Writer's brief and one by a Performing Artist agreed with the recommendation on "joint works". (51, 52; 56, 75, 96, 96a; 17a; 69) The brief by one Broadcaster stated that the present definition of "joint works" in s. 2(k) of the Copyright Act should be retained. (92)

All of the above briefs plus those by another Copyright Association and one Music Publisher agreed that s.12(5) of the Copyright Act should be repealed. (8a; 43)

SUBJECT

RECOMMENDATION

E. *Ownership of Copyright*

1. *Ownership and its Exceptions*

1. *Subject to the exceptions that follow, that the author be the first owner of copyright.*
2. *That ownership in a photograph vest in the person owning the material on which the photograph is taken.*

COMMENTS: The briefs by four Educational Associations, one Performing Artist, two Copyright Associations, one Visual Artist, one Composer/Lyricist, one University and a Broadcaster approved of Recommendation 1. (56, 75, 96, 96a; 69; 51, 52; 24; 27; 77; 92) Two briefs by Literary Publishers and three by Writers also agreed, although some of the above briefs disagreed with the below "exceptions". (33, 72; 17a, 26, 42)

Recommendation 2 received support in the briefs of four Educational Associations, one Performing Artist, two Literary Publishers, one Archive one Copyright Association and one Broadcaster. (56, 75, 96, 96a; 69; 33, 72; 47; 51; 92) Strong disapproval was noted in briefs by three Copyright Associations, one Writer, six Library Associations, one Educational Association and one Archive. (15, 38, 52; 17a; 61, 61a-61e; 28; 39) These briefs all stated that ownership of a photograph should rest in the "maker" or person responsible for the composition.

3. *That the ownership of the copyright in any commissioned work be vested in the person commissioning the work, in the absence of an agreement to the contrary.*
4. *That, similarly the principle that the employer is the first owner of the copyright in works made by his employees in the course of their employment, be retained.*

COMMENTS: Agreement with Recommendation 3 was indicated in the briefs of four Educational Associations, two Literary Publishers, one Archive and one Broadcaster. (56, 75, 96, 96a; 33, 72; 47; 92) Forceful disagreement was noted in the briefs of four Copyright Associations, five Writers, one Visual Artist, one Performing Artist, one Music Publisher, one Library Association and one Composer/Lyricist. (8a, 15, 38, 52; 14, 17a, 25, 26, 42; 24; 69; 43; 4; 27) These briefs all submitted that, notwithstanding that a work is commissioned, the author should be the initial owner of the copyright, subject to an agreement to the contrary. One Educational Association brief submitted that clarification of the term "commissioned" was required to delineate what constitutes "valuable consideration" for the work. (28)

Regarding Recommendation 4, the briefs by five Educational Associations, one Writer, two Copyright Associations, two Broadcasters and two Literary Publishers expressed full approval. (36, 56, 75, 96, 96a; 17a; 51, 52; 80, 92; 33, 72) The brief by one Performing Artist would restrict copyright ownership by an employer to specific purposes. (69) The briefs by three

Copyright Associations, two Writers, one Visual Artist, one Composer/Lyricist, one University and one Research Institute stated that the creator should always be the first owner of copyright, subject to an agreement to the contrary. (8a, 15, 38; 14, 25; 24; 27; 91; 32)

5. *That, unless otherwise provided by contract, where a contribution to a particular periodical is ordered by a proprietor:*
 - (i) *the proprietor be entitled to the copyright only insofar as it relates to publication in that periodical;*
 - (ii) *the author be entitled to the copyright in all other respects.*
6. *That the principle be recognized that a work commissioned for one purpose cannot be used for another, unless there is an agreement to the contrary.*

COMMENTS: Four Educational Associations, two Literary Publishers, one University and one Broadcaster expressed agreement with Recommendation 5 in their briefs. (56, 75, 96, 96a; 33, 72; 91; 92) Disagreement was indicated in the briefs of one Research Institute and one Performing Artist. (32; 69)

With respect to Recommendation 6, support was expressed in the briefs of two Writers, one Performing Artist, two Copyright Associations and one Visual Artist. (14, 25; 69; 51, 52; 24) The briefs of four Educational Associations and two Literary Publishers indicated that such a provision might interfere with the freedom to contract and therefore should not be included. (56, 75, 96, 96a; 2a, 72) The latter two briefs, as well as one by another Literary Publisher, would redraft this proposal so that it would not work to the detriment of Canadian publishers. (33) On this recommendation, one Broadcaster's brief suggested that the commissioned work should only be used in the framework of the professional activity in which the principal is engaged at the time of commissioning. (92) The brief by one Copyright Association would redraft Recommendations 3, 5 and 6 to clarify the respective rights of ownership and the uses to which each party may make of the work. (51)

2. *The Exercise of Ownership of Copyright*

(a) *assignments, voluntary licences, testamentary dispositions*

1. *That the present provisions regarding the exercise of copyright ownership be retained, with the exception of the provision respecting territorial assignment.*
2. *That a licence have priority in law over an assignment made subsequently.*
3. *That provision be made to permit assignment of copyright in works yet to be created.*
4. *That the devising of the original of any unpublished material, protected by copyright, presumes devising of the copyright therein, unless a contrary intention is evidenced in the will.*

COMMENTS: The briefs of four Educational Associations, six Library Associations and one Broadcaster support Recommendation 1, the latter brief noting that to allow territorial assignment of copyright within Canada would result in increased costs to users through competition. (56, 75, 96a; 61, 61a-61e; 92) The briefs by two Literary Publishers, three Copyright Associations, one Broadcaster and one Performing Artist emphatically stated that the provision for territorial assignment should be retained, as being essential for the effective marketing of Canadian works. (2a, 72; 8a, 51, 52; 81; 69)

The briefs of two Copyright Associations, four Educational Associations, one Writer, six Library Associations, one Broadcaster and one Performing Artist concurred with Recommendations 2, 3 and 4. (51, 52; 56, 75, 96, 96a; 17a; 61, 61a-61e; 92; 69) One Educational Association brief noted that there may be problems wherein a corporate copyright owner surrenders its charter or is otherwise wound up. (36) One Archive brief pointed out that a licensee's priority over titular successors should be subject to a bona fide, purchase for value without notice after reasonable attempts at discovery. (95) One Writer's brief indicated that implementation of Recommendation 3 would not be in the best interest of authors. (14)

(b) *compulsory aspects affecting exercise of ownership*

- i) *compulsory licences* *That sections 7 and 13 be repealed.*
- ii) *reversionary interest* *That subsection 12(5) be repealed.*
- iii) *printing clauses* *That sections 14, 15 and 16 be repealed.*

COMMENTS: Complete agreement with the above three recommendations was expressed in the briefs by four Educational Associations, two Copyright Associations, one Performing Artist and one Broadcaster, the latter noting that sections 12(5), 14, 15 and 16 are contrary to the International Conventions (56, 75, 96, 96a; 51, 52; 69; 92) Additionally, three Writers' briefs and one by a Literary Publisher agreed with Recommendation b(i). (14, 17a, 25; 72) Three of these briefs also supported Recommendation b(iii), while one Copyright Association and one Music Publisher agreed with Recommendation b(ii). (14, 17a; 72; 8a; 43)

One brief by a Copyright Association, six by Library Associations and one by a University disagreed with the elimination of compulsory licences. (38; 61, 61a-61e; 91) It was submitted by the same six library associations that these licenses be retained for copyright materials for the handicapped where such sales are envisaged. (61, 61a-61e)

SUBJECT

RECOMMENDATION

F. *Cinematographic Works*

1. *Motion Picture Films*

1. *That motion picture films be protected as specific works, whether or not they are of "original character".*
2. *That ownership of copyright in a film rest with the "maker", defined as the person by whom the arrangements necessary to make the film were undertaken.*

3. *That the term of protection be 50 years from the date of the making of a film.*

COMMENTS: Recommendation 1 was agreed to in the briefs of one Archive, one Performing Artist, two Writers, two Copyright Associations, four Educational Associations, six Library Associations, one Film/Video concern and one Broadcaster. (47; 69; 14, 17a; 51, 52; 56, 75, 96, 96a; 61, 61a-61e; 59; 92). One Copyright Association brief suggested that a generic definition be provided to specifically include videotapes and videograms. (52) One Film/Video brief submitted that a definition of "motion pictures" should be used to include "stills and audio work". (83)

Four Educational Associations' briefs, one by an Archive, six by Library Associations, one by a Performing Artist and one by a Film/Video organization fully supported Recommendation 2. (56, 75, 96, 96a; 47; 61, 61a-61e; 69; 88) Briefs by one Writer and a University disagreed, with the latter suggesting that ownership be established by contract. (14; 91) One Film/Video brief suggested that the "maker" be required to share the royalties with the creator, subject to contract. (88) One Copyright Association brief, two by Educational Associations, one by a Broadcaster and one Film/Video brief noted potential problems with the definition of "maker". (15; 28, 36; 92; 83) The latter two briefs recommended the use of "producer" instead. In addition the Broadcaster's brief would include an exception in respect of ownership for commissioned works.

One brief by a Film/Video concern noted that the "producer/creator" owner of a film should be required to "assemble all the constituent copyright elements" of the film as a "bundle", so that thereafter, copyright in the film could be dealt with as a single unit, especially concerning dealings with collectives. (40) One Copyright Association brief, while agreeing with all of the recommendations regarding motion picture films, would expressly provide that ownership of the copyright in films be specifically subject to the recommendations with regard to ownership by employers and to commissioned works. (51)

Support for Recommendation 3 was indicated in the briefs of one Copyright Association, four Educational Associations, six Library Associations, one Archive, one Performing Artist, one Film/Video concern and one Broadcaster. (52; 56; 76, 96, 96a; 61, 61a-61e; 47; 69; 59; 92) The briefs of two Educational Associations and one Copyright Association again noted the potential for problems in interpreting "making". (28, 36; 15) Also, one Film/Video brief stated that this recommendation should be extended to cover a film while in the process of being made. (59)

4. *That the only rights of makers be:*
- a) *reproduction, including reproduction of any substantial part;*
 - b) *performance in public;*
 - c) *broadcasting;*
 - d) *adaptation.*
5. *That publication, with respect to films, be defined to provide for all manners in which films are in practice made available: by lease, rental, sale or licence.*

COMMENTS: Regarding Recommendation 4, the briefs of six Library Associations, one Archive, one Copyright Association and four Educational Associations indicated agreement. (61, 61a-61e; 47; 52; 56, 75, 96, 96a) One Broadcaster's brief noted that the right to reproduce is inherently restricted to the whole or substantial part of a work, so the latter part of the recommendation can be omitted. (92) Of the two Film/Video briefs, the first would not grant any adaptation right, while the other

would include the right to authorize. (88, 89) The former view was shared by one Performing Artist's and one Writer's briefs. (69; 17a) One Recording Industry brief would add the right to prevent the making of unauthorized copies, the right to distribute copies of the work to the public and the right to authorize any of the aforesaid acts. (73) One brief by a Literary Publisher submitted that the recommendation required clarification. (72)

Unqualified agreement with Recommendation 5 was expressed in the briefs of one Copyright Association, four Educational Associations, six Library Associations, one Performing Artist, one Broadcaster, two Film/Video organizations and one Archive. (52; 56, 75, 96, 96a; 61, 61a-61e; 69; 92; 59, 88; 47)

2. *Videotape*

That videotape be treated as motion picture film for the purposes of copyright protection.

3. *Videograms*

That videograms be treated as motion picture film for the purposes of copyright protection.

