September 15, 2003

SUMMARY OF SUBMISSIONS OF THE WRITERS' UNION OF CANADA, LEAGUE OF CANADIAN POETS, PLAYWRIGHTS GUILD OF CANADA AND PERIODICAL WRITERS ASSOCIATION OF CANADA IN RESPONSE TO THE REQUEST BY THE HOUSE OF COMMONS STANDING COMMITTEE ON CANADIAN HERITAGE WITH RESPECT TO ITS STATUTORY REVIEW OF THE COPYRIGHT ACT (SECTION 92 REVIEW)

The Writers' Union of Canada (TWUC), the League of Canadian Poets (LCP), the Playwrights Guild of Canada (PGC), and the Periodical Writers Association of Canada (PWAC) together represent approximately 3000 professional writers, who live and work in all parts of Canada. TWUC and LCP provide services to writers of published fiction, non-fiction and poetry. The LCP also represents performance poets who pursue the oral poetry tradition. PGC, formerly the Playwrights Union of Canada, provides services to playwrights whose plays have been produced by professional theatres and, as a collective society, licenses plays for amateur production. PWAC represents writers who contribute to magazines, newspapers and other periodicals. A great many of our members have published in books and periodicals in traditional print form, but they also write for other media including CDs, on-line publications and other new media. Our four organizations are founding members of The Canadian Copyright Licensing Agency ("Access Copyright"), a collective society established in 1988 to represent Canadian and foreign writers and other rightsholders with respect to reprographic, digital and other copying of their works.

Most writers find it difficult or impossible to earn a living only from their writing and, to survive economically, must have additional sources of income. The average net annual income of freelance book and periodical writers in Canada from their professional activities is in the neighbourhood of $12,000.

Our survival as freelance professionals depends on protection of our copyright works and we consider it imperative for Canada to modernize its copyright legislation to address the domestic and international developments that have taken place in recent years.

• Although digital technology has presented us with new opportunities to disseminate our works, our digitized works are more vulnerable to infringements of both our moral rights (through unauthorized modification and loss of authorship attribution) and our economic rights (through unauthorized reproduction, even republication). We have welcomed the revolution brought by digital communication but so far it has done little to improve our economic status. Although Canada played a major role in 1996 at the WIPO Diplomatic Conference which concluded the WIPO Copyright Treaty, which is intended to establish minimum standards for copyright protection of authors' works in the digital environment, and although this treaty was signed by Canada in 1997, Canada has subsequently lagged behind many other countries in its implementation and has not yet been able to ratify it.

• Canada has joined the World Trade Organization and is bound by the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs) governing copyright, including an enforcement mechanism to improve compliance with copyright, but deliberately and unfortunately omitting moral rights from the copyright obligations with which its members must comply.

• Canada has not yet followed the lead of United States and the European Union in extending copyright protection of authors' works from 50 to 70 years following the author's death.

• Educators, themselves squeezed for adequate public funding, press for further free uses of our material.

• Non-profit public libraries have become quasi-commercial suppliers of copyright material without any obligation to pay us royalties for much of our material.

Without copyright laws that deal effectively with these developments, our economic condition will not improve and may decline further. Writers' incomes have changed little since 1979.

While Canadian copyright laws are being adapted to the global digital environment and domestic changes, we must remain conscious of issues of Canadian identity, cultural diversity, and, because writers are users as well as creators of copyright, the potential draining of the public domain. We need fair and reasonable access to material that is owned by others or that may "belong" to all Canadians and we are committed to making our own works accessible. At the same time Government and others should not lose sight of the fact that our very survival as individual professionals depends on authors' rights being fully acknowledged and respected by others.

