



## **Bill C-32 Copyright Backgrounder**

### **Projet de loi C-32: un guide**

**Overview of responses from Canada's cultural sector**

**Survol des positions au sein du secteur culturel**

**Canadian Conference of the Arts / Conférence canadienne des arts**

**22 October 2010 / 22 octobre 2010**

# PROS

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## General Pros

### **ACP-Association of Canadian Book Publishers**

C-32 “represents a major step forward in the essential process of informed national discourse.”<sup>1</sup>

### **ANEL-Association Nationale Des Editeurs de Livres**

«Le projet de loi C-32 présente toutes les apparences d’un effort pour moderniser la loi canadienne du droit d’auteur et la rendre compatible aux réalités de l’ère numérique, notamment en érigeant en violation du droit d’auteur le fait de faciliter la commission de violations en ligne et en encadrant le contournement des mesures techniques de protection des oeuvres.»<sup>2</sup>

### **WUC-Writer’s Union of Canada**

“Open letter to Clement and Moore:

Tuesday, August 3, 2010

Dear Ministers,

On behalf of all professional writers in Canada we want to thank you for beginning the process of amending our copyright legislation for the digital environment. We recognize this process as an absolute necessity if Canada is to fulfill her role as a leader in the context of the growing global knowledge economy.”<sup>3</sup>

### **SOCAN**

- “Update the rights and protections of copyright owners to better address the challenges and opportunities of the Internet;
- Clarify Internet service providers’ liability and make the enabling of online copyright infringement itself an infringement of copyright;
- Permit businesses, educators and libraries to make greater use of copyright material in digital form;
- Permit certain uses of copyright material by consumers;
- Ensure the *Act* remains technologically neutral;
- Mandate copyright review by Parliament every five years.

SOCAN considers these intentions laudable. Canada must ensure that its laws are consistent with international standards and these standards primarily acknowledge — as they should — the rights of creators in the digital marketplace.”<sup>4</sup>

## Specific Pros: WIPO Compliance, Photographer Rights

### **CAR/FAC**

"A handful of recommendations made by CARFAC, the national association of visual artists and their Quebec partner, RAAV, have been put forward in the bill including extending rights to photographers

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<sup>1</sup> [www.publishers.ca/images/downloads/acp\\_release\\_re\\_c-32.pdf](http://www.publishers.ca/images/downloads/acp_release_re_c-32.pdf)

<sup>2</sup> [http://www.anel.gc.ca/PDFAutoG/1\\_20100630133222.pdf](http://www.anel.gc.ca/PDFAutoG/1_20100630133222.pdf)

<sup>3</sup> [http://www.writersunion.ca/pdfs/letter\\_clement\\_moore\\_0810.pdf](http://www.writersunion.ca/pdfs/letter_clement_moore_0810.pdf)

<sup>4</sup> [http://www.socan.ca/jsp/en/pub/music\\_creators/Autumn2010\\_SpeakOut.jsp](http://www.socan.ca/jsp/en/pub/music_creators/Autumn2010_SpeakOut.jsp)

and portrait artists and the implementation of the World Intellectual Property Organization Copyright Treaty.”<sup>5</sup>

### **COPIBEC**

COPIBEC is in favour of, “a few new provisions that are favourable to artists (implementing the WIPO treaties, recognizing photographers’ rights, etc.)”<sup>6</sup>

### **PWAC-Professional Writers Association of Canada**

“The draft bill tabled this week in Ottawa, Bill C-32, moves towards harmony with the global framework set out in treaties of the World Intellectual Property Organization (WIPO) that Canada signed in 1996 but has yet to implement. PWAC acknowledges the federal government attempt to align our laws in order to strengthen the legal tools required to give and retain value for copyright materials in the global digital marketplace.”<sup>7</sup>

### **ACTRA-Canadian Cinema, Television and Radio Artists**

“We’re happy to see that after 13 years of embarrassment on the world stage we’re finally catching up to international norms by becoming WIPO compliant,” said Stephen Waddell, ACTRA’s National Executive Director.”<sup>8</sup>

### **CARCC-Canadian Artists Representation Copyright Collective**

“Is there anything good for visual artists in the bill?

One single clause clearly concerns the visual arts: recognition of copyright for photographers, portrait artists, and printmakers.”<sup>9</sup>

### **CAPIC-Canadian Association of Photographers and Illustrators in Communications &**

### **CPC-Canadian Photographers Coalition<sup>10</sup>**

“The Canadian Photographers Coalition (CPC) congratulates the Federal Government on the introduction of copyright reform legislation. The Copyright Modernization Act includes a provision to award photographers first ownership on commissioned works; a right held by all other creators.”

"Today is a great day for Canadian photographers," stated André Cornellier, Coalition Co-chair. "The Copyright Act is an important policy tool for the promotion of Canada's culture and Canadians' creativity. As professional photographers, we understand first-hand the importance of ensuring a modern Copyright Act promotes both of these objectives."

"These amendments allow Canadian small business photographers the opportunity to generate additional revenues for their commercial work. At the same time, they strike a balance by allowing consumers the use of commissioned personal photographs for private non-commercial purposes," Cornellier added.”<sup>11</sup>

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<sup>5</sup> <http://www.carfac.ca/2010/06/bill-c32/>

<sup>6</sup> <http://www1.copibec.gc.ca/?action=prbu&langue=a>

<sup>7</sup> <http://www.pwac.ca/files/PDF/Press.June10.BillC32.pdf>

<sup>8</sup> <http://www.actra.ca/main/press-releases/2010/06/canadas-new-copyright-bill-a-blow-to-artists-half-the-bill-is-missing/>

<sup>9</sup> <http://www.carcc.ca/news.html>

<sup>10</sup> <http://www.newswire.ca/en/releases/archive/June2010/02/c9520.html>

<sup>11</sup> <http://www.capic.org/news.html>

### **SARTEC- Société des Auteurs de Radio, Télévision et Cinéma Compositeurs**

«Certes, le projet de loi comporte quelques éléments intéressants....

- «Les photographes sont enfin traités sur le même pied que les autres créateurs en devenant titulaires des droits sur les œuvres commandées.
- Le Canada adhère aux traités de l'[OMPI](#) sur le droit d'auteur et sur les interprétations exécutions et les phonogrammes. Les artistes-interprètes auront, entre autres des droits moraux sur leur interprétation.
- Le projet de loi protège l'utilisation de serrures numériques et en interdit le contournement.
- Certaines mesures pourront contribuer à réfréner le piratage et contrer les entreprises du style Bit Torrent.»<sup>12</sup>

### **SODART/RAAV-Société de droits d'auteurs en arts visuels**

Les «photographes, graveurs et portraitists...voient leurs droits reconnus comme pour tous les autres créateurs d'oeuvres artistiques.»<sup>13</sup>

### **SCAM-Société civile des auteurs multimédias**

«Mis à part l'adhésion du Canada aux traités de l'[OMPI](#)<sup>(1)</sup> et des dispositions favorables aux photographes auxquels on reconnaîtrait les mêmes droits qu'aux autres créateurs, aux artistes-interprètes d'enregistrements sonores auxquels on accorderait un droit moral sur leurs interprétations, ce projet de loi ne contient rien d'avantageux pour les créateurs canadiens.»<sup>14</sup>

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<sup>12</sup> [http://www.sartec.qc.ca/info/archiv\\_infos/201007/info/article4.htm](http://www.sartec.qc.ca/info/archiv_infos/201007/info/article4.htm)

<sup>13</sup> [http://www.raav.org/pls/htmldb/f?p=105:39:1396671820004854::NO::P39\\_ID\\_NOUVELLE, LAST\\_PAGE:27790%2C34](http://www.raav.org/pls/htmldb/f?p=105:39:1396671820004854::NO::P39_ID_NOUVELLE, LAST_PAGE:27790%2C34)

<sup>14</sup> <http://www.scam.ca/fr/bulletin.html>

# GENERAL CONS:

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## Takes Away the Rights of Creators/ Imperils Our Economy of Knowledge

### DAMIC

«Le 2 juin dernier, le gouvernement déposait à la Chambre des Communes le projet de loi C-32 modifiant la *Loi sur le droit d'auteur* (LDA). Sous prétexte de moderniser la loi, le gouvernement a choisi d'en ignorer les principes fondamentaux et d'en dénaturer complètement l'esprit.

...

Il importe donc que la loi reconnaisse que l'auteur est le premier titulaire des droits sur ses œuvres. Or le projet de loi C-32 vient au contraire évacuer les auteurs d'une loi qui porte pourtant leur nom.»<sup>15</sup>

### [English version]

"On 2 June 2010, the government tabled Bill C-32, modifying the Copyright Act, in the House of Commons. Under the pretext of modernizing the statute, the government has chosen to ignore its fundamental principles and to completely misconstrue its spirit.

...

It is therefore important that the statute recognize that creators are the primary holders of rights to their works. Yet Bill C-32 does the opposite, removing creators from a statute that purports to be about their rights."<sup>16</sup>

### ACTRA-Canadian Cinema, Television and Radio Artists

Unfortunately Bill C-32 as written will weaken current copyright and the collective licensing mechanisms that professional creators rely on to protect their work and make a living.... Instead of moving forward with legislation that gives Canadians access to creative content while making sure creators are fairly compensated, Bill C-32 takes us backwards by destroying the tools artists need to make a living and retain control over their work. Modern and equitable copyright laws that protect creators' rights are a cornerstone of an economic development policy that values creative industries. Bill C-32 must be amended in order to encourage innovation and build Canada's digital economy.<sup>17</sup>

### ANEL-Association Nationale Des Editeurs de Livres

Le projet de loi C-32 «restreint...notre stratégie de commercialisation des livres numériques des éditeurs francophones canadiens et, à terme, met en danger le développement de notre économie du savoir.»<sup>18</sup>

### ACTRA-Canadian Cinema, Television and Radio Artists

Stephen Waddell, ACTRA's National Executive Director : "...overall this bill is a real blow to artists."<sup>19</sup>

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<sup>15</sup> DAMIC®, «Cri d'alarme des artistes et des créateurs québécois à propos du projet de loi C-32 modernisant la Loi sur le droit d'auteur (LDA)» Octobre 2010.

<sup>16</sup> DAMIC®, "Cry of alarm by Quebec performers and creators regarding Bill C-32 modernizing the Copyright Act," October 2010.

