

Submission
to the
Standing Committee
on
Foreign Affairs and International Trade
respecting
Canadian Interests
in
Forthcoming World Trade Organization Negotiations

April 28, 1999

I. Introduction to the Canadian Publishers' Council

Founded in 1910, the Canadian Publishers' Council is a national trade association of publishers. Its members include companies owned in Canada, and Canadian companies owned in the U.S., the U.K., Australia and Germany. Members publish in Canada. They publish for Canadians of all ages: educational titles for schools, colleges and universities; general interest non-fiction and literary works; children's titles; reference works and legal and other professional titles.

These take the form of books, CD-ROMs, software, and database online services. Publishers also distribute under exclusive contract imported titles published by internationally-based companies that have no corporate presence in Canada. It is well known that the revenue from this distribution business helps to keep the prices of original Canadian books competitive in the marketplace. Canada's new Copyright Act recognizes the importance of publishers' international distribution contracts and requires that the exclusivity of those contracts be guaranteed. No one else may import those titles for which there is an appointed exclusive distributor in Canada.

Our main trading partners, whose publishing industries are highly developed, also have copyright laws that secure the integrity of the domestic market by recognizing importation rights. Could these rights be challenged by nations with less developed industries? Yes, they could. It is crucially important that Canada remain free to encourage its cultural industries forward by safeguarding intellectual property rights.

II. Council Members' Contribution to Canada

In 1998, in Canadian English-language publishing, our members:

- ❑ invested in the publication of 1502 new Canadian-authored titles
- ❑ re-issued or reprinted a further 2726 titles
- ❑ spent \$48.0 million in Canada for manufacturing including printing
- ❑ paid royalties of \$23.6 million to Canadian authors
- ❑ employed 2991 full- and part-time persons
- ❑ paid cash compensation in excess of \$100.0 million
- ❑ paid \$8.6 million to free-lance and contract persons, and
- ❑ achieved total sales [all genres, Canadian and imported] exceeding \$850.0 million, of which 40% came from original Canadian titles.

According to Statistics Canada data, Canadian Publishers' Council members' sales of English-language Canadian books [all genres] total
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approximately **65% of all domestic sales of English-language Canadian books.** (Statistics Canada: 87F0004XPB, 96-97, Table 7.)

III. General Observations on the Industry and on Study Objectives

New Strategies for Culture and Trade, *Canadian Culture in a Global World* (Feb., 1999, Culture SAGIT) states that “Foreign firms and products account for 45% of book sales in Canada.” It is also true that our members’ foreign-owned firms account for a large portion of total Canadian titles published as well as total sales of Canadian-authored works. The Canadian book industry can take great pride that in spite of proximity to the giant to the south, more than one-half of all general interest fiction and non-fiction trade sales in Canada are generated by Canadian-published books. All of our members participate in this ongoing success story regardless of the location of their ownership.

- ❑ New Strategies regrettably contains a very misleading and distorted statistic. This is unfortunate since it contains such thoughtful and comprehensive analysis and proposed strategy for all of our key cultural sectors. Page 13, Section 4 [Foreign Investment and Ownership] states, “In book publishing, Canadian-controlled companies publish about 87% of the titles published in Canada.” The relevant statistics would be Canadian-controlled, English-language firms’ title output as a percentage of total English-language firms’ title output, and the same expression of data for French-language publishing. And, of course, the relative proportions vary from one *type* of book to another, by example – from university textbooks to pre-school children’s books.

Canadian- and foreign-owned Canadian firms both contribute to book publishing in Canada. We do not wish to detract from the contributions made by any one company or group of companies. The book industry is squaring off with many challenges. Its sectors must work cooperatively to achieve common objectives. It cannot afford the inflammation that statistical distortions may cause.

In 1998, our members unanimously passed a policy resolution on *Canadian Content, Distribution and Ownership*. It recognizes and applauds the role played by all companies in Canada’s success story and recognizes the vital importance of maintaining the integrity of a domestically-based industry where every entity that participates must contribute to its development. That resolution is appended (A).

Our comments are offered in the context of our members’ contribution which is validated by industry and government statistics and by the domestic and

international recognition of the many Canadian writers they publish. In the last few years, Canadian Publishers' Council members' titles

- ❑ have won Canada's twenty-two top literary prizes without exception
- ❑ have won many other important regional, disciplinary and special awards
- ❑ have been short-listed for the Booker Prize and other prestigious international awards, and
- ❑ have won the Pulitzer Prize.

Members are pleased to have this opportunity to share their views with the Standing Committee on Foreign Affairs and International Trade as it considers Canada's trade objectives and the forthcoming agenda of the World Trade Organization (WTO).

