

From: Bulos Qoqish <bulos.qoqish@gmail.com>

Sent: February 15, 2021 12:11 PM

To: copyrightconsultation/ consultationdroitdauteur (PCH) <copyright-consultation-droitdauteur@canada.ca>

Subject: Re: Parliamentary review of the Copyright Act

Errata :

Phrase should be "Challenges to business success on the part of small industry participants **are** also due to."

I regret the typo, which was caused due to revision.

Thanks

Marcus Shields

On Mon, Feb 15, 2021 at 12:07 PM Bulos Qoqish <bulos.qoqish@gmail.com> wrote:

To whom it may concern

The Parliament of Canada

(Standing Committee on Industry, Science and Technology and Standing Committee on Canadian Heritage)

I submit this response to the Committees' call for public response to the upcoming Parliamentary review of the Copyright Act, as described at the following URL :

<http://www.ic.gc.ca/eic/site/693.nsf/eng/00188.html>

I have prepared my response in the context of being a Canadian fiction novelist (see : [*The Angel Brings Fire* and *The Future Burns Bright*, on Amazon](#)) and of being the manager of a small, independent virtual publishing imprint ("Telostic Publishing"). I live and work out of Bancroft, Ontario.

While it is acknowledged that the scope of Parliament's review of the Copyright Act will incorporate many other topics, I will restrict my commentary here to only a few subjects. I hope that in doing so I will provide a different perspective to the members of the involved Committees. Necessarily, my observations are partially subjective, but they are defensible and valid in my opinion.

First, let me address the subject of "copyright", as it applies broadly to the entire publishing industry, but especially to independent Canadian authors. While some aspects of copyright law and related enforcement undoubtedly do benefit all originators of Canadian creative works (not only printed works, obviously, but also music, video and so on), from my vantage point it certainly appears that most of the benefit accrues to the larger players within the industry, e.g. "established publishers". These laws often seem to be written by, of and for the dominant market leaders (many of whom are often not even Canadian in terms of domicile... that is, Canadian copyright and cultural policy is being determined by large American corporations).

Indeed (except for consultations of this type), what is glaringly absent is a serious commitment to (a) identify all contributors to Canadian creative works (there are undoubtedly many, *many* more than are currently known to the government or relevant regulatory bodies) and (b) actively solicit their input into governmental and regulatory processes that may affect their success in the marketplace.

Instead, what seems to happen very often is that Parliament only hears from well-established and -funded trade organizations, whose business interests can and often do vary significantly from those of smaller participants in the industry. In my case, for example, I only found out about the consultation to which I am now responding, after seeing references to it on the blog of Prof. Michael Geist, which I occasionally visit. Surely there is some way for the Parliament of Canada to more conveniently and consistently contact and consult with independent creators of Canadian content?

Second, with respect to the protections provided by "copyright" generically, I would like to point out to the Committee(s) that having copyright protection applied to my own creative works (say) 70 years after I am dead, as opposed to 50 years after I am dead, is (to put it mildly), not a particularly relevant topic to me. (If and when, please consult with my as-yet-unborn great-great grandchildren as to their preferences.)

From the POV of an independent author, to the extent that there is any risk to the revenues that I (theoretically) deserve from the sale of my novels, this is more an issue of "pirate" channels of distribution, outside of the conventional publishing industry, that Canada's copyright review process does not even *pretend* to address. [Here is one good example](#). (I have appended two screen shots in evidence thereof, should the URL be unavailable.)

The only practical way for Canada to improve this situation would be engagement on a multi-national level, although I am reluctant to recommend this because of the very real possibility that any such initiative would be (as most in the past have been) hijacked by large, entrenched business interests, leading ultimately to an even worse and more unbalanced "copyright" regime than currently exists. In other words, the cure might very well end up looking worse than the disease.

Challenges to business success on the part of small industry participants is also due to many other factors, for example the little-understood fact that most of the available Internet-based publishers are based in the United States and that they apply U.S. domestic tax law (for example, having to file IRS tax forms, with a U.S. "Tax Identification Number", in order to be paid at all) to Canadian author accounts.

What about the platforms' complex and restrictive U.S.-based banking requirements that can make it next to impossible to be paid, if one doesn't have a U.S. bank account denominated in U.S. dollars? (In my own case, I have been fighting for months over one such issue where the publishing distributor is rejecting my banking information, and thus is holding payments for the sale of my novels.)