<sup>17</sup> ACTRA, "Bill C-32 Copyright Background." "

<sup>18</sup> [http://www.anel.qc.ca/PDFAutoG/1\\_20100630133222.pdf](http://www.anel.qc.ca/PDFAutoG/1_20100630133222.pdf)

<sup>19</sup> <http://www.actra.ca/main/press-releases/2010/06/canadas-new-copyright-bill-a-blow-to-artists-half-the-bill-is-missing/>

## **Benefits Consumers and Big Business at the Expense of Creators**

### **ANEL-Association Nationale Des Editeurs de Livres**

«Tout se passe comme si la stratégie numérique canadienne avait pour mission de protéger les consommateurs et les grandes entreprises du numérique au détriment des créateurs et de la création de contenus. C'est toute notre économie du savoir qui est mise en péril.»<sup>20</sup>

### **COPIBEC**

“The government has decided to prioritize users’ demands without trying to reconcile them with what the creative community is looking for. In the news release issued jointly with Tony Clement, Minister of Industry, James Moore, Minister of Canadian Heritage, stated that the Bill “reflects the changing behaviours of consumers...” It would seem that the Minister has forgotten the reason behind the *Copyright Act*.”<sup>21</sup>

“The government is trying to get consumers and the education sector onside by granting them numerous exceptions without any monetary compensation for creators. That very short-sighted policy will weaken our culture and harm our cultural diversity. ...

Entrepreneurial creators – individuals who are the first link in the cultural industries’ production process and who assume risk by creating content without compensation in the hopes that they will find an audience – are sorely neglected in this proposed legislation. If they are overlooked, we will all lose out.

...The *Copyright Act* should not be a padlock law and instead should be the cornerstone of a cultural development policy.”<sup>22</sup>

### **CARCC-Canadian Artists Representation Copyright Collective**

“In fact, Bill C-32 wants to provide Web users with the greatest possible freedom, in use of both digital technologies and artistic and cultural content on the Internet.”<sup>23</sup>

### **SOCAN**

“The government’s “assumed role in copyright-law reform is to balance the sometimes competing interests of copyright owners and businesses that use copyrighted works. Many factors can upset that balance and creators’ rights can be hindered or ignored in the process. Unfairness can result when exceptions to the rights of copyright owners are expanded beyond what’s really necessary.”<sup>24</sup>

### **SARTEC- Société des Auteurs de Radio, Télévision et Cinéma Compositeurs**

«Si la [Loi sur le droit d'auteur](#) avait à l'origine comme objectif la protection des œuvres de l'esprit, force est d'admettre qu'avec le gouvernement conservateur, elle protège de mieux en mieux les consommateurs, les maisons d'enseignement et les grandes entreprises, mais se préoccupe fort peu des créateurs.»<sup>25</sup>

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<sup>20</sup> [http://www.anel.qc.ca/PDFAutoG/1\\_20100630133222.pdf](http://www.anel.qc.ca/PDFAutoG/1_20100630133222.pdf)

<sup>21</sup> <http://www1.copibec.qc.ca/?action=prbu&langue=a>

<sup>22</sup> <http://www1.copibec.qc.ca/?action=prbu&langue=a>

<sup>23</sup> <http://www.carcc.ca/news.html>

<sup>24</sup> [http://www.socan.ca/jsp/en/pub/music\\_creators/Autumn2010\\_SpeakOut.jsp](http://www.socan.ca/jsp/en/pub/music_creators/Autumn2010_SpeakOut.jsp)

<sup>25</sup> [http://www.sartec.qc.ca/info/archiv\\_infos/201007/info/article4.htm](http://www.sartec.qc.ca/info/archiv_infos/201007/info/article4.htm)

### **SODART/RAAV-Société de droits d'auteurs en arts visuels**

«En fait, l'ensemble du projet de loi constitue un affaiblissement des droits des auteurs et des artistes en faveur des consommateurs / utilisateurs d'oeuvres.»<sup>26</sup>

### **DAMIC**

«Et si certains ayants droit du secteur des jeux vidéos, des logiciels ou de l'audiovisuel semblent satisfaits des dispositions interdisant le contournement des serrures numériques, par exemple, ce sont surtout les utilisateurs institutionnels ou commerciaux (radiodiffuseurs, fabricants de lecteurs numériques) voire les fournisseurs de services Internet (FSI) qui trouvent leur compte dans ce projet de loi, le plus souvent au détriment des créateurs professionnels, les grands perdants de cette réforme.»<sup>27</sup>

### **[English version]**

“Although some rights holders in the video games, software, and audiovisual industries seem to be satisfied with the provisions banning the circumvention of digital locks, for example, the main beneficiaries of the bill are institutional and commercial users (broadcasters, manufacturers of digital players), and Internet service providers (ISPs), usually to the detriment of professional creators, who are the big losers in this reform.”<sup>28</sup>

## **Reduces Productivity/Supply of Creators**

### **ACP-Association of Canadian Book Publishers**

“While most Canadians may be aware of the impact of copyright law on consumer practices, few understand the more indirect implications of reduced incentive for creators and producers, and the impact on consumers of reduced supply that would result. Creators and producers have a responsibility to increase awareness of those implications; government shares that responsibility.”<sup>29</sup>

### **ANEL-Association Nationale Des Editeurs de Livres**

Le projet de loi C-32 «restreint notre capacité de produire, développer et promouvoir la créativité de nos auteurs.»<sup>30</sup>

### **SODRAC-Société du droit de reproduction des auteurs compositeurs et éditeurs du Canada**

C-32 will “deprive the musical creative community of essential sources of income.”<sup>31</sup>

### **SARTEC- Société des Auteurs de Radio, Télévision et Cinéma Compositeurs**

Le projet de loi C-32 «se préoccupe fort peu des créateurs.»<sup>32</sup>

### **SCAM-Société civile des auteurs multimédias**

«Ce projet n'apporte rien aux créateurs et détruit un système mis en place par les sociétés de gestion collective auxquelles les créateurs ont confié l'exercice de leurs droits et qui a fait ses

<sup>26</sup> [http://www.raav.org/pls/html/f?p=105:39:1396671820004854::NO::P39\\_ID\\_NOUVELLE, LAST\\_PAGE:27790%2C34](http://www.raav.org/pls/html/f?p=105:39:1396671820004854::NO::P39_ID_NOUVELLE, LAST_PAGE:27790%2C34)

<sup>27</sup> DAMIC, «Cri d'alarme des artistes et des créateurs québécois à propos du projet de loi C-32 modernisant la Loi sur le droit d'auteur (LDA)» Octobre 2010.

<sup>28</sup> DAMIC, “Cry of alarm by Quebec performers and creators regarding Bill C-32 modernizing the Copyright Act,” October 2010.

<sup>29</sup> [www.publishers.ca/images/downloads/acp\\_digital\\_consultation\\_submission\\_july\\_2010.pdf](http://www.publishers.ca/images/downloads/acp_digital_consultation_submission_july_2010.pdf)

<sup>30</sup> [http://www.anel.qc.ca/PDFAutoG/1\\_20100630133222.pdf](http://www.anel.qc.ca/PDFAutoG/1_20100630133222.pdf)

<sup>31</sup> [http://www.sodrac.ca/Telechargement/SODRAC\\_LDA\\_2010\\_06\\_08\\_ENG.pdf](http://www.sodrac.ca/Telechargement/SODRAC_LDA_2010_06_08_ENG.pdf)

<sup>32</sup> [http://www.sartec.qc.ca/info/archiv\\_infos/201007/info/article4.htm](http://www.sartec.qc.ca/info/archiv_infos/201007/info/article4.htm)

preuves depuis des années. Le projet de loi C-32 doit être amendé et c'est ce que nous demanderons au Gouvernement.»<sup>33</sup>

## Ties Issues Up in Court

### **Writer's Union of Canada**

“The six organizations signed below are devoting time and energy to a careful analysis of Bill C-32. We see that without further clarification of some provisions there will be unintended consequences and years of costly litigation in order to establish the “clear, predictable and fair rules” referred to in the preamble to the bill, in other words the practical norms indispensable to all productive enterprise. If C-32 were enacted in its current form these norms would be set by the courts – when adjudicating between those parties who can afford to litigate – instead of through the political process in which we can all participate.”<sup>34</sup>

### **DAMIC**

«Et tout cela, nous le répétons, sans rémunération pour les créateurs et les autres titulaires de droit visés par ces exceptions. Non satisfait de limiter les possibilités pour les créateurs de bénéficier des retombées économiques de leurs œuvres en accédant à de futurs marchés ou à des marchés en développement, le gouvernement compromet également leurs droits à recevoir une rémunération qui leur est déjà versée. En effet, il abolit tout simplement ou soumet à l'appréciation des tribunaux les redevances existantes pour des utilisations d'œuvres littéraires, dramatiques ou artistiques dans les institutions d'enseignement. Il abolit également complètement l'obligation des diffuseurs de payer pour l'exercice du droit de reproduction.

...

Les 17 nouvelles exceptions introduites par le projet de loi, signifient pour les créateurs une diminution importante de leurs revenus et une abolition de leur droit d'autoriser ou non l'utilisation d'une œuvre. Le créateur sera également entraîné dans une kyrielle de procédures judiciaires afin de prouver que les actes posés par les utilisateurs constituent une violation de ses droits. À qui d'autre ordonne-t-on de travailler gratuitement ou de recourir systématiquement aux tribunaux afin de faire valoir son droit de propriété ?

...

De plus, le DAMIC déclare qu'il est injuste de faire reposer sur les seules épaules des créateurs la défense de leurs droits, en la faisant dépendre d'un recours obligé aux tribunaux ou de la mise en place de mesures de protection technologiques coûteuses que même les « majors » de l'industrie de la musique ont abandonnées.»<sup>35</sup>

### **[English version]**

“And all of this, it bears repeating, without remuneration to the creators and other rights holders targeted by these exceptions. Not satisfied with limiting the possibility for creators to benefit from the economic activity of their works by accessing future or developing markets, the government also compromises their right to receive the remuneration that is already being paid to them. In effect, it simply abolishes or submits to the evaluation of the courts existing royalties for the use of literary,

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<sup>33</sup> <http://www.scam.ca/fr/bulletin.html>

<sup>34</sup> [http://www.writersunion.ca/pdfs/letter\\_clement\\_moore\\_0810.pdf](http://www.writersunion.ca/pdfs/letter_clement_moore_0810.pdf)

<sup>35</sup> DAMIC®, «Cri d'alarme des artistes et des créateurs québécois à propos du projet de loi C-32 modernisant la Loi sur le droit d'auteur (LDA)» Octobre 2010.



dramatic, or artistic works in teaching institutions. It also abolishes completely the obligation of broadcasters to pay to exercise the right of reproduction.

...

The 17 new exceptions introduced into the bill mean a major drop in income for creators and the abolition of their right to authorize the use of a work. Creators will also become entangled in a litany of legal procedures to prove that acts taken by users constitute an infringement of their rights. Who else is ordered to work for free or to go to court on a regular basis in order to prove their ownership right?

...

Finally, DAMI© declares that it is unfair to place on the shoulders of creators alone the defence of their rights by forcing them to turn to the courts or the implementation of costly technological protection measures that even the music industry “majors” have abandoned.”<sup>36</sup>

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<sup>36</sup> DAMI©, “Cry of alarm by Quebec performers and creators regarding Bill C-32 modernizing the Copyright Act,” October 2010.