We are very conscious as writers of a power imbalance between ourselves and publishers or other producers. We note here again the exclusion of any moral rights obligation from the TRIPs agreement, which otherwise incorporates the substantive provisions of the Berne Convention, and we observe that producers often ask (in effect, require) creators to waive their moral rights. This imbalance has become greater in recent years, as many writers are forced to give up any expectation of reasonable remuneration from the digital exploitation of their works in order to maintain their traditional sources of income from licences for print publication. It is our observation that as opportunities are developing, including new rights which can be exploited both by individual authors and their collective societies, the assumption is often that these new rights should be transferred to and administered by producers. This may be appropriate where willing creators are able to negotiate a fair return for these new rights, but many producers, most notably newspaper publishers, are claiming or demanding these rights without offering fair financial arrangements even before it has become clear what "normal exploitation" may be in a digital world.

We are looking for changes in the *Copyright Act* that will address these issues and are consequently pleased that the House of Commons Standing Committee on Canadian Heritage will commence its statutory review of the *Copyright Act* mandated by Section 92 of the *Copyright Act*. This review follows the Government's paper *A Framework for Copyright Reform* released in June 2001, to which we previously responded, and its subsequent *Supporting Culture and Innovation* intended as a report on the provisions and operations of the *Copyright Act.* Much of what we said in our October 2001 responses to *A Framework for Copyright Reform* and the *Consultation Paper on Digital Issues* is included in this summary of our submissions.

ACCESS ISSUES

We provide the "cultural content" that is needed to feed the infrastructure of the Information Highway - but are we to become mere "content providers"? The purpose of copyright is to establish and protect ownership of intellectual property. We therefore strongly disagree with the notion, underlying much of the discussion in both *A Framework for Copyright Reform* and *Supporting Culture and Innovation*, that the real purpose of copyright is to facilitate public access to the works we create and that copyright is only a legislated reward for disseminating knowledge and cultural content through creation of works. This is a far cry from copyright based on the theory of ownership of intellectual property, whether "copyright" or "droit d'auteur" is conceptualized as a right conferred by the state (our British heritage) or as a personal right tied to the creator (our French heritage). We cannot tolerate further erosion of our rights to control our creations, whether because of new technology, pressure from users for new exceptions from copyright infringement, or government

policy that ignores or misjudges the financial impact of certain legislative measures on us. It is particularly disturbing to us that educators ask for more and broader exceptions, while there is little or no copyright education in school curricula.

Collective Rights Management

New opportunities for creators to exploit their rights have triggered calls for new exceptions by users, although almost all creators are willing to have their works licensed by collective societies. Collective societies are able to provide users with quick and inexpensive access to a world repertoire comprising millions of works. To quote from *Supporting Culture and Innovation*:

> *Collectives originated in order to streamline the licensing of copyright material when the individual management of rights for specific uses would be unmanageably complex, costly and time-consuming.....*(page 6)
>
> *The Government of Canada has been encouraging the collective management of rights as a means to ensure both proper remuneration for rights holders and efficient access to copyright material. By and large, collective management has worked well, but many stakeholders seek legislative reform to enhance access....* (page 24)

Users continue to demand better access, and when they ask for better "access", they usually mean more exceptions and free access. We believe that better collective licensing, not further exceptions, is crucial to good access to copyright works and that this will require new legislative provisions that will reduce the risks of copyright infringement for collective societies and their licensees when they are acting responsibly. There is already an example of such a mechanism in Sections 38.2 and 38.1(6)(b) of the *Copyright Act,* which limit the damages available to a copyright owner in proceedings against an educational institution, library, archive or museum to the amount of money that would have been payable as a royalty to that copyright owner by a collective society with which that institution has a reprography licence, and remove altogether the possibility of obtaining statutory damages. This is an important provision which acts as a deterrent to legal action against licensees of a collective society. Access Copyright grants comprehensive or "blanket" licences that include all or most of its repertoire and provides its licensed users with a list of rightsholders whose works are not part of the repertoire, together with an indemnity in case of an infringement action which might result because a work copied by a user was not actually in the repertoire.

