



Version 06.04

***Legal Deposit in Quebec:
Protection of rights and accessibility***

Quebec Panorama

Before moving on to my specific topic, I thought it would be good to give you some data that could help you better understand the Quebecois reality.

Be assured, I will not give you a history or a geography course, but I think that Quebec's special features deserve some time.

As you know, Canada, which includes Quebec, is vast. It is the second largest country in the world, just after Russia and ahead of the United States. Some 5,500 kilometers separate the Atlantic from the Pacific; like its motto says, 'From Sea to Sea.' The area of Quebec alone is 3 times greater than that of France, or if you prefer to look at it another way, 54 times larger than that of Belgium. In this immense territory live 7,720,000 (seven million, seven hundred and twenty thousand) Quebecois, of which 80% speak French. Almost half of the population is concentrated in the Montreal metropolitan area. The total population of Canada is 33 million, and outside of Quebec, only 5% of the population speaks French.

A Brief Socio-Cultural Profile of the Quebecois

The Quebecois spend about 3 hours a day watching television; 80% of them use cable or satellite services. More than half of the population has access to the internet and spends about 3 hours a week online. Finally, 75% of the Quebecois say they go to the cinema at least once a year and 30% say they go several times a month. I will add some figures on the state of film production in Quebec that I think will give you some tools for understanding the film industry that we are working in.

Some Industry Data

In 2006, 98 feature-length films (60 minutes or more) were produced in Quebec. Among these, there were 54 works of fiction and 44 documentaries, produced by 83 private production companies. 33 were intended for release in theaters (of which 15 were co-produced), and 19 were made for television. Finally, 46 films were made for parallel markets (niche markets) and for direct-to-DVD release.

The arrival of digital video of all formats and the simplification of postproduction methods has probably strongly contributed to the increase in the number of feature-length films whose primary market is neither the cinema nor the television. Moreover, this increase has proven to be exponential: last year it represented about a quarter of total production, and will be closer to half in 2006.

Of the 98 feature-length films produced, 70 used digital technology and 16 were made in HD (high definition), which is twice as many as the previous year. 23 were produced on 35 mm film.

Finally, for 2006-2007, the production of feature-length films reached a cost of \$146.5 million with an average estimated production cost of \$4.4 million. It is important to note that these funds came almost entirely from the Canadian and Quebecois governments. As for distribution in Quebec, 24.8 million tickets were sold, equaling returns of \$165.1 million.

Film industry and independent television production statistics, 2007
www.stat.gouv.qc.ca

I think that these numbers allow us to take stock of the industry in Quebec, providing us with numerical ideas to take into consideration when talking about the Quebecois cinema and audiovisual industries.

Overview

Copyrights protect the expression of an idea, and not the idea itself.

You know as well as I that the question of copyrights in the film and audiovisual industries is particularly complex. The number of people involved in the production of a film, the writers, screenwriters, directors, composers, and actors as well as the different ways to distribute the work, be it in theaters, on television, on video, on the internet or on any of the new platforms for distributing media: all of these factors are transformed into a tangled mess than can be difficult to unravel. However, since we are regularly confronted with this beast; we must learn how to tame it, or even coexist with it.

Copyrights may not be treated in the exact same manner in Quebec and Canada as in the rest of the world.

First, I will briefly discuss copyrights in the context of their importance for the economy and culture, which will allow us to concretely understand what they represent for the creation and the preservation of audiovisual works.

After that, I will offer a survey of the legal context that governs copyrights in Canada and Quebec by highlighting the system's differences and particularities. This will lead me to speak to you about exemptions to the law that concern us more specifically in regard to the handling of the copies of the works that we hold.

Lastly, I will speak more specifically on the legal deposit for audiovisual works that was recently established in Quebec and, in conclusion, I will try to outline some goals we should all share as we envisage the future.

Copyright: a System that Works!

First off, I would like all of us to understand the place copyrights occupy in all sectors of today's world. To convince you of the importance of copyright, it should be noted that from a financial standpoint, the industries dealing with copyrights total about 3% of GDP in industrialized countries. As such, copyrights have become an important source of revenue for many authors, interpretative artists, performers, publishers, distributors and producers. Indeed, trade in the film and television sectors depends financially on copyrights because selling rights for broadcasting, performance and distribution is its very object.