# GENERAL SOLUTIONS

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## Fighting for Artists Rights

### CAR/FAC

“Copyright is an important part of our ongoing fight to help artists earn a living wage,” said Lise Létourneau, president of RAAV, “CARFAC and RAAV will continue to fight to extend the rights of artists until they are treated fairly.”<sup>37</sup>

### SODART/RAAV-Société de droits d'auteurs en arts visuels

«Au cours des prochaines semaines, les artistes de tous les domaines seront amenés à se mobiliser pour défendre leurs intérêts individuels et collectifs. Votre association professionnelle vous tiendra au courant des actions qui seront entreprises pour faire modifier ce projet de loi par les diverses associations et regroupements artistiques. Vous serez invités à contacter votre député fédéral afin de lui parler des problèmes que vous causerait ce projet de loi s’il était adopté tel quel.»<sup>38</sup>

## Working Together to Change/Amend the Bill

### ACP-Association of Canadian Book Publishers

ACP President Rodger Touchie: “We are eager to see the process advance, through **public debate** and the work of the special parliamentary committee. We look to **all political parties to work together** to move the process forward.”<sup>39</sup>

“Protect intellectual property rights through strong copyright law, with a workable definition of ‘fair dealing’.”<sup>40</sup>

We look forward to working with government in the months ahead to ensure that Canadians have a better understanding of the role of copyright in all aspects of their lives and in Canada’s place in a digital world. Protect intellectual property rights through strong copyright law, with a workable definition of “fair dealing”<sup>41</sup>

Creators and producers have a responsibility to increase awareness of those implications; government shares that responsibility.<sup>42</sup>

### SOCAN

“It is SOCAN’s view that, although it strives to achieve a balance, the bill falls short. We believe Parliament must now make changes to the proposed law to ensure that a balance is indeed achieved and that this balance results in fairness to all those who will be affected by the legislation.”<sup>43</sup>

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<sup>37</sup> <http://www.carfac.ca/2010/06/bill-c32/>

<sup>38</sup> [http://www.raav.org/pls/htmldb/f?p=105:39:1396671820004854::NO::P39\\_ID\\_NOUVELLE, LAST\\_PAGE:27790%2C34](http://www.raav.org/pls/htmldb/f?p=105:39:1396671820004854::NO::P39_ID_NOUVELLE, LAST_PAGE:27790%2C34)

<sup>39</sup> [www.publishers.ca/images/downloads/acp\\_release\\_re\\_c-32.pdf](http://www.publishers.ca/images/downloads/acp_release_re_c-32.pdf)

<sup>40</sup> [www.publishers.ca/images/downloads/acp\\_digital\\_consultation\\_submission\\_july\\_2010.pdf](http://www.publishers.ca/images/downloads/acp_digital_consultation_submission_july_2010.pdf)

<sup>41</sup> [www.publishers.ca/images/downloads/acp\\_digital\\_consultation\\_submission\\_july\\_2010.pdf](http://www.publishers.ca/images/downloads/acp_digital_consultation_submission_july_2010.pdf)

<sup>42</sup> [www.publishers.ca/images/downloads/acp\\_digital\\_consultation\\_submission\\_july\\_2010.pdf](http://www.publishers.ca/images/downloads/acp_digital_consultation_submission_july_2010.pdf)

<sup>43</sup> [http://www.socan.ca/jsp/en/pub/music\\_creators/Autumn2010\\_SpeakOut.jsp](http://www.socan.ca/jsp/en/pub/music_creators/Autumn2010_SpeakOut.jsp)

“SOCAN looks forward to contributing to the copyright reform process in the hopes of striking a better balance, a balance that is fair to all, including creators.”<sup>44</sup>

#### **WUC-Writer’s Union of Canada**

“We will have constructive suggestions to address this and other issues affecting professional writers, including exceptions for non-commercial user-generated content, the digital delivery of material held in libraries to library users across Canada, and secondary uses of our works on the Internet. In the near future and through the parliamentary review of Bill C-32 you will be hearing from us with suggestions on how to amend Bill C-32 in ways that will sustain the creative community that is a key component of growth in every aspect of the knowledge economy.”<sup>45</sup>

“We thank you for your express willingness to amend C-32 and we will be presenting a comprehensive position that includes specific measures we hope will receive the support of your government.”<sup>46</sup>

#### **ACTRA-Canadian Cinema, Television and Radio Artists**

“Both organizations [ACTRA and AFM] look forward to working with the government and opposition parties over the next few weeks to bring more balance to the bill and ensure artists aren’t ignored.”<sup>47</sup>

#### **UNEQ-Union des Écrivaines et des Écrivains Québécois**

«La séance aura lieu à l’Hôtel des Gouverneurs, samedi 25 septembre 2010 à 13h30. Un atelier animé par Hélène Messier, directrice générale de Copibec, sera proposé ainsi que la mise en place d’un plan d’action par le conseil d’administration de l’UNEQ.»<sup>48</sup>

#### **SARTEC- Société des Auteurs de Radio, Télévision et Cinéma Compositeurs**

«Si les auteurs de la SARTEC sont plus directement concernés par l’exception relative à l’enregistrement des émissions pour visionnement ultérieur ou celle concernant l’exécution en public d’une œuvre cinématographique à des fins pédagogiques, ils doivent aussi s’inquiéter de toutes ces exceptions qui touchent les autres secteurs et qui contribuent à un affaiblissement manifeste du droit d’auteur. Un examen plus détaillé du projet de loi et de ses conséquences est actuellement en cours au **DAMIC**, dont la SARTEC fait partie, mais d’ores et déjà, il apparaît clair que les créateurs auront intérêt à resserrer les rangs pour le contrer. Déposé en 1re lecture le 2 juin dernier, le projet de **loi C-32** sera sans doute étudié en Comité parlementaire cet automne.»<sup>49</sup>

#### **CPCC-Canadian Private Copying Collective**

“Only an amendment to the Copyright Act allowing for an extension of the levy to MP3 players can prevent compensation to artists for copies from drying up entirely. Such a levy would only apply to devices that are designed, manufactured and advertised for the purpose of copying music.”<sup>50</sup>

#### **DAMIC**

«Par conséquent, les membres du DAMI© affirment que le projet de loi C-32 est inacceptable tel que présenté et qu’il doit être amendé de façon importante pour reconnaître le rôle central de l’auteur et de l’artiste interprète dans l’innovation et le progrès artistique et culturel de la société et afin de leur

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<sup>44</sup> [http://www.socan.ca/jsp/en/pub/music\\_creators/Autumn2010\\_SpeakOut.jsp](http://www.socan.ca/jsp/en/pub/music_creators/Autumn2010_SpeakOut.jsp)

<sup>45</sup> [http://www.writersunion.ca/pdfs/letter\\_clement\\_moore\\_0810.pdf](http://www.writersunion.ca/pdfs/letter_clement_moore_0810.pdf)

<sup>46</sup> [http://www.writersunion.ca/pdfs/letter\\_clement\\_moore\\_0810.pdf](http://www.writersunion.ca/pdfs/letter_clement_moore_0810.pdf)

<sup>47</sup> <http://www.actra.ca/main/press-releases/2010/06/canadas-new-copyright-bill-a-blow-to-artists-half-the-bill-is-missing/>; Also see: [http://www.writersunion.ca/av\\_pr060810.asp](http://www.writersunion.ca/av_pr060810.asp)

<sup>48</sup> [http://www.raav.org/pls/htmldb/f?p=105:39:0::NO::P39\\_ID\\_NOUVELLE, LAST\\_PAGE:28990%2C34](http://www.raav.org/pls/htmldb/f?p=105:39:0::NO::P39_ID_NOUVELLE, LAST_PAGE:28990%2C34)

<sup>49</sup> [http://www.sartec.qc.ca/info/archiv\\_infos/201007/info/article4.htm](http://www.sartec.qc.ca/info/archiv_infos/201007/info/article4.htm)

<sup>50</sup> <http://cpcc.ca/english/pdf/CPCC-Press-Release-Proposed-Copyright-Law-Fails-Canadian-Artists-20100602.pdf>

assurer une juste rémunération. Conséquemment, toute exception consentie aux utilisateurs doit être limitée à des situations exceptionnelles et ne doit pas porter atteinte à l'exploitation normale de l'œuvre, ni causer un préjudice injustifié aux titulaires de droits. Aucune exception ne devrait être accordée lorsqu'il est possible de se procurer une licence à des conditions raisonnables auprès d'une société canadienne de gestion collective du droit d'auteur et des droits voisins pour l'utilisation désirée.»<sup>51</sup>

#### [English version]

“As a consequence, the members of DAMI© assert that Bill C-32 is unacceptable as tabled and that it must undergo major amendments to recognize the central role of creators and performers in the innovation and progress of art and culture in Canadian society and to provide them with fair remuneration. Therefore, all exceptions granted to users must be limited to exceptional situations and not interfere with the normal exploitation of the work or cause unjustified prejudice against rights holders. No exception should be granted when it is possible to acquire a licence with reasonable conditions from a Canadian copyright collective society and neighbouring rights for the desired use.”<sup>52</sup>

## **Retracting the Bill**

### **ANEL-Association Nationale Des Editeurs de Livres**

«...exigent le retrait de ce projet de loi, et demandent au Parlement de proposer rapidement un projet de loi qui harmonise les dispositions de la présente loi aux conventions internationales signées en 1996, en veillant à créer un juste équilibre entre la circulation et la création du savoir.»<sup>53</sup>

## **WIPO Compliance**

### **ANEL-Association Nationale Des Editeurs de Livres**

L'ANEL «demandent au Parlement de proposer rapidement un projet de loi qui harmonise les dispositions de la présente loi aux conventions internationales signées en 1996, en veillant à créer un juste équilibre entre la circulation et la création du savoir.»<sup>54</sup>

## **WIPO Compliance is Not Enough**

### **SODRAC-Société du droit de reproduction des auteurs compositeurs et éditeurs du Canada**

“...the implementation of the Internet treaties administered by the World Intellectual Property Organization (WIPO) and the targeting of those who promote and profit from infringement are necessary steps. However, several countries have already adopted these provisions; experience shows that such steps are not enough to protect the works and revenues of rights holders, particularly in the songwriting area.”<sup>55</sup>

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<sup>51</sup> DAMI©, «Cri d'alarme des artistes et des créateurs québécois à propos du projet de loi C-32 modernisant la Loi sur le droit d'auteur (LDA)» Octobre 2010.

<sup>52</sup> DAMI©, “Cry of alarm by Quebec performers and creators regarding Bill C-32 modernizing the Copyright Act,” October 2010.