Our preferred model for a mechanism to reduce infringement risks, already being studied by the Government, is a version of the extended collective statutory licence in use in Nordic copyright legislation. Once a significant number of rightsholders in a particular sector have signed up with a collective society for particular uses, it is entitled to grant licences that cover the works of all rightsholders in that sector for those uses. Rightsholders who do not wish a collective society to license their works have the right to opt out of the scheme. As mentioned above, Access Copyright already maintains a list of exclusions. We submit that the *Copyright Act* should be amended to provide for extended collective licensing. This will particularly facilitate the growth of digital licensing for the benefit of both creators and those who wish to use our works.

Exceptions

Already writers have lost out because of legislative changes even where appropriate mechanisms for collective administration were already in place. In the 1997 batch of reforms, new exceptions were legis-

lated for performing dramatic works in schools and other educational institutions (Section 29.5) and making single copies of older periodical articles in libraries, museums and archives (Section 30.2(2)), depriving playwrights and writers of articles of significant income that had only recently become easily collectible through existing collective societies - in effect, an expropriation of their intellectual property. We continue to believe that these particular exceptions put Canada in violation of both the Berne Convention and the more recent TRIPs agreement. Additionally, an exception was introduced in 1997 for the visually impaired, although Access Copyright was then licensing material for the handicapped for nominal fees.

Article 13 of the TRIPs agreement requires members to "confine limitations or exceptions to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the rightsholder". This echoes Section 9(2) of the Berne Convention, although the TRIPs language was significantly broadened to include corporate owners of copyright as well as authors.

We are opposed to special exceptions and see no reason for exceptions in the digital environment where material is available through a collective society.

Library and archive uses. With nary a mention of collective licensing, *Supporting Culture and Innovation* states that existing exceptions may not address the activities of non-profit libraries, museums and archives in the digital environment and that existing exceptions should be examined to consider whether they need to be adapted to the new technology and digital environment. We were already devastated in 1997 by the enactment of the single periodical exception - permitting an article over one year old, if available in every library in Canada that is open to the public or to researchers, to be copied by millions of users, and if not available in a particular library, to be provided to that library by any other library. Under the existing law the library patron cannot receive a digital copy, but these institutions now seek the right to deliver digital copies. The institution may charge for its services although charges should not exceed cost recovery, and we do not think that individual library patrons would resent a few pennies of the copying charge going to a collective society to compensate the creators of copyright material. We submit that the single copy exception in Section 30.2(2) and related the interlibrary "loan" provision in Section 30.2(5) permitting digital transmission of the article to another library should be revisited and eliminated. These activities would be covered under licence from Access Copyright, which has licences with almost every public and university and college library in Canada outside Quebec, where libraries are licensed by Société québécoise de gestion collective des droits de reproduction (COPIBEC). We further submit that there is no need to extend exceptions for archival institutions to for-profit institutions.

Educational uses. We object to any exceptions that would remove from creators our ability to control and benefit financially from the use of our works in distance education or other forms of on-line learning including the Internet. Educators have proposed an exception for material that is "freely available" on the Internet. Material that is "freely available" includes a lot of copyright material for which rightsholders expect to receive remuneration for uses beyond browsing and printing. Access Copyright is already licensing material to be distributed on a secure university network or intranet at reasonable cost and is poised to grant Internet licences if amendments to the *Copyright Act* limit the liability of both the collective society and its licensed users in those instances where a work apparently included in the licence in fact is not actually included. We further submit that Section 29.5 permitting live performances in public in schools should be revisited and eliminated in light of the availability of collective licensing from PGC and Association québécoises des auteurs dramatiques (AQAD), its sister organization in Quebec.

Judicial uses. Law societies are asking for an exception that would, as described in *Supporting Culture and Innovation*, "satisfy the interests of the justice system". We consider this demand outrageous, given the fees

that lawyers charge clients in the pursuit of justice and the incidental charges lawyers usually pass along to their clients for photocopying or that law libraries charge for document delivery and for the use of self-serve photocopiers on their premises.
Handicapped uses. We consider the exception for the visually impaired to be unnecessary as it stands and oppose its expansion because there are collective licensing solutions which would make material available at minimal cost. Other suppliers who make this service to the handicapped possible are paid - why not also the writers unless they individually volunteer?