Culturally speaking, the importance of copyrights is essential, as well; the culture-based economy is intimately connected to copyrights. The growth that the audiovisual sector is witnessing today in particular could not have happened without the guarantee of continuity and security of distribution ensured by copyrights.

The Legal Context

To begin, I should tell you that there is a legal distinction that is worth highlighting: in Quebec, rights are established by the Civil Code of Quebec, which is inspired by the French civil code. Elsewhere in Canada, the common law system applies. This difference obviously has implications for the relations between rights holders and distributors.

In Canada, article 91 of the Constitutional Law of 1867 gives the federal Parliament the exclusive power to legislate in the area of copyrights. Of course, the notion of copyrights discussed here is that which was prevalent in 1867; that is, the Anglo-Saxon conception, which was essentially concerned with the protection of the work itself, as opposed to the Romano Germanic idea present in civil law countries, which stressed the protection of the author as an individual.

Copyrights as such are governed by the Law of Copyrights, adopted in 1924. Although it was modified a few times over the years, its true modernization did not occur until 1988. This slow process is still in progress under the supervision of the Minister of Canadian Heritage. As he describes it, the law's two main objectives are supporting creativity and innovation and supporting the distribution of information.

In Quebec, the principle goal of the *Loi sur le statut professionnel et les conditions*

d'engagement des Artistes de la scène, du disque et du cinéma (Act respecting the Professional status and conditions of engagement of performing, recording and film artists, Law 90), adopted in 1987, is to adapt labor laws to the context of cultural workers. This is done through the implementation of specific procedures to recognize artists' organizations, as well as specific regulations regarding the negotiation of collective agreements between such organizations and producers or producers' associations.

These laws grant the artist not rights, but a particular status. Upon reading the Quebecois and federal laws on the status of the artist, one realizes that there are two focuses: labor law and contract law. Both deal with the same concern: establishing and implementing a particular system for labor relations adapted to the specific context of cultural workers.

Lois sur le Statut de l'Artiste : une approche constitutionnelle, ou l'art de l'ubiquité
Jacques A. Léger, 1993

The Quebecois law on the status of the artist is seen by law scholars as a "judicial fiction." It is copied from labor law and includes several "categories of workers" in its notion of the artist. These categories seem more like cinematic "artisans": technicians, set dressers, costume designers, performers, etc. This creates a situation where, "several employers or several unions" find themselves taking part in the contractual negotiations for the production of a film.

For example, the APFTQ (Association of Film and Television Producers of Quebec), which is the only film producers association in Quebec (similar to France's USPA, Union Syndicale de la Production Audiovisuelle, Trade Union of Audiovisual Production), negotiates its collective agreements with 14 different associations and oversees the implementation of those agreements by its members.

In Canada, the notion of the author is, if not empty, still not clearly defined. In Europe, and more specifically, in France, the idea of the author of audiovisual works exclusively covers screenwriters, directors and composers. This is true in Canada as well, but an "artistic contribution" to a film can also lead to author status or at least partial author status for costume designers, set dressers and head cameramen. This is evaluated on a case-by-case basis, even though these questions are only rarely argued before a court. In principle, the producer has no claim to copyright on a work, nor do performers. The guiding principle is simple: "the law, contracts and use," which is probably inherited from common law.

The Exceptions that Prove the Rule

I am now approaching our more specific concerns: aspects of the law that concern, among other things, film libraries. Changes to Canadian copyright laws dating from 1997 have introduced specific exemptions to the applications of copyright law.

Educational establishments, museums, archives and libraries now benefit from an exemption when they copy a work in order to direct or maintain their own collection

insofar as it corresponds to the criteria defined in the law:

- a) reproduction in the event that the original, which is rare or unpublished, is deteriorating, damaged, has been lost or is at risk of deteriorating, being damaged or being lost;
 - b) reproduction for viewing on the premises, in the event that the original cannot be watched, listened to or handled because of its state, or because it must be kept in special atmospheric conditions;
 - c) reproduction on another device, the original device being obsolete or requiring a technique that is not available;
 - d) reproduction for internal use related to the maintenance of a dossier or catalog; (etc.)
- Copyright Board of Canada: Copyright Act*

A New Element for Quebecois Film Libraries: Managing the Legal Deposit

As you may have noticed, the basic functioning of our film library regarding rights holders is probably very similar to what you are doing now. However, a new element in the audiovisual landscape appeared with the opening of a legal deposit established by the Quebecois government on January 31, 2006. Let me briefly tell you about its origins and how it works.

