

APPROPRIATION ART

A Coalition of Art Professionals

Today many artists and creators use, reproduce, appropriate and incorporate materials found within popular culture and society. These raw materials reflect and embrace the world around us: snippets of film and TV, radio spots, advertisements, news headlines, bits of text, characters, fragments of song...and so on. Artists use this source material just as artists have used raw material for thousands of years. Artists use this source material because it is meaningful and relevant and evocative. Artists must have the freedom to transform this raw material into new works with new interpretations and new meanings in order for culture to advance. These new works push boundaries, question the status quo, advance technologies. These new works encourage experimentation and invention. And while appropriation practice may not be the foundation for every artist, it is inconceivable that in Canada we would actually advocate restricting or even banning these forms of expression.

The practice of Appropriation is a fundamental part of many creative cultural activities. Works of visual art that use Appropriation have a long, distinguished and well documented place in the History of Art. This work is collected and exhibited in major cultural institutions across Canada and around the world. We cannot open a book on modern and contemporary art without being presented with some form of appropriation. Appropriation integrates existing cultural product (movies, top 40 songs, television, radio, advertising, characters etc.), but in such a way that these cultural products are transformed and a new and original work of art is created. Yet in spite of the history, vitality and importance of Art using appropriation, this process is being threatened, as are the rights of artists who practice it. And vulnerable new forms of creativity using appropriation are at threat of being extinguished. Canada's contemporary artists are its future. We ask you, our government, to protect our rights

In Canada we have a hierarchy of rights. Canada's Freedom of Expression is a Charter Right and as such an inalienable right. Copyright is a Statutory Right and a lesser right. Any changes to Copyright legislation must first and foremost encourage and protect Freedom of Expression and ensure that the rights granted to copyright holders must therefore not eclipse Freedom of Expression. Contracts and trade agreements (such as ACTA) must comply with Charter and Statutory Rights and must not be allowed to usurp the rights of copyright holders.

The Appropriation Art Coalition reflects the broad spectrum of Canada's art community. Our coalition numbers over 600 artists, curators, directors, educators, writers, associations and organizations from the art sector. All have come together to express their concern over the state of copyright policy for artists and the future of 'Appropriation Art'. The coalition includes representation from numerous galleries, museums and artist-run centres, all providing critical support, facilities and exposure for Canadian artists. Curators, directors, board members, programmers, from galleries both large and small have also added their support. The coalition includes deans, professors and educators from Canadian Universities and Colleges across the country. There is representation from cultural founders and commercial gallery owners; from writers, theorists and collectors in all areas of the arts. Major organizations have also signed on, IMAA /AAMI (The Independent Media Arts Alliance), CAMDO (Canadian Art Museum Directors' Organization) and the CMA (Canadian Museums Association). We are a coalition of Canadian Art Professionals – Artists, Curators, Arts Organizations and Arts 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. We work in Canada's cultural sector, and we depend on effective copyright laws for our living. Effective copyright laws must offer artists the legal means to enforce their rights in their work, but must not censor or destroy the creativity of others. Canada's existing copyright laws simply do not reflect the reality of contemporary artistic practice.

Artists and Creators have been represented in the copyright consultation process largely by corporate lobby groups, unions and rights collectives. The representatives of these organizations profess to speak on behalf of large, comprehensive memberships on the issue of copyright. They profess to speak for all artists. However, membership figures are often inflated through overlap; the same individual can be 'represented' by the CRIA (Canadian Recording Industry Association), the AFM (American Federation of Musicians), SOCAN (Society of Composers, Authors and Music Publishers of Canada), SAC (Songwriters Association of Canada). In fact these memberships have evolved as a means of collecting fees (collectives) or obtaining paid work (unions). Moreover, these organizations do not always solicit opinions from their members before presenting a position. The Appropriation Art Coalition are one of very few artist representation groups that can unequivocally state that our membership support the position presented and that each member has signed the letter of concern endorsing the principles put forward.

Any discussion of creator's rights must include access to existing material. The Supreme Court has stated "the fair dealing exception, like other exceptions in the Copyright Act, is a user's right." 'Appropriation Artists' rely on Fair Dealing; the right that allows access to existing works. Fair Dealing guarantees the right to criticism, parody and satire. It allows educational use and enables libraries to exist. Fair Dealing is the right that encourages criticism, dissent and difference and ensures Freedom of Expression. Fair Dealing is the right that prevents censorship and wholesale privatization of culture.

The concern is that new legislation will mark a paradigm shift in Canadian copyright law. The concern is that copyright law will be subverted from its original intent which is to protect Canadian culture. The concern is that copyright law will actually be used to define or even censor Canadian culture. As it was written, Bill C-61 increased the control of the copyright license holder while effectively eliminating Fair Dealing. If Bill C-61 had passed, works would have been censored not for their content but for their form and their creative process. The 'legitimacy' of cultural works would have been determined not by artists, curators, educators, writers, critics, writers, museums, galleries and the public but by corporate interests and largely foreign corporate interests. Should similar legislation be written and passed, the practice of Appropriation will be eradicated. Canada would become the first country to make illegal a historic, legitimate and internationally recognized art form. This is unacceptable.

The laws that were included in Bill C-61 would have stifled and destroyed Canadian creativity and culture. We are a country that celebrates diversity and multiple viewpoints. We encourage independent creativity and commentary. We want to ensure that Canadian Culture and its Citizens remain Free, Expressive and Independent. We ask that all artists be given a fair voice. To preserve the original intent of copyright, new legislation must include the following principles:

Fair access to copyrighted material lies at the heart of Copyright.

Lobbyists for the copyright industry claim that copyright owners need greater control over works. This is a misrepresentation of copyright. Copyright is meant to protect and encourage creativity not suppress and restrict it. The law 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 even more restrictions over their works must therefore be rejected.

Artists, creators and galleries 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, at times too narrow to support this work. The works of art we speak of here do not compete with the appropriated material, nor does the value of the work of art derive from the value of its subject. Creators should enjoy the support of the law, and not have to work under conditions of uncertainty and fear. The time has come for the Canadian government to consider replacing fair dealing with a broader defense, one that will offer artists the certainty they require to create and exhibit their work. Any new legislation should, at the very least, include exceptions consistent with recent legislation such as sections 3 (5) and 3(6) (parody and artistic use) of Bill C-47 .

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. Artists who use appropriation work with a contemporary palette, using new technology. They work from within popular culture, using material from movies and popular music. The law must not outlaw otherwise legal dealings with copyrighted works merely because a digital lock has been inserted. Contemporary culture must not be immune to critical commentary. Exciting and important new forms of creativity will be destroyed if anti-circumvention laws are imposed.

Expansive copyright laws are often justified in the name of benefitting artists. We are stating that this is simply not the case. We are not a country that will flourish under excessive copyright laws. Those represented by the Appropriation Art Coalition are a significant and important community within Canada's large cultural network. We want to ensure free, expressive and independent Canadian Culture. We do not want to follow the lead of the United States in matters concerning copyright. Canada needs laws that put Canada first. We want neither legislation nor a government who listen to external pressure and preference corporate desires over the needs of their citizens. The future of Canada's flourishing contemporary cultural community is potentially threatened future changes to copyright legislation. The eyes of the world are on us as we consider the next step. We ask that you consult with us on any potential copyright legislation before further decisions are taken.