What about (for example) the practice of U.S.-based market leaders like Amazon, that (effectively) usurp "intellectual property rights" over books without an independent ISBN, that are self-published on the Amazon "KDP" platform?

What about these publishers' attempts to preclude independent authors from selling their books, on other publishers' systems or through other channels of distribution? (E.g., Amazon does not want you to publish your book with Apple; and Apple doesn't want you to publish it with Google. On and on we go.)

What about the fact that most of the larger players in the market, do not provide a Canada-based self-publishing portal, at all? (This forces independent authors to engage only with the U.S.-based portals, meaning in turn that all regulations and applicable laws, are exclusively American.)

What this means, all in all, is that enforcing "copyright" is often the *last* thing (not the first thing) that Canadian creative content producers worry about, when thinking "why am I not being paid for what I publish"?

Or, one might point out the fact of overwhelming market dominance on the part of a very few, largely American-domiciled corporations. For example, for an independent author, to be "de-platformed" by Amazon would likely put most authors out of business. The same would be true of someone making videos, to be "de-platformed" and / or "de-monetized" by YouTube, and these *ad hoc* sanctions are often imposed based on little or no plausible evidence, with only a perfunctory and one-sided appeal process (if, indeed, such a process exists at all). For example, has the committee ever investigated the fairness of YouTube's "Copyright Strike" system, or whether it conforms with applicable Canadian consumer rights or corporate concentration legislation?

In this context we should not lose sight of the fact that to the extent that the Canadian consumer digital content experience is (sort of) tolerable today, this is largely in spite of, rather than because of, the demands made by large multinational entertainment industry corporations, over time. In many cases this was only achieved because previous Canadian federal governments (partially) resisted the demands of the U.S. Ambassador acting as a proxy for the U.S. entertainment industry.

A good example of this is the fact that one can still download unencrypted digital music from iTunes, at a reasonable price. This situation, which is hugely to the benefit of independent musicians and consumers (and, not incidentally, to the benefit of Apple itself), was only achieved after bitter, prolonged confrontations between Apple and various U.S. music labels, who tried to force "copy-protected music" on their customers, at such a high price that it would have made it pointless to purchase the digital as opposed to the "silver CD disc" version of the same content.

The U.S. entertainment industry tried to push this blatantly self-serving and contrived distribution system, against the near-unanimous opposition of consumers who wanted to be able to play their .MP3s on any device in their possession. Consumers won out eventually, but the

battle could easily have gone the other way. And we are still fighting this struggle on other fronts, today. (Has anyone on the committee ever tried to transcode, e.g. "rip", a Blu-Ray disc that you purchased and own, to your home media player, for example?)

Many other examples of the same syndrome could be quoted here. What few consumer rights that we have today in terms of digital content access were won only after "David and Goliath" style struggles on the part of consumer groups against the far better-funded and -motivated lobbyists hired by large, mostly U.S.-based entertainment conglomerates. I implore the committee, and the government, to avoid backtracking (either intentional or unwitting) in this area.

I understand that the scope of the committees' inquiry may not include the subjects discussed above, but I wanted to mention them for the record, to illustrate the fact that "copyright" itself is little more than a marginal concern for many lower-tier Canadian authors and publishers. Certainly it is far less of a concern than other factors that the government seems strangely reluctant to investigate or effectively address.

In summary, I would like to state that what the Canadian "copyright reform" process needs most of all, is a large dose of citizen (that is, "consumer") input. Right now, the process seems dominated almost exclusively by the parochial interests of large, entrenched market players. While obviously these claims deserve a seat at the table, it is striking how little sustained input is sought for or provided by, other stakeholders. Surely a "liberal democracy" like Canada can do better and can help to set a higher standard for this type of process, than do other jurisdictions.

On behalf of both myself and numerous Canadian independent creative media creators and consumers, I urge the committee(s) to consider these issues and move forward with appropriate legislative and regulatory reforms in the future.

Sincerely and respectfully yours

Marcus Shields

Author of [*The Angel Brings Fire and The Future Burns Bright* novel series](#)

Owner, Telostic Publishing

18 Forest Hill Road

Bancroft, Ontario

K0L 1C0

(613)-332-0023