



Bill C-11:

Copyright Modernization Act

Presentation to the Senate Standing Committee on Banks,
Trade and Commerce

Canadian Conference of the Arts

June 22, 2012

Honourable Senators,

Thank you for your invitation. My name is Alain Pineau and I am the National Director of the Canadian Conference of the Arts (CCA), the oldest and largest coalition in the Canadian arts, culture and heritage sector. It is from this large and unique perspective that I come to you today to ask that you correct the most damaging impacts of Bill C-11 on tens, if not hundreds of thousands of artists, creators, self-employed or unionized, as well as on small and mid-size businesses for whom intellectual property is the legal tool to generate revenue.

Copyright is a key element of “Jobs, Growth and Long-term Prosperity” as C-38, the omnibus budget implementation bill was titled. Intellectual property is one of the cornerstones of a national digital strategy for a Canada establishing its place in the global creative economy. I submit that not to amend the most egregious elements of C-11 is to put at risk the future of our culture and our economy.

No doubt that C-11 contains positive measures for a part of the Canadian creative sector. But not so for the majority of Canadian artists and creators. Last year, we estimated conservatively that unless it is amended, this bill will put in jeopardy at least \$126 M of revenue a year for them, and this only when we look at current revenue reported by collectives. To this, one must add a reduction of the revenue generated by our cultural industries, notably in publishing. The new regime will force some of those industries to adopt business models not suited for their field (I am thinking here of digital locks) while at the same time making access to consumers more difficult, which is quite the opposite of the Bill’s intent.

I will not go over all the reasons that have led to an unprecedented opposition and unity of the Canadian cultural sector, from Victoria to St.-John’s. I have tabled the documents published over the past two years under the umbrella of the CCA. Last January, 68 cultural organizations representing the majority of Canadian artists and creators, as well as producers and distributors sent to the two Ministers responsible for C-11 as well as to the House of Commons Legislative Committee, a joint list of twenty amendments deemed essential to clarify the legislator’s intentions and secure our cultural industries. All of those amendments have been rejected by the government, who made it clear that it had no intention of changing its approach to this most important piece of legislation.

It is therefore to you as legislators unfettered by electoral considerations that we present to you today, on behalf of 75 organizations, three amendments which would at least help our artists, creators and entrepreneurs defend their rights in court, litigation being the first consequence of this Act, not only at home but also from our commercial partners.

The first and most important of these amendments would include in the Copyright Act of the so-called three-step-test. This amendment would link Canadian copyright legislation to the Bern Treaty, which has been signed by Canada. As a consequence, Canadian Tribunals would have to take into account the elements of this test when they have to decide on conflict. This amendment is an interpretation guide as to what constitutes fair dealing and it has already been incorporated in copyright legislation by 47 seven countries signatories of the Bern Treaty. We simply do not understand why Canada would not do the same.

In doing so, one would help correct the Supreme Court’s 2004 decision on fair dealing. For the first time anywhere in the world, the Court introduced the notion that there is such a thing as users’ rights when it comes to using a work protected by copyright. The Court went on to say

that economic damages to the right's owner is one of many considerations to apply when deciding what is fair dealing and that it is not even always the most important one. This particular decision has been severely criticised by legal experts both at home and abroad.

By including the ill-defined term "education" in the list of what constitutes fair dealing, C-11 opens the gates to subjective interpretations that can only lead to costly litigation, something very few cultural workers can afford and will therefore lead to considerable weakening of the sector. By including the Bern Treaty three-step-test in the Act, you will re-establish a balance between the purposes of the users and the consequences on the interests of artists and creators.

The second amendment we are urging you to adopt concerns statutory damages. C-11 has reduced these to the point they are totally meaningless and, according to many, constitute in fact an invitation to steal with little risk of punishment. Given the costs and the time involved in suing, which cultural organisation, not to say which artist, could seriously consider suing someone who has infringed on their right knowing fully that they may at the most receive a pittance in compensation, never enough to cover the costs of litigation? We therefore submit to you that it is necessary to at least keep the current dispositions of the Act when it comes to statutory damages. By the way, we fully expect that this specific point is one of those that will be raised by our prospective partners in the Trans-Pacific-Partnerships negotiations, as Professor Geist said in one of his blogs this week.

The third amendment we propose is to shorten from five to three years the delay under which the Copyright Act will be revisited. Some cultural sectors already feel the effects of C-11 even before it becomes law, because of the widespread understanding that it will caution the notion that everything on the Internet is free. We intend to come back to Parliamentarians with evidence of the economic impacts of this Bill to ask for the speedy correction of its worst aspects.

I thank you for your attention and will respond as best I can to any questions you may have.