COMMENTS: The briefs of six Library Associations, four Educational Associations, one Copyright Association, one Broadcaster, one Performing Artist, one Archive and one Film/Video concern concurred with both above recommendations. (61, 61a-61e; 56, 75, 96, 96a; 51; 92; 69; 47; 88) The brief by a Recording Industry concern also agreed, except for situations where the contrivance was principally an audio recording, as they would then be considered film sound tracks and would not be subject to the sound recordings statutory licensing provisions. (73)

One Film/Video brief expressed agreement with Recommendation 2, while the brief by an Archive indicated that a more detailed definition of "videogram" is required to account for such processes as holography, video-discs, etc.. (60; 47) One other Film/Video brief submitted that other systems such as Pay-TV, video-cassettes, etc., be specifically enumerated as forms of cinematographic works. (88)

SUBJECT

RECOMMENDATIONS

G. *Sound Recordings*

1. *General Considerations and Performing Right*

1. *That sound recordings be protected by copyright as subject matter distinct from literary, dramatic, musical or artistic works.*

2. *That, subject to Recommendations 6 and 7 below, the exclusive rights in a sound recording be the right to "reproduce and the right to publish".*

COMMENTS: Approval of Recommendation 1 was expressed in the briefs of one Writer, one Educational Association, one University and one Broadcaster. (14; 28; 77; 92) One brief by a Copyright Association expressed disapproval in noting that sound recordings are merely "fixations of composite works", thus not requiring special protection. (38) One Recording Industry brief indicated support only if foreign recordings continue to be protected and that a clear definition of "sound recordings" is included. (73)

One Broadcaster's brief noted that 'phonograms' and 'sound recordings' should not be considered one and the same type of work. (80)

Two briefs by Archives indicated approval, generally, for the sound recordings recommendations. (39, 47) One of these briefs would provide that, in the case of oral history recordings, some protection be afforded to the interviewee. (39) This view was shared in the briefs of six Library Associations. (61, 61a-61e) One Literary Publisher's brief indicated general support for Recommendations 1 to 7 provided that the recommendation on "recordings made for sale" is implemented. (72) One Copyright Association brief also expressed general agreement with Recommendations 1 to 5, with some reservations. (52) One other Copyright Association brief disagreed with Recommendation 1 when read in conjunction with Recommendations 6 and 7. (51)

While expressing agreement with Recommendation 2, the brief by one Broadcaster noted that the right to reproduce includes the right to publish. (92) The briefs by four Educational Associations would exclude such rights where the sound recordings are incorporated into educational programmes. (56, 75, 96, 96a) One Recording Industry brief proposed that the exclusive rights be; the right to reproduce the recording of any substantial part in any material form; the right to prevent the making of unauthorized copies; the right to distribute the copies to the public; and the right to authorize any of the aforementioned rights. (73)

3. *That such rights accrue to the "maker" of the recording, except that ownership of the copyright in a commissioned recording belongs to the person commissioning, in the absence of any agreement to the contrary.*
4. *That the "maker" be defined as the person or entity by whom the arrangements necessary to make the recording were undertaken.*
5. *That copyright subsist for 50 years from the end of the calendar year in which the recording was first made.*

COMMENTS: The briefs of one Broadcaster and one Copyright Association supported all three of the above recommendations. (92;51) The briefs of one Copyright Association and six Library Associations would exclude oral history recordings from the provisions of Recommendation 3 and the brief by one Performing Artist totally rejected this recommendation. (15; 61, 61a-61e; 69) One Recording Industry brief agreed with Recommendations 3 and 4, but qualified its support with respect to the exception for commissioned recordings until further clarification is given. (73) This brief would also extend the term of protection to 75 years.

6. *That, providing it can be satisfactorily demonstrated that mechanisms can be established to exercise the rights, Canadian sound recordings be further protected by an exclusive right to perform in public and an exclusive right to broadcast.*

7. That a "Canadian sound recording" be defined as one where the majority of the elements required to produce the recording are Canadian.

COMMENTS: One brief by a Copyright Association supported the creation of a "performing right" as did one Recording Industry brief, however, both briefs stated that it should not be restricted to Canadian recordings only. (52; 73) One Copyright Association brief, while disagreeing with the recommendation's discriminatory approach, indicated possible acceptance if there was a real and substantial benefit to be gained. (8a) Another Copyright Association brief disagreed with the discriminatory approach and suggested that the creation of such a right was unnecessary as not being essential for economic development and protection for creators. (11) This too "pro-creator" approach was also noted in another Copyright Association brief (11a) One further Copyright Association brief, after rejecting the discrimination explicit in the recommendation, suggested that such rights might be better dealt with on a "reciprocal basis". (51) Two Broadcasters' briefs rejected the recommendation, both on the grounds of discrimination and as an unnecessary layering of rights. (81, 92)

One Composer/Lyricist's brief, while agreeing with the creation of a performing right in sound recordings, indicated that it should be granted to both producers ("makers") and the performers involved if such an arrangement does not impair the revenues to songwriters. (79) This possible cutting-down of the composer's fee, as well as the discrimination aspect, were the reasons cited in opposition to the recommendation by another Composer/Lyricist's brief and one by a Music Publisher. (27; 43) One University brief submitted that this proposal would discriminate against educational performances and should be rejected. (77) One Writer's brief agreed with the creation of a right to perform in public, but rejected the "Canadians only" restriction. (14) One Educational Association agreed with the provision for a right to broadcast, but not with a right to perform. (38) Finally, the brief by one Public Advocacy Organization strongly opposed the creation of such rights as being a further derogation of 'users' rights. (93)

Recommendation 7 was interpreted by one Broadcaster's brief as being too vague to warrant inclusion in a revised Act. (92)

2. *Compulsory Licences for the Mechanical Reproduction of Musical Works on Sound Recordings*

(a) *works subject to compulsory licences*

1. That "musical works" be defined as including works intended by the author(s) to be performed with the music.
2. That the compulsory licensing provision apply to any musical work that has been the subject of a recording issued for retail sale and made by or with the consent of the copyright owner.

COMMENTS: One brief by a Research Institute, one by a Performing Artist and one Recording Industry brief approved Recommendation 1. (68; 69; 73) The latter two briefs, as well as the briefs by two Copyright Associations and one Writer, further agreed with Recommendation 2. (8a, 51; 17a) The recommendation was opposed in the briefs of another Writer, a Composer/Lyricist and one Music Publisher. (25; 27; 43) One Recording Industry

brief submitted that restricting the compulsory licensing provision to "musical works" would take oral history recordings and the like out of the provision's ambit. The brief disagrees with this approach, although it agreed with the "issued for retail sale" qualification. (73)

(b) *recordings made for sale*

That the compulsory licensing provision extend only to the making of sound recordings intended for retail sale.

(c) *recordings and motion picture sound tracks*

That it be specified in any new Act that a film sound track is not a sound recording for the purposes of compulsory licensing for mechanical reproduction

(d) *recordings made outside Canada*

That, as a condition of the issuance a compulsory licence to mechanically reproduce a musical work, the musical work must have been embodied in a sound recording previously made in; or imported into, Canada for the purposes of retail sale, by or with the consent of the copyright owner of the musical work.

COMMENTS: One Performing Artist's brief agreed with Recommendations 2b and 2c. (69) The briefs of one Music Publisher and one Composer/Lyricist also agreed with Recommendation 2c as well as 2d, but would add "or by his Canadian agent" to 2d. (43; 27) One Recording Industry brief agreed with Recommendation 2b, but rejected 2d as it would restrict the applicability of the statutory licensing system to Canadian works. (73) Furthermore, this brief questioned Recommendation 2c, suggesting that works first recorded on sound recordings and then transferred to a film sound track should remain available to statutory licensing.

(e) *notices*

1. *That the notice required by s.19(1)(b) and Rule 21(2) be retained with the addition of the following information:*

(a) *a warning to the copyright owner of his obligation to answer in the following ten days and of the consequences of failing to do so;*

(b) *information on how many sound recordings the manufacturer intends to make.*

2. *That Rule 22 be replaced by a provision to the effect that no recordings are to be delivered to a buyer before the notice has been answered or before the expiration of the period to give such an answer, whichever comes first.*

COMMENTS: The briefs of one Performing Artist, one Music Publisher and one Composer/Lyricist agreed with the retention of the notice requirements in s.19(1)(b) and Rule 21(2). (69; 43; 27) The latter two briefs would further require the inclusion of a clause specifying that the "notice"

be given to the "owner or the appropriate collective", with the inclusion of a "30 day" answering period. The brief of one Copyright Association also noted that there may be problems with the time limitation. (51) This was concurred in by a Recording Industry brief, which expressed desire for a longer notice period and clarification of when the notice period is to commence. (73)

The briefs by a Composer/Lyricist, a Music Publisher and a Recording Industry concern disagreed outright with the recommendation that record manufacturers be required to provide information on how many sound recordings are to be made under a compulsory licence. (27; 43; 73) One Performing Artist's brief agreed with Recommendation 2, while one Recording Industry brief, again, noted that clarification of the time limitations is required. (69; 73)

(f) *answering the notice*

1. *That, upon being served a notice of intention to make sound recordings, the copyright owner have ten days to answer on a form prescribed by regulation, which shall provide the manufacturer with an address where he must effect payment of mechanical royalties.*
2. *That the payment of royalties be made on a monthly basis and be accompanied by a detailed statement of account, certified by a chartered accountant carrying on business in Canada.*
3. *That failure on the part of the copyright owner to answer the notice within the ten-day period enables the manufacturer to deposit royalties and statements in trust and in a manner prescribed by regulation.*

COMMENTS: Agreement was noted in the brief of one Performing Artist for all of the above recommendations. (69) Disagreement with Recommendation 2 was expressed in the brief of one Recording Industry concern, two Music Publishers and one Composer/Lyricist. (73; 43; 97; 27) All of these briefs suggested quarterly payments with certification at year end. Two of the briefs would also provide for the imposition of penalties for late payments, as well as interest to be set by the Tribunal. (43; 27)

A Recording Industry brief gave Recommendation 3 an unqualified approval, while one brief by a Music Publisher and one by a Composer/Lyricist again, indicated that 30 days would be more appropriate. (73; 43; 27) One Copyright Association brief and one Recording Industry brief also noted potential problems with the time limitations in Recommendations 1 and 3, and the latter brief would not make Recommendation 3 a mandatory requirement. (51; 73)

(g) *presumption*

1. *That the inquiry in s.19(7) be retained.*
2. *That the inquiry be made in the form presently designated in Rules 24 to 27, with the additional requirement of the 14-day answer period as well as of the presumption of consent which arises if he fails to answer within the time period.*

3. *That the Act specify that such presumption is only a presumption that consent was given to make a previous recording.*
4. *That the Act also specify that an inquiry under this section does not, in itself, constitute a notice of intention to make.*

COMMENTS: With respect to the above recommendations, full concurrence was noted in the briefs of one Performing Artist and one Recording Industry concern. (69; 73)

(h) *sound recordings for which royalties are to be paid*

That mechanical royalties be paid for every contrivance made under a compulsory licence.

(i) *modifications*

That the substance of present s.19(2) be maintained in any new Act; i.e. that modifications of the original work previously recorded may not be mechanically reproduced under a compulsory licence unless they have been previously so reproduced with the copyright owner's consent.

COMMENTS: The brief by one Performing Artist completely agreed with Recommendation (h); however, briefs by one Music Publisher and one Composer/Lyricist would alter it to read "made or sold". (69; 43; 27) One Copyright Association brief submitted that the essential criteria should be "made and distributed", whereas one Music Publisher's brief would use "units sold". (52; 97) Two briefs, one by a Copyright Association and the other by a Recording Industry concern, expressed strong dissatisfaction with this recommendation and would retain the present "actually sold" criteria. (51; 73) The problem with "reserves" could then be appropriately controlled by regulations.

Approval of Recommendation (i) was expressed in the briefs of one Copyright Association, one Performing Artist and a Recording Industry brief. (51; 69; 73)

(j) *compulsory licences not applicable to sound recordings*

1. *That the principle behind present s.19(3) be retained, i.e. sound recordings are not subject to compulsory licensing but the wording changed to accord with previous recommendations concerning sound recordings.*
2. *That the copyright in a musical work be considered infringed when a sound recording is duplicated without authorization, even where other conditions for the issuance of a compulsory licence have been met.*

(k) *arrangements*

That the substance of section 19(4) be retained in any new Act, i.e. that manuscript arrangement and instrumentation of a work for the sole purpose of its adaptation to the requirements of the contrivance is permissible.

COMMENTS: One Copyright Association brief, one by a Performing Artist and one Recording Industry brief supported all of the above recommendations; however, one brief by a Writer disagreed with Recommendation (k) as it allows for the incursion by record companies upon the moral rights of the author of the musical composition. (51; 69; 73; 14)

(l) *royalties*

1. *That the royalty rate payable under a compulsory licence be fixed at a percentage of the retail selling price.*
2. *That the royalty rate be regularly reassessed and revised. This task could be the responsibility of the Copyright Tribunal.*

COMMENTS: Agreement with the first of the above recommendations was expressed in the briefs of one Copyright Association, two Composer/Lyricists, one Performing Artist and two Music Publishers. (8a; 27, 79; 69; 43, 97) The latter brief stated that the minimum rate should be five per cent, subject to review every ten years. Two Copyright Association briefs disagreed, one putting forth a rate based on a "per tune" basis solely, the latter suggesting the "playing time" rate as an alternative to the per tune rate. (51, 52) The "per tune" rate, as opposed to the present s.19(5) "per side" rate, was also supported in the brief by one Recording Industry concern. (73) One other Copyright Association brief expressed concern with the recommendation and indicated that a percentage basis would not be objectionable. (15)

Recommendation 2 was supported in the briefs of two Copyright Associations, one Performing Artist, one Composer/Lyricist and in one Recording Industry brief. (8a, 52; 69; 79; 73) The last brief also proposed a ten year review period.

(m) *apportionment of royalties*

That, where two or more works are reproduced on the same sound recording, and where the copyright owners are different persons, the royalty should be apportioned among the different owners on the basis of the ratio of the duration of each work to the total duration of the sound recording.

COMMENTS: One brief by a Performing Artist agreed with this recommendation, while one Copyright Association submitted that the "per tune" formulae should apply. (69; 51)

(n) *regulations*

That the substance of present s.19(8) be retained in any new Act.

(o) *non-compliance with formalities*

1. *That any new Act provide specific remedies to ensure compliance with formalities.*
2. *That, for greater certainty, any new Act specify that, where the conditions of the licence are not met, the licence cannot issue, and in such a case mechanical reproduction of the work is an infringement.*

3. That, for the purposes of remedies, the formalities of the compulsory licence be considered conditions of that licence.
4. That, where the conditions (including the formalities) of the licence are met by the manufacturer, but where he does not pay royalties in accordance with the regulations, the owner of the infringed copyright be permitted to obtain such payment against the manufacturer's bond, whose licence then becomes suspended with respect to further manufacturing and distribution of the infringed work.
5. That the regulations specify that all other copyright owners whose works are being mechanically reproduced by the infringing manufacturer may request suspension of operating licences in respect of their own works, if the manufacturer does not maintain the full value of his bond.

