



## Saskatchewan Arts Alliance

May 31, 2021

### **Saskatchewan Arts Alliance response to call for comments in public consultation on a modern copyright framework for online intermediaries**

The membership of the Saskatchewan Arts Alliance thanks the Canadian Government for this opportunity to comment on a framework for online intermediaries.

In order to examine the issue, leaders from a cross-section of arts and cultural industry associations in the province and nationally were consulted, including film and television, writing and publishing, and visual arts and crafts.

Remuneration of rights holders for use of intellectual property enabled by intermediaries:

1. **Fair Use and other underlying concerns:** The ability of creators and producers to be paid for the use of their intellectual property by ensuring recompense for educational use remains one of the most urgent copyright issues, and one that must be resolved quickly, by legislation. A generation of educators now believe it's fine to perform and share an entire children's book, for instance, without a license. And that they can use creative materials without payment, in perpetuity. That is a grave concern to creators and producers. The allure of tracking use online and enforcing payment for the use is dampened if the use itself is deemed 'free'.

In the case of the visual arts and crafts, the creation of the Artist's Resale Right/Droit de Suite, which would bring Canada in line with the EU in terms of rights-holder royalties, would be the key to making any recognition of income through intermediaries possible for copyright holders. Methods of tracking art work online are in development, but these would be more useful if the Resale Right was in force.

Music copyright holders indicate they are hopeful that the results of the review of the Telecommunications Act, the Radiocommunication Act, and the Broadcasting Act will result in more fulsome remuneration than the pennies many creators now receive from performance and recording royalties. Fan-powered royalties – a payout model that rewards the artist-to-fan connection and tips the balance in favour of emerging independent artists – at the moment goes to the biggest artists in the world, by record label market share.

Film and television creators and producers are hoping for Canadian Media Fund news.

2. **All of these sectors would benefit greatly from intermediary accountability.**
3. **Tracking use and enforcing payment for use is critical. Intermediary accountability and transparency in the calculation and distribution of royalties represents the first priority for most creators and producers, along with the ability to end unauthorized uses effectively and enforce payment where use takes place.** Tracking doesn't address the low level of remuneration enjoyed by music, for instance, on YouTube, but does provide some tools to quantify activity, and that's a bargaining chip.

With respect to the unauthorized uses, **intermediaries must be responsible for activities within their realm of influence, especially if these activities are preventing proper remuneration for use of intellectual properties.** Even if they are simply hosting, caching or mere conduits, they must be

considered liable for the activities of those who come into their 'safe harbour' when it comes to their attention that piracy or similar **is (or is likely to be)** taking place. As soon as that possibility becomes apparent, **notice and take down of the offending site, and keeping the site from bouncing back up (stay down) would be the best policy.** It is acknowledged that any accountability, transparency, and notice + take down policy would need to complement or even interlock with policies in other countries to have most impact.

4. Compelling remuneration for rights holders through collective licencing limits the success (and the right) rights holders have to take action to enforce their own rights when they are able, or to address their remuneration through commercial agencies for a set commission, for example. Keeping this more flexible is favoured. **Where collective agency is favoured by rights holders, mechanisms to support the ability of the collective to function would be critical.** This goes for an extended collective licencing scheme as well. Rights holders, the copyright owners, need to call the shots. If the extended scheme locks in ridiculously low remuneration, for instance, there is little-to-no advantage. Extended collective licensing is worth looking into, because if it could be made to work, it would be an elegant solution for the rights holders and for the users seeking licence.
5. **The Enforcement options presented in the consultation document have garnered general approval from the creators and producers consulted.**
6. **Royalties gained from enforcement, and from the user payments to creators and producers in these provisions need to go to the copyright holders.** This seems to be unnecessary to state, but there are jurisdictions where the user royalties go to fund arts agencies and related bodies. The Sask. Arts Alliance advocates the routing of user fees and licences to the benefit of the copyright holders.

Providing opportunities for enforcement, such as a small claims process for artists and small producers is an exciting possibility which is still in development in other jurisdictions. Again, the international reach of these copyright courts will be important.

7. For social media users, protocol may be part of the solution, and can be legislated. For instance, the site can make a policy that users don't copy entire property, but provide a link to the rights holders site, or, when the intellectual property opens in the intermediary site, the paywalls are covered by licence or similar mechanism. Subscription is preferable to paywalls. As long as producers and creators get paid.
8. Ensure the subscription income/royalties/license fees collected and held on behalf of creators and producers survive corporate changes. These liabilities don't always follow a corporate purchase or worse, unless they are in a special class.

The Saskatchewan Arts Alliance has had an opportunity to review the submission of Access Copyright and the Coalition for the Diversity of Cultural Expressions and is in agreement with the recommendations contained in those documents.

**The Saskatchewan Arts Alliance looks forward to additional opportunities for input in the Copyright review process.**