
NEWS FROM CANADA

MAJOR IMPROVEMENTS RECOMMENDED FOR COPYRIGHT LEGISLATION

Performers and writers stand to make substantial gains, if the recommendations of the parliamentary Sub-Committee to revise Canada's copyright laws are adopted.

The Charter of Rights for Creators released October 10, recommends 137 ways to support the rights of creators and give artists greater financial returns for creative work.

Among the recommendations are most of the items sought by the Alliance of Canadian Cinema, Television and Radio Artists ("ACTRA") for writers and performers, including performers' rights.

"This is a substantial breakthrough for performers, for which ACTRA has worked for many years," says ACTRA president Bruce MacLeod. "We have lobbied government for over a decade now to provide this fundamental protection to performers. Performers' rights will give us legal ownership in our performances, and ensure that we can control how our performances are used and that we can secure fair compensation for different uses."

Mr MacLeod applauded the efforts of the ACTRA Performers Guild, which in the last six months has undertaken an energetic campaign for the inclusion of performers' rights in the revisions of the copyright legislation. "The Guild really went to work on this issue," said ACTRA's president, "and the report shows it paid off."

Besides recommending performers' rights, the all-party Sub-Committee on Copyright called for stronger moral rights to preserve the integrity of an artist's work and to prevent unauthorised modification or distortion of it; for retransmission rights to ensure that copyright owners of transmitted material share in the revenues produced by their work; for a "fair dealing" provision which limits the number and scope of uses of copyright material which are exempt from copyright provisions.

As well, it proposed a public lending right to compensate authors for the public lending of their works by libraries (though it recommended it be outside copyright law); a form of royalty to be paid writers when works are copied in places such as libraries; and broader powers for the

Copyright Appeal Board (to be renamed the Copyright Board) to enable it to enforce the law and arbitrate disputes.

The Sub-Committee proposed tough new penalties for infringements of copyright law, with fines up to (Canadian) \$1 million as opposed to the current (Canadian) \$2,000 maximum.

In presenting the report, Sub-Committee chairperson Gabriel Fontaine outlined the basic principles which guided the deliberations of the five members. "The Sub-Committee thinks that because of the special contribution creators make to society they must be fairly rewarded for the continually increasing number and variety of uses of their work."

"This report recognises the obligation of any new Copyright Act is to support the rights of the creator," he said. "With the 137 recommendations, we believe, the Copyright Act has the potential - given extensive revision - of becoming a Charter of Rights for Creators."

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Lynn McDonald, NDP Culture Critic, filed a dissenting report, saying the recommendation on retransmission rights would result in a serious drain of resources to the United States. She said while the amounts are hotly contested, ranging from (Canadian) \$11 million to (Canadian) \$82 million, "when cultural dollars are as limited as they are and in a year of (Canadian) \$100 million in arts cutbacks, one must question any recommendation that will result in an outflow of funds from the country."

She also said that while she believes many of the recommendations "would considerably improve the lot of creators" she is alarmed at the shift in emphasis of whom copyright is intended to serve - from the individual creator to the cultural enterprise, including large and profitable corporations, whose employees do the work. This is apparent in the recommendation for maintaining employer's rights where, she said, "the whole purpose of copyright is realigned from reward for creative work to reward for risk taking."

Ms McDonald said, "the understanding of copyright as a reward for creative work

must be retained."

ACTRA's Writers Guild has also expressed serious concern about this shift in emphasis.

"It is a major problem," according to Jack Gray, Chair of the Writers Copyright Committee. "Copyright must be vested in the creator, irrespective of whether he or she is employed."

Now that the Sub-Committee has tabled the report, it will be prepared in legislative form. Then it will go back to the Standing Committee on Communications and Culture which will seek public input through some form of public hearings. The final bill is expected to be tabled in the House of Commons and voted on by the middle of 1986.

ACTRA president Bruce MacLeod says, "ACTRA will have to keep the pressure on MP's to ensure that final legislation reflects the need of artists in the copyright area. While there are a few problems which we will have to work on, the report of the Sub-Committee contains most of the items for which we have pressed."

"It is a major victory," Mr MacLeod said "and deserves celebration but," he added, "we'll postpone the celebration until the final Copyright Act is passed in legislation, to our complete satisfaction!"

Performers win first round in fight for performers' rights

Performers have won the first round in the fight for performers' rights, said Lyn Jackson, Chairperson of the ACTRA Performers Guild after reading the report of the parliamentary Sub-Committee on Copyright.

"At last, there is recognition for the principle of performers' rights, and there is a recommendation that Parliament implement statutory performers' rights. If this is implemented, we will have achieved an important goal."

