

asted

Association pour l'avancement  
des sciences et des techniques  
de la documentation

Combining Creation  
and Knowledge

Position of the Association pour l'avancement des sciences  
et des techniques de la documentation  
on Bill C-32, An Act to amend the Copyright Act

February 14, 2011

The Association pour l'avancement des sciences et des techniques de la documentation (ASTED) is a national not-for-profit cultural and scientific professional association. Since 1973, it has worked to advance the science and techniques of documentation by pooling its members expertise, its publications, its activities of every sort, its services and its ties with other organizations in the field of documentation and information, and with the general public.

ASTED's goals are:

- to promote excellence in the services provided by libraries, documentation centres and information centres and among the personnel of those institutions;
- to inspire legislation and advocate for the interests of libraries, documentation centres and information centres and of the users of those institutions, with the governments concerned;
- to play a leading role in library science and in documentation and information sciences within North American Francophonie.

ASTED is the only organization in Quebec that brings together members from all aspects of the field of documentary information. It has two member categories: group (or institutional) members and individual members. Together, its members represent the broadest range of professionals working in documentary information services: administrators, librarians, documentation technicians, documentalists, professors and researchers, students and others.

ASTED represents a well-organized, recognized and strong group, through which its members can

- be part of a forum for exchanging ideas and experience with colleagues;
- learn about trends in documentation that affect the present and future of their library or documentation centre;
- be on the leading edge of innovations in the field of documentation and information;
- reach the largest network in Quebec and French-speaking Canada of documentation specialists who are constantly looking for ways to advance the field of documentation.

## **General considerations regarding copyright**

ASTED, libraries and information professionals are very sensitive to the position taken against Bill C-32 by the National Assembly of Quebec and various stakeholders in the publishing and cultural industries. ASTED reaffirms that it recognizes and supports the principle that the intellectual effort of the creator of a work and the financial effort of the distributor of the work deserve to be and must be recognized and so must be compensated adequately, preferably as provided for in agreements. That principle cannot be absolute, however, having regard to the right of users of the work to fair use that does not unduly interfere with the right to compensation. In fact, that is what the Supreme Court of Canada held in *CCH Canadian Ltd. v. Law Society of Upper Canada* when it ruled that exceptions set out in the Copyright Act are a users' right, and that to maintain the proper balance between the rights of a copyright owner and users' interests, they must not be interpreted restrictively. In fact, ASTED regrets that the government has decided not to adopt the philosophical approach advocated by the Supreme Court for dealing with the question of exceptions to copyright.

If, as the government repeatedly claims, it wishes to maintain a balance between the intellectual property rights in works and wide circulation of those works, the way to do this is by incorporating exceptions in its legislation that allow everyone, not just those who have the financial means to do so under contractual agreements with suppliers of digital documentation, to have access to those works.

## **ASTED's comments on Bill C-32**

ASTED works closely with the Canadian Library Association on many issues, including copyright. As well, ASTED's positions are similar in many respects to the positions taken by the CLA in its paper *Protecting the Public Interest in the Digital World*. However, the unique characteristics of ASTED's members, in terms of the circumstances of their work and the publics they serve, call for us to take a different or qualified position on certain points.

Whatever their field, libraries play a major role as cultural or scientific mediators; they also make an important contribution to the creation of the social fabric through the many services they provide, in particular to literacy learners and newcomers. The breadth and variety of the content they offer ensures equal access for everyone to knowledge and culture, and promotes ongoing learning, research and innovation. In view of the benefit that libraries contribute to Canadian society, they are given a special mandate that they have a duty to fulfil, based on a set of values in which access is central.

Accordingly, legislation that is receptive to the needs of libraries in terms of access can only be viewed favourably by them. We appreciate the concern shown by the government in introducing legislation that strikes a balance between creators and users in a world in which the digital economy is constantly expanding. From reading Bill C-32, we understand that this balance is advanced in provisions designed to protect works through digital locks, making it an offence to circumvent those locks, and to facilitate the use of the works by introducing new exceptions. We would like to examine the issues that are certainly raised by these protective measures and exceptions when they are applied to libraries.

### **Exceptions in libraries and digital locks**

Libraries' mandate, to which we referred earlier, is of crucial importance to the public in Canada, which must have access to knowledge on an equal footing for everyone. To meet those needs, libraries must be able to utilize works in a manner that goes beyond the way they are used by individuals. Libraries also need to have the flexibility to make access more universal, so that knowledge, in all its variety, is available to satisfy the curiosity of its users. In that sense, the exceptions that are useful to libraries are the ones that allow collections to expand and release the treasures they hold: they are not meant to substitute for the market or to encourage the infringing distribution of works.

But the exceptions that can support libraries in fulfilling their mission are invalidated by the provisions concerning digital locks that prevent circumvention even for use that the bill does not consider to be infringing, such as conservation. ASTED agrees with its colleagues in the CLA who are proposing that the definition of "circumvention" in section 41(a) and (b) be amended to include the words "for any infringing use".

### **Exceptions for private study and research**

As we noted earlier, exceptions in libraries are not intended to interfere with the exploitation of works. We believe it is necessary to give the public a provision saying that the private study and research activities they wish to engage in may be carried on, if they wish, in an environment that is largely independent of the economic activities and interests associated with the exploitation of a work in the market. This kind of flexible access provides a bridge between freedom of information and freedom of expression, since the exceptions for private study and research encourage the production of new value-added content, which in turn will make its way onto the market.

The inter-library loan (ILL) service is tremendously useful in this regard, by putting the complementary resources that libraries can make available to their users to work. In a very large majority of cases, ILL is used in a relatively limited way and in specific fields. As well, the harm that ILL may cause has not actually been demonstrated to date.

For these reasons, ASTED believes that the requirements already imposed by sections 30.2(2), 30.2(3) and 30.2(5) of the existing Act, and made even more stringent (particularly the provision for destruction after five days) by clause 29 of Bill C-32, do not truly reflect the real use of ILL, and that it would be difficult to enforce them, for technical reasons, among others.

### **Fair use for education**

ASTED believes that the use of works in the educational context falls outside the purview of libraries, and therefore prefers not to take a position. However, because of the scope of that exception, it urges the government to listen carefully to the concerns voiced by groups representing creators.

### **Conclusion**

ASTED acknowledges that the government's task in reforming its copyright regime so it will be able to meet the challenges presented by technological change in the 21st century is not an easy one.

ASTED believes it is important that a balanced copyright regime be able to guarantee creators an income from the use of their works and adequate protection of those works from infringing uses that contribute nothing to advancing our society. It is just as essential, however, in ASTED's view, that there be flexibility for uses that do not interfere with the exploitation of works and at the same time promote the creation of new works. Libraries have a mandate that assigns them a pivotal role in the creation and dissemination of knowledge and culture, and ASTED urges the government to adapt Bill C-32 to guarantee libraries the flexibility in their use of works that will benefit everyone.

ASTED cannot support a bill that does not provide for libraries and their users to be able to circumvent the technical digital lock measures so they are able to enjoy the full benefit of the exceptions granted for library users, thereby guaranteeing fair and equitable access for everyone to all print and digital documentary information, while at the same time not causing economic harm to the creators and distributors of that information.