

APPROPRIATION ART

A COALITION OF ART PROFESSIONALS

June 06, 2006

The Honourable Bev Oda P.C., M.P.
Minister of Canadian Heritage
25 Eddy Street
Gatineau, Quebec
K1A 0M5

The Honourable Maxime Bernier P.C., M.P.
Minister of Industry
5th floor, West Tower
C.D. Howe Building
235 Queen St.
Ottawa, Ontario K1A 0H5

Dear Ministers:

Re: Canadian Copyright and Cultural Reform

We write to you as a coalition of Canadian Art Professionals; Artists, Curators, Arts Organizations and Institutions, who share a deep concern over Canada's copyright policies and the impact these policies have on the creation and dissemination of Contemporary Art. At particular risk are those artworks using appropriation; eg. Conceptual Art, Art Video & Film, Sound Art and Collage.

Contemporary Art often takes the form of cultural commentary, criticism, parody. Art using appropriation is no exception. The subject of this artistic commentary ranges widely, but often involves the examination of the cultural products of others (eg. movies, top 40 songs, television, radio, advertising...). Aspects of these are often reproduced as part of the work of art, but in such a way that the subject is transformed and offers the world something new. The new works that are produced comment on the world in which we live and reflect the nature of creativity itself.

The practice of Appropriation has become a fundamental part of many creative cultural activities. Artworks using Appropriation have a long and well documented place in the History of Art. These works are collected and exhibited in major cultural institutions across Canada and throughout the world. We cannot open a book on Modern and Contemporary Art without being presented with some form of Appropriation. The ability to appropriate has not simply changed the way we make art, it has changed the way we see the world. And yet we fear that this form of creativity is being threatened and new forms of creativity using appropriation will be prevented even before their potential is recognized. We ask that you, our government, protect our rights as creators and supporters of important cultural works.

As individuals working in the cultural sector, we rely on effective copyright laws for our living. Effective copyright laws should offer artists the legal means to enforce their rights in their work, but should not over-reach and stifle or even destroy creativity of others. We do not believe Canada's existing copyright laws reflect the reality of contemporary artistic practice. We fear that revisions to the copyright laws currently under consideration will compound artists' problems under the law.

We come together to offer THREE PRINCIPLES that in our view must ground Canadian copyright policy:

FAIR ACCESS TO COPYRIGHTED MATERIAL LIES AT THE HEART OF COPYRIGHT. Lobbyists for the copyright industry often claim that copyright owners need greater control over works. This is a false view of copyright. The law merely grants copyright owners limited rights over their works. Balanced against those rights are the rights of those who follow. Creators need access to the works of others to create. Legislative changes premised on the 'need' to give copyright owners more control over their works must be rejected.

ARTISTS AND OTHER CREATORS REQUIRE CERTAINTY OF ACCESS. Artists who use appropriation in their practice, rely on Canada's fair dealing exception to create. Fair dealing is a narrow right, perhaps at times too narrow to support this work. Creators should enjoy the support of the law, and not have to work under conditions of uncertainty. The work we speak of here does not compete with that of its subject, nor does the value of this work derive from the value of its subject. The time has come for the Canadian government to consider replacing fair dealing with a broader defense, such as fair use, that will offer artists the certainty they require to create.

ANTI-CIRCUMVENTION LAWS SHOULD NOT OUTLAW CREATIVE ACCESS. We understand that the Canadian government is considering legislation to privilege technical measures that protect access to digital works. Such laws must be rejected. The law should not outlaw otherwise legal dealings with copyrighted works merely because a digital lock has been used. The artists we represent work with a contemporary palette, using new technology. They work from within popular culture, using material from movies and popular music. Contemporary culture should not be immune to critical commentary.

We are an important and vital community within Canada's large Cultural Network. We ask that you consult with us on any potential copyright legislation this government intends to table. Expansive copyright laws are often justified in the name of benefitting artists. We ask for the opportunity to voice our views.

Yours truly,

The Coalition of Art Professionals

cc: Patricia Neri, Director General, Copyright Policy
Department of Canadian Heritage

Susan Bincoletto, Director General, Marketplace Framework Policy Branch
Industry Canada