



## **ACTRA's Advocacy for Copyright Reform**

*Bill C-61 must be fair to artists*

- **ACTRA's objectives for copyright reform are to ensure performers and other artists are fairly paid for their work and that they have rights to protect the integrity of their work and their image**
- **Bill C-61 is an essential step towards implementing the WIPO Performances and Phonograms Treaty (WPPT) to bring Canada's law into line with international standards established for the digital world**
- **Bill C-61 gives performers important new rights, although these rights only apply to aural works, such as sound recordings**
- **Bill C-61 is lopsided by legalizing format shifting without establishing an income stream for creators for the copies involved**

### **ACTRA's position on Bill C-61, Amendments to Canada's *Copyright Act***

- Following months of speculation, having actual draft language in Bill C-61 will focus the discussion about copyright reform.
- ACTRA welcomes the provision of new rights for aural performances, including moral rights (the right of attribution and to protect against distortion or association) and making available rights (the right to authorize the Internet release of their work).
- Bill C-61 appears to bring Canada's law into line with the World Intellectual Property Organization (WIPO) Internet Treaties: the WIPO Copyright Treaty and the WPPT, which ACTRA supports.
- Bill C-61 is lopsided in legalizing format shifting without putting in place an income stream for the creators of the works involved.
- Bill C-61 is light-handed with Internet Service Providers (ISPs), taking a 'notice and notice' approach to infringement instead of the more effective 'notice and takedown.'
- In addition to format shifting, ACTRA views Bill C-61 as consumer friendly with its nominal \$500 penalty cap for individual infringement. Stiffer penalties apply only for commercial infringement, circumventing digital locks and large-scale piracy.
- ACTRA will participate in the committee process and seek amendments to fix the bill. We will also be engaged in the separate review of the private copying regime, announced by Industry Minister when Bill C-61 was introduced.

### **Making Available Rights**

- Making available rights are the right to distribute the work where an individual member of the public can choose the time and place where they wish to listen to it, such as releasing a work through the Internet. Bill C-61 extends making available rights to performers and their performances, but only for aural works such as sound recordings which is consistent with the rights accorded performers in the WIPO Treaties. Under Bill C-61, performers are not entitled to payment for making the work available, and will need to negotiate payment for that right when the work is recorded.

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- ACTRA supports the introduction of making available rights for performers in sound recordings.
- Under Canada's existing *Copyright Act*, while the performer has the right to authorize the recording of their work, when a performance is recorded in a cinematographic work such as a film or television production, the performer automatically loses all of the economic rights provided in the law and this will include the new making available right.

### **Moral Rights**

Moral rights are the right for the performer to be identified with their performance, and the right to object to any distortion of the work, or the association of the work with any product, where such distortion of association would be prejudicial to the performer. In current law, performers do not have moral rights in their recorded performance. With Bill C-61, performers gain moral rights, but only in aural works such as sound recordings, which is consistent with the rights accorded performers in the WIPO Treaties. The new moral rights will only apply for works that are recorded after the law comes into force.

- ACTRA supports the introduction of moral rights for performers in aural works. ACTRA would like to see these rights extended to apply to future uses of existing recorded performances as well.

### **Technological Measures**

Technological protection measures, TPMs or TMs, are digital locks on CDs, DVDs, software and cellphones, for example. Bill C-61 makes it illegal for anyone to hack them. Including TMs in the proposed legislation doesn't obligate creators to use them. TMs provide the creator with a way to protect their work from misuse or piracy.

- ACTRA supports the legalization of TMs because doing so is part of our obligations under the WIPO Treaties and because creators need the option of TMs to protect their work. ACTRA also respects the right of creators to choose how to make their work available.

### **Format Shifting**

Bill C-61 permits consumers to make copies of materials such as books, newspapers, TV shows or music onto any device in any format, so long as they have legally obtained the work, make only one copy of the work on each device, and are only using the copy for private purposes.

- ACTRA has serious concerns about legalizing format shifting without putting in place an income stream for the creators of the works. In our view, this is a lopsided approach that needs fixing. The private copying regime, a system that authorizes copying in exchange for levies that compensate artists when their works are copied, is by far the most common approach to dealing with unauthorized copying and is widely accepted around the world.
- ACTRA Performers' Rights Society (PRS) collects and distributes royalties on behalf of performers and musical artists. Since March 2004, almost \$9 million has been paid out to assignees by ACTRA PRS as a result of existing private copying levies.
- Along with the Canadian Private Copying Collective (CPCC), ACTRA will be looking closely at the bill to see if it jeopardizes existing levies. ACTRA will pursue amendments to address the format shifting imbalance and will support efforts by the CPCC to ensure that Canada's copying regime is supported and not undermined by any changes to Canadian copyright law.

### **Time Shifting**

Under current law, it's illegal to record a TV show for later viewing, known as time shifting. Bill C-61 would update Canada's copyright law and recognize time shifting as common practice. The copy must be for private use and may not be sold or rented.

## **Internet Service Providers (ISPs)**

Bill C-61 uses the lighter ‘notice and notice’ approach to infringement, where ISPs’ legal responsibility will be limited to forwarding a complaint of copyright infringement from the rightsholder and maintaining records about that client.

- In a 2004 case, the Supreme Court of Canada concluded that a more effective approach is the ‘notice and takedown’ system that has been adopted in Europe and the U.S.

