

QUEEN
KE
2799
.C6
1984

COPYRIGHT AND THE CULTURAL COMMUNITY

Francis Fox, Minister of Communications



Government of Canada
Department of Communications

Gouvernement du Canada
Ministère des Communications

Canada

multist

QUEEN
KE 2799
2799
C67
1984

COPYRIGHT AND THE CULTURAL COMMUNITY

By collecting the views of the public, the Government of Canada and the Department of Consumer and Corporate Affairs, and the Copyright Commission, have been able to identify the areas where the law is most in need of revision. The Commission's report will be published in the near future. It will also be available in French.

Copyright law is a key element of the Government of Canada's legislative framework for the communications and cultural industries. It is designed to meet the challenges of the 1980s and beyond.

The policies underlying our proposals for revision of the copyright law are based on several considerations: first, what copyright law does today does not adequately protect the rights of authors; second, that equalization of author's rights with other creative rights depends on a system of royalties, performance and marketing rights, copyright exceptions, and, finally, that any restriction or increase in the level of copyright protection will have direct effects on creators, the general public, and the health of the cultural industries.

The process of transferring the Government's proposals into legislation is now underway. To facilitate the process, the Commission is being referred to the House of Commons, the Senate, and the provinces and territories. The Commission is also being consulted on the proposals. The Commission is also being consulted on the proposals. The Commission is also being consulted on the proposals.

DEPARTMENT OF CONSUMER &
CORPORATE AFFAIRS
LIBRARY
MAY 8 1984
BIBLIOTHÈQUE
MINISTÈRE DE LA CONSOMMATION
ET DES CORP. D'IND.

1. Name of the person or organization
2. Address
3. City
4. Province
5. Postal Code

My colleague the Honourable Judy Erola, Minister of Consumer and Corporate Affairs, and I have tabled in the House of Commons a White Paper that sets forth the Government of Canada's proposals for revision of the Copyright Act. My purpose in issuing the document now in your hands is to highlight what I believe are the most important implications of the White Paper for Canada's creators, the cultural industries and the cultural community generally.

Copyright law is a key element in the Government of Canada's articulation of a comprehensive set of communications and cultural policies that respond to the technological, economic and social challenges of the 1980s and beyond.

The policies underlying our proposals for revision of the copyright law are based on several considerations: first, that copyright legislation grants creators exclusive rights in their works; second, that exploitation of works is founded solely on creators' rights, because each stage of production, performance and marketing rests on copyright exclusivity; and, third, that any reduction or increase in the level or scope of copyright protection will have direct effects on creators, the promotion of creativity and the health of the cultural industries.

The process of transforming the government's proposals into legislation is now underway. To facilitate the task, the White Paper is being referred to the House of Commons Standing Committee on Communications and Culture. The White Paper contains two kinds of proposals: those on which a decision has been made and those on which public comment is invited before a final decision is made. The Committee will provide a forum for those most directly affected by copyright law to make their views known. I am confident that the nation's cultural community, which has so much at stake in copyright revision, will participate actively, vigourously and constructively in this process.

— —
Francis Fox

Francis Fox
Minister of Communications

Ottawa
May 1984

CONTENTS

THE NEED FOR REVISION OF CANADA'S COPYRIGHT LAW	1
COPYRIGHT AND CANADA'S CULTURAL GOALS	2
NEW RIGHTS	2
PROTECTION FOR NEW CATEGORIES OF WORKS	3
ENHANCING CREATORS' ABILITY TO DEAL IN THEIR WORKS	4
DURATION OF COPYRIGHT PROTECTION	5
PENALTIES AND REMEDIES	5
IMPORTATION PROVISIONS	5
PERFORMERS' RIGHTS	6
OTHER MATTERS REQUIRING FURTHER CONSIDERATION	7
A FORUM FOR PUBLIC DISCUSSION	8
A CORNERSTONE OF CULTURAL POLICY	9

THE NEED FOR REVISION OF CANADA'S COPYRIGHT LAW

Copyright law is the legal recognition of the rights of creators. Its purpose is to protect the results of intellectual and creative labour. Originally concerned solely with printed matter, it now extends to other works and activities. Copyright law confers exclusive rights. Except where the law expressly provides, there can be no copying, public performance, recording, filming or broadcasting of a protected work, without the creator's consent.