The term “legal deposit” appeared for the first time in 1975 in legal documents in Quebec, referring to the possible creation of a national film library by the government. This project never saw the light of day because the film community rallied in favor of maintaining the existing film library, the Cinémathèque Québécoise, a private corporation created in 1963 and subsidized by the Ministry of Culture.

In 2003, the then Minister of Culture and Communications proposed creating a legal deposit for audiovisual works produced in Quebec, notably those that had received public aid. Only works produced exclusively in the independent private sector were concerned. Public corporations such as the National Film Board of Canada, the Canadian Broadcasting Corporation, and Télé-Québec and governmental productions have to preserve their materials in accordance with agreements with the National Archives of Canada and Quebec.

As a private corporation, the film library could not serve as a legal deposit which, by law, belongs to the state. The solution was to make the library responsible for the preservation and management of the deposited materials while the National Archives and Library of Quebec (BAnQ) would act as the depository. The film library has more than 40 years of preservation experience and possesses reliable facilities for climate controlled storage. This is the first partnership between BAnQ and Cinémathèque Québécoise.

I should clarify that this is a legal deposit for preservation purposes only, and as such does not envision providing direct access to the films. The legal deposit of films in Quebec is required under law for films, videos and TV shows that receive direct or indirect financing from the Quebec government, which is the case 99% of the time.

For television productions, an additional classification is made according to, for example, whether the production is a variety program or documentary.

The producer is responsible for depositing a new, optimally calibrated copy of a film. At the latest, the deposit should be made six months after the first public presentation of the work in its original version. The cost of making the deposited copy can be included in the financing application for government organizations.

While preparing for the inauguration of the legal deposit, we met, along with BAnQ, the principle governmental organizations involved with financing the project: Sodec, Téléfilm Canada, and the Conseil des Arts et des Lettres du Québec as well as the main producers, directors, screenwriters, actors, composers, and copyright advocates. We hope to inform them, gather their comments and seek their collaboration to distribute information about the project for an optional license permitting access to deposited films. I will come back to that in greater detail in a moment. First, I would like to introduce these organizations so that you know who the major players were in the process of creating the legal deposit.

The Organizations: A Group Portrait

Society of Composers, Authors and Music Publishers of Canada (SOCAN)

The Society of Composers, Authors and Music Publishers of Canada is the largest performance rights company, administering public performance rights for musical works by Canadian authors, composers and publishers, as well as for affiliated companies that represent authors, composers and foreign publishers.

As for what is of particular importance to us, SOCAN is involved when we welcome actors to our film libraries for the projection of a film. SOCAN is the only performing rights society in Canada.

Union des Artistes (UDA)

UDA is the union that governs relations between actors working in the French language in Quebec and elsewhere in Canada and production companies. It is this association that signs the collective work agreements with different stage and audiovisual organizations, institutions and companies. UDA represents the interests of artists working in publicity, recording, stage and the dubbing of cinema and audiovisual materials.

Société des Auteurs de Radio, Télévision et Cinéma (SARTEC)

Founded in 1949, the Société des Auteurs de Radio, Télévision et Cinéma (SARTEC) is a trade union with almost 1000 members who write films, drama, serials, series, made-for-TV movies, documentaries, variety programs, etc.

Association des Réalisateur et Réalisatrices du Québec

(ARRQ)

Founded in 1973, ARRQ brings together freelance directors working mainly in the areas of cinema and television. The organization works to defend the professional, economic, social and moral rights and interests of its members, and seeks to represent directors in all matters. Today, ARRQ represents more than 550 directors working mainly in the French language in Quebec.

Quebec Film and Television Producers Association (APFTQ)

This very important organization, although not a royalty collection company, plays an essential role in the relations between its members and artists. APFTQ represents the majority of Quebecois independent cinema and television production companies. The association represents its members in government and other organizations and encourages close cooperation with all industry participants.

The APFTQ currently unites more than 130 companies producing feature-length films for cinemas, all genres of television programming (documentaries, dramas, variety, animation, news programs, reality television, etc.) and advertising films.