<sup>53</sup> [http://www.anel.qc.ca/PDFAutoG/1\\_20100630133222.pdf](http://www.anel.qc.ca/PDFAutoG/1_20100630133222.pdf)

<sup>54</sup> [http://www.anel.qc.ca/PDFAutoG/1\\_20100630133222.pdf](http://www.anel.qc.ca/PDFAutoG/1_20100630133222.pdf)

<sup>55</sup> [http://www.sodrac.ca/Telechargement/SODRAC\\_LDA\\_2010\\_06\\_08\\_ENG.pdf](http://www.sodrac.ca/Telechargement/SODRAC_LDA_2010_06_08_ENG.pdf)

### **SAC-Songwriters Association of Canada**

“But WIPO compliance has not restored the music industry to health in the United States or any of the other countries where its provisions have been adopted....File-sharers can easily employ available masking technologies and instead of ending “piracy”, it will simply be driven underground.”<sup>56</sup>

## **Solution for Music-sharing problem**

### **SAC-Songwriters Association of Canada**

“The Songwriters Association of Canada has proposed that Bill C-32 be amended to legalize music file-sharing in conjunction with a remuneration system for creators and rights-holders. Consumers who wish to file-share would be asked to pay a reasonable monthly licence fee. The revenue received could be distributed to performers, songwriters, and rights-holders on a transparent, pro-rata basis by one of Canada’s respected music collectives, such as SOCAN.

This one simple measure would not only go a long way toward eliminating the need for “locks and lawsuits”, but would create a new business model that would be fair to consumers and creators alike.

Apparently the government will hold consultations with interested parties later this year with a view to improving Bill C-32. Many of us who write and perform music for a living hope that the government takes a progressive approach to the difficult issues facing our industry, and moves beyond the failed policies of the last 10 years.

Rather than follow other nations down the copyright rabbit hole into a netherworld that makes less and less sense, Canada can lead the world to a forward-thinking approach that gives consumers the unrestricted access to music they want, while at the same time fairly compensating creators.”<sup>57</sup>

## **Litigation**

### **WUC-Writer’s Union of Canada**

“Ottawa, June 6, 2010.

The Writers’ Union of Canada calls on the Canadian Government to withdraw this “fair dealing for education” provision in Bill C-32, which takes rights from creators and endangers their incomes. If Bill C-32 passes without this change, the Union will have no alternative but to pursue other possibilities, including class action litigation, to void this provision, and will call on other organizations to join in any such challenge.

The Writers’ Union of Canada is resolved to fight this attack on writers and their fellow creators and on the creative communities of our country.”<sup>58</sup>

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<sup>56</sup> <http://www.songwriters.ca/Article/37/EddieSchwartzdetails.aspx>

<sup>57</sup> <http://www.songwriters.ca/Article/37/EddieSchwartzdetails.aspx>

<sup>58</sup> <http://attlc-ltac.org/node/501?page=2>

## Contact MP

### CARCC-Canadian Artists Representation Copyright Collective

“write to us, give us your support – we need voices, many voices. This battle is yours: it is your rights that are threatened. Help us defend you!

You may also contact your member of Parliament, whichever party he or she represents, to tell him or her how important it is:

- 1- To include the resale right in the bill
- 2- To end discrimination against older artists in application of the exhibition right
- 3- To ensure the protection of copyright in the digital world and of the resulting income for artists and creators.”<sup>59</sup>

### SODART/RAAV-Société de droits d'auteurs en arts visuels

“Ask readers, supporters to contact their MP or local representative and tell him about their problems with this bill.”<sup>60</sup>

## Extension of Private Copy Levy

### CARCC-Canadian Artists Representation Copyright Collective

“That the private copy regime be extended to all digital devices and that artists from all disciplines be able to benefit from them;

...a small percentage of compensation should be included in the purchase price of any device that can capture, copy, transmit, or distribute images that belong to artists.

That the private copy regime be extended to all digital devices and that artists from all disciplines be able to benefit from them.”<sup>61</sup>

## Collective User Licenses (instead of education exception)

### CARCC-Canadian Artists Representation Copyright Collective

“For teaching institutions and libraries, the fair way to treat artists would be to negotiate and sign collective user licences for digital works, just like the ones that they already sign for photocopying.”<sup>62</sup>

### CCC-CREATOR'S COPYRIGHT COALITION

“We also look forward to bringing our perspective to the upcoming digital economy consultations. For example, we'll urge the government to consider the potential for collective licensing to facilitate consumer access to our works while ensuring Canadian creators are compensated.”<sup>63</sup>

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<sup>59</sup> <http://www.carcc.ca/news.html>

<sup>60</sup> [http://www.raav.org/pls/htmldb/f?p=105:39:1396671820004854::NO::P39\\_ID\\_NOUVELLE, LAST\\_PAGE:27790%2C34](http://www.raav.org/pls/htmldb/f?p=105:39:1396671820004854::NO::P39_ID_NOUVELLE, LAST_PAGE:27790%2C34)

<sup>61</sup> <http://www.carcc.ca/news.html>

<sup>62</sup> <http://www.carcc.ca/news.html>

<sup>63</sup> <http://www.creatorscopyright.ca/op-ed/2010-05-18/creators-push-for-copyright-reform>

# FAIR DEALING REFORM

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## General Comments

### **COPIBEC**

COPIBEC is not in favour of “exceptions for consumers, educational institutions and libraries. It is true that exceptions to copyright have previously been granted in situations where overriding interests may take precedence, but under the international treaties to which Canada is committed, such exceptions must be “special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder” (TRIPS Article 13 and Berne Convention Article 9).<sup>64</sup>

### **WUC-Writer’s Union of Canada**

“The six organizations signed below are devoting time and energy to a careful analysis of Bill C-32. We see that without further clarification of some provisions there will be unintended consequences and years of costly litigation in order to establish the “clear, predictable and fair rules” referred to in the preamble to the bill, in other words the practical norms indispensable to all productive enterprise. If C-32 were enacted in its current form these norms would be set by the courts – when adjudicating between those parties who can afford to litigate – instead of through the political process in which we can all participate.”<sup>65</sup>

### **SARTEC- Société des Auteurs de Radio, Télévision et Cinéma Compositeurs**

«La parodie, la satire, la reproduction à des fins privées, l'enregistrement d'une émission pour visionnement en différé, les copies de sauvegarde voire le contenu non commercial généré par un utilisateur à partir d'une œuvre existante font désormais l'objet d'exceptions.

Les maisons d'enseignement pourront bénéficier de nouvelles exceptions pour l'enseignement à distance, pour l'utilisation d'œuvres disponibles sur Internet. Les bibliothèques pourront fournir une copie numérique d'une œuvre à une autre bibliothèque. À cela s'ajoutent des exceptions au profit des diffuseurs (enregistrement éphémère), des fournisseurs de service, etc.

La liste des exceptions est longue, et même si toutes n'auront pas la même incidence, elles nuiront certainement aux sociétés de gestion qui négocient pour les différentes utilisations des œuvres et qui devront peut-être recourir aux tribunaux pour circonscrire l'application des nouvelles dispositions sur l'utilisation équitable, par exemple.»<sup>66</sup>

### **CCC-CREATOR’S COPYRIGHT COALITION**

“No expansion of fair dealing.”<sup>67</sup>

### **SODRAC-Société du droit de reproduction des auteurs compositeurs et éditeurs du Canada**

“First and foremost, Bill C-32 removes the requirement for broadcasters to pay royalties for ‘temporary copies’ of music for digital operation and will allow them to retain such copies for up to 30 days without paying royalties.”<sup>68</sup>

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<sup>64</sup> <http://www1.copibec.qc.ca/?action=prbu&langue=a>

<sup>65</sup> [http://www.writersunion.ca/pdfs/letter\\_clement\\_moore\\_0810.pdf](http://www.writersunion.ca/pdfs/letter_clement_moore_0810.pdf)

<sup>66</sup> [http://www.sartec.qc.ca/info/archiv\\_infos/201007/info/article4.htm](http://www.sartec.qc.ca/info/archiv_infos/201007/info/article4.htm)

<sup>67</sup> <http://www.creatorscopyright.ca/op-ed/2010-05-18/creators-push-for-copyright-reform>

## DAMIC

### **«Les exceptions consenties aux utilisateurs minent le droit d'auteur.»**

La Convention de Berne prévoit que les exceptions consenties aux utilisateurs doivent être réservées à des « cas spéciaux qui ne portent pas atteinte à l'exploitation normale de l'œuvre ni ne causent un préjudice injustifié aux intérêts légitimes du détenteur de droits » (art.9). Le projet de loi C-32 fait fi des obligations internationales du Canada en incluant une myriade de nouvelles exceptions qui visent à légaliser les activités illicites ou inéquitables de certains utilisateurs sans prévoir de rémunération pour les créateurs.

...

Le gouvernement ne peut justifier la création de toute cette multitude d'exceptions gratuites dans le projet de loi C-32 en invoquant un problème d'accès aux œuvres puisque cet accès existe à travers les sociétés de gestion collective. Doit-on y voir une volonté d'appauvrir les créateurs ? Ce sera pourtant le résultat auquel conduira l'adoption du projet de loi C-32 s'il est adopté dans sa forme actuelle. Ce projet affaiblit de façon importante la protection des œuvres et la capacité des créateurs professionnels à être rémunérés pour leur utilisation. Il s'agit d'un véritable détournement de sens de la *Loi sur le droit d'auteur* et d'une grave entrave au développement d'une culture canadienne forte et diversifiée.»<sup>69</sup>

### **[English version]**

#### ***“Exceptions granted to users undermine copyright.***

The Berne Convention provides that exceptions granted to users must be reserved to “special cases, provided that such reproduction does not conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author” (article 9). Bill C-32 shows contempt for Canada’s international obligations by including a myriad of new exceptions aiming to legalize illicit or unfair activities by certain users without providing for remuneration for creators.

...

The government cannot justify the creation of so many free exceptions in Bill C-32 by invoking a problem with access to works, since this access exists through collective societies. Should we interpret the bill as a desire to impoverish creators? This would in fact be the result of adoption of Bill C-32, if it is adopted in its current form. This bill significantly weakens the protection of works and the capacity of professional creators to be remunerated for their use. It is a real corruption of the meaning of the Copyright Act and a serious obstacle to the development of a strong and diversified Canadian culture.”<sup>70</sup>

## **EDUCATION EXCEPTION**

### **ACP-Association of Canadian Book Publishers**

“In expanding the definition of “fair dealing” to include education, as is proposed in Bill C-32, the value of all publishers’ chief asset is undermined. The digital revolution is changing all the boundaries for content creation and delivery; no change to date has posed as large a threat to the fundamental viability of Canadian publishing as would the extension of fair dealing to education.”<sup>71</sup>

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<sup>68</sup> [http://www.sodrac.ca/Telechargement/SODRAC\\_LDA\\_2010\\_06\\_08\\_ENG.pdf](http://www.sodrac.ca/Telechargement/SODRAC_LDA_2010_06_08_ENG.pdf)

<sup>69</sup> DAMI©, «Cri d'alarme des artistes et des créateurs québécois à propos du projet de loi C-32 modernisant la Loi sur le droit d'auteur (LDA)» Octobre 2010.

<sup>70</sup> DAMI©, “Cry of alarm by Quebec performers and creators regarding Bill C-32 modernizing the Copyright Act,” October 2010.

