

May 29, 2002

Bruce Stockfish, Director General
Copyright Policy, Canadian Heritage
275 Slater Street
Ottawa, Ontario
K1A 0M5

Michèle Gervais, Director
Intellectual Property Policy
Industry Canada
CD Howe Building, 235 Queen Street
Ottawa, Ontario K1A 0H5

Dear Mr. Stockfish & Ms. Gervais,

RE: A Framework For Copyright Reform

We write on behalf of the National Intellectual Property Section of the Canadian Bar Association (CBA Section) and Intellectual Property of Canada, in regard to the government's paper, *A Framework for Copyright Reform* (the Framework Paper). This submission has been prepared by the Technical Copyright Committee, a joint committee of the CBA Section and Intellectual Property of Canada. We appreciate this opportunity to comment upon the Framework Paper, and have added some new issues to those it contains to create a more comprehensive list of the issues we believe should be addressed in the copyright law reform process.

1. The Framework Paper focuses primarily on various substantive matters in a piece-meal fashion, in accordance with the approach to copyright law revision adopted to date. As a consequence, a number of technical issues cutting across several areas are never addressed, nor are other issues which do not neatly fall into any of the areas discussed in the Framework Paper. Important examples of other areas which should be addressed include the concepts of publication, originality, authorization, matters relating to enforcement, conflict of laws and fair dealing. In our view, a comprehensive technical review of the entire Act is required.
2. Several definitions require review. Some examples include clarification of whether and how an "operatic work" differs from a "dramatico-musical work", correction of the outdated definition of "plate", greater consistency between french and english versions of the Act and correction of the defective wording in certain sections of the Act.
3. Amendments to the Act will be required if Canada is to join the two WIPO Treaties. A list of the required amendments would include, for example, providing a term of life plus 50 years for photographs with corporate owners, moral rights for performers and a revised requirement regarding the fixation of a sound recording.
4. Section 66(5) of the existing Act provides that a member of the Copyright Board is eligible to be re-appointed only once, and should be repealed.

5. Under the existing Act, the rules regarding authorship and ownership of copyright apply to computer-generated works. Consideration should also be given to whether current ownership rules require amendment in relation to those works.
6. The existing Act contains remedies against importation in sections 44 and 44.1. We question whether the importation remedies are effective in protecting against importation of infringing products into Canada, and whether the existing provisions require amendment to improve the process.
7. The existing Act provides for a copyright registration system. The issue is whether the existing system requires amendment to address issues such as the identification of registered works, the authority of the Registrar to refuse an application, the appropriate application of presumptions, penalties for false statements, and the need for a deposit system.
8. The issue is whether the *Copyright Act* should continue to have priority provisions such as those in section 57(3) and if so, whether the existing provision is appropriately worded. We understand that the entire issue of security interests in intellectual property is currently being studied by the Law Commission of Canada.
9. The existing Act provides for presumptions outside of the registration system. Consideration should be given to whether existing presumptions should be updated.
10. If it is considered advantageous to retain the concept of “a grant of an interest in copyright by licence”, the meaning of the concept should be clarified.
11. The provisions dealing with the right of licensees and collectives to sue should be reviewed to determine whether they should be amended in light of current business practices. The existing law is unclear.
12. The application of the *Copyright Act* to the operation of collectives in a digital environment should be reviewed.
13. Amendments should be considered to clarify the operation of section 58.1 of the existing Act, containing a transitional provision dealing with the assignment of a right or a grant of an interest by licence prior to the passage of Bill C-32 (S.C.1997, c. 24).
14. Consideration should be given to the extent (if any) to which provisions of the *Copyright Act*, particularly with regard to exceptions, can be overridden by contract in an on-line environment.
15. Enforcement of the existing copyright law is particularly problematic in the case of cross-border litigation. Some of these issues are whether and how to harmonize rules for

cross-border lawsuits, how to provide for reciprocal enforcement of civil judgments between countries and appropriate rules to decide on the applicable law and to determine the court of competent jurisdiction.

Thank you for considering the views of the joint Technical Copyright Committee of the CBA's National Intellectual Property Section and Intellectual Property of Canada.

Yours truly,

Janet M. Fuhrer
Chair
CBA National Intellectual Property Section