The “Optional License”

An interesting characteristic worth mentioning is that, even though the legal deposit is compulsory, we (as mentioned earlier) offer an optional license that is similar in certain respects to that found in the voluntary deposit contract for works we currently use.

This optional license allows us to suggest the possibility of reproducing films for purposes of preservation, access to copies for on-site use, public showings within the framework of our mission and the use of extracts for self-promotion. These proposals, which are not truly discussed in the legal deposit law, are left to the consideration of the rights holder at the time of deposit.

“The full reproduction of a film, should it be deemed necessary for preservation of the film within the archives of the Cinémathèque Québécoise in the framework of its mission, including the transfer to another media when necessary for preservation.” (1.1.1)

“The full reproduction of a reasonable number of copies for the sole purpose of viewing on the premises of the Cinémathèque Québécoise for non-commercial purposes.” (1.1.2)

“The full reproduction of a film for non-commercial public use in the Cinémathèque Québécoise, in theaters under its direction and in the archival theaters of members of the Fédération Internationale des Archives du Film (FIAF), upon reasonable request made by the latter for non-lucrative ends and only within the framework of their respective missions.” (1.1.3)

“The reproduction by any means of an extract of a film with a duration of less than two minutes for self-promotion by the Cinémathèque Québécoise in direct

relation with its mission.” (1.1.4)

The law allows us to perform these two actions without necessarily having the authorization of the rights holders; however, in a spirit of transparency and willingness to collaborate with rights holders, we have chosen to include these notions in the optional license that we offer them.

Copies of the license we are offering with BAnQ will be made available to you, and I stress that the document offered to rights holders mentions both the BAnQ and the Cinémathèque Québécoise. Thus, the reproduction clauses for films are similar, as are our respective missions, with the exception of article 1.2.1 which states:

“The creation of a reasonable number of complete copies of a work for use only on the premises of the BAnQ, with the understanding that adequate security measures have been taken to prevent reproduction by the users.”

This specification was added because of the large number of viewing stations at the BAnQ.

Today

We continue to offer this license to rights holders under the jurisdiction of the legal deposit.

The following table shows the volume of works deposited, be they single productions, productions with multiple episodes or series. You can see that the volume of works that must be processed is considerable for a modest team like ours, but the results of the proposals to rights holders, the optional clauses, are encouraging. You can see that there is a large difference in how rights holders choose to agree to one right or another. We have to deal with this on a case-by-case basis, and this seems the only option at the moment.

In this regard, I should tell you that we are faced with a refusal to support our initiative on the part of the APFTQ, which I mentioned earlier. The APFTQ has recommended that their members not sign our license. At the time of release of this message, we have only conjecture; we have had no clear explanation as to the exact reason why it has rejected our initiative. Personally, I think that the fact that there are two entities requesting rights on the license troubles people in the film industry. They are familiar with the experience and the practices of the Cinémathèque Québécoise, but the National Archives and Library of Quebec is a government entity that the film world has had little contact with until now. However, negotiations with all of our partners will follow.

We will have to communicate with organizations in order to secure their collaboration and establish solid partnerships for the preservation and use of our national heritage.

Conclusion

I would like to conclude with several thoughts on the evolution of our work brought about by the new role that has been entrusted to us. What good does it do to preserve all cinema and television productions if we cannot show them? As distributors, our role cannot be limited to being the closet where works are piled up but not made available to the public.

I think that film libraries should be actively and dynamically involved in a country's cultural life. We must develop our tools for communicating, win new audiences and offer another way to "see movies." In a word, our mission consists of in-depth work to provide the public with high-value education about cinema and its history. It also consists in training the viewer's eye and perception of images, developing his/her critical sense and even, through the richness of the content of our films, showing them that cinema plays a social role and is not a mere object.

I find that the work of film libraries and archives is not truly possible without developing our relationships with the entire film world and a certain leniency in copyright laws and practices to make works more easily accessible.

Now more than ever, technological innovations and new platforms for distribution offer the possibility for films to be accompanied by materials that allow for better comprehension not only of the film itself but of the author and of all the creative processes that were used. In this sense, the copyrights protecting creators and their works are good, but should not be a hindrance to the educational and distributional activities that we undertake.

Thank you.

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