

# Renewal of the Copyright Act

## Background

The purpose of the *Copyright Act*<sup>1</sup> is to encourage the creation of artistic and literary works and to ensure the proper use of these works. The *Act* does this by balancing the interests of owners and users of copyright material.

The *Copyright Act* is currently being amended, in part, to respond to digital technology. In May 2004, the House of Commons Standing Committee on Canadian Heritage released "The Bulte Report" (named after the Chair of the Committee at the time)<sup>2</sup>. The report contains recommendations that overwhelmingly favour the interests of copyright owners at the expense of the general public.

With students and instructors increasingly using online media to access and share educational information, the Bulte Report's proposals will hinder access to public digital information and impose new fees on cash-strapped educational institutions.

## What is Copyright?

The *Copyright Act* provides owners of copyright in literary and artistic works (such as books, paintings, sculptures, songs, software and scientific papers) certain rights over how these works are used. One of the most important rights is the right to control the reproduction or copying of work. At the same time, the *Act* gives users rights, including limited rights to make copies without permission through exceptions, "fair-dealing", and the public domain. Copyright also protects the "moral rights" of creators by prohibiting users from disfiguring their works. Copyright ownership usually attaches automatically to the creator of a work, but is often transferred to a separate owner, such as, a record company or a publisher.

## Current Context: Responding to the Digital Revolution

Copyright is intended to protect both the economic and moral rights of creators, without stifling the use of works. As such, a core principle of copyright is that knowledge must be shared to encourage creative endeavours. Reasonable access to current and past materials is imperative for students, scholars, researchers, artists, and the general public.

A recent ruling by the Supreme Court of Canada<sup>3</sup> confirmed that the purpose of the *Copyright Act* is to serve the public interest by encouraging both the creation and use of works. However, the Bulte Report recommendations upset this balance.

Students, instructors, and researchers will be penalized if these recommendations become law.

New technology, such as the Internet, offer exciting possibilities for the sharing of information. The Internet has enabled democratic engagement on a global scale, providing citizens easy access to information from governmental and non-governmental organisations, scholars, educational institutions, and individuals. Stifling access to such information, in order to appease private interests that view the Internet as only a commercial outlet, would be a step in the wrong direction.

## The Main Issues

### Fair Dealing

The *Copyright Act*'s "fair dealing" clause allows users to make single copies of portions of works for "research and private study". Unlike the American equivalent, "fair use", the Canadian provision does not include the right to make multiple reproductions for classroom use. Extending fair dealing to allow for increased reproduction of materials in educational institutions would remove barriers to accessing documents for educational purposes. The Bulte Report ignores the need to expand the definition of fair dealing to come in line with the American interpretation.

### Extended Collective Licensing: More Fees, Less Access

The Bulte Report recommends that the federal government implement "Extended Collective Licensing", a requirement that would force educational institutions to pay a fee to those selling material on the Internet. The fee would "allow" students access to publicly available (free and not pirated) material on the Internet and exempt students and instructors from liability for inadvertent infringing on copyright.

Extended Collective Licensing is unworkable. The vast bulk of material on the Internet is

# Membership Advisory

“The Internet is not a wholly commercial medium for copyright owners. It is and has always been, primarily, a communication medium intended to be free – more like a speaker’s corner than a bookstore. For Canadians to have to pay for using publicly available, free Internet materials in a classroom is totally unacceptable.”

*Gord Comeau,  
Canadian School  
Boards Association*

“What is at stake is the way society views knowledge. Is it part of the common heritage of humanity? Or is it a commodity that can be completely owned and locked down by private interests?”

*Ken Fields,  
Canadian  
Association of  
University Teachers*

placed there with no expectation of payment and, therefore, should not be subject to a levy to subsidize private companies. Businesses that want to profit from Internet sales can do so by encrypting their products or creating password protected sites instead of charging everyone who may use the Internet. The proposed licensing scheme would very likely suppress the use of the Internet as a place for the open sharing of information and likely lead to additional ancillary fees at universities and colleges. The publishing industry already charges significant copyright fees to educational institutions for paper reproduction and electronic journals.

## Internet Service Provider Liability: Increasing Costs, Infringing Privacy

The Bulte Report recommends implementing a “license and takedown” scheme for Internet Service Providers (ISPs). Essentially, the publishing and recording industries want service providers to police internet users. This practice would infringe on individual privacy and remove legitimate works from the Internet at the whim of the recording and publishing industries. It would also create unnecessary administrative costs for the service providers, costs that would, in all likelihood, be passed on to the Canadian public, including students and instructors.

## The Big Picture

An overly restrictive *Copyright Act*, as advocated by the recording and publishing industries and championed by the Bulte Report, is bad public policy. Because all creators build on the past work of others, too much copyright strangles the development of new ideas, and thereby discourages social, cultural, and economic growth.

The Bulte Report’s recommendations are being strongly resisted by faculty, librarians, university and college administrators, and school boards. The Heritage Committee’s position contradicts the position of Industry Canada, which has suggested that the *Copyright Act* broaden exceptions for non-profit educational institutions, including the educational use of publicly available material on the Internet<sup>4</sup>. Industry Canada further argues that the costs and difficulties of licensing educational material are a deterrent

to using digital content for educational purposes—another deterrent to maintaining a vibrant intellectual community.

First and foremost, copyright laws should serve the public interest, not the financial interests of large companies. The publishing and recording industries have portrayed themselves as representatives of the “starving artists” who will allegedly be the major victim of balanced copyright law. The recommendations in the Bulte Report, however, would do little or nothing to protect real artists who are already able to restrict access to digital materials if they so choose. Instead, the license fees are mainly funnelled from the pockets of students directly to the recording, publishing and movie industry, most of which are not even located in Canada<sup>5</sup>.

## Get Involved

To actively oppose restrictive copyright law:

- Write letters to Members of Parliament, in particular Marlene Catterall, Chair of the Standing Committee on Heritage (House of Commons, Ottawa, Ontario, K1A 0A6 [no stamp required] or Catterall.M@parl.gc.ca); and
- Write letters to student or mass-market media.

## Further Information

To learn more about restrictive copyright law.

- Canadian Internet Policy and Public Interest Clinic: [www.cippic.ca](http://www.cippic.ca)
- Digital Copyright Forum: [www.digital-copyright.ca](http://www.digital-copyright.ca)
- Public Interest Advocacy Centre: [www.piac.ca](http://www.piac.ca)
- Faircopyright.ca: [www.faircopyright.ca](http://www.faircopyright.ca)
- lexinformatica: [www.lexinformatica.org](http://www.lexinformatica.org)

1. Copyright Act ( R.S. 1985, c. C-42 )

<http://laws.justice.gc.ca/en/C-42/text.html>

2. Bulte, S. (2004) Interim Report on Copyright Reform: Report of the Standing Committee on Canadian Heritage. <http://www.parl.gc.ca/InfocomDoc/Documents/37/3/parlbus/commbus/house/reports/herirp01-e.htm>

3. Law Society of Upper Canada v. CCH Limited, [2004] S.C.J. No.12, (2004) 236 D.L.R. (4th) 395. <http://www.canlii.org/ca/cas/scc/2004/2004scc13.html>

4. Hirshhorn, R. (2004) Assessing the Economic Impact of Copyright Reform in the Area of Technology-Enhanced Learning. Prepared for Marketplace Framework Policy Branch, Industry Canada. [http://strategis.ic.gc.ca/epic/internet/inippd-dppi.nsf/en/h\\_ip01074e.html](http://strategis.ic.gc.ca/epic/internet/inippd-dppi.nsf/en/h_ip01074e.html)

5. Ibid