Recent concerns and points of issue well known to us all include but are not limited to:

- ❑ The WTO decision on split-run editions [and Bill C-55],
- ❑ the Investment Canada decision on the entry of Borders Bookstores and the recent reassertion of Borders' views within the Office of the U.S. Trade Representative,
- ❑ the entry of Tower Books and Music without clearance from Investment Canada,
- ❑ the increasing incursion into the Canadian market by foreign-based lease operators of college and university campus bookstores,
- ❑ the possibility of foreign online booksellers undermining this market, and
- ❑ concerns about 'national treatment' as raised during the MAI debate.

The issues in these relate to management of trade treaties, particularly to intellectual property matters, and to rights and obligations; they are infinitely complex, and trade issues and intellectual property issues are inextricably connected.

The trade interdependence considerations of the Committee are equally relevant and important to Canadian-owned and Canadian-based firms that invest in this country's industries and future. International complaints against Canada under NAFTA, WTO / TRIPS affect all companies -- affect the entire industry. We hear with increasing regularity that others question the right of Canada to protect and incent its domestic industries. But if we do not have an energized domestic cultural environment, we will have little that is Canadian to export in cyberspace or in book form. Our recent export successes are newsmaking. More than ever before, we need to reach into foreign markets and to be welcome in them. Canada has always been open to the importation of foreign-produced books, magazines, films and sound recordings.

Global alliances can and do benefit Canadian companies. At the same time, we must be vigilant about the integrity of our domestic marketplace. This is a

key consideration as international borders are being dismantled by communications technologies.

It is in the interest of government and of industry to engage in cooperative discussion about these matters; to determine collaboratively those policy objectives which will truly boost Canadian culture and Canadian publishing within Canada and internationally. It is important that the interests of all companies engaged in the business of publishing in Canada are secured and respected.

IV. Copyright and Intellectual Property Considerations

A) Trade Agreements:

We remember that Canada's Copyright Act was amended by the implementation of Canada's NAFTA obligations. We were uneasy. We paid keen attention to the GATT / TRIPs negotiations and to the WTO as GATT's successor — because we wanted to ensure that the domestic and international trade opportunities afforded by our copyright regime were not compromised. We shared with SOCAN and many others the view that Canada should not embrace the Multilateral Agreement on Investment (MAI) unless an statement on culture was included to ensure that nothing in the MAI would be construed to prevent any party from taking any action or measure which it deemed necessary to promote its own culture or the industries that advance its culture.

Consumers of books today shop the world with a point, a click and a keystroke. Those who once thought copyright to be an arcane legal exercise replete with incomprehensible contracts and measurement systems now find copyright to be the core of the Information Age. No longer the poor cousin of patents and trademarks, copyright ensures the validation of the knowledge-based economy. No amount of subsidy, benevolent taxation or investment policy can underpin publishing in this era unless our domestic copyright statutes are current and we are a party to modern international treaties. Its reciprocal nature is more important than ever before. It is for this reason that this submission focuses extensively on copyright considerations.

When Mr. Bill Graham, current Chair of the Foreign Affairs Committee, spoke to our Council's Annual General Meeting a few years ago, he reminded us that if book publishing is excluded from trade agreements to which Canada adheres, we have no recourse within those agreements should we wish to dispute our treatment. It is for these reasons that we agree with the concept of a distinct international trade instrument that a) sets out rules on the kind of domestic regulatory and other measures that countries can and cannot use to enhance cultural diversity and that b) establishes how trade disciplines would or would not apply to culture measures that meet those agreed upon rules.

B) The Digital Environment

The Patent and Trademark Institute of Canada brief to the Standing Committee noted that “During the negotiations that preceded the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), Canada played a key role in building and shaping the global consensus regarding intellectual property standards and provisions for enforcement.” Regrettably, this leadership is not yet evidenced in policy development considerations on the digital environment.

1) Protection of Databases:

A draft database treaty was introduced at WIPO but it was excluded from the diplomatic negotiations that resulted in the adoption of treaties on copyright and on phonograms. The Department of Industry has commissioned a policy paper on databases (R. Howell) and we have made two submissions on the matter. It appears that Canada may now be giving further consideration to database protection.

In the interim, the European Union has adopted a database directive on *sui generis* protection. *Sui generis* protection is available only to those who provide reciprocal protection. A Canadian publisher will only receive protection in the EC if Canada affords an equal level of protection. Material reciprocity is vital to international trade by Canada’s publishers and to copyright protection in international markets.

Database Bill HR 354 is currently making its way through the U.S. Congress. Three additional database bills have been introduced in the Congress.