<sup>71</sup> [www.publishers.ca/images/downloads/acp\\_digital\\_consultation\\_submission\\_july\\_2010.pdf](http://www.publishers.ca/images/downloads/acp_digital_consultation_submission_july_2010.pdf)



## **ANEL-Association Nationale Des Editeurs de Livres**

“disent non à l’exception pédagogique”<sup>72</sup>

D’entrée de jeu, trois des grands objectifs de C-32 sont de permettre à diverses catégories d’usagers — entreprises, établissements d’enseignement, chercheurs, enseignants, bibliothèques, consommateurs — d’utiliser sans violation du matériel protégé, en ligne ou autrement.<sup>73</sup>

“S’il devenait loi, ce projet signerait l’arrêt de mort de l’édition scolaire et porterait une atteinte sérieuse à notre société de gestion collective, Copibec.”<sup>74</sup>

## **CAR/FAC**

“On the other hand, adding a fair dealing exception for education purposes could jeopardize small but important income sources for visual artists. The lack of clarity about what is considered “fair” means that artists may need to go to court to determine what their rights are – something that many can not afford.”<sup>75</sup>

“Everyone else in the education system is paid for their work, why would you single out creators as the only ones not to be paid?” said Gerald Beaulieu, CARFAC president. “It’s a complicated piece of legislation so we will be looking into just what it will mean for visual artists in the coming weeks.”<sup>76</sup>

## **COPIBEC**

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

Fair dealing allows a work to be used without infringing copyright and can serve as a defence against legal proceedings. The courts will be expected to rule on the actual significance of the word added in the proposed legislation. In the meantime, copyright owners and teachers will have to live with insecurity, wondering for many years which uses are covered by the provision. And yet, agreements currently exist between copyright licensing agencies and educational institutions to provide a framework for the use of literary, artistic, dramatic and musical works. In the case of literary works and the artistic works that they incorporate, an agreement negotiated between the parties has been in effect since 1982 and is now administered by Copibec. The 175 million copies made by Quebec schools, colleges, CEGEPS and universities generate royalties of \$9 million for the authors, illustrators and other artists as well as their publishers. Why call into question a system that has proven effective for nearly 30 years?”<sup>77</sup>

## **WUC-Writer’s Union of Canada**

“Copyright legislation introduced on June 3 into the House of Commons is an alarming attack on Canadian culture that will create a copyright-free zone in Canadian schools, colleges and universities and will erode the incomes of Canadian writers. In addition to all the existing exemptions for education, Bill C-32 introduces a very broad and vague provision into the Copyright Act that will lead to uncertainty and litigation. It will expand unpaid uses of copyright material for educational purposes and conflict with the licensing of writers’ works. Not only will it expropriate the rights of writers and creators but it will violate Canada’s international treaty obligations. The proposed change to the section of the bill known as “fair dealing” will take many dollars from the incomes of Canadian writers, most of whom earn less than \$15,000 annually from their writing. A significant portion of this income comes from the copying of

<sup>72</sup> [http://www.anel.qc.ca/PDFAutoG/1\\_20100630133222.pdf](http://www.anel.qc.ca/PDFAutoG/1_20100630133222.pdf)

<sup>73</sup> [http://www.anel.qc.ca/PDFAutoG/1\\_20100630133222.pdf](http://www.anel.qc.ca/PDFAutoG/1_20100630133222.pdf)

<sup>74</sup> [http://www.anel.qc.ca/PDFAutoG/1\\_20100630133222.pdf](http://www.anel.qc.ca/PDFAutoG/1_20100630133222.pdf)

<sup>75</sup> <http://www.carfac.ca/2010/06/bill-c32/>

<sup>76</sup> <http://www.carfac.ca/2010/06/bill-c32/>

<sup>77</sup> <http://www1.copibec.qc.ca/?action=prbu&langue=a>

their works in schools, colleges and universities. Writers want their works to be used in schools, but they need to be paid.”<sup>78</sup>

“From our perspective the biggest weakness in the bill is the addition of the word ‘education’ to the purposes of “fair dealing” without clear legislative guidance on how this amended provision of the Copyright Act will work in conjunction with other, more specific exceptions for education. We think that this new fair dealing provision will result in serious damage to the cultural sector and to Canada’s embryonic knowledge economy and, together with other new exceptions, negatively affect Canada’s professional writers.”<sup>79</sup>

### **PWAC-Professional Writers Association of Canada**

“PWAC President Tanya Gulliver noted that the current political landscape offers an opportunity to ensure that the issues are thoroughly debated and more widely understood by MPs and their constituents. “We will be working with our partners in the writing and publishing industry to make sure that all parties understand what is at stake for Canada’s creative economy if the draft Fair Dealing exceptions move forward.” C-32 as written contains a blanket exception for education that is particularly troubling to the writers group.”<sup>80</sup>

“The organization agrees with the Canadian Publishers Council’s statement as reported in *Quill & Quire* that every exception to copyright results in reduced incentive to invest in the publishing process, reduced innovation, reduced author royalties, reduced employment, and reduced output of cultural expression.”<sup>81</sup>

### **CARCC-Canadian Artists Representation Copyright Collective**

“The bill also gives educational institutions the right to use works in whatever way they like, as long as it is an educational, non-commercial use, and they are no longer required to pay copyright royalties to anyone. Visual Artists who receive ACCESS Copyright or COPIBEC cheques may see this income disappear if the bill is not amended.

For teaching institutions and libraries, the fair way to treat artists would be to negotiate and sign collective use licences for digital works, just like the ones that they already sign for photocopying.”<sup>82</sup>

### **SOCAN**

“In another example, by creating numerous exceptions for education, the proposed law may negatively impact those copyright owners whose primary business — and income — lies in providing educational materials.”<sup>83</sup>

### **UNEQ-Union des Écrivaines et des Écrivains Québécois**

“against educational exception and private/non-commercial exception.”<sup>84</sup>

### **SCAM-Société civile des auteurs multimédias**

«Essentiellement, il prévoit une nouvelle série d’exceptions dont bénéficieront les consommateurs, les bibliothèques, les établissements d’enseignement.»<sup>85</sup>

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<sup>78</sup> <http://attlc-ltac.org/node/501>

<sup>79</sup> [http://www.writersunion.ca/pdfs/letter\\_clement\\_moore\\_0810.pdf](http://www.writersunion.ca/pdfs/letter_clement_moore_0810.pdf)

<sup>80</sup> <http://www.pwac.ca/files/PDF/Press.June10.BillC32.pdf>

<sup>81</sup> <http://www.pwac.ca/files/PDF/Press.June10.BillC32.pdf>

<sup>82</sup> <http://www.carcc.ca/news.html>

<sup>83</sup> [http://www.socan.ca/jsp/en/pub/music\\_creators/Autumn2010\\_SpeakOut.jsp](http://www.socan.ca/jsp/en/pub/music_creators/Autumn2010_SpeakOut.jsp)

<sup>84</sup> [http://www.raav.org/pls/htmldb/f?p=105:39:0::NO::P39\\_ID\\_NOUVELLE, LAST\\_PAGE:28990%2C34](http://www.raav.org/pls/htmldb/f?p=105:39:0::NO::P39_ID_NOUVELLE, LAST_PAGE:28990%2C34)

## DAMIC

«Grâce à ce projet de loi, les professeurs pourront utiliser des œuvres protégées dans leurs cours sans aucune permission à demander, et ils pourront reproduire ce cours afin de le diffuser par télécommunication dans le cadre d'un enseignement différé ou à distance. Ils pourront aussi reproduire des œuvres dans leur totalité à des fins d'affichage sur des tableaux blancs interactifs ou des écrans d'ordinateur. Les écoles ne paieront plus de redevances pour enregistrer des émissions d'actualités à des fins pédagogiques, présenter des films ou représenter des pièces de théâtre où elles pourront reproduire les décors, les costumes et les éclairages créés par des artistes professionnels. Nous assistons ici à une totale expropriation des droits de propriété intellectuelle des créateurs en milieu éducationnel. Tout se passe comme si le gouvernement déclarait que les créations littéraires, dramatiques, musicales et artistiques seront dorénavant considérées comme une propriété collective.

Le gouvernement ne craint pas non plus de renverser les principes reconnus du droit d'auteur à l'effet qu'une œuvre originale est protégée lorsqu'elle existe sous une forme matérielle quelconque. Les professeurs et les élèves pourront en effet utiliser toutes les œuvres trouvées **sur Internet**, sauf si une mesure technique en empêche l'utilisation ou si un avis, autre que le symbole du copyright, en interdit formellement l'utilisation.

Des exceptions existeront aussi pour l'utilisateur d'une bibliothèque qui pourra recevoir une copie numérisée d'une œuvre imprimée dans le cadre d'un prêt entre bibliothèques, de même que pour les radiodiffuseurs qui seront désormais libres de faire des copies temporaires des œuvres protégées.»<sup>86</sup>

### [English version]

"Thanks to this bill, teachers will be able to use protected works in their classes without asking permission, and they will be able to reproduce their course work to broadcast it by telecommunication in the context of remote or distance teaching. They will also be able to reproduce works in their totality for the purpose of display on interactive whiteboards or computer screens. Schools will no longer have to pay royalties to record news programs for pedagogical purposes, to present films, or to perform plays, for which they will be able to reproduce the sets, costumes, and lighting designs created by professional artists. This is a total expropriation of the intellectual property rights of creators in the educational sector. It is as if the government had declared that from now on literary, theatre, musical, and artistic works will be considered collective property.

Nor is the government concerned that it is reversing recognized principles of copyright to the effect that an original work is protected when it exists in any material form. Teachers and students will be able, in effect, to use all works found on **the Internet**, unless a technical measure impedes use or a notice, other than the copyright symbol, formally forbids use.

Exceptions will also exist for library users, who will be able to receive a digitized copy of a printed work in the context of interlibrary loans, as well as for broadcasters, which will be free to make temporary copies of protected works."<sup>87</sup>

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<sup>85</sup> <http://www.scam.ca/fr/bulletin.html>

<sup>86</sup> DAMI©, «Cri d'alarme des artistes et des créateurs québécois à propos du projet de loi C-32modernisant la Loi sur le droit d'auteur (LDA)» Octobre 2010.

<sup>87</sup> DAMI©, "Cry of alarm by Quebec performers and creators regarding Bill C-32modernizing the Copyright Act," October 2010.

## **PARODY AND SATIRE EXCEPTION**

### **CAR/FAC**

“CARFAC and RAAV are also happy to see that an exception has been added for parody and satire. The use of copyrighted work has long been an important part of the creative process for some artists and in certain cases the market has failed to meet their legitimate access needs.”<sup>88</sup>

### **CARCC -Canadian Artists Representation Copyright Collective**

CARCC asks that “new exceptions dealing with parody, satire, and education be defined and limited.