## **Penalties for infringement**

Bill C-61 makes a distinction between those who violate copyright for private use and those who do so for larger-scale commercial purposes. Individual penalties are capped at \$500, while those who download works for commercial purposes or upload material including to P2P sites, or who hack digital locks, could be fined up to \$20,000 per work.

## **Photographers**

Bill C-61 provides important new rights to photographers. Under the current law, the owner of a photograph is assumed to be the person who commissioned the work. Under Bill C-61, the photographer becomes the first author of the work, unless there is an agreement to the contrary.

## **Too many exceptions**

Bill C-61 includes many exceptions that expand the permission that libraries and schools have to access and use copyright material for research and private study. This includes a broad right to use material available on the Internet. Some payment streams are contemplated, though. For a teacher to distribute a digital copy of a work as part of course materials, the school must pay royalties through a licensing agreement. Including this within Bill C-61 is support for the educational licensing system and is an argument for incorporating an equivalent system for format shifting.

- However, teachers may use copyright materials in the classroom or for remote lessons, and librarians will be able to make a digital copy of a work without payment. The source of the work and the author or performer must be mentioned.

## **What’s next for Bill C-61?**

Bill C-61 will be referred to the Industry Committee in the fall 2008. The committee is likely to hold hearings into the bill, which will provide an opportunity for ACTRA and other creator organizations to provide feedback and propose amendments.

## **Links**

Creators’ Copyright Coalition [www.creatorscopyright.ca](http://www.creatorscopyright.ca)

Canadian Conference of the Arts [www.ccartarts.ca](http://www.ccartarts.ca)

Bill C-61 <http://www2.parl.gc.ca/HousePublications/Publication.aspx?Docid=3570473&file=4>

ACTRA’s myths and truths [www.actra.ca/actra/control/feature30](http://www.actra.ca/actra/control/feature30)

## **ADDITIONAL BACKGROUND ON COPYRIGHT**

### **Compensating artists for their work supports our economy**

Arts and culture account for 740,000 jobs in Canada, and \$40 billion of our GDP. Culture is more than big business – it gives us our identity and sense of place in Canada and adds to the richness of our lives. Artists make a significant contribution to our culture, yet though they are highly educated, they are among the lowest-paid workers in our economy. Strong copyright laws are important protections for artists, tools for guarding the integrity of artists’ work and ensuring that they are fairly compensated for it. Updating Canada’s copyright law must take into account the contributions that artists make to our cultural fabric by enhancing rights for performers and other artists and not just protecting large business interests.

ACTRA represents 21,000 professional performers across Canada. In addition, ACTRA works on behalf of thousands of singers and musicians through the ACTRA Performers’ Rights Society, Sound Recording Division, which collects and distributes royalties from the public performance of musical recordings.

### **Technology brings new challenges and opportunities**

Performers' work is part of many audiovisual products including television, film and increasingly, digital media. Technology creates both opportunities and challenges for performers – ways to earn revenue from performances coupled with the increased risk that a work could be altered without authorization. Performers require legal protection beyond just their contracts to maintain the integrity of their work and be paid fairly for it.

ACTRA is a member of the Creators' Copyright Coalition and shares in the following principles:

- All artistic work, innovation, and cultural expression, begins with a creator, an artist.
- Creators, artists are independent entrepreneurs who assume significant financial risks in their business.
- These risks relate to the necessity for creators to be associated with the economic life of their creations.
- The economic success of a work depends on its being circulated, broadcast, and distributed as widely and broadly as possible.
- Compensation permits authors and performers not only to earn a living, but also to reinvest in the creation of new works.
- A multiplicity of creative work and expression enriches the community.
- The economy of a lively, strong, innovative, diversified and dynamic national culture rests on a *Copyright Act* that recognizes the importance of authors and performers, protects their production and privileges creation.

### **Artists deserve choice**

ACTRA recognizes that many artists are choosing to give away their work for free on the Internet and looking to earn a living through live performance or merchandise sales. Updating Canada's *Copyright Act* would not interfere in any way with how an artist chooses to make their work available. Strong copyright law guards against unauthorized use or misuse of an artist's work.

### **The WIPO Treaties**

The World Intellectual Property Organization adopted two treaties in 1996. Canada signed on to both the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT) in 1997 but has yet to implement either treaty by updating Canadian law, although many of our trading partners have implemented the treaties. The United States is a member of WIPO as are United Kingdom, Germany, France, Australia and 56 other countries. Bill C-61 would appear to make Canada able to comply with the WIPO Treaties.

WCT introduced a new economic right, the 'right of making available,' and made it an offence to tamper with technological measures that prevent copying. WPPT included the 'right of making available' and also includes technological protection measures. ACTRA supports both the WIPO Treaties through the International Federation of Actors (FIA).

WCT and WPPT protect authors, sound recording makers and performers of audio works, but missing from both these treaties are protections for performers in audiovisual performances such as film, television and digital media.

### **WIPO Audiovisual Performances Treaty**

In 2000, a WIPO Audiovisual Performances Treaty was nearly concluded. Since then, WIPO rounds have focused on a broadcaster treaty, leaving performers behind yet again. The broadcaster treaty has hit its own stumbling blocks. As the WIPO Audiovisual Performances Treaty was so close to conclusion, FIA is advocating that it proceed at WIPO ahead of the broadcaster treaty. Performers require a full right to negotiate reproduction and rights to guard against third-party use of their work without authorization.