COMMENTS: The above recommendations received full support in the briefs of one Copyright Association and one Performing Artist. (51; 69) The briefs of one Composer/Lyricist and one Music Publisher would distinguish, by inclusion of definitions, between the manufacturer/owner of the record label and the manufacturer/presser of the contrivance. Default by the producer/manufacturer would then enable the copyright owner to seek redress against the presser/manufacturer. (27; 43)

SUBJECT

RECOMMENDATIONS

H. *Broadcasts*

1. That copyright protection be provided to Canadian broadcasts with the following exclusive rights attaching to the originating broadcasting organization:
 - (a) the right to record the sounds and/or images broadcast;
 - (b) the right to use such a recording for:
 - i) broadcasting or diffusing;
 - ii) causing the broadcast to be heard or seen in public;
 - (c) the right to rebroadcast the broadcast.
2. That the term of protection be 50 years from the time of the making of the broadcast.

COMMENTS: General agreement with the first of the above recommendations was expressed in the briefs of one Performing Artist, one University, four Educational Associations and in one Government brief. (69; 77; 56, 75, 96, 96a; 6) One Broadcaster's brief submitted that such a right could be restricted to an exclusive right to record or make copies of the broadcast. This protection would be sufficient to protect against unauthorized delayed

rediffusion and the sale of video discs, etc. (81) One Archive's brief stated that such rights "are not enforceable" as usually no permanent records are kept as means of verification. (47)

The brief by another Broadcaster, along with those by four Copyright Associations, one Writer, one Cablecaster and one Public Advocacy Organization, noted that the discriminatory protection of "Canadian" broadcasts only, may involve Canada in retaliatory legislative and economic reprisals and are probably in breach of Canada's international treaty commitments. (92; 8a, 11, 51, 52; 14; 70; 93) Again, one brief by a Copyright Association disagreed with the Report, stating that as broadcasts are merely composite works, no specific protection is merited. (38) One other Copyright Association brief submitted that "there is nothing creative about a physical signal as such". (52)

More specifically, one Broadcaster's brief would expressly provide for the right of Canadian broadcasters to use "any protected copyrighted material" under a compulsory licensing system, with the fees being set by the Copyright Tribunal and administered by a collective. (92) Another Broadcaster's brief would include the restriction "or sold" to the right of use outlined in Recommendation 1(b)(ii). (81)

Regarding Recommendation 1(c), two briefs by Educational Associations generally noted that educational institutions should be expressly exempt from any infringement proceedings for rebroadcasting copies of broadcasts made by an educational organization and broadcast within the educational environment and for educational purposes. (18, 78) One Broadcaster's brief also noted that the "right to broadcast" expressly includes simultaneous and/or future broadcasts. (92) One Writer's brief stated that the right to rebroadcast should specifically belong to the author of the works. (25) Recommendation 2 received approval in one Performing Artist's brief and in one University's brief. (69; 77)

SUBJECT

RECOMMENDATIONS

I. *Computer Programs*

1. *That computer programs per se not be protected by copyright.*
2. *That, where they fall under existing categories of protected material, computer programs embodied in that material be accorded the protection attached to those categories.*
3. *That it be specified in the infringement action of the Act that nothing in the Act prevents the use of a computer program to operate a computer.*

COMMENTS:

Two Literary Publishers' briefs and one each by an Archive, a Research Institute, a Library Association, a Computer Industry concern, plus two briefs by Copyright Associations disagreed with Recommendation 1 and indicated that computer programs merited specific protection. (2a, 33; 47; 68; 94; 33; 15, 16) The briefs of one Writer, one Performing Artist, two Universities, one Broadcaster and one Government brief all agreed with the Report. (14; 69; 76, 77; 92; 10) In addition, agreement was noted by one Copyright Association, which interpreted the recommendation as referring to the concepts underlying computer programs or to user's rights per se. (52) One Literary Publisher's brief, while indicating

support for the inclusion of specific computer program protection, agreed that such action should be deferred for the moment. (72)

One University brief, one by a Performing Artist and one brief by a Copyright Association were unopposed in their support of Recommendation 2. (76; 69; 52) The latter brief argued that, regardless of the material form in which a program was originally expressed or fixed, protection should attach. (52) This could be accomplished by the expansion of the definition of "fixation" or "literary works". This brief also approved the last of the above recommendations, provided it was modified to incorporate the restriction "in the absence of any translation or reproduction of the program". Thus, an unauthorized transfer of a program from one computer to another would be an infringement. (52) One Performing Artist's brief did not elaborate on its support for Recommendation 3. (69) Six Library Association briefs indicated agreement with all three recommendations. (61, 61a-61e)

SUBJECT

RECOMMENDATIONS

J. *Published Editions of Certain Works.*

1. *That new editions of public domain material published by a resetting of the material be protected by copyright.*
2. *That the protection extend only to providing a right against reproduction and that the general section dealing with this matter contain the following safeguards:*
 - a) *No new copyright is to be provided, other than in the edition.*
 - b) *The edition must be a new resetting of a literary, dramatic, musical or artistic work.*
 - c) *The publisher must be a qualified person at the time of first publication, i.e. a Canadian publisher or a publisher of a country to which the particular provision extends through reciprocal agreement.*
 - d) *The term is to be ten years.*
 - e) *The editions must be marked as claiming typographical copyright, and must show the year of publication, failing which copyright is lost.*

COMMENTS: Support for Recommendation 1 was indicated in briefs by a variety of interest categories, i.e., three Literary Publishers, three Copyright Associations, one Music Publisher, six Library Associations, one Performing Artist and one Writer. (2a, 33, 72; 8a, 51, 52; 43; 61, 61a-61e; 69; 17a) The briefs by one Writer and one Broadcaster disagreed and stated that, as no real creativity was involved in resetting the material, no copyright protection should accrue to such works. (14; 92) One of the Copyright Association briefs would, however, remove the "public domain" restriction. (52)

Of those briefs which supported such a right, six by Library Associations, one by a Performing Artist, one Copyright Association brief, one by a Writer and one by a Literary Publisher further expressed agreement with Recommendation 2, in general. (61, 61a-61e; 69; 51; 17a; 72) The briefs by three Literary Publishers, three Copyright Associations, one Writer and one Music Publisher noted that the term proposed in Recommendation 2d was far too short and should be extended to 25 or 50 years. (2a, 33, 72; 8a, 51, 52; 17a; 43) One of the Literary Publisher's briefs submitted that Recommendation 2e should be reconciled with the prescribed notice requirements for the U.C.C.. (72)

SUBJECTRECOMMENDATIONS

K. *Performances by Performers*

1. *That, subject to resolving the difficulties of viable collective mechanisms, revenue sharing, and multiple licensing, a right in performances by Canadian performers be provided in any new Copyright Act.*

COMMENTS: Total agreement with this proposal was indicated in the briefs by one Government entity and three Performing Artists. (6; 35, 67, 69) The briefs by one Copyright Association, two Performing Artists and one Writer, while agreeing with the creation of such a right, noted concern, once again, with the discriminatory approach of providing protection to "Canadian" performers only. (11; 37, 86; 14) One of these briefs put forth the view that reciprocal protection was more acceptable than outright discrimination in protection. (86) In addition, one Educational Association brief argued for the restriction and exclusion of this right in the case of student performances. (36) One Film/Video brief submitted that such a right would have to be reconciled with synchronization rights. (40)

The briefs by one Public Advocacy Organization, three Music Publishers, four Educational Associations, one Cablecaster, one Recording Industry concern and four Copyright Associations were opposed, absolutely, to the creation of such a right, even if the "discrimination" problems are overcome. (93; 43, 48, 78; 56, 75, 96, 96a; 70; 73; 8a, 11, 51, 52) Two Broadcaster's briefs agreed with this view, stating that performers are best protected by contract. (80, 92) One other Broadcaster also disagreed, stating it would only unnecessarily complicate the use and performance of copyrighted materials. (81) One of the Copyright Association briefs agreed with one by a Broadcaster, both arguing that if protection is required to some degree, same should be provided for by criminal sanctions included in the Criminal Code of Canada. (57; 92) One brief by a Composer/Lyricist withheld support for the creation of a performer's rights until it can be definitely shown that Canadians would benefit from such a right. (27)

2. *That the exclusive rights granted to a performer be:*
 - a) *to make a recording of a performance;*
 - b) *to reproduce recordings of a performance;*
 - c) *to broadcast and perform in public a performance.*
3. *That the term of protection be 20 years calculated from the date of the first fixation of the performance.*

COMMENTS: General agreement with Recommendation 2 was expressed in one Performing Artist's brief. (86) More specifically, the briefs by one Writer and one Music Publisher agreed with Recommendation 2a, whereas two Performing Artist's briefs were of the view that the enunciation of a broadcast right in Recommendation 2c should be approved. (14; 73; 35, 69) Two Broadcaster's briefs noted that Recommendation 2c was vague in not expressly stating whether "broadcast" referred to live or recorded broadcasts. (80, 92) Finally, with regard to Recommendation 3, two briefs by Performing Artists submitted that the term was too short; one would extend the term to 100 years, the other suggested 50 years as a minimum. (37, 86)

Six Library Association briefs approved all of the recommendations regarding "performer's rights", with a special provision that the rights of native people as performers be protected, i.e. ethnological recordings. (61, 61a-61e)

SUBJECTRECOMMENDATIONS

L. *Public Lending Right*

That a PLR not be provided in a revised Copyright Act.

M. *Droit de Suite*

That a droit de suite not be provided in any new Copyright Act.

N. *Domaine Public Payant*

That no provision be made for domaine public payant in any new Copyright Act.

COMMENTS: The briefs by three Copyright Associations, one Literary Publisher, nine Library Associations, one University, one Broadcaster and one Performing Artist agreed to exclude a PLR in a revised Copyright Act. (15, 51, 52; 72; 53, 61, 61a-61e, 62, 90; 77; 92; 69) The last brief, as well as one by a Copyright Association, recommended that such a right be provided for in other statutes. (69; 51) The briefs by two Writers and one Visual Artist emphatically disagreed with the Report's recommendation. (14, 42; 30)

Recommendations M and N also received approval in the briefs of two Copyright Associations and one Broadcaster. (15, 52; 92) Objections were noted in the briefs of two Writers and one Visual Artist. (14, 42, 30) One brief by a Copyright Association also expressed disagreement with Recommendation M and the brief by one Performing Artist would provide for a "droit de suite" in other statutes. (51; 69)

SUBJECTRECOMMENDATIONS

O. *Use of Copyright Material in Information Storage and Retrieval Systems*

1. *That unauthorized recording of unpublished copyright material for use in an ISRS constitutes an infringement.*

COMMENTS: Support for this recommendation was expressed in the briefs of one Writer, two Copyright Associations, one Research Institute, one Performing Artist, two Literary Publishers and one Library Association. (17a; 8a, 51; 68; 69; 33, 72; 94) Six other Library Association briefs, in agreeing generally with all of the ISRS recommendations, qualified their support by noting that a definition should be included to restrict this

provision to computer-based ISRS only. (61, 61a-61e) The brief by one Literary Publisher expressed the opinion that such acts contemplated in the above recommendation, could best be accommodated through a blanket licensing system. (2a) One Broadcaster's brief was totally opposed to the inclusion of such a provision as it might interfere with the use of ISRS for private research. (92)

One other Copyright Association brief would add "published" materials to the provision, whereas one Library Association brief would exclude unpublished citations and abstracts from protection. (52; 90) One other brief by a Library Association submitted that all of the provisions relating to ISRS require further study and, therefore, should not be included in a revised Act, while one Archive brief expressed concern for the potential compromising of the basic archival functions of organizing and codifying records. (44; 47)

2. *That the making of a contrivance embodying published copyright material for ISRS purposes, and its input into an ISRS, not constitute infringement, subject to a right of discovery, as indicated in recommendation 3 hereafter.*
3. *That there be a statutory right of discovery whereby a copyright owner may compel disclosure of whether any of his copyright material is or has been stored in an ISRS.*
4. *That where, after the expiration of a period to be fixed by regulation, there is a failure to answer a request for a discovery or there is a false answer given to that request, the storing of copyright material in an ISRS become an infringement subject to all remedies afforded by the Act.*

COMMENTS: Although the brief by one Library Association fully endorsed Recommendation 2, objections were noted in the briefs by three Copyright Associations, two Literary Publishers, one Writer, one Performing Artist, one Research Institute and one Broadcaster. (94; 8a, 51, 52; 33, 72; 17a; 69; 68; 92) These briefs submitted that infringement should be determined at the input stage, which would eliminate many of the later authorization problems. One Archive brief suggested that a blanket licence system would adequately cover such situations and this view was shared by one Literary Publisher's brief. (47; 2a)

