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TELEPHONE (416) 921-8478

CANADIAN COPYRIGHT INSTITUTE

Established to promote a better understanding of copyright and to encourage its use in the public interest

SUITE 260, 86 BLOOR STREET WEST, TORONTO, ONTARIO M5S 1M5

10 November, 1980

Dear Member of Parliament

We are aware that constitutional discussions and the new budget with its particular emphasis on energy policies leave a limited amount of time for discussion and consideration of other important pending legislative changes. However, the copyright studies initiated by the Department of Consumer and Corporate affairs are nearly completed, and important decisions will be made in the near future.

The Institute is concerned that Canada keep its cultural integrity and believes that the recommendations in the attached letter encourage creativity and provide Canadians with easy access to information.

Your evaluation of the proposals is most crucial.

Yours sincerely,



Dr. M.O. Edwardh
Chairman,
Canadian Copyright Institute

Sustaining Members of the Canadian Copyright Institute

Association of Canadian Publishers
Canadian Author's Association
Canadian Artist's Representation
Canadian Booksellers' Association
Canadian Book Publishers' Council
Canadian Labour Congress
Canadian Music Publishers' Association
Canadian Periodical Publishers' Association
Graphic Arts Industries Association
Royal Canadian Academy of Arts
League of Canadian Poets
Writers' Union of Canada

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November 1980

Dear Member of Parliament:

The previous letters have outlined the purpose and importance of copyright. They also have stressed the need for adequate dialogue between the government and the authors and publishers whose basic rights and interests will be tied intimately to the new copyright legislation. It is only by input from both private and public sectors that the enacting of satisfactory new copyright legislation will be assured.

This third letter considers the challenge of copyright and the new technology which is already affecting our work-day as well as our recreational hours. Information is a valuable resource and will increasingly become a commodity which will be bought and sold. Teletext systems which transmit words and pictures to a screen will become a two way system which will allow a viewer to ask for and receive information from many sources. Telidon, designed by the Canadian Department of Communications, is a two way system which can be connected to a data computer bank. The satellites in turn permit transmission amongst many such computer banks. A globally shared network of knowledge is within reach. This is the single most important factor which has made copyright revision so urgent. Somehow a revised and updated structure for copyright has to be designed which will provide an adequate level of protection for authors and publishers as well as allowing the public ready access to information and entertainment. It should allow creators of copyright material to recover their creative investment when making it available to the public. Failure to achieve such an accommodation will result in all too free access to an ever dwindling source of new materials.

Already copyright is under strain from the effects of the photocopy machine. The present legislation will certainly break down when we have interactive access to a choice of entertainment and to data bases in our homes and offices. The international implications of access to world wide sources of information through cable and satellite communication must be faced. This urgent problem demands resolution.

As photocopying services are now found in every library, post office, school, and most business offices, it is a good springboard for an examination of the problems posed vis-a-vis copyright and to evaluate the suggested resolution. Similar solutions can be applied to copyright problems involving other forms of technology.

More practical would be the establishment of a special reprographic right under new copyright legislation setting out terms and conditions under which reprography would be permitted, and giving guidelines of how collectives would operate. In effect, this would establish a form of compulsory licence² which would permit reprography of copyright material without permission provided certain limitations and conditions were to be observed, a fee paid and records provided. Non-observance of these conditions would remain a breach of copyright. These provisions should apply to all users, private, public and semi-public. It would include all levels of government and there should be no exceptions for educational or charitable organizations. It is just as unreasonable to expect the creative community to make its materials available without charge, as it is to expect that teachers should contribute their time for educational purposes without salary. No doubt educational institutions would require some funding to pay for copying material in the same way that they receive funding for other purchases and services. But the costs for doing so would be as real and as justified as the cost of the utilities used, or textbooks bought and salaries paid.

Recognizing the great convenience afforded and the ease of compliance in making reprographic copies within the law, the penalties for non-compliance

2. Compulsory Licence -- copying could not be prohibited if the conditions, as detailed in the agreement, were followed.

should be easy to enforce³, and sufficiently severe to act as a deterrent.

Under Canada's international treaty obligations as a member of the Berne Union and Universal Copyright Convention, the same rights would have to be offered to foreign nationals. Fiscal measures could be developed to withhold payment from countries other than those providing reciprocal rights and payments.