In its report the parliamentary Sub-Committee recommended that the performances of performers be a new category protected under copyright protection.

"As a matter of principle," said the report, "all creators should be protected against unauthorised uses of their intellectual property. A performer is just as much a creator as is the producer of a sound recording or a film. It is inequitable to protect some creative works and not others based on artificial distinctions that betray value judgments as to

the creative merits of certain works."

The Sub-Committee recommended that performers' rights take the form of universal statutorily-created rights, administered by a performers' rights society. This was one of two options, presented by ACTRA in its submission to the Sub-Committee. This is the most comprehensive model for implementation of performers' rights and would create for performers a right very similar to a writer's copyright.

Performers' rights will give us a legal right to determine how our performances are used and to control unauthorised distribution.

"If implemented in legislation, the proposed performers' rights will provide performers with ownership of our performances when recorded on audio or video tape, film, phonograph, compact disc or any other media," said Lyn Jackson. "We will have a legal right to determine how our performances are used and to control unauthorised distribution."

To date, while ACTRA performers have the protection of the collective agreements, which include re-use payments, there is no protection in law. This denies the performer the guarantee of proper remuneration or means of enforcement of the required payments. While collective agreements bind producers of programs, they have no sway with third parties. This means that while performers can take legal action against engagers for breach of contract, performers have no grounds for legal claims with distributors who have acquired the rights for recorded performances from engagers.

ACTRA's Performers Guild has spearheaded a campaign to secure performers' rights for performers, building on a decade of lobbying on this issue by the Alliance as a whole. The Guild prepared a pamphlet on performers' rights and initiated several mailings to Members of Parliament. Before the report was tabled, the Guild participated in the development of the Alliance's submission and appeared as part of ACTRA's delegation before the Sub-Committee to present our position.

"The next round in the fight for performers' rights," according to Lyn Jackson, "is to ensure that when the recommendations of the Sub-Committee are translated into legislation, we get it passed by the House of Commons."

The response from MPs to the two

mailings has been very good, with answers from just under a third. While some said "thank you, I'll read the material", there were assurances from members from all three parties that they support the introduction of performers' rights.

"This is good support to build on, though there are still many MPs who must be convinced of the importance of the issue," said the Chairperson of the Performers Guild. "We must keep the momentum going and make sure that every MP is familiar with our arguments by the time the copyright legislation is discussed in the House of Commons."

"This is a critical issue for performers and we are on the verge of winning the protection we have sought for years," said Lyn Jackson. "I urge all our performer members to stay involved."

Jane Craig

The Alliance of Canadian Cinema, Television and Radio Artists (ACTRA), is a Canadian union of performers, writers and broadcast journalists affiliated to the Canada Labour Congress (CLC), the International Federation of Actors (FIA) and the International Affiliation of Writers' Guilds (IAWG).

The above article appeared in ACTRA's quarterly publication ACTRASCOPE. Jane Craig, the author of the above article is its Editor.

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Conferences are a useful and informal means of discussing and clarifying matters which do not require the formal taking of evidence or detailed legal argument. The Tribunal might, for example, conduct conferences with submitters to clarify points raised in their submissions. In other cases, where there is a collateral dispute between parties to an inquiry, a conference may be one means of resolving it. A conference can be conducted by any member of the Tribunal, usually but not necessarily a member of the inquiry Division.

Hearings will usually be a bit more formal than conferences, although it is likely that the Tribunal will be looking to shed as much of the "judicial" appearance of current hearings as it can. The Act itself says that the Tribunal shall not have regard to "legal forms and solemnities". The most important point about hearings is that they will be confined to matters which are best dealt with in oral hearings. A hearing will not roam over all the issues to be decided in the inquiry.

The Tribunal may restrict participation of parties to conferences and hearings, as it directs. Of course, this power is subject to implicit natural justice limitations.

The regulations specifically provide that proceedings (other than confidential sessions) at a conference or hearing may be recorded in any manner that does not, in the Tribunal's view, disrupt the proper conduct of the proceedings.

Conclusion of Inquiry

Following a conference or hearing, the Tribunal may decide that it needs additional documentation. It may then hold another conference or hearing as it sees fit. At some stage it will be satisfied that it has made a thorough investigation into the relevant issues and is sufficiently well-informed to proceed to a decision. A decision, when made, has to be followed by the familiar report on the inquiry.

Transitional Arrangements

The procedure outlined above will apply initially to any inquiry which does not fall within s98 of the Broadcasting and Television Amendment Act 1985. In numerical terms, that will be a fairly