



Canadian Photographers Coalition (CPC) ***On An Act to Amend the Copyright Act***

Professional Photographers of Canada (PPOC)
Canadian Association of Photographers and Illustrators in Communications (CAPIC)

Canadian Photographers are Small Business Owners

The Canadian Photographers Coalition (CPC) was formed to support the extension of copyright fairness to Canada's working professional photographers.

Our Coalition represents the interests of two professional associations – the Professional Photographers of Canada (PPOC) and the Canadian Association of Photographers and Illustrators in Communications (CAPIC).

Together our groups represent professional photographers working in all aspects of our craft and in all regions of the country. There are over 14,000 professional photographers working and living in Canadian communities from coast to coast to coast. Over 95% of professional photographers are small business people, owning, operating and working in their own businesses and dependent on sales of their work to support their families. Like all small business people, photographers are part of the engine that drives the Canadian economy.

Canadian Photographers are at a Disadvantage

The CPC's primary concern is how the current Copyright Act, exacerbated by the emergence of digital imaging technology, places Canadian photographers at a disadvantage relative to our international peers and other Canadian creators. Specifically, there are two sections of the Copyright Act which reflect an outdated and discriminatory view of photography: Section 13(2), which deals with commissioned photographs, and Section 10(2), which defines the author of a photograph for the purposes of awarding copyright as well as the terms of copyright protection in works, including photographs.

Like most international copyright laws, Canada's generally awards the first ownership of a work's copyright to its author. This principal is laid out in Section 13(1) of the Act, which states: "*Subject to this Act, the author of a work shall be the first owner of copyright therein.*"

Unlike most other creations, however, commissioned photographs are specifically exempted from this section of the Act. Section 13(2) deems the commissioner, not the author, as the owner of the copyright of the image, absent any agreement to the contrary.

This provision contrasts sharply with most other works – such as literary pieces or musical performances – where ownership of first copyright rests with the author, even in cases where the work was commissioned by someone else.

This provision has led to inequitable treatment of photographers in Canada. Consider the following example. Canadian magazine publishers routinely commission freelance journalists to write stories for publication and freelance illustrators and photographers to illustrate them. In this situation the writer and the illustrator would own the copyright in the story but the photographer would not own the copyright in the photographs unless he negotiates it back from the magazine publisher.

Perhaps even more disconcerting, Section 13(2) of the Act places Canadian photographers at a disadvantage to their international peers. In virtually every other industrialized country, including the United Kingdom, France, Australia and the United States, photographers retain first ownership of copyright in commissioned works – just like any other creator.

Canadian Photographers are Missing Economic Opportunities and Losing Revenue

Revenues from Worldwide Internet Sales

This inequity is having severe economic consequences for Canadian photographers. Because photographers from other industrialized countries have copyright to their works, they are increasingly generating additional revenue from the licensing of additional rights or through stock photography library sales. The stock sales business is a global one, increasingly transacted via the Internet, meaning that photographers who participate in the stock photography market can sell their works around the world.

The American Society of Media Photographers (ASMP) has done extensive studies in the United States on the value of the stock photography market. A recent ASMP survey of professional photographers in the United States found that the stock industry is a major business, generating \$1.75-2 billion (US).

According to the same survey, 30 percent of sales were transacted via the Internet and it is expected to become an entirely digital business in the future as more photographers make original creations with digital equipment. Over 80% of the photographers surveyed in the United States by the ASMP participate in this key business. The survey found that 40% of photographers participating in the stock photography business generate between \$50,000-100,000 (US) from this sales venue; 32% generate more than that.

Because Canadian photographers do not own the copyright on their commissioned works, they are being excluded from this increasingly lucrative global business. Photographers cannot put images into this market unless they own the copyright. For small business men and women the potential to generate additional revenues of \$50,000 to \$100,000 represents a significant economic opportunity for their families.

Lost Opportunities and Revenues

All major advertising agencies and companies in Canada have joined the new trend and are now buying photographs and illustrations through stock agencies on the Internet.

For example, in 2006 Cossette Communication Marketing, one of the major advertising agencies in Canada, purchased over \$1 million worth of photography licenses through stock agencies like Getty Images and Corbis (the two biggest stock agencies). This figure was expected to grow to \$1.45 million in 2007. In the past, these sales would have been done on a commissioned basis with Canadian photographers. Now, however, they are purchases made at American stock agencies.

If Canadian photographers could participate in the stock agency market with their commissioned work, they could get some of this revenue back and also increase sales in international markets.

Cost of Conversion and Permanent Upgrades

Another consequence of Canada's inequitable treatment of commissioned photographs under Section 13(2) is that Canadian photographers are being forced to bear the cost burden of incorporating technological innovations in photography (primarily digital) without access to many of the economic benefits of adapting to the digital world.

The average cost of conversion to professional quality digital cameras, supporting software, computers and printers is very high. Photographers who have recently converted to digital operations were surveyed and the average cost for these small business owners can easily be \$250,000. Equipment alone can top \$150,000, plus computers, software, training, and conversion costs. Setting up and maintaining a web site can also cost up to \$30,000. Administrative charges, loss of productivity during conversion, and archiving of existing work also have an economic impact.

In addition to these one time costs, professional photographers are also required to replace and upgrade their equipment to incorporate new technologies in a relatively short time span, possibly every two years. The cost for this permanent upgrading can be \$75,000-\$100,000.

Worldwide, photographers who have clear ownership of copyright, access to stock photography markets, and the potential to negotiate fair terms for the use of their works can generate revenue to pay for this conversion. On the other hand, Canadian photographers are seriously disadvantaged when it comes to generating the revenue needed to profit from new technologies.

Bill C-61 and Photography

On June 12, 2008 the Government of Canada introduced Bill C-61, *An Act to amend the Copyright Act*. Under Bill C-61 the Government has proposed to repeal Sections 10(2) and Subsection 13(2) of the *Copyright Act*. The CPC strongly supports these amendments and welcomes the Bill's imminent reintroduction.

However, one minor revision should be considered. In Bill C-61, the Government proposed to remove Section 13(2), and introduced a new Section 32.2(1) that allows:

(f) for an individual to use for private or non-commercial purposes a photograph or portrait that was commissioned by the individual for personal purposes and made for valuable consideration, unless the individual and the owner of the copyright in the photograph or portrait have agreed otherwise.

This wording in Section 32.2(1) allows an exception to copyright ownership by the commissioner for “**private or non-commercial purposes**”. The CPC is concerned that this wording may be too broad. In some cases it could give the commissioner of the photograph an unfettered right to make as many copies of the photograph as they like without the permission of the photographer.

Moving Forward

The CPC is pleased that *An Act to Amend the Copyright Act* will begin to give photographers the copyright protection they enjoy in the rest of the world and that is offered to other creators. The Coalition is available to answer any questions on these provisions.