Technology-neutral legislation? In its discussion of digital issues in *A Framework for Copyright Reform* the Government states that copyright legislation should be technologically neutral, to the extent possible. This may have the appearance of fairness, but in fact it is a dangerous principle. It has been said that rights often adapt themselves, while exceptions need to be adapted. For example, the reproduction right under the *Copyright Act* has proved sufficient to cover copying by means ranging from the pen to the typewriter to the photocopier to the computer. But it is critical to look in each instance at the potential impact that an exception in any particular media may have on the creator of the copyright material because of the technology involved; for example, an exception with respect to an on-line communication of a copyright work has the potential to do or cause more damage or loss to its author than an exception in the print-on-paper world.

Contractual limits on exceptions. Users are demanding that contracts between users and rightsholders or their collectives not be permitted to limit exceptions. We submit that it should continue to be possible for licensing agreements to override exceptions, but not to prevent fair dealing with licensed material if legally accessed.

Fair dealing

We oppose exceptions for special interests but we do believe that it is essential to maintain that aspect of the present “fair dealing” defence which permits quotations and use of extracts for purposes of criticism or review and newspaper summary - even where such use is for communication or publication on the Internet. In other words, we think Sections 29.1 and 29.2 of the *Copyright Act* should be applicable in a digital environment, but not Section 29, which allows “fair dealing” with respect to research and private study. It is our view that we and others should pay rightsholders when we make copies from books and periodicals for research and private study.

Supporting Culture and Innovation identifies the issue of whether or not to extend the categories of fair dealing beyond the current purposes of research or private study, criticism or review or news reporting. As users as well as creators of copyright, we see no need for this and will strongly oppose any such proposal. Licences are usually available, often through collective societies.

Although we will vigorously support the existing defence of fair dealing, we will also vigorously oppose any proposal to allow any fair dealing that does not require acknowledgment of the authorship source, notwithstanding that some may regard this a “cumbersome” condition.

Public domain

While we wish to have strong protection for our copyright work and no new exceptions, we also believe in a strong “public domain”, a term we use here in its broadest sense, not just to refer to works in which there is no copyright. We do not wish to see an end to the “fair dealing” defence in the digital environment. We are

committed to making our works accessible and do not wish to “lock them up”, as some users fear. Nor do we wish to see a “lock-up” on the works of others, as we are frequent users of other authors’ works ourselves. Where such materials are obtained under licence from collective societies, we know that the royalties that we and others pay will be reasonable or challengeable because of the Copyright Board’s supervision over filing or rate-setting or its role as an arbitrator in the event of a dispute between a collective society and users.

Unlocatable copyright owners

We submit that section 77 of the Copyright Act should be extended to cover unpublished works where the owner cannot be located. While we respect the right of other writers to first publish their own works, it is our view that licences should be available, under the purview of the Copyright Board, for older, unpublished materials if exhaustive but unsuccessful efforts have been made to find the author or his or her heirs.

CROWN COPYRIGHT

It is our position that the Government should be bound by copyright and not claim copyright on the basis of Crown prerogative. There is, of course, some government-owned copyright material that must continue to be protected, for example, materials produced by and for government-owned theatres, galleries, museums and broadcasters both by freelancers and employed writers. The *Copyright Act* should clearly state what is and is not protected and how long Crown copyright lasts. Much government-owned material, both federal and provincial, including judicial proceedings and official reports, should not be protected by copyright, although there should be authorship attribution and integrity requirements. Canadian taxpayers have already paid for these materials and should be able to access them without paying the high fees now required, for example, by Statistics Canada. (We refer below, in our discussion of Database Protection, to our concern that in future more and more federal and provincial government material may only be available through private databases and at higher cost.)