There is a risk involved in giving internet users “the right to alter them, use them [images] in satire or parody, and integrate them, in whole or in part, into a new “work” or document, then to redistribute it on the Internet. The only conditions imposed are:

- Not to bypass a technical protection measure
- Not to make commercial use of the images”<sup>89</sup>

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<sup>88</sup> <http://www.carfac.ca/2010/06/bill-c32/>

<sup>89</sup> <http://www.carcc.ca/news.html>

# ISP LIABILITY

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## **CARCC -Canadian Artists Representation Copyright Collective**

“Finally, that Internet service providers become artists’ partners in the protection of their works against illegal uses, and that they contribute through a collective royalty to the vitality of Canadian artistic creation.”<sup>90</sup>

## **SOCAN**

“Finally, provisions in the bill that attempt to clarify the role of Internet service providers in preventing copyright infringement will likely encourage litigation, as those who do not wish to pay for the exploitation of copyright will suggest that these provisions support their position and copyright owners will suggest the opposite.”<sup>91</sup>

## **SARTEC- Société des Auteurs de Radio, Télévision et Cinéma Compositeurs**

«Et le parti pris pour la grande entreprise ne s'arrête pas là. Ainsi, en cas de piratage, les fournisseurs de service Internet, qui font pourtant des profits élevés grâce à l'utilisation des œuvres et de la bande passante, n'ont toujours aucune responsabilité financière ou autre. En fait, si un client télécharge illégalement du matériel protégé et qu'ils en sont informés par un ayant droit, leur seule obligation sera alors d'expédier un avis audit client. Une procédure jugée totalement inefficace par la plupart des ayants droit.»<sup>92</sup>

## **CCC-CREATOR'S COPYRIGHT COALITION**

“We need effective complaint-based mechanisms for rights-holders who object to their work being made available online without their authorization. It is not the role of ISPs to determine the legality of material being transmitted through their networks.”<sup>93</sup>

## **SCAM-Société civile des auteurs multimédias**

«Par ailleurs, en cas de piratage, les fournisseurs de service Internet n’auraient aucune responsabilité autre que celle d’envoyer un avis au client qui téléchargerait illégalement du matériel protégé.»<sup>94</sup>

## **SODRAC-Société du droit de reproduction des auteurs compositeurs et éditeurs du Canada**

“[Internet service providers] should assume significant legal and financial liability aimed at transforming them into effective partners in the fight against online piracy.”<sup>95</sup>

## **DAMIC**

**«Les auteurs ne sont pas en mesure de policer le Web et de poursuivre les contrevenants.**

Le gouvernement canadien s’apprête à établir dans la *Loi*, le régime de responsabilité le moins contraignant qui soit à l’égard des fournisseurs de services Internet (FSI) alors que de nombreux pays ont plutôt choisi d’accroître leurs responsabilités à l’égard des contenus qui circulent sur leurs réseaux, par des systèmes d’avis et retrait, ou en les obligeant à mettre en place des mécanismes de riposte

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<sup>90</sup> <http://www.carcc.ca/news.html>

<sup>91</sup> [http://www.socan.ca/jsp/en/pub/music\\_creators/Autumn2010\\_SpeakOut.jsp](http://www.socan.ca/jsp/en/pub/music_creators/Autumn2010_SpeakOut.jsp)

<sup>92</sup> [http://www.sartec.qc.ca/info/archiv\\_infos/201007/info/article4.htm](http://www.sartec.qc.ca/info/archiv_infos/201007/info/article4.htm)

<sup>93</sup> <http://www.creatorscopyright.ca/op-ed/2010-05-18/creators-push-for-copyright-reform>

<sup>94</sup> <http://www.scam.ca/fr/bulletin.html>

<sup>95</sup> [http://www.sodrac.ca/Telechargement/SODRAC\\_LDA\\_2010\\_06\\_08\\_ENG.pdf](http://www.sodrac.ca/Telechargement/SODRAC_LDA_2010_06_08_ENG.pdf)

graduée dans le cas de récidives ou même de filtrage pour détecter la mise en ligne illicite d'œuvres protégées par le droit d'auteur.

Se disant incapables de contrôler l'ensemble de l'information présente dans leurs réseaux, les FSI ont obtenu de ne pas être tenus responsables de la mise en ligne illégale d'œuvres protégées par le droit d'auteur sur les sites Web qu'ils hébergent. Si une telle disposition est adoptée, la responsabilité de policer le web retombera sur les épaules des auteurs et de leurs sociétés de gestion collective du droit d'auteur qui n'ont assurément pas les moyens de le faire.

...

Le DAMIC réaffirme donc qu'il est inacceptable de priver les créateurs et les artistes d'une rémunération équitable pour l'utilisation de leurs œuvres. Il réaffirme également que rien ne justifie qu'une catégorie de travailleurs soit contrainte de renoncer à être rémunérée pour son travail au profit des grands utilisateurs ainsi que des fournisseurs de services Internet qui devraient être tenus de redistribuer aux divers créateurs de contenu une partie des revenus colossaux que leur procure l'exploitation des réseaux numériques, tel Internet.»<sup>96</sup>

#### [English version]

##### ***“Creators do not have the means to police the Web and pursue violators.***

The Canadian government is preparing to establish in the Act the least restrictive responsibility regime for ISPs, while numerous countries have instead chosen to make ISPs more responsible for the content that circulates on their networks via notice and withdrawal systems, or by forcing them to institute graduated countermeasure mechanisms against recidivists or filtering to detect the illicit putting on line of copyright-protected works.

Claiming that they are incapable of controlling all of the information present on their networks, the ISPs have obtained the right not to be held responsible for the illegal putting on line of copyright-protected works on the Web sites that they host. If such a provision is adopted, the responsibility for policing the Web will fall onto the shoulders of creators and their copyright collective societies, which assuredly do not have the means to perform this task.

...

DAMI© therefore reasserts that it is unacceptable to deprive creators and artists of fair remuneration for the use of their works. It also reasserts that there is no justification for a category of workers to be forced to renounce remuneration for their work to the profit of large users, and that ISPs must be required to redistribute to content creators part of the colossal revenues that they make from exploitation of digital networks such as the Internet.”<sup>97</sup>

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<sup>96</sup> DAMI©, «Cri d'alarme des artistes et des créateurs québécois à propos du projet de loi C-32 modernisant la Loi sur le droit d'auteur (LDA)» Octobre 2010.

<sup>97</sup> DAMI©, “Cry of alarm by Quebec performers and creators regarding Bill C-32 modernizing the Copyright Act,” October 2010.

# Resale Right

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## **CAR/FAC**

“What is disappointing is that Bill C32 has missed the opportunity to implement a Resale Right – an important tool used all over the world for visual artists to share in the wealth they create. A Resale Right would see artists receive a percentage royalty payment from the resale of their work. The Australian government recently adopted the Resale Right after the late Clifford Possum Tjapaltjarri’s painting, Warlugulong, sold for \$2.4 million in 2007, thirty years after the artist sold the work for a mere \$1200. Once established in Canada, artists would be able to benefit from reciprocal arrangements with other countries where the Resale Right exists. Canada’s Aboriginal and senior artists in particular are losing out on the profits being made on their work in the secondary market.

While the public debate about copyright has centred on the fight between heavy handed corporate rights holders and users, copyright was originally designed to encourage creativity by providing a source of income for creators. As such, CARFAC and RAAV encourage their members not to sign their rights away to galleries or corporations.”<sup>98</sup>

## **CARCC-Canadian Artists Representation Copyright Collective**

“What is missing from the bill for visual artists?...The inclusion of the Artist Resale Right on the resale of art works.”

Why should the Resale Right be adopted in Canada?

Because it is an act of justice toward Canadian visual artists. Works often increase in value over time and through acquisitions and subsequent sales. But only dealers and resellers benefit from this increase, while the artists who made the effort to become better known and improve their art receive nothing. Older and Aboriginal artists would be the main beneficiaries of this royalty, which incidentally, would cost the government nothing. This would enable more Canadian artists to benefit from the resale of their works in any of the 59 countries that have adopted the Resale Right, including Australia, England, and all of the countries in Europe.”<sup>99</sup>

## **SODART/RAAV-Société de droits d'auteurs en arts visuels**

«Au nombre de ces grandes omissions, le Droit de suite sur la revente des oeuvres artistiques pourtant déjà inclus dans la législation d’au moins cinquante-six pays à travers le monde et qui prive les artistes en arts visuels canadiens et québécois d’importants revenus.»<sup>100</sup>

## **SODRAC-Société du droit de reproduction des auteurs compositeurs et éditeurs du Canada**

“As regards the visual arts and crafts, SODRAC had called for the introduction of resale rights that would have enabled creators in these areas to receive a portion of the proceeds generated when their works are resold, as it exists in more than 50 countries. However, the proposed legislation remains silent on this point.”<sup>101</sup>

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<sup>98</sup> <http://www.carfac.ca/2010/06/bill-c32/>

<sup>99</sup> <http://www.carcc.ca/news.html>

<sup>100</sup> [http://www.raav.org/pls/htmldb/f?p=105:39:1396671820004854::NO::P39\\_ID\\_NOUVELLE, LAST\\_PAGE:27790%2C34](http://www.raav.org/pls/htmldb/f?p=105:39:1396671820004854::NO::P39_ID_NOUVELLE, LAST_PAGE:27790%2C34)

<sup>101</sup> [http://www.sodrac.ca/Telechargement/SODRAC\\_LDA\\_2010\\_06\\_08\\_ENG.pdf](http://www.sodrac.ca/Telechargement/SODRAC_LDA_2010_06_08_ENG.pdf)

## DAMIC

«Finalement, à part un article reconnaissant le droit d’auteur des photographes, dessinateurs et portraitistes, (aussitôt réduit par une exception d’ailleurs), le projet de loi C-32 omet d’inclure un droit de suite sur la revente des œuvres d’art, comme l’ont déjà fait 59 pays dans le monde.»<sup>102</sup>

### [English version]

“Finally, aside from a section recognizing copyright for photographers, designers, and portrait artists (which, however, is reduced immediately by an exception), Bill C-32 fails to include a resale right on artworks – a right that 59 countries have already adopted.”<sup>103</sup>

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<sup>102</sup> DAMIC®, «Cri d’alarme des artistes et des créateurs québécois à propos du projet de loi C-32 modernisant la Loi sur le droit d’auteur (LDA)» Octobre 2010.

<sup>103</sup> DAMIC®, “Cry of alarm by Quebec performers and creators regarding Bill C-32 modernizing the Copyright Act,” October 2010.