Recommendation 3 was supported in the briefs of one Writer, one Performing Artist and two Copyright Associations. (17a; 69; 51, 52) Briefs by one University, one Literary Publisher and one Broadcaster disagreed (91; 72; 92)

Regarding Recommendation 4, one Copyright Association brief, one by a Performing Artist and one Writer's brief indicated agreement (51; 69; 17a) One Broadcaster's and one Literary Publisher's briefs noted disagreement. (92; 72) Two briefs by Library Associations pointed out that clarification of this, as well as the previous recommendation, is necessary to protect user confidentiality. (90, 94)

5. *That the unauthorized output by an ISRS of legally stored copyright material, whether effected by printout, cathode ray tube display, or otherwise, constitutes an infringement.*

COMMENTS: Overall support for this recommendation was noted in the briefs of two Copyright Associations, one Research Institute, two Literary Publishers, one Writer, one Performing Artist, and one Library Association. (51, 52; 68; 33, 72; 17a; 69; 94) Another Library Association brief and one by a Broadcaster questioned its desirability, at least as far as private use is concerned. (90; 92) The two Library Association briefs urged that specific provisions be made to accord copyright protection to those second parties who, on output from an ISRS, enrich the raw data base. (90, 94) A further Library Association brief suggested that ISRS on-line output is not analogous to a "performance in public" and would impose the delays that Recommendation 2 was designed to prevent. (47)

SUBJECT

RECOMMENDATIONS

P. *Cablecasting Rights*

That in respect of the operations of cable systems the following cablecasting rights be provided in any new Copyright Act:

1. *Diffusion (where cable systems originate programmes)*
 - a) *That copyright owners be provided a specific right to authorize the diffusion of their material by cable systems.*
 - b) *That cable systems be provided protection in programmes they originate, analogous to the protection to be provided to Canadian broadcasters in their broadcasts.*

COMMENTS: General agreement with the above recommendations was indicated in the briefs by four Educational Associations, one University, one Performing Artist, one Cablecaster and one Broadcaster. (56, 75, 96, 96a; 77; 69; 70; 92) The briefs by two Film/Video organizations also expressed overall support, with the proviso that systems such as closed circuit and Pay-TV be included. (59, 88)

More specifically, approvals of Recommendation 1a were noted in the briefs by four Copyright Associations, two Music Publishers, one Broadcaster, one Composer/Lyricist, one Performing Artist and two Film/Video groups. (8a, 38, 51, 52; 43, 48; 81; 27; 86; 83, 88)

2. *Rediffusion (where cable systems simultaneously rediffuse broadcasts)*

That Canadian broadcasters be granted a right to authorize simultaneous rediffusion of their Canadian broadcasts.

3. *Regulation of rediffusion*
 - a) *That, as the granting of the foregoing right will entail determining a basis for and the payment of royalties, appropriate regulatory mechanisms be established.*
 - b) *That the Copyright Tribunal fix the appropriate fees and establish the necessary safeguards to ensure the equitable assessment, collection and distribution of royalties to Canadians.*

COMMENTS: Recommendation 2 received support in briefs by two Performing Artists, one University and four Educational Associations. (69, 86; 77; 56, 75, 96, 96a) Briefs by one Writer, three Copyright Associations, one Music Publisher and two Film/Video concerns stated that a rediffusion authorization right should vest with the copyright owner. (14; 8a, 38, 51; 48; 59, 88) Of the last two briefs, the former submitted that other spheres of legislation and communications policy should be used to require cablecasters to compensate broadcasters, not copyright law. (59) The latter brief stated that Recommendation 2 should only be implemented and should restrict royalty payments to Canadians only or to other nationals as per reciprocal agreements. (88) One other Film/Video brief would also restrict the rediffusion right to Canadian owners of copyrighted programmes. (83) A contrary view was expressed in one Film/Video brief and in one by a Music Publisher. (59; 43) These briefs stated that such protection should apply to all copyright owners, not just Canadians, to avoid any discrimination problems. One Composer/Lyricist's brief would not distinguish between diffusion-rediffusion rights and the Copyright Tribunal could account for the cablecaster's activities in assessing fees, as proposed in Recommendation 3. (27) One Copyright Association brief would not provide any copyright protection for simultaneous retransmissions, for either authors or broadcasters. (52)

One brief by a Broadcaster, alluding to the problems inherent in the rediffusion of distant signals, would only give broadcasters a right to control the reproduction of their broadcast programmes, not copyright in the signal per se. (81) Another Broadcaster's brief noted that if such a right is granted, it should not be restricted solely to "Canadian programmes". (92) This brief would eliminate the "simultaneous" criteria, as broadcasters should be able to control all forms of rediffusion of their broadcasts. Additionally, this brief stated that these rights should be "exclusive". One brief by a Film/Video organization expressed concern that the requirement for cablecasters to pay royalties to broadcasters might derogate from the cable companies' input to community channel programming. (60) Finally, one brief by a Cablecaster noted strong opposition to Recommendation 2, as it is within the sphere of jurisdiction of the CRTC to regulate channel and signal allocation, as well as being discriminatory in nature. (70) Many other briefs directed remarks at the discriminatory approach of the Report, with regards to these and other recommendations.

Regarding Recommendation 3, four briefs by Educational Associations expressly agreed with 3a, while 3b was approved by one Film/Video brief. (56, 75, 96, 96a; 88) One Broadcaster's brief commented that, read in conjunction, Recommendations 2 and 3 really amounted to a compulsory licensing scheme and not an authorization right. (92) One Performing Artist, one University and one Film/Video concern expressed approval in their briefs for both aspects of Recommendation 3. (69, 77; 88)

SUBJECTRECOMMENDATIONSQ. *Exceptions to Copyright Protection*1. *Present Exceptions*(a) *fair dealing*

That "fair dealing" apply to protected material for the purposes of:

1. *private study;*
2. *research;*
3. *criticism, or review, whether of that work or of another, where the criticism is accompanied by a sufficient acknowledgement of the work;*
4. *summary*
 - a) *in a newspaper, magazine or similar periodical, or*
 - b) *by means of a broadcast, or in a motion picture film, where such reporting is accompanied by a sufficient acknowledgement of the work.*

COMMENTS: Eight briefs by Library Associations, three by Copyright Associations, one by a University, two Government briefs and one by a Performing Artist were in general agreement with the above recommendation. (44, 61, 61a-61e, 94; 8a, 51, 52; 77; 1, 10; 69) The briefs by two Literary Publishers qualified their support by stating that "fair dealing" should not apply to multiple copy reprography once a blanket licensing system is implemented. (2a, 72) One Research Institute brief stated that this provision should not apply to unpublished materials; whereas one University brief would have it apply to unpublished materials used by libraries or archives. (68; 91) Two briefs by Archives submitted that it should specifically apply to both unpublished and published materials. (39, 47)

Noting the problems of determining what constitutes a "substantial part", the briefs by two Literary Publishers, six Educational Associations, one Library Association, one Music Publisher, one Copyright Association and one Research Institute urged that a statutory definition of "fair dealing", similar to that included in the new U.S. Copyright Act, be incorporated in a revised Act. (2a, 72; 28, 56, 75, 89, 96, 96a; 82; 43; 15; 68) One Library Association's brief would classify fair dealing as a specific user's right. (44)

Referring to the specific provisions of the recommendation, the briefs of one Library Association, one University and eight Educational Associations argued to extend the concept beyond that of just "private" study. (34; 58; 18, 46, 46a, 46b, 75, 89, 96, 96a) One Writer's brief indicated that only clarification of the definition was required. (25) The briefs by one Research Institute, one Educational Association and one University would provide a specific teaching exemption. (32; 36; 58) Three University briefs would provide an exemption for classroom use, akin to s.107 of the U.S. Act. (76, 77, 91). One Librarian's brief and one by an Educational Association specifically agreed with a definition of fair dealing that would exempt from acts of infringement, the making of single copies for private research or study. (57; 38) One Archive brief stated that copying for research purposes of an entire literary or artistic work should be permitted. (47) The briefs by two Copyright

Associations and one Writer would limit "research" to "private research", in order to forestall commercial gain through the use of copyrighted materials. (51, 52; 17a) The latter brief would further exclude the defence of fair dealing, even for single page copying, once a collective is established to oversee reprography and copyright payments. One Literary Publisher agreed with this point of view. (33)

Briefs by one Copyright Association and one Librarian expressly agreed with Recommendation 1(a)3 and one Copyright Association brief supported 4(a). (51; 60; 52) The last brief submitted that adequate acknowledgement should accompany the summary. The briefs by one Copyright Association and one Broadcaster were in agreement with Recommendation 4, however, the latter brief noted that as there may be authorship acknowledgement problems for non-stop programming, a specific exemption should be provided. (51; 92) One Film/Video brief would exclude films from the "summary" provisions, while another would exempt the use of broadcasts and films as components of video collages. (59, 60)

In addition to the above "purposes", one brief by a Library Association would add a Recommendation 4(c): "relating to IRS". (94) Another such brief would add the following 4(c) "by way of computer printout". (90) One Archive brief suggested the addition of "exhibition" and/or "display" as alternate "means", while one Copyright Association would include summaries diffused by cable systems. (47; 52)

(b) *use of matrices of artistic works*

That the exception now allowed by s.17(2) be retained, but expressed in the words of the UK Copyright Act, s.9(9); i.e. the copyright in an artistic work is not infringed by the making of a subsequent artistic work by the same author, notwithstanding that part of the earlier work is

- a) reproduced in the subsequent work, and*
- b) so reproduced by the use of a (matrix) made for the purpose of the earlier work,*

if in making the subsequent work the author does not repeat or imitate the main design of the earlier work.

COMMENTS: Unqualified support for the above recommendation was indicated in the briefs by two Copyright Associations, one Performing Artist and one Film/Video organization. (51, 52; 69; 60)

(c) *certain works permanently situated in a public place*

That the exception now allowed by s.17(2)(e) be maintained but expressed in the words of the UK Copyright Act, s.9(3), s.9(4), and s.9(6):

9(3) The copyright in a work to which this subsection applies (sculptures and certain works of artistic craftsmanship) which is permanently situated in a public place, or in premises open to the public, is not infringed by the making of a painting, drawing, engraving, or photograph of the work, or the inclusion of the work in a cinematograph film or in a television broadcast.

9(4) The copyright in a work of architecture is not infringed by the making of a painting, drawing, engraving or photograph of the work, or the inclusion of the work in a cinematograph film or in a television broadcast.

The UK Act, in its subsection 9(6), deals with the "publishing of the reproduction of an artistic work permanently situated in a public place.

COMMENTS: Full agreement with the above recommendation was expressed in one Performing Artist's and one Broadcaster's briefs. (69; 92) The briefs by two Copyright Associations, referring back to the "specific right to exhibit an artistic work in public", would remove the phrase "or in premises open to the public" to maintain a consistent approach. (51, 52) One Visual Artist's brief totally disagreed with this recommendation. (12)

(d) short passages for schools

That the exception now allowed by s.17(2)(d) be maintained; that it apply to published literary or dramatic works as set forth in s.6(6) of the UK Act, subsections (a), (b), and (d) only.

6(6) The copyright in a published literary or dramatic work is not infringed by the inclusion of a short passage therefrom in a collection intended for the use of schools, if:

- a) the collection is described in its title, and in any advertisements thereof issued, by or on behalf of the publisher, as being so intended, and
- b) the work in question was not published for the use of schools, and
- c) the inclusion of the passage is accompanied by a sufficient acknowledgement:

Provided that this subsection shall not apply in relation to the copyright in a work, if, in addition to the passage in question two or more other excerpts from works by the author thereof (being works in which copyright subsists at the time when the collection is published) are contained in that collection, or are in that collection taken together with every similar collection (if any) published by the same publisher within the period of five years immediately preceding the publication of that collection.

COMMENTS: The briefs by nine Educational Associations agreed with these recommendations but would extend them to specifically apply to copyright materials used for examination purposes. (18, 36, 46a, 46b, 56, 75, 89, 96, 96a) Two Writers briefs, one by a Performing Artist, two by Copyright Associations and one Literary Publisher's brief indicated that such an exemption should not be included in a revised Act, especially where school text reproduction is concerned. (17a, 25; 69; 51, 52; 33) One brief by a Literary Publisher was of the opinion that if such an exemption is to be included, then s.6(6)(c) of the U.K. Act should also be incorporated. (72)

(e) *newspaper report of public lectures*

That the exception now allowed by s.27(2)(e) be extended to include reports given by means of broadcasts and programs originated by diffusion services (cable).

COMMENTS: One Copyright Association brief, one by a Broadcaster and one by a Performing Artist were of the view that the above recommendation is merely a logical extension of the present provision; however, one Copyright Association brief and one by a Writer disagreed with such an exception. (51; 92; 69; 52; 17a)

(f) *public recitation of extracts*

That the exception now allowed by s.17(2)(f) be restricted to published literary or dramatic works, properly acknowledged, but should not apply to broadcasts or diffusion by cable services.

(g) *performance at agricultural fairs*

That the exception now allowed by s.17(2)(g) be deleted.