TERM OF COPYRIGHT

We consider it important to extend the term of copyright from 50 to 70 years following the death of the creator to harmonize our copyright law with that of the United States and the European Union. This will give the works of Canadian writers similar protection to works first published in countries with the 70-year rule. As things now are, it is not only Canadian authors but also Canadian publishers who lose out - and not just because of the shorter protection in Canada. It is smart for Canadian authors to publish first outside Canada in order to ensure themselves and their families of the longer period of protection elsewhere, not always accorded to authors first publishing in countries that protect their works for a shorter period.

TRANSITIONAL PERIOD FOR UNPUBLISHED WORKS

We support the provisions of Bill C-36 restoring some protection to the unpublished works of authors who died in the 1930’s and 1940’s, as we consider it unfair that the period of protection - previously perpetual - for the unpublished works of many deceased writers will abruptly and unfairly be cut off at the end of 2004. The existing legislation, arbitrarily enacted in 1997 without consultation with rightsholders, gave authors’ heirs too little time to endeavour to arrange and benefit from publication of previously unpublished manuscripts, sometimes sensitive letters and diaries where persons mentioned or affected may be still alive or recently deceased. The 1997 change also affects a great many dramatic works and the heirs of playwrights, as plays

are frequently not published. It should not be forgotten that, more often than not, the main assets of an author's estate are his or her works.

DIGITAL ISSUES

While the framework rules for the digital environment should be clear and allow easy, transparent access and use, copyright owners must retain effective controls over the use of their material and have effective remedies when their material is misused. The proposals for copyright reform should promote a vibrant and competitive electronic commerce in Canada, but this must be achieved without sacrificing the rights and legitimate expectations of authors.

Moral rights

Moral rights are fundamental to an author's control of the integrity of his or her work and continuing recognition of authorship. We unsuccessfully opposed an amendment in 1988 that explicitly encourages waiver of moral rights and that does not require moral rights waivers to be in writing. This remains our strong concern in both traditional and digital environments, but digitization has revolutionized communications and heightened our concern. Where works are digitized, there is an enormous potential for distortion, which would infringe the author's right to the integrity of a work, or for dissemination without the author's name, which would infringe the author's attribution right. These moral rights are critical, given the increased possibility of a runaway work without authorship credit or with text garbled or altered so as to change meanings.
We submit that the current provisions in the *Copyright Act* on moral rights are insufficient to provide adequate protection in the digital environment, or to satisfy the Berne Convention and WIPO Copyright Treaty. Article 3 of this treaty requires countries to apply Article 6(bis)of the Berne Convention on moral rights. Yet neither *Supporting Culture and Innovation* nor the Government consulting document on Digital Issues deals with moral rights as a digital issue, despite creators' demands for better moral rights protection in the digital environment.

Section 28.2 of the *Copyright Act* provides that the author's integrity right in a work is not infringed without evidence that any modification, distortion or mutilation has prejudiced the honour or reputation of the author. It amazes us that a distortion or mutilation is not deemed to constitute such prejudice even in the print-on-paper world, and digitization increases the likelihood of distortion or mutilation many-fold. We submit that an author should not have to prove prejudice to his or her honour where a work is distorted or mutilated. Nor should this be necessary in the case of other modifications to a work no longer controlled by its author, but there should be a requirement that any modification be "reasonable".

Making Available Right

Article 8 of the WIPO Copyright Treaty sets out an exclusive making available right - a key principle of this international agreement. The exclusive right of authors to make their works available in order to be accessed on-demand by members of the public (i.e. at places and times they individually choose)must be absolutely clear. The Government regards the current law as adequate with respect to authors' works, although it recognizes that the companion WIPO Treaty on Performances and Phonograms requires it to legislate such a right for performer's performances and phonograms. We, however, have grave concerns about the Government's disinclination to provide a similar, explicit making available right for authors.

We urge that a right of making available be clearly provided for all rightsholders including authors. This would be in line with the Government's desire for clarity, would facilitate licensing, and would reduce the

likelihood of misunderstandings between rightsholders and users, deliberate misuse by users of copyright works, or judicial narrowing of authors' rights at some later point. These risks are greatly increased by the inevitability of comparison between authors' rights and the clearly expressed making available right for performers and makers of sound recordings. To spell out a specific, exclusive right of making available for authors would help to achieve the Government's goal of making copyright law easy for all to understand.

