

Copyright: Now or Never

by Ian Hose

This fall, a White Paper entitled "From Gutenberg to Telidon", was published jointly by the Department of Consumer and Corporate Affairs and the Department of Communications. Copies may be obtained by writing to the Ministry of Supply and Services in Ottawa and requesting publication #R.G.43-21/1984E.

In the document, the government stated its commitment to assure a climate in which creativity can flourish and its determination to help Canadians benefit from technological change. These are concerns shared by all, but by educators in particular. Comments are requested, despite the fact that Cabinet approval has already been given in some areas to the draft legislation. Five areas where decisions have not yet been made are discussed in detail and comments on these are especially welcomed. These areas are:

- cable and satellite retransmissions of broadcasts
- ownership of copyright in employment situations
- time which ephemeral recordings may be retained
- special treatment for jukebox performances
- exemption for certain performances in public establishments

Since we have a new government in office and new ministers in both departments, it is important that changes be suggested so that the legislation will better reflect the views of the educational community. AMTEC members should be making Members of Parliament aware of their concerns.

Unlike the United States government, ours, in Ottawa, does not propose "... to substantially alter the existing law regarding educational use of copyright material. Fair use considerations are applicable to the educational use of copyright material as they are to any other use." Under the current law the term "fair dealing" permits private study, research, criticism, review, or newspaper summary. By introducing and defining fair use "as a use that does not conflict with the normal exploitation of the work or subject matter and does not unreasonably prejudice the legitimate in-

Ian Hose is AV Co-ordinator, East York, Board on Education, Toronto.

terests of the copyright owner", educators will face an almost impossible task trying to obey the law.

A suggested solution to this problem is the formation of copyright societies where copyright owners could assign their rights for the purpose of exploitation and enforcement. Currently musical performing rights societies collect on behalf of the copyright holders. In its submission reacting to the Keyes and Brunet Proposals, AMTEC endorsed the formation of such a collective with appropriate controls ensuring that teachers have quick and easy access to as wide a range of materials as possible.

Computer programmes will be included in the new Act and will be protected for five years, rather than the general term of the life of the author plus 50 years. Under the present Act, computer programmes in human-readable form are protected like any other scientific form, but difficulties arise with machine-readable programmes. An outline of the important aspects of the scheme of protection is listed. No provision is made for duplication of software for archival purposes. Perhaps the onus is on the educational institution purchasing the software to arrange for backup copies to be provided with the original.

Despite the arguments from producers, the white paper recommends that a general exemption be made available for the benefit of the handicapped. At the moment educational users must obtain permission to adapt materials for students with special needs.

The majority of AMTEC members are employed in educational institutions. Thus changes in the section dealing with first ownership in works created by employees in the course of employment are of particular significance. Should copyright remain with the author and be licensed to the employer, or should the employer have the prime right and the employee some say over assignment of license to a third party?

Concern has been expressed when an educational body rents or buys a video tape for use in a school setting. The Canadian Motion Picture Distributors' Association takes the position that video cassettes are sold or rented for home use only, and that face-to face classroom use amounts to public performance. Without the necessary license this is illegal. The new Act will pro-

vide a renting right to copyright holders of films, videotapes and sound recordings. How will this section affect you?

