



March 1, 2012

Via email: claudе.brunet@nortonrose.com; cchisick@casselsbrock.com

Claude Brunet
Suite 2500, 1 Place Ville Marie
Montréal, QB H3B 1R1

Casey Chisick
Cassels Brock & Blackwell LLP
2100 Scotia Plaza
40 King Street West
Toronto, ON M5H 3C2

Dear Messrs Brunet and Chisick,

Re: Copyright Working Group

Thank you for the letter signed by you and other copyright practitioners dated February 21, 2012. The other CBA Executive Officers and I have reviewed the lengthy history of this matter (including the previous letters sent in 2010) with the Intellectual Property Section Executive and the Bill C-32 Working Group. We have reflected on the matters you raise. The CBA Executive Officers share the views I will express in this letter.

We remain of the belief that the IP Section Executive and the Working Group worked in good faith to produce a balanced submission with a view to informing government policy on this important issue.

CBA submissions are always the work product of several volunteer members – legal experts who contribute to the draft, provided on the understanding that the ultimate submission does not go under their individual names but the name of the CBA or one or more of its constituent groups. There is no doubt that similarities exist between blog posts by Professor Geist and quotations from the submission. Professor Geist provided input directly to early drafts of the submission through his past membership in the Copyright Policy Committee. I am satisfied that there was no unauthorized use and no "passing off". He and other expert practitioners and academics participated in the drafting of this submission. Varying views were sufficiently persuasive to be incorporated into the submission and emulated clearly in its language. There is nothing intellectually dishonest about this. It is precisely the process contemplated by the procedures of the CBA with respect to our legislation and law reform initiatives.

All members of the IP Section were invited to provide comments to the Working Group. This goes well beyond the usual process for input in developing a CBA Section submission.

Those who agreed to the terms were informed of the names of the Working Committee members, and will recognize that they possess several decades of collective experience in practice and academic pursuits in the copyright field. The diverse group contributed countless hours in an effort to produce a balanced submission on what, as you say, is a “complex and contentious piece of legislation.” They were open to all substantive and constructive input from all members of the Section, including you. When a preliminary draft of your recent letter came to the attention of the CBA Section Executive, the Section Executive invited you and all signatories to discuss this at the Section level.

The executives of each interested Section (who are in turn accountable to the Section membership) must sign off on a submission before it comes to the CBA Executive Officers for final approval. As with all CBA submissions, we considered whether the submission on Bill C-32 canvassed the issues and considered them in a fair and balanced manner. In this case, the submission clearly presented opposing views on identified issues, leaving it to Parliament to make appropriate policy decisions with the assistance of the commentary from different perspectives. CBA effectiveness in law reform is based equally on its reputation for objectivity and independence, its professional expertise, and its national voice. In all of this, as was my predecessor Rod Snow in 2010, I am reminded of the CBA motto: *Honestas collegii fundamentum iustitiae* (The integrity of the profession is the foundation of justice). I reiterate his response to the 2010 letter on this submission. I have every confidence in the integrity of the Working Group, the IP Section Executive, and the process they followed in developing the Bill C-32 submission.

Yours truly,

(original signed by Trinda L. Ernst)

Trinda L. Ernst Q.C.

cc. (CBA member signatories of 21 February 2012 letter, IP Section Executive)

CBA Member Signatories of 2012 Letter:

Susan Abramovitch — Gowlings LLP
Claude Brunet — Norton Rose Canada LLP
Sheldon Burshtein — Blake, Cassels and Graydon LLP
Casey Chisick — Cassels Brock & Blackwell LLP
Benoît Clermont — Productions J Inc.
Neil Finkelstein — McCarthy Tétrault LLP
Marian Hebb
Daniel G.C. Glover — McCarthy Tétrault LLP
Brian Isaac — Smart and Biggar LLP
Virginia Jones — Canadian Motion Picture Distributors
Madeleine Lamothe-Samson — Norton Rose Canada LLP
Michael Manson — Smart & Biggar LLP
Steve Mason — McCarthy Tétrault LLP
Colette Matteau — Matteau Poirier Avocats Inc
Tara Parker
Richard Pfohl
Tim Pinos — Cassels Brock & Blackwell LLP
Stephen Selznick — Cassels Brock & Blackwell LLP
Barry Sookman — McCarthy Tétrault LLP
Bob Tarantino — Heenan Blaikie LLP
Lee Webster — Osler, Hoskin & Harcourt LLP
David Wotherspoon — Fasken Martineau DuMoulin LLP
David Zitzerman — Goodmans LLP