

From: Daniel AJ Sokolov  
Sent: January 31, 2011 5:14 AM  
To: ~Legislative Committee on Bill C-32/Comite législatif chargé du projet de loi C-32  
Subject: Brief on Bill C-32 from Daniel AJ Sokolov

Honourable Members of the Copyright Committee,

Thank you for the opportunity to voice my point of view regarding proposed changes to Canadian copyright. I'm a journalist. My father is an author of novels, my sister is a creative artist. The copyright-system, in one way or another, directly or indirectly, guarantees all our livelihoods. We could most likely make a similar living without copyright as we know it, but it would require considerable transformations of value chains. Not easy.

Having said that, I wish to point out that we are also consumers of copyrighted material of all sorts. We read, watch, listen and feel works of other creators. Personally, I have spent considerable amounts of money to build a CD-collection with a four digit number of CDs. My VHS, music cassette and DVD collections are smaller, but still considerable. I also buy MP3s online, every now and then ? and often later buy the CD as well, because I value the artwork and I like having physical pieces for my collection.

I tend to backup all the CDs and DVDs I buy. I would NOT BUY any media I could not backup or copy for my own use. CDs and DVDs wear out over time. They can get broken, lost, stolen or stuck in storage far away. The latter is currently the case for me. I've moved from Europe to Canada only a few months ago. I haven't shipped my collections (yet), but rely on my digital copies and I have a separate backup, just in case (which proved to be very valuable when my hard drive unexpectedly quit the other week).

So I understand the need for a fair compromise. And I understand you have invested a lot of time and effort to find that balance. However, the current proposal is unbalanced and unfair in some areas. Let me point out the most important areas where I see need for improvement:

1. I oppose the provision in the proposed law that makes any and all circumvention of digital locks illegal.

Yes, I ?circumvent? digital locks regularly. Not to harm any copyright holder, let alone profit commercially from the act. I am forced to do it to be able to watch the DVDs I have legally acquired. For whatever reason, I had to download and install a DVD ?descrambling? program on my Linux computers. Otherwise I would not have been able to watch or backup the DVDs I have paid for, or which were given to me as presents from family and friends (who had paid for them). I do not have a TV set, because I don't watch TV. A friend gave me their used TV set when I moved to Canada as a present. I set it up and made sure it worked with the cable TV service that was included in my rent. After that, I

never used it. So after almost four months of non-use, I passed the TV set on. I do not have DVD-player anyway and given the fast track of technology, it seems to be already outdated technology.

This is a major reason why I oppose the proposed digital lock provisions: Technology changes rapidly these days and it is not going to slow down any time soon. Do you remember Sony's Mini Discs? Where are they now? What about VHS? You get the point. We know the media formats are not going to last and can copy or backup if we want to invest the time necessary.

Now add digital locks to the game. We have seen a number of online music shops/services, that employed digital locks, suddenly being shut down. The loser was almost always the consumer. They had paid for music or movies which have suddenly turned into useless data garbage, because the control server has gone offline. Or these files will become useless soon, when the customers have to get a new hard drive or a new complete computer and the "re-validation" server has vanished.

When you go to the length of legally buying a copyrighted work (as you know, it is often easier to obtain an illegal copy for free) and pay for it, you want to be able to enjoy that piece of the work as long as you wish. (Rental, subscriptions or pay-per-use is different.) You do not want to be locked in to a certain device, certain software, certain version of certain operating system or what have you. When the company who has sold you their goods decides to shut down their service, or if your device breaks down and you have to get a new one, you do not want to be forced to pay again for the very same piece of work you have already paid for.

This would be very unfair, it would constitute an act of "inverse piracy". And so the proposed law would send the wrong message: It is OK to rip others off. This is exactly what a part of the "pirate" movement says and I don't think this is what you, as lawmakers, want to amplify. It certainly is not something I would want, as I make a living of selling copyrighted works myself.

Even if I had a DVD-player and TV-set, I would have to backup my DVDs. In a few years down the road there won't be any more DVD-players available. Or they would have a region code, which prevented me from viewing the DVDs I have legally bought and paid for in Europe or Australia.