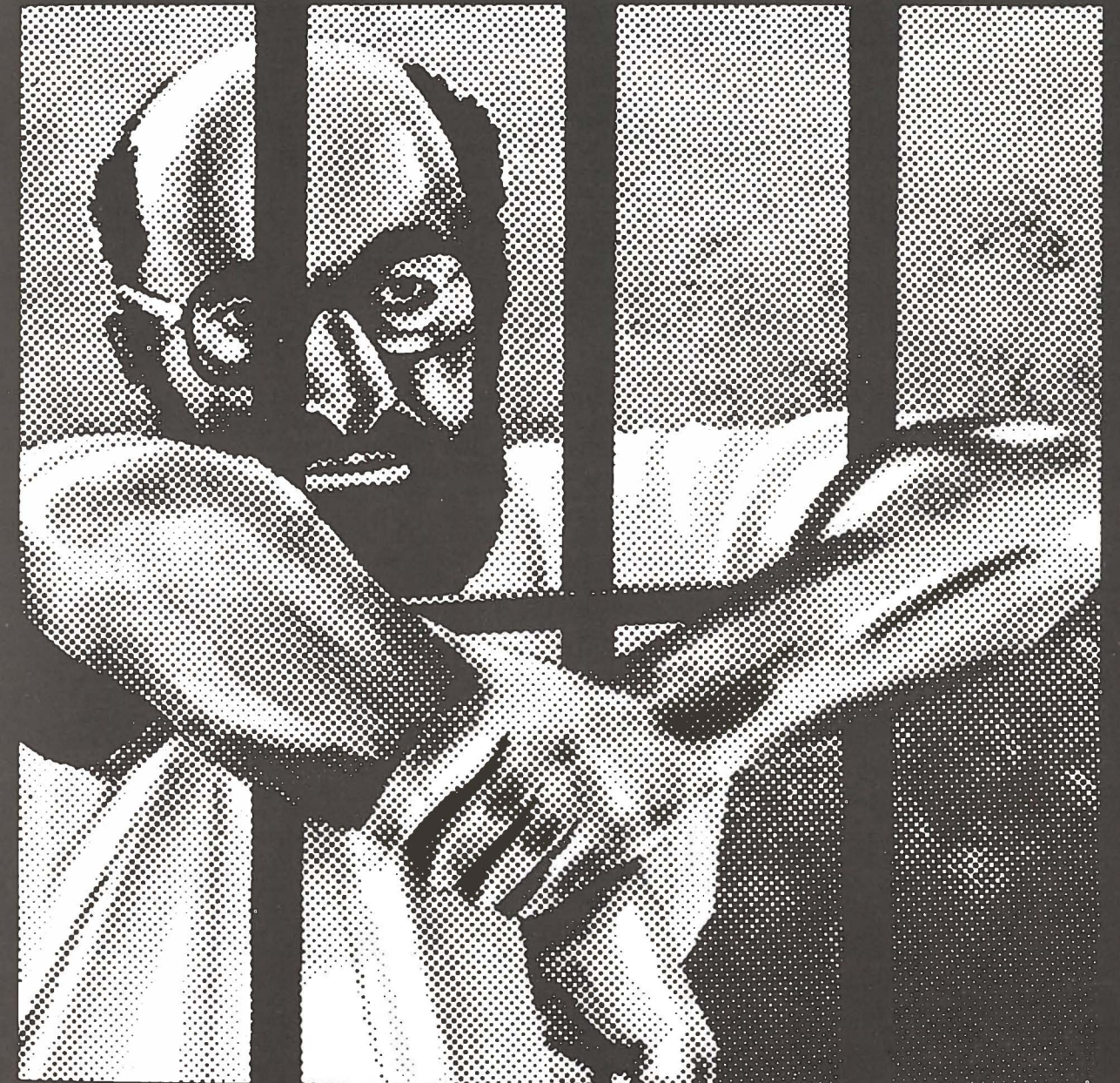
"Public performance in an educational context refers to both live performances of copyright works and performance via technological means such as recordings or broadcasts." In Ontario "no trespassing" signs have been posted on school entrances. The idea that the buildings are open to the public is incorrect. When instructional materials are viewed in a classroom, no charge is made and the materials are not subject to the provincial censor board. This section on public performance requires clarification in the new Act.

If you have any comments on the proposed changes, send them to The Clerk, Parliamentary Committee on Communications and Culture, Room 516, 180 Wellington Street, Ottawa, Ontario. K1A 0A6. Your own M.P. should receive a copy along with copies to the Honourable Marcel Masse, Department of Communications, and the Honourable Michel Cote, Department of Consumer and Corporate Affairs. Please send a copy of your correspondence to Chairman, AMTEC Copyright Committee, 14 Willowbank Blvd. Toronto, Ontario M4R 1B6. Your comments will assist in the preparation of an AMTEC brief on copyright. □

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From Gutenberg to Telidon, p. 41.


A film about the right to challenge the law



DEMOCRACY ON TRIAL THE MORGENTALER AFFAIR

1970 to 1976

Directed by Paul Cowan
Produced by the National Film Board of Canada

 National Film Board of Canada
Office national du film du Canada

Now available for preview from your local NFB office