# DIGITAL LOCKS (anti-circumvention rules)

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## **Against making artists place a copyright or digital lock etc to make it protected.**

### **ANEL-Association Nationale Des Editeurs de Livres**

«Non seulement la télécommunication est-elle définie du seul point de vue de l'utilisateur, mais le fardeau de la protection incombe aux créateurs. Le symbole de copyright ne suffit plus à indiquer qu'une oeuvre est protégée : l'oeuvre n'est protégée que si le créateur met un verrou électronique, annonce haut et fort par un avis qu'elle est protégée ou, dans certains contextes, en interdit explicitement la reproduction.»<sup>104</sup>

### **COPIBEC**

“Allowing material that is publicly available on the Internet to be used for education purposes, i.e. works that are not protected by a technical measure such as a digital lock or that do not include a clearly visible notice prohibiting such use (simply displaying the © copyright symbol would not be sufficient). The ministers of education of all the provinces (except Quebec) believe that a provision of that nature is necessary to avoid having children be treated as criminals when they use online content for their schoolwork. Frankly, no copyright licensing agency or copyright owner in Canada has ever taken legal action against a child, teacher, school or parent because a student copied a picture into his or her homework. This provision puts the onus on copyright owners to lock their works or add a notice, which is contrary to the standard copyright principle that unauthorized use is prohibited. With respect to this new use, that which is not prohibited is allowed. But in any other context, the standard principle would apply. This situation could create an entire generation of children with “split personalities” and, more specifically, a whole generation of new-media users who would be ignorant of the basic rules for copyright compliance and intellectual property. Is it so hard to educate our students about those rules? Do we have to force creators to lock their works when they would actually prefer to allow access to them as long as their rights are respected? Here once again, free choice seems to be the name of the game. And that choice would not penalize the education sector because copyright owners have already freely chosen to make millions of works available to schools at no charge through Creative Commons licences. Those works are easily identifiable by search engines. In this context, why create a new exception?”<sup>105</sup>

### **SAC -Songwriters Association of Canada**

“Given that currently something in the order of 100 million unique songs without TPMs [digital locks] are already being shared over P2P networks in Canada and around the world, it's difficult to understand what the government hopes to achieve by 'locking the barn after the horses have run off'. Music file-sharing now constitutes well over 90 percent of all the music obtained on wired and wireless networks, and dwarfs all other means of distribution, including iTunes.”<sup>106</sup>

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<sup>104</sup> [http://www.anel.gc.ca/PDFAutoG/1\\_20100630133222.pdf](http://www.anel.gc.ca/PDFAutoG/1_20100630133222.pdf)

<sup>105</sup> <http://www1.copibec.gc.ca/?action=prbu&langue=a>

<sup>106</sup> <http://www.songwriters.ca/Article/37/EddieSchwartzdetails.aspx>

### **SARTEC-Société des Auteurs de Radio, Télévision et Cinéma Compositeurs**

«Les serrures numériques feront l'affaire de l'industrie des jeux, alors que les mesures antipiratage font surtout écho aux pressions américaines et apparaissent bien peu efficaces pour contrer une bonne partie des utilisations.»<sup>107</sup>

«Certes, le projet de loi comporte quelques éléments intéressants....Le projet de loi protège l'utilisation de serrures numériques et en interdit le contournement. Certaines mesures pourront contribuer à réfréner le piratage et contrer les entreprises du style Bit Torrent.»<sup>108</sup>

«Les serrures numériques feront l'affaire de l'industrie des jeux, alors que les mesures antipiratage font surtout écho aux pressions américaines et apparaissent bien peu efficaces pour contrer une bonne partie des utilisations.»<sup>109</sup>

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<sup>107</sup> [http://www.sartec.qc.ca/info/archiv\\_infos/201007/info/article4.htm](http://www.sartec.qc.ca/info/archiv_infos/201007/info/article4.htm)

<sup>108</sup> [http://www.sartec.qc.ca/info/archiv\\_infos/201007/info/article4.htm](http://www.sartec.qc.ca/info/archiv_infos/201007/info/article4.htm)

<sup>109</sup> [http://www.sartec.qc.ca/info/archiv\\_infos/201007/info/article4.htm](http://www.sartec.qc.ca/info/archiv_infos/201007/info/article4.htm)

# PRIVATE COPYING LEVY

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## Artists now get no remuneration from private copying

### **ANEL-Association Nationale Des Editeurs de Livres**

«Le droit de copie privée permet désormais la copie intégrale des oeuvres, ce qui faciliterait le marché du livre numérique, mais il n'est pas assorti d'un principe de compensation.»<sup>110</sup>

### **COPIBEC**

COPIBEC supports: "Allowing legitimately acquired copyrighted content to be copied onto another device or into another format for private use.

Royalties for private copying already apply to cassettes and could easily be extended to all digital platforms as well as all the works that can be copied onto them, including music, text and images. Ministers Clement and Moore have refused, arguing that Canadian taxpayers are already overtaxed. But no tax is involved: Royalties would be paid in consideration for a licence from copyright owners. Those royalties -- amounting to a few cents or a few dollars depending on the medium -- would be allocated to a fund and redistributed to the creators, publishers and producers of the copied content."<sup>111</sup>

### **ACTRA-Canadian Cinema, Television and Radio Artists**

"ACTRA and AFM Canada have been calling for a made-in-Canada bill that balances the ability of Canadians to enjoy creative content wherever and whenever they want while making sure creators are compensated. However, the new bill leaves creators out in the cold by legalizing format shifting and private copying without building on existing royalty systems so that income flows to artists."<sup>112</sup>

"...[extend] the private copying levy to include digital devices," said Ferne Downey, ACTRA National President."<sup>113</sup>

"Last revised in 1997, the Copyright Act specifies that the private copying levy -- which compensates rights holders when Canadians make copies of their work for personal use -- only applies to blank media like audio cassettes, Mini-Discs and CD-Rs. By extending the levy to devices Canadians use today, artists will continue to have this important source of revenue while making it clear that Canadians are legally able to make copies of musical works for private use."<sup>114</sup>

### **CARCC-Canadian Artists Representation Copyright Collective**

CARCC defines as a risk that fact that: "The bill enshrines the right of citizens using the Internet to download, copy, and transfer onto various digital devices all images that they find on the Internet."<sup>115</sup>

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<sup>110</sup> [http://www.anel.gc.ca/PDFAutoG/1\\_20100630133222.pdf](http://www.anel.gc.ca/PDFAutoG/1_20100630133222.pdf)

<sup>111</sup> <http://www1.copibec.gc.ca/?action=prbu&langue=a>

<sup>112</sup> <http://www.actra.ca/main/press-releases/2010/06/canadas-new-copyright-bill-a-blow-to-artists-half-the-bill-is-missing/>

<sup>113</sup> <http://www.actra.ca/main/press-releases/2010/05/if-only-minister-clement-supported-the-private-copying-levy-levy-easy-solution-to-his-illegal-ipod/>

<sup>114</sup> <http://www.actra.ca/main/press-releases/2010/05/if-only-minister-clement-supported-the-private-copying-levy-levy-easy-solution-to-his-illegal-ipod/>

<sup>115</sup> <http://www.carcc.ca/news.html>

CARCC requests: “That photographers, portrait artists, and printmakers be able to benefit from the economic spin-offs of the use of their works.

But Bill C-32 takes away with the other hand by adding that a person who commissions photographs or a portrait, for a wedding for example, has the right to make as many copies as he or she wishes for relatives or friends, as long as the copies are not sold. If the photographer wishes to include payment for copies in the contract, the person who ordered the photographs may simply answer that he or she has the right to make copies and does not have to pay for them.”<sup>116</sup>

“What about fair treatment of artists by schools and libraries?

Why should artists be the only ones not to be remunerated for their work? A creator’s copyright is his or her income....[The] private copy regime be extended to all digital devices and that artists from all disciplines be able to benefit from them.”<sup>117</sup>

### **SOCAN**

“For example, the proposed law would no longer make it an infringement for consumers to copy the musical works they have purchased onto devices such as MP3 players — for personal use. SOCAN has no problem with that. However, the law does not provide a corresponding compensation to rights holders for the new legal recognition of the ability to make copies. As a result, it creates an unjust situation for copyright owners as users are granted expanded rights to privately copy musical works with no corresponding expansion of private-copying remuneration for the copyright owners.”<sup>118</sup>

### **CPCC-Canadian Private Copying Collective**

“The legislation does not address the urgent need for Canadian artists to receive fair compensation for the use of their work,” stated Annie Morin, Chair of the CPCC Board of Directors. ‘By not allowing for a levy on MP3 players, the government is effectively saying that an artist’s work is of no value. But without the music, it is the MP3 player that has no value.’”<sup>119</sup>

### **SCAM-Société civile des auteurs multimédias**

«Il légitimisme l’enregistrement d’émissions de télévision pour visionnement ultérieur et la copie de cd sur des baladeurs numériques, ce qui équivaut à mettre un terme au régime de la copie privée sonore qui n’a d’ailleurs même pas été étendu au secteur de l’audiovisuel.»<sup>120</sup>

### **CCC-CREATOR’S COPYRIGHT COALITION**

“...the private copying regime needs to be updated and expanded to apply to technologies that are ordinarily used by Canadians for private copying so that creators are fairly compensated for this use of their work.”<sup>121</sup>

### **SOPROQ-Société de gestion des droits des producteurs de phonogrammes et de vidéogrammes du Québec**

“In favour of saving the private copying levy.”<sup>122</sup>

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<sup>116</sup> <http://www.carcc.ca/news.html>

<sup>117</sup> <http://www.carcc.ca/news.html>

<sup>118</sup> [http://www.socan.ca/jsp/en/pub/music\\_creators/Autumn2010\\_SpeakOut.jsp](http://www.socan.ca/jsp/en/pub/music_creators/Autumn2010_SpeakOut.jsp)

<sup>119</sup> <http://cpcc.ca/english/pdf/CPCC-Press-Release-Proposed-Copyright-Law-Fails-Canadian-Artists-20100602.pdf>

<sup>120</sup> <http://www.scam.ca/fr/bulletin.html>

<sup>121</sup> <http://www.creatorscopyright.ca/op-ed/2010-05-18/creators-push-for-copyright-reform>

<sup>122</sup> <http://www.soproq.org/uploads/files/savethelevy.pdf>

### **SARTEC-Société des Auteurs de Radio, Télévision et Cinéma Compositeurs**

«En contrepartie, le gouvernement aurait pu, entre autres, au moins étendre l'actuelle copie privée sonore aux lecteurs numériques ou introduire la copie privée pour l'audiovisuel. Mais comme l'affirmait le ministre de l'Industrie Tony Clement, également responsable de la révision de la Loi, le gouvernement ne veut pas imposer « une nouvelle taxe à la consommation sur les iPod, les BlackBerry, les ordinateurs et les téléviseurs (...). Nous souhaitons aider non seulement les artistes, mais également les consommateurs. »<sup>123</sup>

### **SODART/RAAV-Société de droits d'auteurs en arts visuels**

«En fait, l'ensemble du projet de loi constitue un affaiblissement des droits des auteurs et des artistes en faveur des consommateurs / utilisateurs d'oeuvres. Le pire c'est qu'aucune compensation n'est prévue pour dédommager les pertes de revenu des artistes et ayants droit si jamais ce projet de loi est adopté. Ainsi, le régime de la copie privée n'a pas été étendu aux appareils numériques et les fournisseurs de services Internet demeurent toujours les grands gagnants du système actuel en s'appropriant plus de 80% des revenus provenant de l'internet. Toujours selon M. Azzaria, « Il semble que les fournisseurs de services pourraient participer plus activement au partage des revenus générés par l'économie numérique. [2] »<sup>124</sup>

### **UNEQ-Union des Écrivaines et des Écrivains Québécois**

«En effet, le projet de loi...spécifie que tant qu'il s'agit d'une utilisation pédagogique, privée, et à des fins non commerciales (voir les autres exceptions), celui-ci n'a plus besoin de payer de redevances de droit d'auteur à qui que ce soit.