Technological change has fundamentally transformed the context and assumptions of many of our laws and institutions. Not least among these, it has radically altered the relationship between creators and the users of their works. Sixty years have elapsed since Canada's copyright law was revised in 1924, years that have witnessed the advent of radio, television, photocopiers, computers, satellites, and a host of electronic storage and retrieval devices that are commonplace tools for the communication and exploitation of intellectual property.

Not only are we confronted with a host of new technologies, but the importance of economic activities dependent on copyright materials has increased exponentially since 1924. Indeed, the copyright industries are now one of the most important sources of economic growth in our society. The social, cultural and economic interests served by the nation's press, electronic media, entertainment industries and many other services depend ultimately on the talents and efforts of individual creators.

The importance of the work of the individual creator will continue to grow as our society enters ever deeper into the Information Age, an era in which there are means of access to copyright works unimagined when the present legislation came into force.

It is time to revise Canada's Copyright Act, to make it responsive to the challenges of today and the future.

COPYRIGHT AND CANADA'S CULTURAL GOALS

The issues raised by the revision of the Copyright Act link two crucial policy objectives of the Government of Canada. The first is the government's determination to foster a climate in which creativity can flourish. The second is to ensure that Canadians reap the greatest possible benefits from technological change.

Revision of the copyright law is fundamental to a series of other initiatives under the federal government's comprehensive approach to cultural policy: the National Broadcasting Strategy and the new policy thrust for the Canadian Broadcasting Corporation have been announced; the government's copyright policy has been enunciated with the issuing of the White Paper; soon to come is a policy statement on the film and video industries. These, together with a revised copyright law, will form the foundation and framework of Canada's cultural policy.

NEW RIGHTS

The revised copyright law will provide new rights that will enable creators to exploit their works through the modern media engendered by advanced technology.

Rental rights

Owners of copyright will be accorded a right to control the renting of sound recordings and films to the public, which will compensate them for royalties lost through foregone sales. This recognizes that the rental of movies and sound recordings has become widespread and that creators of the material rented should share in the revenues generated in this expanding market. Furthermore, to ensure that the law will be responsive to future developments, the Governor in Council will have the authority to extend the renting right to other categories of works.

Original transmission by cable or satellite

In addition to the conventional broadcasting right, the creator of a work will be enabled to control its original transmission by cable or satellite, where the cable or satellite system originates the

program. The revision will clearly define these rights, to ensure that all transmissions to the public will be subject to copyright.

Moral rights

The new law will strengthen the moral rights of all creators and will provide even stronger moral rights protection to visual artists, by adding two new rights. The first provides the creator with the right to use a pseudonym or remain anonymous and to restrain others from falsely claiming authorship. The second new moral right protects authors of unique artistic works by prohibiting any distortion or mutilation of an original work. Moreover, the law will provide effective remedies for the infringement of moral rights.

PROTECTION FOR NEW CATEGORIES OF WORKS

The law will be extended to protect categories of works heretofore not adequately dealt with in the Act or else not protected at all, such as computer programs.

Recordings, films and choreography

The law will explicitly protect sound recordings, motion picture films, and choreography. For films, this will replace the inadequate system of dual protection, whereby films are protected as either dramatic or artistic works.

Computerized information storage and retrieval devices

Under the revised law, copyright material will be protected regardless of the medium of expression. Magnetic tapes, discs and silicon chips will be considered to be copies, thus making unauthorized reproduction in these formats an infringement. Displays on a video unit will not be considered copies for purposes of the Act. Works first fixed in a computer databank will qualify for copyright protection whether or not they are also fixed in another medium.

Computer programs

The new Act will contain a specialized form of protection for computer programs in machine-readable form. Section XII of the White Paper outlines a possible way of implementing this form of protection. Public comment is invited.