Legal Protection of Technological Measures

Legal protection of technological measures taken to protect copyright is also a key principle of the WIPO Copyright Treaty. We agree with the comment of Government's experts engaged in 1997-98 to produce discussion papers on its implementation:

> The Canadian Act is of very limited assistance to address infringements associated to the tampering of technological protections measures....In order to comply fully with Article 11 of the [Copyright] Treaty, Canada will have to adopt a specific provision.

Canada needs laws that will both deter conduct and prohibit devices that have the purpose of circumventing or defeating encryption and other copyright protection measures put in place to protect copyright works from misuse. Once rightsholders lose control of their material on-line, its value plummets. On the other hand, legal protection of technological measures will encourage rightsholders to make their works available because they will be confident that their works are reasonably secure from infringement.

Technological measures may be minimal - in many instances, simply a signpost that the material is not available without permission rather than "a locked drawer". Once the drawer is opened with permission, it is our view that the contents of the drawer should be subject to "fair dealing" and other legitimate uses. Other technological measures may be very sophisticated, but even the strongest technological measures will be vulnerable to circumvention. Whether measures are minimal or strong, legislation must send a strong message to hackers and others who might attempt to remove or otherwise defeat technological protection of copyright works.

It seems to us specious to suggest, as educators have, that it should be permissible to circumvent technological measures to accomplish acts that are non-infringing or to copy public domain material. Such measures will be mostly used to protect copyright material. If it should happen that copyright material is accessed but can only be read, and not copied again because of further copy-protection, we are back to the situation where copying might require the scanning of a print-out or even re-keyboarding by would-be users. This is not a legitimate complaint, as a licensor has no obligation to digitize material for the benefit of a licensee other than for the purposes covered by the licence. There is an irony in this complaint, as the "fair dealing" defence originated when there were no photocopiers or computers and there were practical limits on copying because the material reproduced had to be laboriously handwritten.

Legal Protection of Rights Management Information

Legal protection of rights management information embedded in copyright material is a key principle of the WIPO Copyright Treaty and not currently covered by Canadian copyright law. Protection of rights management information is critical to our ability to obtain compensation for use of our copyright material in digital environments. Primarily for the use of the copyright owner, it should not be tampered with by others with impunity in any circumstances.

We support the initiative of Access Copyright in its participation in the work of the International Standardization Organization which will lead to an identifier for text. Implementation of the new International Standard Textual Work Code (ISTC) together with the Digital Object Identifier (DOI), or of a comparable code, will facilitate both the management of copyright material by rightsholders and their collective societies and its access by users.

Liability of Network Intermediaries, such as Internet Service Providers

An ISP cannot carry out its primary functions without creating "reproductions" that fall within the exclusive rights of the copyright owner set out in section 3 of the *Copyright Act*, but it is not a necessary conclusion that an ISP should therefore be released from liability for such reproductions. We acknowledge that notice and take-down systems could benefit both ISPs and rightsholders, but extremely careful consideration must be given to whether or to what exent this should free an ISP from liability and damages, especially because providers of infringing content are frequently unreachable or reachable only at prohibitive cost.

A system which completely absolves ISPs from liability will drastically reduce the incentive of ISPs to negotiate licences with collective societies for digital uses of copyright works in their repertoires. We would support a scheme which would restrict ISP liability for reproduction or for authorization of communication to the public under certain conditions, including being licensed by a collective society or subject to a Copyright Board-approved tariff with respect to the type of work involved (cf. Section 30.3 of the *Copyright Act* on exempting educational institutions etc. from liability for infringing copying by students, instructors and staff on self-serve photocopying machines). To work efficiently, a scheme for ISPs would have to include a mechanism to reduce the risks of the collective society, the ISP and its clients, such as the extended collected licence or limited damages (see above in the discussion of Collective Rights Management). This would allow a collective society to grant licences to ISPs for activities such as caching, browsing, printing and, subject to appropriate conditions, further communication of copyright material.