OTHER FORMS OF THE NEW TECHNOLOGY

Similar problems and solutions apply in the case of access to copyright material through other forms of technology. If we may suppose a wide use of data banks emerging in the years ahead, we may also anticipate some forms of publication in non-book form, obtainable solely through some communication system for display on a TV screen or terminal. Some payment for access to these materials is essential in order to defray the cost of the preparation and distribution and these fees might well be the only source of payment if there were no other form of publication. In essence such payment for use is no different from the payments to actors and directors in filmed commercials or entertainment programs every time such programs are presented. This eventually means that even a small extract of the material should be subject to a fee. Such a

3. The subject of enforcement of copyright is to be dealt with in a subsequent newsletter.

request should present no problem because the mechanism for allocating and recording it could be handled by electronic means. The same search program which would be used to locate the material in its memory source, on instructions from, and activated by, the viewer could be used to record the use made of the material and by whom. Subsequently an appropriate charge could be billed in the same way as the telephone company records long distance calls by number and charges them to the customer.

This system would readily lend itself to the kind of interactive systems which are being developed for pay TV and operate in conjunction with a control module which will permit the viewer a wide selection of different information programs.

Indeed the technology already exists for connecting the viewer not only with the entertainment he desires, or the information he is seeking, but with a powerful computer system which would respond to his instructions and provide a processing facility, all with the use of the same TV screen and control unit. It is logical to suppose that this system would in time be extended to be in contact with satellite communication systems and a world range of specialized data banks. The charging method which would be needed to recover the costs of these information systems could be used for including an add-on charge for the use of copyright materials.

SUMMARY

There are many applications of the new and future technology which have copyright implications. So far the copyright legislation has made little progress in coming to terms with them. We are still operating under a 1921 Act which came into force in 1924 -- a pre-television, pre-computer, pre-photocopy, pre-videodisc and pre-satellite era. That is why it is important that copyright revision should be enacted in a form appropriate to the needs of this new electronic society. It must adequately meet the needs of the creators as well as those of users. Their needs are, in fact, complementary. Without the creators there will be no users, and without users there can be no incentive to create. Copyright is the bond that connects their mutual interest. Far from making it obsolete the new technology has given a renewed significance to copyright from which our whole society can benefit.

Appendix

A COPYRIGHT COLLECTIVE SYSTEM FOR PHOTOCOPY

The collective concept which has been used successfully for the public performance of musical works provides a useful model for print material. It is self-financing out of the fees it collects and takes an active role in enforcement. It does rely on a sam-

pling technique, however, which is not suitable for print media because of the wide range of materials copied and the difficulty in getting a statistically valid sample without extensive record keeping. The cost of sampling and record keeping for print media copied would in all likelihood outweigh the value of the fees collected. To avoid this problem the collective would concern itself only with multiple copying and copying of an extensive amount of a work.

Accordingly, the collective would not be involved with casual copying of copyright material provided it was a single copy and did not exceed a certain proportion of the work (either 2% or 3% might be useful examples, remembering that a work might be a whole book or just part of a page in the case of some poetry). Within such restriction no permission, no record keeping and no fee would be required.

The collective would, however, be greatly concerned about extended copying of a single work (e.g. more than 2% or 3%) or multiple copying of any part of a work. In such cases either by an individual or an institution, no permission would be required, but it would be necessary to maintain records and to make payment of a fee based on a flat rate per page. The collective would be responsible for the collection of these fees from institutional and private copying centres and for using the records provided to make payment to the copyright holders. Permission to copy on a fee basis would stop short of the copying of a complete work, or multiple copies exceeding, for instance, 50 copies of

the same work made within the same month. Copying in excess of these amounts would represent a form of publication which would have to be cleared in advance by negotiation with the copyright owner.

The rationale for such an approach would be that: -

1. Single copies of a work in printed form and of limited extent do not endanger the economic viability of a publishing project. (This generalization has a particular meaning and limitation in respect to poetry.)
2. Permitting multiple copying or extended single copying does represent a threat to the economic viability of a publication. In recognition of this and of the convenience of having immediate access, payment should be made to a collective and records maintained and submitted.
3. Multiple photocopies of parts of a work in excess of a certain percentage or single copying of a whole work does represent a form of publishing which should not be permitted without clearance from the publisher and the negotiation of an appropriate payment.
4. Treatment on a percentage basis rather than a quantity of pages provides an equitable solution to the problem of poetry and short essays in which even part of a page or very few pages can represent the whole work.
5. Payment would be on a flat rate per page and subject to review and change annually. It should be at a level that it would be more economical for the user to purchase a book than to photocopy it.