Computer programs in human-readable form will continue to be protected by traditional copyright. The one limitation is that users will be allowed to make a machine-readable program from a human-readable program well before the expiration of the copyright in that program.

ENHANCING CREATORS' ABILITY TO DEAL IN THEIR WORKS

There are important changes that increase the ability of creators to deal in, and with, their works.

Abolition of compulsory licences

One major change is the abolition of compulsory licences, which allow the use of a work without the permission of the copyright owner provided a fee is paid.

Among these licences is the compulsory licence for the mechanical reproduction of musical works. This was first introduced in Canada and many other countries when the record industry was in its infancy. Now that the industry is well established, there is no longer justification for such support measures.

Copyright societies

The new law will foster an environment in which creators will be able to exploit their works freely in the marketplace. Technology has greatly increased the ease and amount of copyright infringement: effective control by an individual copyright owner has been rendered virtually impossible. Therefore, the formation of copyright societies -- organizations which acquire, exercise and enforce rights on behalf of their member copyright owners -- will be encouraged.

DURATION OF COPYRIGHT PROTECTION

The revised law will maintain the general principle governing the duration of copyright protection: that protection should be for the lifetime of the author and fifty years thereafter. Moreover, this term of protection, which is the international norm used in the vast majority of countries, will be provided for all artistic works, including photographs.

PENALTIES AND REMEDIES

There will be a general increase in the severity of penalties for copyright infringement: the civil and summary remedies will be strengthened, and the courts will be encouraged to award damages commensurate with the plaintiff's injury. The major change is the "strict liability" system, which provides for a scheme of statutory compensation.

In addition to many technically detailed proposals, a general strengthening of the criminal remedies is proposed, primarily by increasing the level of fines.

IMPORTATION PROVISIONS

It has been decided to continue the existing importation provisions for cultural products such as books, films and records. Furthermore, the Governor in Council will also be empowered to bring other cultural products within the protected group should that be required. Thus, Canadian publishers, recording companies and film producers will continue to be protected against competition from imported authorized foreign products. In this respect, Canada is following the practice of its major trading partners and most developed countries -- including the United States, the United Kingdom, France, the Federal Republic of

Germany and Australia -- which deem import protection to be a necessary condition for promoting the development of domestic cultural industries.

PERFORMERS' RIGHTS

An important issue in revising the copyright law is what form of protection should be provided to performers. Under the existing law, performers receive remuneration for their performances only by contract, and the present copyright law does not provide a right for performers.

Not all countries provide special protection to performers. Many countries that inherited their legal system from the English common law rely on criminal sanctions to provide protection to performers. In the United Kingdom, for example, it is an offense to make or use a recording without the authorization of the performer.

Performers have complained with justification of their inability to deal with third parties who have recorded and used a performance without authorization and have sought criminal sanctions that will deter would-be "infringers." The revised law will provide for such criminal sanctions.

The question of performing rights in sound recordings

It has been decided not to provide a performing right in sound recordings, that is, a right which would enable the owner of the copyright in the sound recording to require remuneration when the recording is performed in public or broadcast. This right did exist in Canadian law but was repealed in 1971. At that time, 90 per cent of the records manufactured in Canada were made from master recordings produced outside Canada. That percentage has not changed appreciably and the decision not to reintroduce the right has been made for the same policy reasons cited in 1971.

OTHER MATTERS REQUIRING FURTHER CONSIDERATION

Revision of the copyright law is a complex undertaking that involves many issues. Some are matters of detail while others raise broad policy questions. The White Paper on Copyright sets out the government's policy objectives in reaching decisions that have already been made. However, because of the complexity of the subject matter, it was not possible to reach a decision on every issue. A few matters require further public response and discussion. Among them are: the droit de suite, the first ownership of copyright in a work created during the course of employment; the retransmission of copyright material by cable, satellite and other means; and the issue of home taping.