COMMENTS: The first of the above recommendations received approval in one Copyright Association brief, but was rejected in the briefs by one Writer, one Copyright Association and one Performing Artist, with the latter stating that, if it is retained, it should be severely limited in scope. (51; 17a; 52; 69) One Broadcaster's brief would only support it if it applied to broadcasts and cable diffusions. (92)

Two Copyright Association briefs, one by a Performing Artist and one by a Research Institute were in agreement with Recommendation (g). (51, 52; 69; 68) One Educational Association brief would retain the present exception, but without the qualification, "without motive of gain", and would apply it to all musical works performed or used at agricultural exhibitions or fairs. (71) One Copyright Association would retain s.17(2) but amend it as per the recommendation of the Ilsley Commission. (38)

(h) *performance for charitable and other objects*

That the public performance on premises occupied by any religious, educational or charitable organization, where no person obtains a benefit in association with such a performance and where no entrance fee is charged should not constitute an infringement of copyright.

(i) *report of a political speech in a newspaper*

That the exception now allowed by s.18 be extended to include broadcasting and diffusion by cable services, in addition to newspapers.

COMMENTS: Although nine Educational Association briefs, one by a Performing Artist, one Research Institute brief and one by a Broadcaster expressed approval of Recommendation (h), one other Educational Association brief as well as one by a Writer and two by Copyright Associations disagreed. (18, 22, 28, 29, 46a, 46b, 75, 96, 96a; 69; 68; 92; 36; 17a; 51, 52) It was suggested in some of these briefs that if such a provision is to be included that the reference to "premises" be deleted and that the "benefit" be qualified to mean monetary or financial benefit.

Recommendation (i) was unconditionally agreed to in the briefs by two Copyright Associations, one Broadcaster and one Performing Artist. (51, 52; 92; 69)

(j) *public performance by gramophones and radio receiving sets*

i) *coin-operated gramophones (juke-boxes)*

Section 50(7) should be deleted; i.e. in respect of public performances by means of any radio receiving set or gramophone in any place other than a theatre that is ordinarily and regularly used for entertainments to which an admission charge is made, no fees, charges or royalties shall be collectable from the owner or user of the radio receiving set or gramophone, but the Copyright Appeal Board shall, so far as possible, provide for the collection in advance from radio broadcasting stations or gramophone manufacturers, as the case may be, of fees, charges and royalties appropriate to the new conditions produced by the provisions of this subsection and shall fix the amount of the same; in so doing the Board shall take into account all expenses of collection and other outlays, if any, saved or savable by, for or on behalf of the owner of the copyright or performing right concerned or his agents, in consequence of this subsection.

COMMENTS: The briefs by three Copyright Associations, one Composer/Lyricist, one Music Publisher, one Performing Artist and one Recording Industry concern were in agreement with this recommendation. (15, 51, 52; 27; 43; 69; 73) Two of the briefs by Copyright Associations further recommended the gradual implementation of a licensing system, while one Educational Association brief would provide for educational exemptions. (51, 52; 28)

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|--|---|
| <i>ii) non-coin operated
gramophones</i> | <i>That the exception now allowed by
s.50(7) be deleted.</i> |
| <i>iii) radio receiving
sets</i> | <i>That the public performance of
copyright material by broadcast
receivers or similar devices in an
enterprise not employing more than
three persons be exempt from payment
of performing rights fees.</i> |

COMMENTS: Recommendation ii received approval in the briefs of one Composer/Lyricist, one Music Publisher, one Recording Industry organization and one Performing Artist. (27; 43; 73; 69)

Although two Educational Association briefs disagreed with Recommendation iii, the briefs by one Composer/Lyricist, two Copyright Associations, one Music Publisher, one Performing Artist and one Recording Industry brief noted complete agreement with it. (36, 74; 27; 51, 52; 43; 69; 73) A broadcaster's brief also agreed, but questioned whether "copyright material" covered the same works as in "protected materials" as per the fair dealing provisions. (92) General agreement with all of the provisions of Recommendation (j) was indicated in one other Performing Artist's brief (67)

2. *Prospective Exceptions*

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|-------------------------|---|
| <i>(a) photocopying</i> | <ol style="list-style-type: none"> 1. <i>That photocopying not be the subject of any specific provisions.</i> 2. <i>That any new Copyright Act allow, as it does presently, and encourage the formation of collectives to protect authors' and publishers' interests, under the supervision of a government tribunal.</i> |
|-------------------------|---|

COMMENTS: General agreement with Recommendation 1 was expressed in one Government brief, two by Copyright Associations, one by a Performing Artist, six Library Association briefs, one by a University and one Broadcaster's brief. (1; 8a, 52; 69; 61, 61a-61e; 77; 92) The briefs by one Literary Publisher and one Educational Association expressed disagreement, without further elaboration. (33; 36) One Archive brief, as well as one Research Institute brief, indicated that the onus of applying the fair dealing provisions to photocopying should not be left up to the archives or libraries, to interpret the law as it develops through cases. (47; 68) One Public Advocacy Organization's brief submitted that not to provide provisions in this area, especially regarding user's rights, was an "all-but-Ludite approach", ignoring the possibilities of connecting creators and consumers. (93)

A specific exemption, with respect to reprography, for libraries and educational institutions was recommended in the briefs by one Research Institute, one University and one Library Association. (68; 91; 94) One Library Association brief would require that photocopying be a defined facet within the concept of fair use, while another Library Association brief would include a specific exception for research publications. (94, 90) One Writer's brief stated that the Act should provide "that reprographic copying is illegal without the owner's consent". (17a) One Copyright Association brief recommended the establishment of a specific reprographic right to cover photocopying, as opposed to other means of reproduction, which could be assigned to the collective and would be enforceable by the collective without joining the author or publisher.

(51) One Literary Publisher's brief submitted that, if these provisions are related to those on fair dealing, then, no specific provisions are necessary. (72)

Concurrence with Recommendation 2 was expressed in the briefs by three Literary Publishers, one Governmental organization, four Copyright Associations, one Writer, one Educational Association, eight Library Associations, one Performing Artist and one University. (2a, 33; 72; 1; 8a, 15, 51, 52; 17a; 28; 44, 61, 61a-61e, 82; 69, 77) One of the Library Association briefs would require that the collective be private and non-profit, with users, creators and copyright owners, being represented. (44) One Librarian and one Writer brief disagreed with this proposal, the latter stating dissatisfaction with government interference in the Institute brief registered strong objections to this recommendation, as being an inappropriate function of the Act to give such groups quasi-official status without a clear need for such having been put forth (32) One public Advocacy Organization brief submitted that such a proposal would not only be "extraordinarily intricate" but also "likely to be very costly in operation". (93) One Archive brief expressed no strong opinion except that, if these recommendations are accepted, the archival profession be consulted concerning the details of the operation of the Tribunal. (39)

Five briefs, one by an Educational Association and four by Library Associations, qualified their support and sought to ensure that collectives be non-profit; that a blanket licensing system should not include single extract copies and that "user's interests" be added to the recommendation. (44; 53, 62, 90; 94) This last viewpoint was shared by one Research Institute brief. (68)

(b) *exceptions applicable to libraries*

1. *That the defence of fair dealing be available to a librarian who makes a copy of material for a user if that user also has available to him the defence of fair dealing.*
2. *That no further exceptions for librarians be provided.*

COMMENTS: The comments regarding Recommendation 1, in the briefs by one Literary Publisher, one Writer, one Performing Artist and nine Library Associations indicated agreement. (2a; 17a; 69; 44, 53, 61, 61a-61e, 62) One of the briefs by a Library Association and one University brief would clarify the recommendation to cover all employees of a library. (53; 77) The Library Association brief also noted that there should not be any liability for a Library if it turns out that the user does not, in fact, have available the defence of fair dealing. (53) One Archive brief submitted that archives should be expressly included. (47)

The briefs by one Literary Publisher and two Copyright Associations disagreed with this recommendation. (33; 51, 52) One Library Association brief would extend the recommendation to account for "all those who disseminate information", while one Literary Publisher brief would accept both of these recommendations, if its proposals on fair dealing and blanket licensing were accepted. (94; 72)

Support for Recommendation 2 was expressed in six Library Association briefs, one by a Writer and one Performing Artist's brief. (61, 61a-61e; 17a; 69) Three Library Association briefs pointed out that a specific exception, allowing for inter-library loans, should be included. (44, 53, 62) One Archive brief agreed with this view, where the protected work is no longer available at a reasonable price. (47) One Library

Association brief noted that libraries should not be liable for the use of unsupervised photocopy machines to make infringing copies, while another stated that the existence of a copier on library premises not be prima facie evidence of authorization to copy. (82, 90)

(c) *exceptions applicable to judicial proceedings.*

That any use of protected subject matter for the purposes of judicial proceedings or in official reports of such proceedings not constitute an infringement.

COMMENTS: The briefs by two Copyright Associations, six Library Associations and one Performing Artist were unconditional in their agreement with this recommendation. (51, 52; 61, 61a-61e; 69) One Literary Publisher brief also agreed with it, subject to clarification of what constitutes an "official report". (72) One Copyright Association would add reports of quasi-judicial proceedings, i.e. CRTC hearings. (52)

(d) *exceptions applicable to ephemeral recordings.*

That an exception for "ephemeral recordings" be provided, in accordance with the following:

- a) *Authorization to broadcast a copyright work should be deemed to include the right to make ephemeral recordings of the work solely for the purposes of broadcasting.*
- b) *A recording should be deemed an ephemeral recording if it or copies of it are used solely for the purpose of the authorized broadcasting within a period of 30 days after the day when it or a copy of it was first broadcast.*

COMMENTS: General agreement with these recommendations was expressed in briefs by two Copyright Associations, two Broadcasters and one Performing Artist. (51, 52; 81, 92; 69) One of the Copyright Association briefs noted that cablevision ephemeral recording should be specifically included. (52) One Film/Video brief would exclude films for the reason that, to allow ephemeral recordings of them leads to outright piracy. (59) One Performing Artist's brief submitted that such a right should expressly be subject to an author's moral rights. (86)

Regarding Recommendation (a) seven Educational Association briefs pointed out that educational purposes should also be included as a basis for the making of ephemeral recordings. (18, 28, 29, 56, 75, 96, 96a) One Broadcaster brief questioned whether the "authorization" referred to authority under the law or authorization by the copyright owner. (92) One brief by a Cablecaster agreed with this recommendation. (70)

Although the brief by one Educational Association supported Recommendation (b) as it stands, four other Educational Association briefs would extend the period to 6 months. (18, 56, 75, 96, 96a) One Archive brief expressed general satisfaction, save that a longer period would be appropriate for research or study purposes. (47) Of two Broadcaster briefs, one expressed the opinion that the period should be extended to one year, while the other submitted that 6 months was sufficient. (81, 92) This last brief, as well as one by a Copyright Association, further noted that a provision should be included to permit the recording of broadcasts for preservation purposes in broadcaster's archives. (92; 52)

(e) *exceptions applicable to artistic works**i) incidental use in a broadcast*

1. That incidental use of an artistic work in a film or broadcast not constitute an infringement of copyright.

2. That the term "broadcast" in this and related provisions include an origination (diffusion) by a cable system.

ii) making of a three-dimensional object

That the making of a three-dimensional object of a two-dimensional artistic work not constitute infringement if the object made is not a reproduction of the original work.

iii) reconstruction of buildings

That the reconstruction of a partially or completely destroyed building not constitute an infringement of the copyright in the building, nor an infringement of the copyright in the plans and drawings of the building.

COMMENTS: Unqualified agreement with Recommendation (e)(i) was expressed in each of the briefs of one Copyright Association, one Performing Artist and one Broadcaster. (51; 69; 92) The briefs by one other Performing Artist, one Film/Video organization and one Copyright Association suggested that "incidental use", as opposed to planned use, requires clarification, especially when an author's moral rights are also considered. (86; 60; 52)

The briefs by three Copyright Associations and one Literary Publisher disagreed with Recommendation (ii), the consensus being that such a provision is superfluous to the generality of the right to reproduce and that it should be an evidentiary matter whether or not there is sufficient resemblance for an article to be held to infringe the copyright in a drawing. (16, 51, 52; 33) One Performing Artist's brief indicated support for this provision. (69)

Two Copyright Association briefs, one by a Performing Artist and one by a Broadcaster gave unqualified support for Recommendation (iii) (51, 52; 69; 92)

(f) *exceptions available to handicapped*

That no special exception be provided for the benefit of producers of special media material for the handicapped.

COMMENTS: The briefs by one Writer, two Copyright Associations, one Performing Artist, and one Literary Publisher totally agreed with this recommendation (17a; 51, 52; 69) One other Literary Publisher's brief agreed, but would provide reduced blanket licence fees for such materials. (72)

Strong disagreement with this recommendation was expressed in the briefs by ten Organizations Providing Services for the Handicapped, eight Educational Associations and eight Library Associations. (19, 20, 41, 49, 50, 50a, 55, 66, 84, 84a; 45, 46, 46a, 46b, 75, 89, 96, 96a; 53, 61, 61a-61e, 62) Typically, the arguments put forth in these briefs noted the special social needs of handicapped persons, the relatively few who would undertake the production of such materials and the fact that commercial publishers in Canada are not involved in the production of such materials. Six of the Library Association briefs agreed that there should be a restriction on the distribution of such materials to qualified users and that no charge be levied except for expenses. (61, 61a-61e)

(g) *exceptions applicable to education*

That it be permissible to perform material protected by copyright in the course of activities in a school, without such a performance constituting a performance in public, providing any audience is limited to teachers at or pupils in attendance at that school.