It should not be possible to revoke my rights as a law-abiding consumer by just placing a digital lock on stuff I buy. If this is going to be included in the new law, I would stop buying DVDs and anything else that has a digital lock. And I am sure that a lot of other people would do likewise - in the end to the detriment of creators and the content industry.

Let me give you an example of how digital locks services dig their own graves: I was an early adopter of buying music online with my mobile

phone to listen to it on the go. It was not cheap, as I had to pay for both the file and the data transport over the mobile phone. But it was convenient and I wanted to support some upcoming artists.

When I had to get a new phone, I switched the SD memory card from the old to the new phone. But the files I had legally acquired could not be played any more. Digital locks! They seriously wanted me to pay them again. Now, I could have searched for a way to circumvent the lock. It was too much hassle. I simply stopped buying anything from that mobile music store.

There must have been more consumers like me, because the service shut down not much later. Now my files would have been useless anyway, as they required monthly re-validation.

BTW, I've never bought anything from these artists again either.

The lesson I learned: Digital locks are bad for the law-abiding consumer. ?Pirates? and people who knowingly obtain illegal copies from them, however, don't care about digital locks. These people are willing to brake the law in the first place and don't care about the ?circumvention? clauses. These clauses would penalize otherwise law-abiding citizens who value the artist's work and are willing to pay for it. Once per piece, not once per technology life cycle (e.g. every few years).

With digital locks they can't legally circumvent, people will come to the conclusion that the value of the artwork they are interested in is very low. This is not something the Canadian laws should aim for.

2. Independent of the provision on digital locks I oppose the ban on the distribution and marketing of devices (like software) that can be used to circumvent digital locks. The reason is simple: All copyright comes to an end eventually. It simply runs out, and that is for good. At that time, users should be able to unlock digital files they had acquired legally previously. This means they need to obtain and use technology that can be used to circumvent digital locks places on content that is not copyrighted any longer.

Furthermore, this proposed provision creates problems with works that include material that is governed by different licenses, maybe issued under different legal situations in other countries. Some works might include other works which can be legally copied, distributed, etc. It must be possible to extract these parts of a digitally locked work. Otherwise it will be very difficult or almost impossible to use ?free? artwork in new artwork, if this new work would be subjected to digital locks. The creator of the new work would suddenly place restrictions on someone else's work or public domain material.

3. I welcome the reduction of statutory damages for non-commercial infringement. However, I regard the maximum of 5.000 \$ as still too high. It should be no more than 1.000 \$ with a mechanism to increase

or decrease this amount every review cycle (5 years) by the same degree as the prices for copyrighted work copies will have increased or decreased (similar to inflation/deflation, but focused on copyrighted material).

4. I wish to express my concern that the proposed provisions in 27 (2.3) in connection with (2.4) and others will be used to shut down services that are used for legitimate and illegal purposes alike, like Bit-torrent trackers. I have used them a few times to download open source software and movies who where available under creative commons licenses or who's copyright had run out.

Given the currently proposed wording it seems possible that services like Bit-torrent trackers, who do not even host any copies themselves, would become illegal, if the prosecution can prove that a majority of the material pointed to are illegal copies and that the provider of the tracker service was aware of that fact. I know that there are other factors for the assessment, but still I can imagine unfavourable results of the use of these provisions.

I would argue that illegal dealing happens with other goods as well, like guns, drugs, or even cheese made of raw milk (a ridiculous ban, BTW). Still, we wouldn't outlaw telling people where they can obtain these things. We would however make sure that the authorities on charge use this information to go after the dealers, not about the informants.

So the focus should not be on people or services who point to illegal, harmful activity, but on the illegal, harmful activity itself. Outlawing the pointing (like Bit-torrent trackers) is a threat to free speech and free flow of information from and to the ordinary citizen. Furthermore, I do not believe that such a measure would stop any dedicated ?pirate? from carrying on.

I expressively consent to the publication of my statement as part of the political process.

Thank you,  
Daniel AJ Sokolov

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