Droit de suite

Yet to be decided is the enactment of a droit de suite, the right whereby a creator of an artistic work can share in the proceeds of successive sales of the original work after its initial sale. Artists favouring a droit de suite argue that as the reputation of an artist grows, the artist should share in the increased value of the work. Aside from the practical difficulties arising from a droit de suite, there is the further problem of ensuring that the right would apply only to Canadian artists. Canada's obligations under the Berne Convention would require that the right be applied to all convention nationals, without reciprocity. It might not be in Canada's interests to provide such a right. Public comment on this question is welcomed.

First ownership of copyright

Under the present law, copyright in a work created by an employee in the course of employment belongs to the employer unless there is an agreement to the contrary. Creators have argued that the employee should be the first owner unless there is an agreement to the contrary. Because this is a question affecting all employers and employees, public comment is solicited.

Satellite and cable retransmission

Under the present law, cable and satellite systems which pick up broadcast signals for retransmission to subscribers are not required to pay copyright royalties. Whether they should pay is one of the most complicated and contentious issues of copyright revision. Because any decision must take into account a broad spectrum of cultural, broadcasting and communications policies, it has been decided that the issue will be further addressed by public hearings and thorough public discussion. The issue is analyzed in Appendix I of the White Paper, and comment is invited.

Home taping

Producers of audio and video material have argued that they should be compensated for sales and revenues lost as a consequence of home taping of their works. Because these activities occur in the privacy of the home and cannot be monitored or controlled, copyright would not seem to be the appropriate remedy.

This is an issue which, like others requiring further public discussion, may be further addressed by the House of Commons Standing Committee on Communications and Culture, to which the White Paper on Copyright has been referred.

A FORUM FOR PUBLIC DISCUSSION

The House of Commons Standing Committee on Communications and Culture will provide a forum for those affected by copyright revision to make their views known. Your suggestions and reactions to the proposals for copyright revision, whether supportive or critical, are earnestly solicited and will be most welcome. It is hoped that referral to the Committee of the decisions announced in the White Paper, together with matters not yet decided, will greatly facilitate the process of revision. The government believes that this approach, which will give interested parties ample opportunity to prepare submissions, will be more productive than the more usual procedure of announcing decisions by

introducing legislation in Parliament. While the process of drafting the new bill is taking place, public discussion and consideration by the appropriate parliamentary committee will, it is hoped, ultimately reduce the time required to have the Bill passed into law.

A CORNERSTONE OF CULTURAL POLICY

A new copyright law, responsive to contemporary realities, will fully recognize the fundamental importance of copyright legislation to the elaboration of the Government of Canada's communications and cultural policies. By ensuring that the rights of creators are effectively safeguarded, copyright law will be a positive factor in fostering a lively, creative and flourishing national culture. The exclusive rights conferred by copyright will be a direct economic incentive to create and market cultural products, for the benefit of both creators and their audiences: the greater the scope of copyright protection, the greater the incentive for creative expression.

Copyright law, complicated as it must be in the Communications Age, is the cornerstone upon which the cultural industries are built. Without musical composition there would be no recording industry, without a script no film or video industries. It is here, at the very fount of creativity, that copyright law serves its essential purpose. The law must protect the author, the composer, the artist and other creative talents by conferring on them rights to safeguard and exploit their works. The legal protection takes the form of a variety of exclusive rights that prevent others from copying, performing or broadcasting their works without permission. It is these exclusive rights that are bought and sold by the cultural industries to publish, broadcast, film and record the works and thereby disseminate them to audiences.

In brief, without effective copyright law there can be no sure foundation for cultural life. That is why the Government of Canada, placing the highest priority on fostering the conditions essential for national cultural expression, is determined to act expeditiously in revising the copyright law.

Thus, a new copyright law is an essential element of a broader policy thrust whose ultimate goal is to ensure that Canadian cultural expression, in all its diversity, richness and vigour, will flourish in a transformed, and transforming, technological era. As one of the Government of Canada's policy responses to the economic, social and cultural challenges of today, copyright legislation occupies a crucial place.

