

From: Isaac Lin
Sent: January 29, 2011 10:37 PM
To: ~Legislative Committee on Bill C-32/Comite législatif chargé du projet de loi C-32
Subject: Comments on Bill C-32: proposed amendments to the Copyright Act

Dear Legislative Committee on Bill C-32,

Bill C-32 reflects a great deal of study on the evolving nature of copyright in a digital society, and aspects such as a limit on damages for non-commercial copyright infringement are welcome. However, the proposed clauses for Digital Rights Management (DRM) ignore the original reasons for copyright, and how DRM is being abused in the United States to supplant contract law with copyright law. Rather than trying to craft specific exceptions to the DRM circumvention provisions, the Copyright Act should return to first principles and not outlaw circumvention when there is no reasonable basis to assume harm to the ability of copyright holders to profit from their creations.

Copyright law arose out of the following key principle: in order to encourage creativity, provide a limited monopoly for creators to distribute their works. This monopoly is term-limited so that the work will eventually become public domain and can be exploited by others. In addition, specific situations have been recognized as fair dealing and sufficiently beneficial to society to require specific exemptions in the Copyright Act.

Bill C-32 proposes to block these specific exemptions in cases where works are protected by DRM. This is of dubious worth, as the greater good of fair dealing remains in effect, regardless of whether or not a work's creator chose to put a digital lock on it. In addition, by locking up the creation, it is at risk of not becoming freely available at the end of its copyright term, thereby robbing us of its historical worth.

Another problem is how DRM is being used in the United States under the terms of the Digital Millennium Copyright Act to subvert contract law. By protecting a device's embedded software with DRM, a use of the device that is contrary to its licensed purpose can now result in criminal legal action under copyright law, instead of a civil suit under contract law. As virtually all appliances are becoming driven by software, this has far-reaching effects into the everyday lives of Canadians.

I urge Parliament to return to first principles: rather than reverting all rights back to creators for DRM-protected works, all of the exemptions that we have deemed appropriate for copyrighted material should remain in effect. For a given circumvention of DRM, if there is no reasonable basis to assume harm to the ability of creators to exploit their works, then the Copyright Act should not make legal damages available. This will continue to protect creators while also respecting the well-tested exemptions already present in the Act, and

avoid turning all contractual disputes into criminal matters.

Some may argue that there are a number of exceptions in Bill C-32 for the DRM circumvention provisions. However, given the rapidly changing digital communications environment we now live in, we need to encourage greater innovation, so that businesses can rapidly adapt to new ways of profiting from creative content. This cannot be met with rigid exceptions carved into the law. Canadians are best served by having more flexibility, so as new modes of operation are invented, we can take advantage of them quickly. The rights of creators and consumers have been well-served through the existing fair dealing and other exemptions in the Copyright Act; we should seek to continue these exemptions and not wipe them all away just because a work has DRM protection.

Please make Canada a leader in balancing the rights of creators with those of society and do not make DRM a blanket method to revert rights back to creators, or a subversive manner to convert all contract breaches into criminal cases. Amend the proposed provisions in Bill C-32 related to DRM so that circumvention remains legal where there is no reasonable basis to assume that the creators have been limited in their abilities to profit from their works.

Sincerely yours,

Isaac Lin