

Bill C-32 - The Perspective of an Ordinary Canadian

A Brief by Paul Cullum

Let me start by saying that I consider myself to be an ordinary Canadian. So typical in fact that I don't usually get worked up issues and I rarely make waves. However I'm having a problem with the current state of Bill C-32 however and I feel compelled to speak up.

There are many things to like about Bill C-32. For the most part, it defines a balanced approach that considers both the rights of the consumer and of copyright holder. It clearly enshrines what common sense already understands to be fair use of copyrighted works. It is, except for a fatal flaw, a fair compromise between the different stakeholders.

This fatal flaw is that Bill C-32 will make it illegal to circumvent digital locks or Technological Protection Measures (TPMs). At the moment, this is not illegal and it should remain this way. Let me be clear, there are legitimate reasons to circumvent digital locks. In fact, there are times when it is necessary to circumvent digital locks. Sometimes, in order to realize a fair use of something you have acquired that is encumbered with a digital lock, you may have to break it. In such a situation, Bill C-32 will make this illegal even though your only misdeed would be to circumvent the lock.

I, and many other ordinary Canadians such as myself, have a penchant for technology and for DIY projects. Many of us are hobbyists who use media centre software such as MythTV¹ and XBMC². Our hobby will likely be rendered illegal as a result of the proposed digital locks provisions even though we won't be infringing copyright. Let me offer a couple of examples of activities that I currently do as examples of my future illegal behaviour.

1. I watch my legally purchased DVDs on my HTPC (Home Theatre Personal Computer).
2. I put songs I purchased through iTunes on my MP3 player.

You might wonder, "What could possibly be wrong with that?". The problem is that I am watching the DVDs on a platform that I have made and that I am listening to songs on my MP3 player and not on an iPod.

The digital locks that I'm talking about, and that most of us are afflicted with, are part of a scheme known as Digital Rights Management (DRM). DRM doesn't have anything directly to do with copy protection. What DRM is intended to do is restrict the platform you use. It is meant to take the choice away from the consumer. Digital locks don't prevent copying but they are intended to restrict media to approved platforms.

Without circumventing a digital lock, most DVDs may only be played upon approved devices in approved regions. When you buy a DVD it will come with the added bonus of being encumbered by a scheme known as CSS (Content Scramble System). This ensures that you won't be able to play that

¹ MythTV - <http://www.mythtv.org>

² XBMC - <http://xbmc.org/>

movie you bought while visiting the UK, on your sanctioned DVD player that you purchased in Ottawa. We all know that you wouldn't want to do that.

It is difficult, if not impossible, to play commercial DVD using a Linux based home theatre computer without circumventing a digital lock. The pro-lock lobby has no desire for me to be able to watch DVDs on devices of my choosing. Currently I have to circumvent the CSS encryption present on DVDs that I've legally obtained in order to watch them on my home theatre Pc. DRM is an impediment to legitimate use that often needs to be overcome in order to give that choice back to the consumer.

Some of the first songs that I ever purchased from iTunes were afflicted with DRM. As a result I have to circumvent digital locks just to play my music on my non-Apple music player. I have a Sansa MP3 player. I don't own an iPod, which is the only music player that will play songs with Apples DRM. In order to play my songs on my device I have to first strip the DRM from the songs and convert the songs to MP3 format. Apple DRM only allows media to be played on Apple devices or with iTunes. It is there to protect their platform and provide a beachhead against competition. You are likely to keep using iTunes and Apple media players if your music has to stay with Apple.

It is bad enough that companies make it difficult for me to enjoy content that I pay for, using my own devices. But now it seems as if my own government is going to make it illegal for me to try to circumvent those impediments. There are going to be far more ordinary Canadians who will end up as law-breakers as a result of Bill C-32 than there could ever be as a result of the long-form census or the gun registry. Where is the balance in this bill if its anti-circumvention provisions make it illegal to try to make use of media in what would otherwise be a fair and acceptable way? Bill C-32 will make it illegal to circumvent DRM in order to use my media in a fair and non-infringing way. If Bill C-32 passes and I continue watching DVDs as I have been, I will be breaking the law. If I format shift, even if it is just to get my DRM protected songs from iTunes onto my MP3 player, I will be breaking the law.

DRM provides little benefit to society or consumers. Trapping content within particular delivery platforms reduces choice, decreases innovation and will make it a victim of obsolescence. What will you do with your Blue-Ray discs after the last Blue Ray player has been sold? If people aren't free to pick their own platforms then they will be picked for us. If you can't move your media then you will either lose access to it or you will end up buying it again. If you even can. If your local library has a 100 year old book in its collection, you may check it out and read it. In 100 years from now you may find it difficult to read a 100 year old DRM encumbered eBook from their collection. In fact, you may have trouble reading that eBook from the library in our current time. If it becomes illegal to circumvent DRM in order to play a movie that was legally purchased then it will become more enticing to copy a pirated version of that movie which will be far easier to play. There will be less respect for the law when the law stops respecting consumers.

I haven't heard any convincing arguments in support of digital lock protection. I can't see any reason that there needs to be legal protection for locks on media regardless of the rights associated to the use of the media. The detrimental effects of digital locks will be long lasting and protection for them is short-sighted if not blind.

I've heard the argument that digital locks need protection in order to properly implement WIPO treaties. That in itself isn't an argument that digital locks are of any benefit. If there is a requirement to make it illegal to break a lock in order to access media that I have a legal right to access, then there is a

I've heard the argument that companies need digital locks in order to create new business models. How can it be more important to create artificial business models at the cost of taking away our rights to innovate and to create our own delivery platforms? I own more than one hundred DVDs and I will lose the right to watch them in the manner that I've always been able to do.

All consumers will end up losing this valuable right. How will consumers be compensated for this loss? Ideally locks should not be permitted to restrict interoperability or competition. Ideally I shouldn't have to break them to use the software of hardware of my choice.

I implore the committee to amend Bill C-32 to protect the right to access and use media in ways that do not violate copyright. The act of breaking a lock should not in itself be considered illegal. TPMs provide no real barrier to those who wilfully intend to commit copyright infringement. To protect digital locks against circumvention by those who have a legal right to access their media will only harm legitimate users such as myself.

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