Jurisdiction

We urge clarification in the law that Canadian courts are able to take jurisdiction with respect to copyright infringement where the infringing material can be accessed in Canada regardless of the location of the web site displaying the material or of a contract made in or for use in territories outside Canada. There is no need to leave this to the uncertainties of the court system.

TRADITIONAL KNOWLEDGE

We believe that aboriginal and First Nations creators working in traditional forms and styles should have the benefit of law to enforce respect for the protocols of their cultures. The challenge for copyright law will be to find ways to protect material in which there is a communal interest and for which there is no identifiable individual creator.

DATABASE PROTECTION

Our *Copyright Act* already protects databases as "compilations". We support protection of databases and would support legislative clarification to the *Copyright Act* to achieve greater protection of what some courts now call "non-original databases" because of their discomfort in recent years when asked to protect databases assembled largely through "sweat of the brow". This compiled information may be all or mostly

public domain material and the requisite "originality" may not be evident; for example, a telephone directory is at the low end of the spectrum of "creativity" or off the creativity chart altogether. However, even such databases take effort and expense to make and maintain and, regardless of the degree of creativity, a database "originates" from someone. We do not think it fair that such person or other entity should be without any protection from wholesale copying.

At the same time we, as users of databases, are concerned that material once freely available, often from government sources, may eventually only be available in commercial databases and could become inaccessible because of excessive cost. Once legally accessed, a user should not be prevented from any dealing with public domain material extracted from a database or from "fair dealing" with any copyright material.

CONCLUSION

Our society and ways of carrying out certain activities have changed since 1997 when the last amendments were made to the *Copyright Act.* We can see a little more clearly the impact of digitization but no one has a crystal ball to see where it or further technological developments will take us. There is no doubt that digitization is having a profound effect - negative as well as positive - on the use of the material which we as writers produce, particularly in the spheres of education, government and business. It affects both our economic rights and our moral rights.

We urge the Government to proceed quickly with implementation of the WIPO Copyright Treaty. Until the WIPO Treaties are implemented in Canadian law, we believe that it will not be clear to Canadians that copyright laws apply to the use of copyright material on-line as much as to its use in pre-digital environments. An explicit "making available right" will encourage writers to allow their material to be accessed electronically in a variety of forms, including electronic books, on-line magazines, databases or web sites. Effective remedies are needed to protect technological measures and rights management information designed to deter infringement of copyright material and to manage it. The WIPO Copyright Treaty incorporates the moral rights obligations from the Berne Convention. We go further by submitting that an author should not be required to prove prejudice to his or her honour or reputation in a moral rights infringement action if the change to a work amounts to distortion or mutilation and that other modifications to a work should be reasonable.

We submit that where collective licensing is available there is no need for exceptions or, alternatively, where exceptions exist, they should only be applicable with respect to those certain types of copyright material not in the repertoire of a collective society. Collective administration of literary and dramatic works is efficient and cost-effective where individual licensing is impracticable for users and rightsholders. For it to work well in both digital and traditional environments, we need mechanisms that will reduce the liability of participants - both collective societies and their licensed users. Our preferred choice is adoption of the extended collective licence which is used in the Nordic countries. An alternative would be extension and refinement of the limited damages regime which is used in the United Kingdom and which is already in place for educational and certain other non-profit institutions under our own *Copyright Act*.

We appreciate the opportunity for representatives of all of our organizations to appear before the Committee to discuss our shared and individual concerns and, as may be appropriate in the course of your Section 92 review, to make supplementary submissions on particular issues.

RESPECTFULLY SUBMITTED TO THE STANDING COMMITTEE ON CANADIAN HERITAGE BY:

THE WRITERS' UNION OF CANADA
LEAGUE OF CANADIAN POETS
PLAYWRIGHTS GUILD OF CANADA
PERIODICAL WRITERS ASSOCIATION OF CANADA

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