COMMENTS:

The briefs by two Copyright Associations and one Literary Publisher agreed with this recommendation, but the latter brief stated that the inclusion of others than those teachers or pupils "in attendance at the school" should be strictly prohibited. (51, 52; 72) One Performing Artist's brief submitted that the application of the recommendation be restricted to situations where there is no pecuniary gain and that television broadcasts and cable TV be excluded. (69)

One Film/Video brief would exclude films, whereas twelve Educational Association briefs would extend its operation to educational activities occurring outside of the school. (59; 18, 22, 28, 29, 36, 46, 46a, 46b, 75, 89, 96, 96a) One of these briefs would also ensure that the activities of extension educators are recognized. (29) One Government brief also shared the above viewpoint and would expand the provision to include the transmission of such a performance by non-profit educational institutions and governmental educators. (1) One Broadcaster's brief and one by another Educational Association would add educational broadcasts as a legitimate form of educational performances. (92; 56)

(h) *exceptions applicable to archival activities*

That no statutory exceptions be provided to libraries and archives with respect to copyright material deposited therein, other than to permit the making of a copy for the sole purpose of preserving the material which is deteriorating or damaged.

COMMENTS:

One Performing Artist's brief indicated full support for, and one Copyright Association brief would not object to, the inclusion of this recommendation. (69; 51) All of the briefs by eleven Library Associations, two Archives, one Educational Association and two Universities were in agreement that archival copying, for preservation purposes, should be permitted before damage or deterioration begins to occur. (34, 53, 61, 61a-61e, 62, 90, 94; 39, 47; 36; 77, 91)

Of the above briefs, two by Library Associations would also allow such copying for replacement purposes. (90, 94) One University brief, one by a Copyright Association and one Library Association brief would restrict this copyright exemption to situations where the work is unpublished, out of print or not reasonably available otherwise. (91; 52; 90)

(i) *exceptions applicable to non-exclusive licences in certain cases*

1. *That a non-exclusive licence to use a work be obtainable upon application to the Copyright Tribunal and granted on such terms and conditions as the Tribunal may determine providing:*
 - a) *the author of the work has died;*
 - b) *the applicant wishes to use the work as it has previously been used with the author's consent, and has not been able to locate the owner of the copyright in the work;*

- c) the applicant has complied with the criteria established by the Tribunal for determining the adequacy of the applicant's search for the owner;
 - d) the applicant has complied with all terms and conditions imposed by the Tribunal; and
 - e) appropriate arrangements have been made for the payment of royalties should the copyright owner be located.
2. That the granting of such a licence not constitute infringement of the copyright in the work.
 3. That the Copyright Tribunal have the sole discretionary power to issue such a licence.
 4. That the exception not affect or modify any other compulsory licensing provision.

COMMENTS: Two Writer's briefs, and one by a Literary Publisher agreed, generally, with Recommendation 1; however, the latter brief would require that all of the listed conditions be met concurrently. (14, 17a; 72) The brief by one Copyright Association did not see any demonstrated need for such provisions, while another such brief would not object to their inclusion. (52, 51) Qualified support for this recommendation was indicated in one Broadcaster's brief, which noted the ambiguity of the word "work", ie, does it mean protected works? (92) Additionally, this brief expressed the opinion that it should apply to any copyright holders, not just to deceased authors or owners and it should also be available if there are no justifiable reasons for not granting such a licence.

One Writer's brief specifically agreed with Recommendation 1b, and one University brief submitted that, with respect to Recommendation 3, libraries be given the authority to issue non-commercial licences. (17a; 91) One Performing Artist's brief agreed, in general, with all of the above recommendations. (69)

SUBJECT

RECOMMENDATIONS

R. *Infringement*

1. *Direct Infringement*

No recommendations; see discussion of "innocence" under "Presumptions - the Innocent Infringer".

2. *Indirect Infringement*

1. That the terms of present s.17(4) be retained but also include indirect infringement with respect to all protected subject matter. i.e. 17(4) Copyright in a work shall also be deemed to be infringed by any person who
 - a) sells or lets for hire, or by way of trade exposes or offers for sale or hire;
 - b) distributes either for the purposes of trade, or to such an extent as to effect prejudicially the owner of the copyright;

- c) *by way of trade exhibits in public;*
 or
 d) *imports for sale or hire into*
Canada;
and work that to his knowledge
infringes copyright or would infringe
copyright if it has been made within
Canada.

COMMENTS: One Writer's brief and one by a Literary Publisher expressed overall agreement with the above recommendation. (17a; 33) The briefs of two Copyright Associations, one Film/Video brief and one Recording Industry concern would specifically include "possession for the purposes of trade" and "acts authorizing infringement" as species of indirect infringement. (51, 52; 59; 73) The Film/Video brief would re-define "infringing copies" to bring copies, which, although authorized have been misappropriated, within the ambit of s.17(4). (59) Deletion of the requirement on the plaintiff to prove the defendant's knowledge of infringement was recommended in the brief by one Writer, one Recording Industry brief and in those by three Copyright Associations. (17a, 73; 15, 51, 52)

2. *That the terms of present s.17(5) be retained but without the words "unless he was not aware and had no reasonable ground for suspecting that the performance would be an infringement of copyright".*
17(5) Copyright in a work shall also be deemed to be infringed by any person who for his private profit permits a theatre or other place of entertainment to be used for the performance in public of the work without the consent of the owner of the copyright, unless he was not aware, and had no reasonable ground for suspecting, that the performance would be an infringement of copyright.
3. *Other changes to s.17(4) are suggested under Importation Provisions.*

COMMENTS: Support for Recommendation 2 was indicated in the briefs of one Copyright Association and one Music Publisher, however, two Copyright Association briefs and one by a University would retain the clause that allows the defendant to establish a defence of innocence. (15; 43; 51, 52; 91) This view was also put forth in one Broadcaster's brief. (92) One Copyright Association brief would restrict the ability to use this provision to copyright owners of a "composite work" only. (38).

SUBJECT

RECOMMENDATIONS

5. *Remedies*

1. *Presumptions - the Innocent Infringer*

1. *That the present rebuttable presumption in s.20(3)(a) concerning the existence of copyright be retained in any new Act: where the existence of copyright, or title thereof, is put in issue, the work is presumed to be in copyright.*

2. *Similarly, that the present rebuttable presumption in s.20(3)(c) concerning authorship be retained in any new Act: where the work bears a name purporting to be that of the author, the person whose name is indicated shall be presumed to be the author of the work.*

COMMENTS: One Film/Video brief, one by a Writer and two by Copyright Associations noted unconditional support for Recommendation 1. (59; 17a; 51, 52) The briefs of three Copyright Associations also agreed with Recommendation 2, but would specifically include "joint authors". (15, 51, 52) A Film/Video brief further noted that, as a distinction was made elsewhere in the Report, this recommendation should include a "maker" of a film. (59) One Broadcaster's brief rejected both of these recommendations as giving an unjustifiable advantage to copyright holders that would establish them as a separate class before the law. (92)

3. *That there be a rebuttable presumption of copyright ownership in favour of the plaintiff, rather than in favour of the author.*
4. *That, in order to assist in proving ownership, in the absence of a registration system, there be a statutory right to enter assignment documents as evidence, as well as prima facie presumption that such documents reflect the truth of their contents.*

COMMENTS: General agreement with Recommendation 3 was expressed in the briefs of one Writer, one Literary Publisher, one Recording Industry organization, one Film/Video concern and one Broadcaster. (17a; 72; 73; 59; 92) One Copyright Association brief would restrict this provision to situations where a default in the application of the other presumptions occurs, as the implementation of the recommendation in its present form would likely give rise to a race to initiate litigation. (52) This brief, as well as one other Copyright Association brief which also agreed with Recommendation 3, further recommended the addition of other presumptions as in s.20(5)-(7) of the U.K. Copyright Act. (52, 51)

Recommendation 4 received concurrence in the briefs by one Copyright Association, one Writer, one Broadcaster, one Recording Industry organization and in one Film/Video brief. (52; 17a; 92; 73; 59) The latter two briefs further recommended that documents relating to entitlement to initiate a suit and licence agreement documents also be included. One Copyright Association brief submitted that further clarification as to the "truth of their contents" recital, is required. (51) One Literary Publisher's brief stated that mere insertion of a "recital" should not necessarily prove the truth of the statement therein". (72)

5. *That "innocence" be a defence only with regard to indirect infringement.*
6. *That, in any new Act, "innocence" not be interpreted as meaning ignorance of the existence of copyright but only as not knowing that what was done constituted an infringement, or not having reasonable grounds for knowing that it would likely infringe.*

7. *That, where "innocence" is established damages not be recoverable, but that all other remedies be available.*

COMMENTS: The first of the above recommendations was agreed to in the briefs of one Recording Industry organization and one Broadcaster, but two Copyright Association briefs disagreed and would allow a defence of "innocence" to be raised in direct infringement proceedings. (73; 92; 51, 52)

The briefs by one Literary Publisher, one Broadcaster and one Recording Industry concern indicated approval for Recommendation 6, while only the Broadcaster's brief specifically agreed with Recommendation 7. (72; 92; 73) One Copyright Association brief disagreed with both recommendations and would only approve them if the definition of "innocence" was restricted to "not having reasonable grounds for suspecting that what was done was likely to infringe copyright", and that the onus for proving innocence rests with the defendant. (51) This view was also expressed in one Film/Video brief. (59) Another Copyright Association brief stated, concerning Recommendation 7, that where a complete defence of innocence is established in an indirect infringement case, no relief of any kind should lie for the plaintiff. (52) This brief would only agree with Recommendation 7 as it relates to direct infringement. The briefs by one Performing Artist and one Literary Publisher also noted disagreement with this recommendation. (69; 72)

2. *Summary Remedies*

That no summary remedies be provided in any new Act.

COMMENTS: The briefs of one Performing Artist, six Library Associations and one Broadcaster expressed agreement with this recommendation. (35; 61, 61a-61e; 92) Strong opposition to the recommendation was noted in the briefs of three Copyright Associations, four Writers, one Visual Artist, one Composer/Lyricist, two Literary Publishers, one Music Publisher, one Film/Video concern and one Recording Industry organization. (15, 51, 52; 17, 17a, 25, 42; 23; 27; 33, 72; 48; 59; 73)

One Government brief questioned the advisability of this recommendation, whereas the briefs by two Copyright Associations, after expressing their rejection of it, further submitted that the present summary remedies should be strengthened to include "possession in the course of trade of unauthorized copies". (6; 51, 52) The Film/Video brief also would extend the provision to apply to copies in the possession of an accused without the consent of the owner. (59) The previous three briefs suggested that the onus to prove innocence be placed on the defendant, with greater penalties resulting upon conviction. (51, 52; 59) One Recording Industry brief agreed with this viewpoint but would qualify the said "possession" by limiting it to possession for the purposes of "sale". (73)

3. *Civil Remedies*

1. a) *That the principles in s.20(5) be maintained in any new Act, specifically: the author or owner of any copyright or any person or persons deriving any right, title or interest by assignment or grant in writing from any author or other owner as aforesaid, may each, individually for himself, in his own name as party to a suit, action, or proceeding, protect and enforce such rights as he may hold.*

- b) *That the principles in s.20(1) also be maintained in any new Act, specifically: any person deriving an interest in a copyright is entitled, to the extent of that interest, to all such remedies by way of injunction, damages, accounts and otherwise as are or may be conferred by law for the infringement of a right, insofar as these remedies are consistent with other provisions of the Copyright Act.*

COMMENTS: Agreement with Recommendation 1a was expressed in the briefs of one Writer and one Copyright Association. (17a; 52) The briefs by one Broadcaster and one Film/Video brief also agreed, but would, respectively, qualify "any right" to read "any protected right" and would add "licences" to the list. (92; 59) The Broadcaster's brief further indicated express support for Recommendation 1b. One Copyright Association noted agreement with both recommendations, while six Library Association briefs indicated general agreement with all the civil remedies recommendations. (51; 61, 61a-61e)

2. *That no statutory damages be provided in any new Act.*
3. *That, in assessing damages, the court be directed to take into account the following criteria:*
- a) *the actual damages suffered by the plaintiff;*
 - b) *the benefits which might have accrued to the infringer. In this respect, the courts may order an account of profits;*
 - c) *the flagrancy of the infringement, including repeated infringements of a related type;*
 - d) *where the defence lacks merit, or where prelitigation conduct was uncooperative, the actual reasonable costs of investigation, preparation and litigation;*
 - e) *the need for deterrence and likelihood of a deterrent effect;*
 - f) *such further criteria as shall be determined by regulation from time to time.*

COMMENTS: Recommendation 2 was agreed to in the briefs of one Copyright Association and one Broadcaster, however one Writer's brief would only agree with it if punitive damages are specifically recognized. (52; 92; 17a) The briefs by one Composer/Lyricist, one Visual Artist, one Music Publisher, one Film/Video organization, one Copyright Association, and a Recording Industry concern all expressly stated that some form of statutory damages should be provided for. (27; 30; 43; 59; 51; 73)

One Copyright Association brief, one by a Writer and one Broadcaster's brief expressed general agreement with Recommendation 3. (52; 17a; 92) More specifically, two Copyright Associations and two Writers indicated in their briefs that exemplary damages should be given statutory recognition. (15, 51; 17a, 25) One Literary Publisher's brief also agreed with this view. (72) One Film/Video brief expressed support for Recommendation 3d. (59)

4.
 - a) That the possibility of a broad injunction covering many works or a class of works not be specifically recognized in any new Act.
 - b) That an injunction not be available where infringement occurs due to the construction or demolition of a building.
 - c) That the court have the discretion to order the suspension of any manufacture or public performance, in progress or announced, which constitutes an infringement or an act which the court considers manifestly preparatory to infringement.
5. That it not be a defence to an action for copyright infringement for a person to tender, after the fact, licence fees which, according to the licence, could only have been paid before a use which was otherwise prohibited.
6. That a statutory right of discovery be included in any new Act, whereby a copyright owner may, by court order, require anyone to disclose whether that person has or has had possession, for commercial purposes, of a copy of any protected subject matter, and if so, to disclose from whom such copy was acquired.

