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From: Paul Nijjar
Sent: January 31, 2011 5:09 PM
To: ~Legislative Committee on Bill C-32/Comite législatif chargé du projet de loi C-32
Subject: C-32 Brief

I have been following the progress of Bill C-32 for some time. Bringing copyright up to date is a worthwhile goal; there are many grey areas that should be addressed. However, this bill suffers from several deficiencies which I encourage the Legislative Committee on Bill C-32 to remedy.

Firstly, the bill creates two classes of copyright -- regular copyrighted works, and works to which technological protection measures (TPMs) have been applied. I understand that under WIPO treaties TPMs must be given some legal protection, but I object to TPM-protected works being given substantial greater protection than regularly-copyrighted works. I do not oppose copyright holders applying TPMs to their work, but TPMs should serve as technological tools, not political ones. To do otherwise is to weaken copyright, not strengthen it.

The best way to handle this would be clauses that assert that it is not an infringement of copyright to circumvent a technological protection measure if the circumvention's only purpose is to facilitate a use that is not an infringement of copyright. This could be added to the list of exceptions in section 41, with the structure modelled after the structure of section 41.12.

At the very least, the Bill should maintain a strong distinction between cirumventing TPMs for accessing works as compared to circumventing TPMs for copying works. Therefore the Bill should assert that it is not an infringement of copyright to break a technological protection measure for the purpose of accessing the work's content, provided that the individual has a legal licence to the work. This is technologically neutral (which the current bill is not), because it allows access to works the content providers is unwilling to support. This again could be added to the exceptions of section 41. People who are licenced to access works (whether purchased or borrowed from libraries) should be allowed to access those works using whatever devices are most convenient to them.

The "Youtube clause" of Section 29.21 just muddies the waters of copyright. It should be eliminated. Especially problematic is clause (c), which depends on individuals being ignorant of the copyright status of the infringed work.

Secondly, the bill encourages bad security and protects poor technology. Giving TPMs full legal status is one example of this error. Section 41 defines technological measures as needing to be

"effective", and the clauses of that section apply only to works to which "effective" TPMs have been applied, but in the government's own messaging the TPMs used in commercial DVDs would be protected in section 41. The copy protection on DVDs is notoriously weak, and has been broken for years. Yet, DVDs to which TPMs have been applied (including nearly all commercial DVDs), and playing these DVDs using open-source media players will be illegal. This suggests that those wishing to take advantage of the protections of section 41 can make their technological protection as weak as they like.

I have similar concerns about sections 41.13.3 and 30.62.c, which require security researchers to inform the subjects of their research before conducting that research. This sounds reasonable but in fact will lead to worse security, because security researchers will become targets of lawsuits and other harassment intended to keep them quiet. Such harassment already occurs against researchers disclosing vulnerabilities; copyright law should not encourage this practice. With these clauses, less above-board security research will take place, and
more security vulnerabilities will remain unpatched. These clauses should be struck down. (Note that the equivalent clauses in 41.15 and 30.63 have different consequences and should be allowed.)

The third theme that concerns me is interoperability with respect to open source software. Open source software serves two valuable services to society: it keeps proprietary software makers honest, and it provides cheap public access to our technological world. Unfortunately, Bill C-32 makes distributing open source software that works with TPMs much more difficult in Canada.

The exemption of Section 41.12 promises some protection for open source software under "interoperability", but it is still not clear whether those who publish and redistribute such works will be liable under the law. The wording of the law suggests that these uses will be protected, but comments from Minister Clement suggest otherwise.

This matters a lot. I do not represent the views of my workplace, but the organization I work for refurbishes and redistributes used computers. We already have to jump through hoops to provide software (such as MP3 codecs and DVD players) that allow our low-income customers to use our computers for such mundane tasks as listening to podcasts and playing DVDs from the public library. As time passes this issue grows more critical -- for example, the Kitchener Public Library now distributes e-books to which TPMs have been applied, and interfacing iPods to Linux computers requires software not created or authorized by Apple. A person who owns an iPod or signs out a library e-book should be able to access those objects if they have legal rights to use them; under Bill C-32 this will not be the case, and we will not be able to help our customers cross the digital divide legally. (Meanwhile many individuals will continue to infringe copyright openly, just as they do everywhere else in the world.)

To fix this, Section 41.12 should unambiguously allow the redistribution, possession and use of TPMs that permit interoperability, and these protections should be extended to media as well as program interoperability, so long as the use does not infringe copyright otherwise.

I hope you will take the issues I have raised seriously, and that you will implement these changes in the interests of Canadians.

Sincerely,
Paul Nijjar