



To:

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**OPEN LETTER TO
THE MINISTERS OF INDUSTRY CANADA, CANADIAN HERITAGE,
INTERNATIONAL TRADE AND FOREIGN AFFAIRS**

Dear Sirs,

We are a coalition of international, regional and national publishers associations who have been closely following the reform process of Canada's copyright legislation for a number of years. We have repeatedly voiced our serious concerns regarding the compatibility of Bill C-11 (formerly C-32) with international law in various formal consultations and through other channels. We note with great regret that, so far, the Canadian government has shown no interest in taking into consideration the concerns of national and international publishing industries. In this letter we want to once more alert the Canadian government and Canadian readers to the possible consequences of enacting Bill C-11 as it currently stands, in the hope that a serious debate about our earnest concerns may lead to a more balanced legal solution.

As detailed in our individual submissions in the consultation process, we are deeply concerned that the fair dealing for education exception fails to pass the three step test which forms part of major international treaties to which Canada is a party, including the WTO Agreement on Trade Related Aspects of Intellectual Property (TRIPS), the WCT, WPPT and the Berne Convention. When the Berne Convention was revised in 1971, a general educational exception was intensely discussed and expressly discarded in favour of a three-pronged solution: the three step test, the illustration for teaching exception, and the Annex of the Berne Convention as part of a carefully worded and nuanced compromise. The three-step-test seeks to ensure that copyright exceptions are (1) confined to certain special cases that (2) do not conflict with the normal exploitation of the work and (3) do not unreasonably prejudice the legitimate interest of the author or publisher.

As currently drafted, however, many provisions of C-11 may allow a broad group of public and private institutions and organizations to copy and distribute works under a vague and intentionally broad educational exception in ways that publishers and authors license, thereby promoting strife and litigation, and potentially violating all three elements of the three-step test.

Similar concerns also relate to the exceptions for non-commercial user generated content, the display exception and the tests and examination exception, the exception relating to publicly available material on the internet, and the inter-library loan exception.

Publishers, authors and other rightsholders are not the only ones who are alarmed by the text of the Bill. Many of Canada's main trading partners share our concerns and are currently working on ensuring international treaty compliance when negotiating free trade agreements. In light of this background there is a real possibility that a WTO complaint will be brought against Canada – and, indeed, some of the submissions made in the consultation process have already alluded to this possibility.

Where the creativity of authors and the innovation of publishers are threatened through legislation, it will not only be reflected in declining cultural diversity, but will also impact the GDP and employment generated by the creative industries (currently some 3% of the Canadian GDP and 5% of the Canadian workforce). This is particularly tragic in an area where publishing contributes most directly to society's progress: education. Because the important creative role and expertise of educational publishers in the educational process is not fully taken into account (especially now when new digital educational resources have to be designed), the loss for Canadian society that would result from a reduced local educational publishing industry is not correctly gauged. We therefore appeal to the Canadian Government to ensure that Bill C-11 contains the important moderations we have requested, for the sake of creativity, cultural diversity and economic strength.

We remain at the Government's disposal for more detailed information about our concerns.

Yours sincerely,



Jens Bammel
Secretary General, International Publishers Association

This letter is endorsed by:

The Publishers Association, United Kingdom



THE PUBLISHERS
ASSOCIATION

Syndicat national de l'Édition, France



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