There are competing interests across the international communities of science, research, education, librarianship, and publishing. Nevertheless, these communities agree at least theoretically that protection of databases is important to the advancement of their collective interests. The issue: how to ensure access and competition and at the same time protect the economic and intellectual property interests of the database publisher / developer. In fact, these communities are all users as well as creators and producers of information stored in and shared among databases. Other countries are prepared to have the debate and to achieve a give-and-take resolution that benefits all interests. Canada must be prepared to move to the debate expeditiously. Our trading partners must not be able to say that we are out of step.

2) WIPO Copyright Treaty:

The federal government recently commissioned a Discussion Paper on Canada’s readiness to implement the WIPO Copyright Treaty. Our Council

submitted its views. There is little evidence that Canada is moving to table legislation that will enable its ratification of this important international digital treaty.

Several countries have now moved to implement the treaty and the U.S. passed its Digital Millennium Act in late 1998.

While some would submit that our new Copyright Act affords the protection necessary to creators in the digital environment, we disagree. An explicit commitment in the digital context will add needed clarity and confidence. Creators and producers will be disinclined to enter the digital arena -- domestic or international -- without a sense that they can specifically and efficiently exercise their property rights.

Again, there are competing interests across communities of creators, producers, internet service providers, telecommunications entities, and the library and education communities. The bottom line: if the issues are not resolved, Canada's copyright community will be loathe to invest in the development of trade in digital properties and in electronic trade.

3) E-commerce and Technology:

The unbridled advancement and use of technology poses challenges to publishing. The seizure of opportunities for the electronic dissemination of content, for entry into electronic markets, and for publishing and marketing in digital formats requires creators and producers to safely depend upon Canada's Copyright Act. We must also be able to rely on Canada's compliance with international copyright treaties and trade instruments with intellectual property attachments.

The 'information highway' will continue to be woefully short of validated content unless it is safe for copyrights to travel the highway. Consumers of copyright material should not be able to arbitrarily steer that material down the exit ramp without paying tolls along the way. Canada's content industries will either seize the commercial opportunities presented by technology or they will be left behind, depending upon the government's resolve to protect intellectual property and to provide incentives for its development in a digital environment that encircles the world.

Canada's government has made a commitment to "wire" Canada and to ensure domestic and international e-commerce. The Industry Minister's commitment was reiterated during the 1998 OECD Conference on E-commerce held in Canada. The Government of Canada must play a role in the development and implementation of Electronic Copyright Management Systems (ECMS) and system standards. There must be some element of symmetry with the systems of our trading partners.

Concerns have already arisen about the capacity or willingness of online retail booksellers to ensure that they respect copyright in separate editions. Where the rights are held for a particular edition in a discrete geographic market, the online seller must not breach that market's copyright by selling a competing edition of the same work into that market. This paper's Introduction references Canada's new Book Importation statutes. Technology makes it increasingly difficult to regulate markets for cultural goods.

V: Trade Agreements and Education

As our Council stated in 1981 before the Federal Cultural Policy Review Committee, "It is, to a great extent, through education that the cultural process evolves and is played out." Our member educational publishers produce more than 70% of Canada's indigenous English-language textbooks and other print-based resources. Members also develop resources in electronic formats. The development, organization, and validation of content is the publisher's contribution to education. It is central to the delivery of education and to the achievement of educational objectives.

We remember that discussions at the next level of NAFTA were to involve states and provinces. We know that one of the key areas untouched to date is that of education policy.

At present, every province has the right and the flexibility to set requirements for Canadian content and to make unencumbered choices related to management and delivery of education. In Ontario, it is required that all core learning materials be written and manufactured by Canadians. Ontario's longstanding policy made a difference to the development of the educational publishing sector. We would not want provinces' discretion and choice to be limited at one level of government by trade decisions made at another. We would expect to be consulted if trade discussions turned to education.

Conclusion

The SAGIT has observed that the "issue and impact of foreign ownership is likely to become more complex in the future." That statement was made in the context of broadcasting. In fact, the question of who owns what rights in a multimedia product or in an international co-venture will become infinitely more difficult to answer at first examination.

It is imperative that property rights are protected in international trade. Anyone who breaches those rights had a responsibility to determine who held the rights in question. The '*should have known*' provisions of copyright have a place in international trade.

Whatever the medium of distribution -- cardboard carton, compact disk or Internet -- Canada must lead the way in protecting and ensuring compensation for use of Canadians' intellectual property in the global, knowledge-based trade environment. We look forward to continuing participation in development of strategies to "safeguard intellectual property and to encourage cultural industries" -- strategies that are consistent with international treaties but allow us to continue to promote our national identity.

It is our expectation that consultations on WTO rounds and on the FTAA will be regular and mutually worthwhile.

Again, we appreciate the opportunity to comment. We would be pleased to respond to any questions that might arise from our comments.