

CANADIAN COPYRIGHT INSTITUTE

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

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Committee and Private

Legislation Branch

Comité de Législation Privée

SUITE 260, 16 BLOOR STREET WEST, TORONTO, ONTARIO M5S 1M5

TELEPHONE (416) 923-8478

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

TELEPHONE (416) 921-8478

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.

The Canadian Copyright Act was passed in 1921, long before the advent of the photocopier, and it gave the copyright owner the exclusive right to reproduce a work. For any unauthorized person to reproduce a work by any means was, and remains, an infringement of copyright. There are no exceptions to this rule, although certain limited statutory defences are provided such as "any fair dealing with any work for the purposes of private study, research, criticism, review or newspaper study".

The Act has left to the courts the interpretation of the extent of copying covered by the fair dealing provisions. There are few case histories for guidance in this area, and the interpretation by the courts could vary, depending on the amount of copying and the type of material. This uncertainty was to some extent an academic point until the invention of the photocopy machine because of the limitations imposed by copying by hand -- at least as far as private study was concerned. Modern photocopying and duplicating equipment, however, made instant copying of even unlimited quantities of a whole work technically possible. There is no question that this extensive and multiple use of copying, or reprography as it is known generically, represents infringement of copyright.

That such infringement is damaging both to the copyright owner and ultimately the public interest, is seldom realized. It is damaging to copyright

owners because they rely on the sale of the book to reward the creative effort of the author and to recover the cost of making the work available to the public. Without such sales or some other method of recovery, the financial viability of publications becomes endangered. The public is the final victim as future publications never reach the market. Inevitably, the sources wither, and the supply meets neither the public need nor the public demand.

Reduced sales potential is a critical factor to a publisher in his decision to publish a book or a periodical because below a certain financial point a publication is no longer economically viable. No one denies the convenience of photocopy. Nonetheless, the question remains, can some method of permitting the photocopying of copyright works within certain limitations, and of channelling payment to the copyright owner, be devised. If it were developed it could render the publication fiscally sound and would encourage further publications and nurture creativity.

A method which could, with some adaptation, be used for this purpose is already in use for the public performance of musical works. From concert hall renditions to jukeboxes, fees for all performances are collected. The "collective" which distributes fees to copyright owners has been operating successfully in Canada for a number of years. A suggested method of how a similar collective for printed materials could operate is included as an appendix.

the terms would permit the casual copier to make a single copy of limited extent without permission or payment. Persons or institutions making single copies of an extensive part of texts or multiple copies up to a certain quantity would be able to do so without permission but would be required to pay a set fee which would be submitted to the collective periodically with appropriate records. Further copying would be a matter for negotiation with the copyright owner, because it would really represent a form of publishing rather than convenience copying.

The suggested terms and limitations are intended to meet the needs of those wishing to duplicate copyright material without the formality of record keeping or of seeking permission. This system should meet the needs of research workers, students and the general public. (Single copying of part of a work which is illegal at present does not seem to pose a threat to the primary sale of publications.) The threat arises from extended single copying and multiple copying, much of which is carried out in educational institutions. Sometimes schools deplete the budget for books and resort to making illegal photocopies of texts and work books for whole classes without thought of payment. Photocopy cost may be greater than the cost of the book, but it comes from another administration budget. The practice of duplicating multiple copies of sections of different texts is also quite common in post secondary institutions. These are distributed to the students in lieu of textbooks, on payment of a fee to

cover the cost of duplicating or printing only.

These practices are clearly illegal but would be permitted on a controlled basis under the proposed system. The multiple copying which now undermines the sale of the original source material would instead contribute towards the cost of publication and the livelihood of the author. The record keeping for the purpose of payment need not be particularly involved for this extended scale of copying and would be more than compensated for by the convenience of immediate access. The fee structure for the use of material would almost certainly be less than the physical cost of copying.

#### ENABLING LEGISLATION

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The use of a collective for these purposes is in principle quite possible under present copyright law, and one has indeed been incorporated but has not yet become fully operational. The practical difficulty of operating a collective under the present legislation is that it requires all copyright owners to assign<sup>1</sup> their works to it voluntarily, and does require a high level of participation to be effective. Moreover, there could be problems of effective enforcement without extensive and costly litigation which would be out of proportion to the compensation likely to be received.

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1. It technically gives control of the copyright to the collective.

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.