COMMENTS: Full support for Recommendation 4a was noted in one Copyright Association brief, while one Film/Video brief would agree with it, provided that the court's inherent jurisdiction to grant "broad" injunctions is not interfered with. (52; 59) Two Copyright Associations, one Writer, one Literary Publisher and one Recording Industry organization indicated total disagreement in their briefs. (15, 51; 17a; 72; 73) One of the Copyright Association briefs suggested that 4b be expanded to deny injunctions in instances where the impact on the defendant far outweighs the gravity of the infringement to the plaintiff. (52) Two Copyright Association briefs pointed out that Recommendation 4c is superfluous and should be omitted. (15, 52)

Although two briefs by Copyright Associations and one by a Writer agreed with Recommendation 5, one brief by a Broadcaster expressed the view that such actions be permitted for broadcasters. (51, 52; 17a; 92)

One Film/Video brief, one Recording Industry brief, one by a Writer and one by a Copyright Association specifically supported Recommendation 6. (59; 73; 17a; 51) Two Copyright Associations and one Broadcaster submitted in their briefs that, as such a right is available under present law, no further provisions are necessary. (15; 52; 92)

7.
 - a) That a person, whether innocent or otherwise, be liable to deliver up infringing plates on notice, without compensation, or for damages if that person retains them.
 - b) That the guilty infringer also be liable to deliver up infringing copies on notice, without compensation, or for damages if he retains them.

- c) *That, where the defendant is "innocent", the copyright owner be given the option of acquiring the infringing copies at cost, or of leaving them to be disposed of by the defendant, in which latter event the defendant would have to account to the copyright owner for the profits.*
- 8. a) *That infringement of a moral right give rise to all remedies such as injunction, damages, accounts and otherwise as are or may be conferred by law for the infringement of any other right.*
 - b) *That a right to a declaratory judgement be introduced as an addition to the remedies presently provided in s.20(1).*
 - c) *That any person who distributes a protected work without indicating the name of the author be obliged where possible to disclose the identity of the author by suitable means related to the use of the work (e.g: broadcasting, insertions of errata, or communications in the media).*
- 9. *That the present limitation period of three years be maintained in any new Act.*

COMMENTS: With respect to Recommendation 7a, one brief by a Copyright Association, one by a Music Publisher and one Film/Video brief declared that a definition of "plate" be added to include "anything made for the purposes of producing infringing copies". (51; 43; 59) Another Copyright Association brief would include a provision requiring prior judicial authorization for seizures made before judgement. (52) This would alleviate the differences between the common law and Quebec's Civil Code. One Writer's brief supported this recommendation. (17a)

One Film/Video brief indicated that, regarding both "plates" and "infringing copies", it should be the plaintiff's option to require delivery-up. (59) Although this brief further agreed with Recommendation 7c, one Recording Industry brief stated that the copyright owner should have an unfettered right to obtain delivery-up of all infringing copies, regardless of the innocence of the infringer, and without compensation for the same. (73)

Two briefs by Copyright Associations and one Writer's brief expressed agreement with Recommendation 8, however, the brief by one Broadcaster suggested that "protected work" be changed to "protected subject matter" and that the list of examples specifically include "cablecasting". (51, 52; 17a; 92)

Recommendation 9 received unqualified support in the briefs by two Copyright Associations and one Writer, while one Film/Video brief would extend the term in cases of concealed fraud. (51, 52; 17a; 59) The briefs by two Writers would also extend the term, with one brief suggesting five years. (14, 25)

SUBJECTRECOMMENDATIONST. *Importation Provisions*

1. *That section 17(4), prohibiting the importation of infringing copies of any work, be retained but amended to provide exceptions for individuals importing for private use, and for institutions, as designated in the Ilsley Report.*

COMMENTS: Eight Library Associations and one Performing Artist indicated unconditional support in their briefs for this recommendation. (53, 61, 61a-61e, 62; 69) One Broadcaster's brief stated that broadcasters, especially educational broadcasters, be included as designated exempt institutions. (92) One Film/Video brief submitted that no importation of films be permitted, even for individuals. (59) One Writer's brief disagreed with the retention of s.17(4) as recommended, stating that the requirement to prove the "guilty knowledge" of the defendant should be deleted. (17a)

Briefs submitted by one Writer and a Literary Publisher gave a qualified support, suggesting no allowance for institutional or individual importation, except for copies of protected works brought to Canada in a person's personal luggage as on return from abroad. (14; 33) One other Literary Publisher's brief would only favour the retention of s.17(4) in the proposed amended format, if "infringing copies" referred only to 'piratical editions' and not include copies produced abroad under copyright licence. (13) The briefs by two Copyright Associations and one Literary Publisher shared the view that importation be restricted to individuals returning from abroad, while one Public Advocacy Organization's brief expressed the view that, although author's are entitled to royalties from the sale of imported editions, the free flow of such copies should not be impeded. (51, 52; 93) Additionally, one Recording Industry brief would not permit any form of importation. (73)

2. *That sections 27 and 28 be repealed.*

COMMENTS: General agreement with this recommendation was expressed in the briefs by one Performing Artist, one Government department, one Literary Publisher, eight Library Associations, one Writer, one Public Advocacy Organization and one Broadcaster. (69; 3; 13; 53, 61, 61a-61e, 62; 14; 93; 92) Total disagreement was indicated in the briefs by three Literary Publishers, two Writers and three Copyright Associations. (2a, 33, 72; 17, 17a; 15, 51, 52) One brief from the latter category would provide for the application of the provision to members of the Berne Union as well as U.C.C. members. (51) One other Government brief stated the view that s.s. 27 and 28 should be replaced by one condensed and cohesive section. (6) One Film/Video brief favoured the retention of all the present importation provisions, however, agreed that they should be redrafted and updated. (59)

SUBJECTRECOMMENDATIONSU. *Registration of Copyright*

That the present voluntary registration system not be retained in any new Act.

COMMENTS: The briefs by one Government department, one Writer, one Performing Artist, one Broadcaster and one Recording Industry concern agreed with this recommendation. (10; 14; 69; 92; 73) It was pointed out in some of these briefs that such a system, if retained as the most essential method of establishing copyright ownership, might contradict the "no formalities" provisions of the international copyright conventions.

Notwithstanding this argument, the briefs of two Copyright Associations, one Composer/Lyricist, one Performing Artist and one Literary Publisher indicated support for the retention of the present system. (8a, 38; 27; 35; 72) One brief by an Archive would institute a compulsory registration system, while three Copyright Association briefs would agree to the deletion only if the recommended "presumptions" were strengthened. (47; 15, 51, 52)

SUBJECTRECOMMENDATIONSV. *Collectives*

1. *That the collective exercise of copyright be encouraged as a means of satisfying the needs of both authors and users.*
2. *That, if any collectives are formed to exercise any right given under a new Act, their regulation, control and review be the responsibility of the appropriate government agency designated.*

COMMENTS: Broad support for Recommendation 1 was expressed in the briefs of one Government department, three Literary Publishers, four Copyright Associations, two Writers, three Educational Associations, two Performing Artists, eight Library Associations, two Broadcasters, one University and one Recording Industry organization. (1; 2a, 33, 72; 8a, 38, 51, 52; 14 17a; 18, 56, 89; 35, 69; 61, 61a-61e, 90, 94; 81, 92; 91; 73) One of the Copyright Association briefs pointed out that there should only be one collective for each type of work. (38) One Music Publisher's brief suggested that the Canadian Musical Reproduction Rights Agency Limited be given the "sole mandate" to licence record reproduction rights and collect the mechanical contrivance royalties from the record companies on behalf of the copyright owners, much the same as CAPAC does regarding performing rights. (97)

Recommendation 2 received support in the briefs of one Copyright Association, three Educational Associations, three Literary Publishers, one Performing Artist, eight Library Associations, one University, two Broadcasters and one Writer. (38; 18, 56, 89; 2a, 33, 72; 69; 61, 61a-61e, 90, 94; 91, 81, 92; 17a) One Writer's brief disagreed with any notion of government intervention and regulation of such collectives, while one Broadcaster's brief submitted that, where creators do not form or join such collectives, their works be subject compulsory licensing. (14; 92)

Three Educational Association briefs submitted that neither recommendation be included until further study on the proposed collectives is undertaken. (22; 46a, 46b) One other Educational Association's brief rejected outright, both above recommendations. (36) One Film/Video brief would exclude the operations of collectives as regards films. (40) A number of other Educational Association briefs, which claimed support for similar briefs mentioned above, have not been included under these comments as their parallel support of contradictory viewpoints results in extreme difficulty in characterization of viewpoint. (75, 96, 96a)

SUBJECTRECOMMENDATIONSW. *The Copyright Tribunal*

1. *That a Copyright Tribunal be created to replace the present Copyright Appeal Board.*
2. *That the Copyright Tribunal, in addition to the responsibilities already imposed on the Copyright Appeal Board, be responsible for:*
 - a) *establishing the rate for mechanical recording royalties;*
 - b) *fixing those fees required to be paid by cable systems for rediffusion, and establishing the rules governing assessment, collection and distribution of such fees;*
 - c) *regulating the collective exercise of copyright with respect to collectives other than Performing Rights Societies: approving licences, and hearing disputes on contracts, licences, changes in royalty rates.*
3. *That there be no right of action by a collective against an alleged user of copyright material unless and until the Tribunal has been notified by the collective of its existence.*
4. *That the Tribunal be given sufficient discretionary powers to enable it to function properly: to determine and establish its own procedures and the means of exercising its powers; and to ensure that royalties are distributed for the purposes for which they are collected.*

COMMENTS:

As in the case of the previous recommendations, those relating to the proposed establishment of a Copyright Tribunal received many direct comments in the briefs. Notably, those by three Literary Publishers, one Composer/Lyricist, two Copyright Associations, four Educational Associations, seven Library Associations, one Broadcaster, one Performing Artist, one University, one Recording Industry organization and one Writer expressed general agreement. (2a, 33, 72; 27; 51, 52; 56, 75, 96, 96a; 44, 61, 61a-61e; 92; 69; 91; 73; 17a) One other Educational Association's brief submitted that the creation of a new Tribunal would result in a confusion of legal principles and concepts with respect to Quebec. (36)

General agreement with Recommendation 2 was indicated in the briefs of one Composer/Lyricist, two Copyright Associations, six Library Associations, one Writer, one Performing Artist and one Broadcaster. (27; 38, 51; 61, 61a-61e; 17a; 69; 92) The last brief stated that the provision should specifically include "mechanical contrivances". While one Government brief expressly agreed with Recommendation 2c, the Broadcaster's brief noted that the Tribunal's regulatory jurisdiction should be extended to cover the major music publishers and phonogram producers. (6; 92) One Writer's brief would restrict the Tribunal's regulation of "licences" to those granted by collectives. (17a)

Other briefs expressed a wide range of viewpoints, for example; one Educational Association's brief submitted that the proposed powers were too broad; one Copyright Association's brief agreed with this opinion and stated that consideration of the Tribunal's powers was premature. (18; 52) Additionally, one Performing Artist's brief would empower the Tribunal to hear summary complaints, whereas the briefs by one Literary Publisher and one University would provide a clearer outline of the Tribunal's jurisdiction and powers. (35a; 72; 91)

Recommendations 3 and 4 received support, without qualification, in the briefs of one Copyright Association, one Broadcaster, six Library Associations and one Performing Artist. (51; 92; 61, 61a-61e; 69) One Composer/Lyricist's brief also agreed that the Copyright Tribunal should be empowered to ensure that the distribution of royalties by collectives (who would be required to give full disclosure) is equitable. (27)

SUBJECT

RECOMMENDATIONS

X. *Crown Copyright*

1. *That the Crown be subject to the Copyright Act.*
2. *That, if the Crown retains prerogative copyright, an exhaustive list of items coming within the prerogative be enumerated in any new Act.*
3. *That a specific exception be provided for parliamentary use of any copyright material in the exercise of legislative functions.*
4. *That the Crown review its interests in the acquisition, control, administration and assertion of copyright.*

