



# **Consultation on a Modern Copyright Framework for Artificial Intelligence and the Internet of Things**

**Submission from The Writers' Union of Canada**

**September 16, 2021**

## **Recommendation**

The Writers' Union of Canada (TWUC) recommends that Government proceed with the most pressing and overdue revisions to the Copyright Act to make immediate repair to the cultural marketplace. Consideration of and debate over Artificial Intelligence (AI) and the Internet of Things (IoT) at this point serve only as distractions from that necessary work.

Creative content uses required by AI and the IoT must be negotiated within a market for licensing rather than through a damaging new exception to copyright.

## **The Writers' Union of Canada**

Founded in 1973, TWUC is the national organization representing and advocating for professionally published writers. It is dedicated to enhancing writers' working conditions; advocating for their rights; providing professional development tools and opportunities; promoting authors and their writing; and enabling writers to network and share information with their colleagues. Union membership has steadily expanded with the growth of the Canadian writing and publishing sector. Beginning with just 43 members, TWUC now represents 2,300 cultural professionals. Since 2014, TWUC has chaired the International Authors Forum (IAF), representing over 750,000 authors worldwide.

TWUC has engaged multiple times in government inquiry affecting copyright law. It took part in the consultative process preceding amendment of the Copyright Act in 1988. That amendment authorized the collective licensing of copyright works in Canada by collectives like Access Copyright. TWUC was also an active advocate on behalf of writers prior to the 1997 amendment of the Copyright Act. It has previously made representations to the federal government on issues of copyright reform, intervened in and supported many court cases related to the protection of creator rights, and appeared before parliamentary committees struck to review amendments to the Copyright Act, including submission prior to the 2012 amendments and recent presentations to the Statutory Review of the Copyright Act<sup>i</sup>. In its role with the IAF, TWUC monitors meetings of the Standing Committee on Copyright and Related Rights (SCCRR) at the World Intellectual Property Organization (WIPO) in Geneva.

Earlier this year, TWUC submitted recommendations to the Consultation on How to Implement an Extended General Term of Copyright Protection in Canada, and the Consultation on a Modern Copyright Framework for Online Intermediaries.

## **No New Exceptions are Necessary**

TWUC is concerned that with each new technologically driven “use” of creative content comes a call for a new exception to the exclusive rights of those who create that content. This exception-focus throws the traditional purpose of copyright completely out of balance and privileges the

desires of industrial users over the rights of creators. The end-result is what has been described as a Copyright Act “like a pasta strainer”; legislation so full of exceptions and loopholes that there remains simply no motivation on the part of users to seek permission or pay for the content they use. The kneejerk reflex to create ever greater exceptions is a market destroyer, as has been amply proven over the last decade by Canada’s ill-advised adoption of education as a fair dealing category. That change to the Act has done nothing to provide students or their instructors with more affordable access, but it has transferred hundreds of millions of dollars from the cultural sector to educational administrations.

The content uses requested by developers of artificial intelligence and the internet of things must be negotiated in the context of a respectful market for licensing. These are enormously powerful and wealthy corporate entities primarily driven by a profit motive (though they often hide their motivation behind claims of serving the public interest); they can and should be expected to operate in a licensing environment. Licensing is not a barrier to innovation, and the suggestion that Canada should adopt US-style fair use in our Act to advance innovation is painfully wrong-headed. Innovation does not mean free riding on the work of others, nor should it; yet it would under a fair use regime, as evidenced by the success of US tech giants in claiming fair use again and again while profiting relentlessly from work created by others. Canada must do better.

Licensing preserves the integrity of copyright by giving creators an element of control over how their works are used. Licensing also provides legal certainty to good faith users, and keeps disagreements at the bargaining table where they belong, and not in court.

## Conclusion

The Writers’ Union of Canada (TWUC) recommends that Government proceed with the most pressing and overdue revisions to the Copyright Act to make immediate repair to the cultural marketplace. Consideration of and debate over Artificial Intelligence (AI) and the Internet of Things (IoT) at this point serve only as distractions from that necessary work.

Creative content uses required by AI and the IoT must be negotiated within a market for licensing rather than through a damaging new exception to copyright.

As with our previous submissions to the Term Extension and Online Intermediaries consultations, TWUC is concerned that pressing issues pertaining to Canada’s Copyright Act must be immediately addressed.

Since 2012, because of ill-defined provisions inserted into the Act, Canada’s writing and publishing sector has suffered a loss of earned educational copying income in the hundreds of millions of dollars. The fact that large-scale, unpermitted educational copying is a problem for the cultural economy was recognized by both Standing Committees engaged with the recent Statutory Review of the Copyright Act. There are recommendations before Parliament for immediate repair.

TWUC once again urges government to act immediately on recommendations 18, 19, 20 and 21 from the CHPC *Shifting Paradigms* report<sup>ii</sup>, and to restore a working educational market for Canadian cultural work.

Finally, we refer you as well to the submissions for this consultation from the Canadian Copyright Institute (CCI) and Access Copyright (AC), as the Union shares their opinions and further analysis of the issues around AI and the IoT.

Respectfully submitted by,



Rhea Tregebov, Chair  
The Writers' Union of Canada

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<sup>i</sup> TWUC briefs to the [CHPC](#) and [INDU](#) Committees

<sup>ii</sup> [Shifting Paradigms](#), May 2019