Tel qu'il est le projet C-32 menace les droits des auteurs d'oeuvres artistiques, dramatiques, littéraires, musicales et cinématographiques. »<sup>125</sup>

### **SODRAC-Société du droit de reproduction des auteurs compositeurs et éditeurs du Canada**

"...under the private copying regime, creators are still entitled to receive financial compensation for personal copies of musical works made on certain recording, such as CDs. But the decision not to extend the scope of this provision to include digital media such as MP3s and to legalize the recording of works by consumers for personal use, with no financial compensation for the creators, will result in the loss of a significant source of revenues as physical formats become obsolete." <sup>126</sup>

### **DAMIC**

«De plus, il signe la mort à court terme du régime de la copie privée en permettant au consommateur de reproduire de la musique sur divers supports, dont des enregistreurs audionumériques, sans pour autant étendre la redevance de la copie privée aux nouveaux supports.

...

Le gouvernement canadien s'apprête à établir dans la *Loi*, le régime de responsabilité le moins contraignant qui soit à l'égard des fournisseurs de services Internet (FSI) alors que de nombreux pays ont plutôt choisi d'accroître leurs responsabilités à l'égard des contenus qui circulent sur leurs réseaux, par des systèmes d'avis et retrait, ou en les obligeant à mettre en place des mécanismes de riposte

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<sup>123</sup> [http://www.sartec.qc.ca/info/archiv\\_infos/201007/info/article4.htm](http://www.sartec.qc.ca/info/archiv_infos/201007/info/article4.htm)

<sup>124</sup> [http://www.raav.org/pls/htmldb/f?p=105:39:1396671820004854::NO::P39\\_ID\\_NOUVELLE, LAST\\_PAGE:27790%2C34](http://www.raav.org/pls/htmldb/f?p=105:39:1396671820004854::NO::P39_ID_NOUVELLE, LAST_PAGE:27790%2C34)

<sup>125</sup> [http://www.raav.org/pls/htmldb/f?p=105:39:0::NO::P39\\_ID\\_NOUVELLE, LAST\\_PAGE:28990%2C34](http://www.raav.org/pls/htmldb/f?p=105:39:0::NO::P39_ID_NOUVELLE, LAST_PAGE:28990%2C34)

<sup>126</sup> [http://www.sodrac.ca/Telechargement/SODRAC\\_LDA\\_2010\\_06\\_08\\_ENG.pdf](http://www.sodrac.ca/Telechargement/SODRAC_LDA_2010_06_08_ENG.pdf)

graduée dans le cas de récidives ou même de filtrage pour détecter la mise en ligne illicite d'œuvres protégées par le droit d'auteur.

Se disant incapables de contrôler l'ensemble de l'information présente dans leurs réseaux, les FSI ont obtenu de ne pas être tenus responsables de la mise en ligne illégale d'œuvres protégées par le droit d'auteur sur les sites Web qu'ils hébergent. Si une telle disposition est adoptée, la responsabilité de policer le web retombera sur les épaules des auteurs et de leurs sociétés de gestion collective du droit d'auteur qui n'ont assurément pas les moyens de le faire. »<sup>127</sup>

#### [English version]

“ It also abolishes completely the obligation of broadcasters to pay to exercise the right of reproduction. Furthermore, it means the death, over the short term, of the private copying regime by permitting consumers to reproduce music on various supports, including digital audio recorders, without extending the royalty for private copying to new supports.

...

The Canadian government is preparing to establish in the Act the least restrictive responsibility regime for ISPs, while numerous countries have instead chosen to make ISPs more responsible for the content that circulates on their networks via notice and withdrawal systems, or by forcing them to institute graduated countermeasure mechanisms against recidivists or filtering to detect the illicit putting on line of copyright-protected works.

Claiming that they are incapable of controlling all of the information present on their networks, the ISPs have obtained the right not to be held responsible for the illegal putting on line of copyright-protected works on the Web sites that they host. If such a provision is adopted, the responsibility for policing the Web will fall onto the shoulders of creators and their copyright collective societies, which assuredly do not have the means to perform this task.”<sup>128</sup>

### Québec Union des consommateurs

#### Extension de la partie VIII sur le droit d'auteur:

« Actuellement la Partie VIII de la Loi sur le droit d'auteur est extrêmement limitative, se cantonnant aux supports audio<sup>99</sup>. La Cour d'appel Fédérale dans l'affaire Société canadienne de perception de la copie privée c. Canadian Storage Media Alliance, 2004 CAF 424100 a d'ailleurs mentionné à ce sujet: «À mon humble avis, c'est au législateur fédéral qu'il appartient de décider si les enregistreurs audionumériques comme les lecteurs MP3 doivent faire partie de la catégorie d'articles assujettis à une redevance en vertu de la partie VIII. Dans sa rédaction actuelle, la partie VIII n'accorde pas le pouvoir d'homologuer des redevances sur ce type d'appareil ou sur la mémoire qui y est intégrée.»<sup>101</sup>

« Nous suggérons donc l'extension de cette partie VIII de la Loi sur le droit d'auteur, notamment aux appareils tels que les enregistreurs audionumériques, mais aussi vidéonumériques tels que Tivo et autres décodeurs à disque dur intégrés, aux appareils téléphoniques qui disposent d'une mémoire permettant de lire des fichiers numériques, aux DVD. L'extension suggérée de cette partie VIII de la Loi sur le droit d'auteur devra être rédigée en termes suffisamment ouverts pour inclure les développements technologiques à venir.

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<sup>127</sup> DAMI©, «Cri d'alarme des artistes et des créateurs québécois à propos du projet de loi C-32modernisant la Loi sur le droit d'auteur (LDA)» Octobre 2010.

<sup>128</sup> DAMI©, “Cry of alarm by Quebec performers and creators regarding Bill C-32modernizing the Copyright Act,” October 2010.

...

Ces modifications permettraient donc de rétribuer les titulaires de droits pour les reproductions des oeuvres, tout en permettant aux consommateurs de télécharger les oeuvres, de les reproduire sur leurs différents appareils numériques. »<sup>129</sup>

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<sup>129</sup> <http://www.ic.gc.ca/eic/site/008.nsf/eng/02864.html#s3-3-2>

# Misc Issues

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## Five Year Review

### **PWAC-Professional Writers Association of Canada**

“PWAC does support the proposed five-year automatic review of the legislation as a sensible mechanism in this time of rapid change in communications technology and usage.”<sup>130</sup>

## Ageism

### **CARCC-Canadian Artists Representation Copyright Collective**

“ There is discrimination against older artists in the *Copyright Act*.... In fact, there are two types of discrimination: first, discrimination based on age, since works produced before 8 June 1988, which are necessarily made by older artists, are excluded from the application of the Exhibition Right; second, discrimination based on art discipline, since this exclusion applies only to the Visual Arts. This is unacceptable discrimination against artists who are approaching retirement age, or who are already at that age, and who will need this income.”<sup>131</sup>

### **CCC-CREATOR'S COPYRIGHT COALITION**

“On behalf of Canadian creators from across the country, the CCC is looking for the new copyright bill to:

- Designate writers and directors as joint authors of AV works
- Institute strong penalties against content piracy”<sup>132</sup>

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<sup>130</sup> <http://www.pwac.ca/files/PDF/Press.June10.BillC32.pdf>

<sup>131</sup> <http://www.carcc.ca/news.html>

<sup>132</sup> <http://www.creatorscopyright.ca/op-ed/2010-05-18/creators-push-for-copyright-reform>



# International Issues:

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## **CARCC-Canadian Artists Representation Copyright Collective**

“Is the government of Canada free to act as it wishes with regard to copyright?

Canada is a signatory to a number of international treaties, including the Berne Convention, concerning intellectual property. It is thus committed to protecting copyright. However, Canada’s international partners consider Canada much too lax with regard to protection of intellectual property in the digital age. We know that many illegal copies of films and music are made here, and the large international cultural conglomerates, particularly in the United States, are exerting pressure for the Canadian statute to be more stringently applied, or even strengthened.”<sup>133</sup>

Is the United States the only country pressuring Canada?

Canada has begun negotiations on a free trade agreement with the European Community, and the agreement will be concluded, if possible, in 2011; however, the European partners also require better copyright protection in the digital age. They are also asking that the Artist Resale Right be instituted in Canada, since this right is applied in Europe.”<sup>134</sup>

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<sup>133</sup> <http://www.carcc.ca/news.html>

<sup>134</sup> <http://www.carcc.ca/news.html>

## COALITIONS

### **VISUAL ARTISTS COALITION**

Canadian Artists Representation Copyright Collective  
CAR/FAC  
RAAV  
APASQ  
ILLUSTRATION QUÉBEC

### **WRITERS COALITION**

Playwrights Guild of Canada  
Writer's Union of Canada  
The Professional Writers Association of Canada  
League of Canadian Poets  
Playwrights Guild of Canada

### **MEMBERS OF THE CREATORS COPYRIGHT COALITION (CCC)**

Alliance of Canadian Cinema, Television and Radio Artists (ACTRA)  
American Federation of Musicians (AFM)  
Canadian Actors' Equity Association (Equity)  
Canadian Artists Representation/Front des Artistes Canadiens (CAR/FAC)  
Canadian Artists Representation Copyright Collective (CARCC)  
Canadian Association of Photographers and Illustrators in Communications (CAPIC)  
Canadian Music Centre (CMC)  
Canadian League of Composers  
Guild of Canadian Film Composers (GCFC)  
League of Canadian Poets  
Professional Writers' Association (PWAC)  
Songwriters Association of Canada (SAC)  
Society of Composers, Authors and Music Publishers of Canada (SOCAN)  
Writers Guild of Canada  
The Writers Union of Canada (TWUC)

### **Members of DAMIC**

Association des professionnels des arts de la scène du Québec (APASQ)  
Association québécoise des auteurs dramatiques (AQAD)  
Conseil des métiers d'art du Québec (CMAQ)  
Regroupement des artistes en arts visuels du Québec (RAAV)  
Société des auteurs de radio, télévision et cinéma (SARTEC)  
Société professionnelle des auteurs et des compositeurs du Québec (SPACQ)  
Union des écrivaines et des écrivains québécois (UNEQ)  
Guilde des musiciens et musiciennes du Québec (GMMQ)  
Union des artistes (UDA)  
Société de gestion collective de l'Union des artistes (ARTISTI)  
Société du droit de reproduction des auteurs, compositeurs et éditeurs du Canada (SODRAC)  
Société québécoise de gestion collective des droits de reproduction (Copibec)  
Société québécoise des auteurs dramatiques (SoQAD)

### **Canadian Photographers Coalition (CPC)**