COMMENTS: Overall agreement with Recommendation 1 was evident in the briefs of one Performing Artist, two Government departments, three Copyright Associations, two Writers, two Archives and five Library Associations. (69; 1, 10; 15, 51, 52; 14, 17a; 39, 47; 53, 62, 65, 90, 94) Two of the Copyright Association briefs and three Library Association briefs further agreed with Recommendation 2. (15, 51; 53, 62, 65) One of the Copyright Association briefs and one by a Library Association submitted that clarification of the procedure for recognition of authorship for employees of the Crown and other authors whose works are first published by the Crown, as per s.11, is required and to specifically include Crown corporations as being subject to copyright law. (52; 94) One Writer's brief objected strongly to any such ability of the Crown to assume ownership of a non-employee-author's copyright. (17a) One Government brief agreed to the removal of the Crown's prerogative if the Report's recommendations regarding "fair dealing" are implemented. (10) One Performing Artist's brief disagreed with the continuation of any prerogative right except for statutes, regulations, Hansard, etc.. (69)

One Government brief, four by Library Associations, one Performing Artist's brief and one by a Copyright Association expressed support for Recommendation 3. (10; 53, 62, 65, 94; 51) One Copyright Association brief noted that this provision should not be included under the heading of Crown Copyright, as the Crown and Parliament are not synonymous governmental bodies. (52)

With respect to Recommendation 4, approval was indicated in the briefs by one Performing Artist, two Government departments, three Copyright Associations and eleven Library Associations. (69; 1, 10; 15, 51, 52; 53, 61, 61a-61e, 62, 65, 90, 94) One Writer's brief would restrict the Crown's assertion of copyright ownership to as few instances as necessary, while one brief by an Archive would impose a 50 year term after the creation of the document in question, as well as specifying which officials have the authority to grant permission to use such materials. (17a; 47)

SUBJECTRECOMMENDATIONSY. *International Conventions*1. *Phonogram Convention*

That Canada accede to the Phonogram Convention.

2. *Satellite Convention*

Apart from certain difficulties in complying with the procedural requirements of the treaty, the questions and issues arising from the above matters render it premature to come to any recommendation. Therefore no recommendation is made.

3. *Neighbouring Rights Convention*

That Canada not accede to the Neighbouring Rights Convention in the absence of any evidence that it would be in Canada's interest to do so.

4. *Vienna Agreement (type faces)*

That Canada not accede to the Agreement, pending decisions reached with respect to industrial design legislation.

COMMENTS: Support for accession to the Phonogram Convention was expressed in the briefs by two Copyright Associations, one Recording Industry concern, one Performing Artist and one Broadcaster, although the latter qualified its support by stating that Article 6 of the Convention should be specifically utilized; (Article 6 defines the conditions under which compulsory licences can be granted.) (51, 52; 73; 69; 92)

Two Copyright Association briefs agreed with the Report's comments concerning the Satellite Convention, but one Broadcaster's brief indicated that, as no real economic deficit would result from accession to this treaty, the protection it affords to the transmission of broadcast signals is desirable. (51, 52; 92) One Performing Artist's brief also agreed that Canada should adhere to the Satellite Convention and one Literary Publisher's brief cautioned against Canada taking an inflexible position regarding accession to this Convention. (35; 72)

Agreement with the proposal concerning "neighbouring rights" was expressed in the briefs by two Copyright Associations, one Broadcaster and one Recording Industry association. (51, 52; 92; 73) Disagreement was stated in three Performing Artists' briefs. (35, 69, 86)

Although one Copyright Association brief disagreed with the Vienna Agreement recommendation, two other briefs by Copyright Associations and one by a Broadcaster agreed, the latter noting that it is too early to assess the costs and benefits of accession to this treaty. (16, 51, 52; 92)

<u>SUBJECT</u>	<u>RECOMMENDATIONS</u>
Z. <i>Application of the Provisions of the Act</i>	<i>That the extension of benefits and rights provided in any new Copyright Act or the provision of any conditions thereunder be accomplished by Order in Council, upon the recommendation of the Minister.</i>
AA. <i>Transitional Provisions</i>	<i>That the necessary transitional provisions be incorporated in any new Act.</i>
BB. <i>Periodic Revision and Consultation</i>	<ol style="list-style-type: none"> 1. <i>That continuous evaluation be maintained of the impact of existing and emerging intellectual property systems.</i> 2. <i>That provision be made for a means to conduct and maintain a continuing review and study of copyright law and practice, and of technological and other developments in the field, with a view to encouraging the initiation and development of policy recommendations.</i> 3. <i>That provision be made for the periodic revision of copyright law.</i> 4. <i>That a mechanism be provided to initiate and conduct regular liaison, consultation and discussion with private and public copyright interests in Canada, and with foreign copyright offices and international organizations.</i>

COMMENTS: The briefs by two Copyright Associations and one Performing Artist expressed approval for Recommendations Z, AA, BB 1 and 2. (51, 52; 69) The latter two recommendations were also agreed to in the briefs by one Archive and one Research Institute, although the latter would specify a continuing ten year review and revision process. (47; 68) One Broadcaster's brief pointed out that Recommendation AA is only acceptable if more detail is forthcoming. (92) This brief, however, agreed with Recommendation Z. One Library Association's brief expressed specific support for Recommendation BB 1. (44)

Two briefs by Copyright Associations, one Archive and one Performing Artist concurred with Recommendations BB 3 and 4, particularly the provision for "voluntary" private sector participation. (51, 52; 47; 69) One Broadcaster's brief submitted that Recommendation 4 should specifically include "users" as parties to the consultation process. (92) One Visual Artist's brief and seven by Library Associations supported all of the "Revision" recommendations. (12; 61, 61a-61e, 90)

<u>SUBJECT</u>	<u>RECOMMENDATIONS</u>
CC. <i>General Recommendations</i>	<ol style="list-style-type: none"> 1. <i>That Canada remain at the present level of international participation in respect of the Berne Convention and the Universal Copyright Convention.</i>

2. *That Canada should, however, maintain the present level and extent of protection, taking into account social and cultural developments and, in particular:*
 - a) *opposing forces and views: i.e., to provide greater access to copyright material, yet increase the share of creators and authors in copyright returns and to have regard for the interests and entrepreneurs as well as those of users (consumers) on the equitable basis; and*
 - b) *the need to extend the scope of protection laterally to encompass new subject matter, new use of material, and associated matters.*

3. *That the legal basis of copyright remain that of property.*

COMMENTS: All three above recommendations were agreed to by one Copyright Association's brief. (51) Recommendation CC 1 received approval in the briefs of one Public Advocacy Organization, one Copyright Association and one Broadcaster. (93; 52; 92) One Writer's brief noted disagreement with it, stating that Canada should adhere to the Stockholm Text of Berne. (25) One Performing Artist's brief recommended Canada's accession to all international conventions that would afford stronger protection for performers, while another such brief suggested that further consideration of the matter is desirable. (35, 69) One Copyright Association brief submitted that Canada's level of international copyright commitments should be reduced. (38)

One Broadcaster's brief noted that Recommendation CC 2 is questionable if it results in an increased outflow of copyright payments. (92) This brief further added, regarding Recommendation CC 3, that copyright should be considered a "sui generis", not a property right. The briefs by one Copyright Association and another Broadcaster stated that copyright is "in the nature of a contract with the State" and is a "limited legal monopoly", not a property right. (11; 81) One other Copyright Association's brief and one by a Composer/Lyricist supported the contention that the legal basis of copyright remain that of property. (52; 79)

APPENDIX 'A'

Briefs Incorporated within Digest

<u>Index No.</u>	<u>Author</u>
1.	Agriculture Canada
1a.	Agriculture Canada Information Services
2.	Association of Canadian University Presses
2a.	Association of Canadian University Presses
3.	Revenue Canada, Customs and Excise
4.	Canadian Association of Music Libraries
5.	Alliston Press Limited
6.	Secretary of State
6a.	Secretary of State, Multilingual Services
7.	Song in Your Heart Publishing Limited
8.	Board of Trade of Metro Toronto
8a.	Board of Trade of Metro Toronto
9.	Institut National de Recherche Scientifique
10.	Statistics Canada
11.	R. J. Roberts
11a.	R. J. Roberts
12.	Irma Coucill
13.	Coles Publishing Co. Ltd./Coles Book Stores Ltd.
14.	International Writers' Guild
15.	M. E. McLeod
16.	Chartered Institute of Patent Agents
17.	Writers Union of Canada
17a.	Writers Union of Canada
18.	Canadian Teachers' Federation
19.	Radio Reading Service
20.	Social Planning and Review Council of British Columbia
21.	University of Western Ontario
22.	Canadian School Trustees' Association
23.	Canadian Crafts Council
24.	Canadian Association of Photographers and Illustrators in Communications
25.	La Société Canadienne Française de Protection du Droit d'Auteur
26.	Indexing and Abstracting Society of Canada
27.	Composers, Authors and Publishers Association of Canada Ltd. (CAPAC)
28.	Association for Media and Technology in Education in Canada (AMTEC)
29.	Western Agricultural Conference
30.	Canadian Artist's Representation
31.	IBM Canada Limited
31a.	IBM Canada Limited
32.	Humanities Research Council of Canada
33.	Canadian Book Publishers' Council
34.	Association of Canadian Map Libraries

<u>Index No.</u>	<u>Author</u>
35.	Canadian Council of Performing Arts Unions
35a.	Canadian Council of Performing Arts Unions
36.	La Conférence Des Recteurs et Des Principaux Des Universités du Québec
37.	International Performing Artists' Recordings Limited (INTERPAR)
38.	Musical Protective Society of Canada
39.	Association of Canadian Archivists
40.	Motion Picture Theatres Association of Canada
41.	Library Development Commission of British Columbia
42.	Association des Traducteurs Littéraires
43.	Canadian Music Publishers Association (CMPA)
44.	Sheridan Park Association, Library and Information Science Committee
45.	Manitoba Department of Education
46.	Canadian Education Association, Ad Hoc Joint Education Committee on Copyright
46a.	Canadian Education Association, Ad Hoc Joint Education Committee on Copyright
46b.	Commissions Scholaires Catholiques du Québec
47.	Public Archives of Canada
48.	The Music People Limited
49.	British Columbia Advisory Committee on Library Services to the Handicapped
50.	Canadian National Institute for the Blind
50a.	Françoise Hébert
51.	Canadian Copyright Institute
52.	Patent and Trademark Institute of Canada (PTIC)
53.	Ontario Library Association
54.	Susan Klement
55.	Vancouver City Digest
56.	Ontario Educational Communications Authority
57.	Patricia Dye
58.	L'Association des Collèges du Québec
59.	Canadian Motion Picture Distributors' Association
60.	Satellite Video Exchange Society
61.	Canadian Library Association
61a.	Saskatchewan Library Association
61b.	British Columbia Library Association
61c.	Library Association of Alberta
61d.	Special Libraries Association; Montreal Chapter
61e.	Canadian Association of Research Libraries
62.	University of Western Ontario Librarians' Association
63.	John The Poet
64.	James Feeley
65.	Canadian Association of Law Libraries
66.	A. Carlson
67.	Benny Louis
68.	National Research Council Advisory Board on Scientific and Technical Information (ABSTI)

Index
No.

Author

69. Association of Canadian Television and Radio Artists (ACTRA), Canadian Association of University Teachers (CAUT), Guild of Canadian Playwrights, Playwrights Co-op
70. Canadian Cable Television Association (CCTA)
71. Canadian Association of Exhibitions
72. Association of Canadian Publishers
73. Canadian Recording Industry Association
74. Saskatchewan Agricultural Services Coordinating Committee (SASCC)
75. The Ontario Association of Education Administrative Officials
76. University of Toronto Copyright Committee
77. University of Guelph
78. Art White Music Service Limited
79. Canadian Songwriters' Association
80. Standard Broadcast Productions Limited
81. Canadian Association of Broadcasters
82. Association of Academic Librarians of Ontario (AALO)
83. Canadian Film and Television Association
84. Charles Crane Memorial Library, University of British Columbia
- 84a. B. Stuart-Stubbs, University Librarian, U.B.C.
85. Bernadette Renaud
86. International Labour Office
87. Diane Giguère
88. The Council of Canadian Filmmakers
89. Council of Ministers of Education, Canada
90. The Council of Federal Libraries
91. Association of Universities and Colleges of Canada
92. Canadian Broadcasting Corporation
93. Consumers' Association of Canada
94. Canadian Association for Information Science
95. Canadian Art Museums Directors Organization
96. Ontario Association of School Business Officials
- 96a. Ontario School Trustees' Council
97. Morning Music Limited

Briefs Submitted Subsequent to Preparation of DigestIndex
No.Author

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| 98. | MICROFOR Inc. |
| 99. | Nova Scotia Department of Agriculture and Marketing |
| 100. | H. Lange |
| 101. | W. R. Wilson |
| 102. | Les Photographes Professionnels du Québec Inc. |
| 103. | Society of Graphic Designers of Canada |
| 104. | McMaster (University) Faculty Assoc. |