

Jan 31, 2011

The Legislative Committee on Bill C-32 (CC32)
Sixth Floor, 131 Queen Street
House of Commons
Ottawa, Ontario
K1A 0A6

Dear Ministers,

I would like to take this opportunity to convey to the Legislative Committee charged with studying Bill C-32, The Copyright Modernization Act, my concerns regarding this legislation. Although Bill C-32 appears to be more flexible than the previous attempts at copyright reform, this Bill is flawed to its core by the inclusion of strict, anti-circumvention provisions. As a Canadian, I am both concerned and disheartened by how easily my rights are trumped by the overriding and all encompassing protection for digital locks contained in the legislation.

The anti-circumvention provisions included in Bill C-32, unduly equip corporate copyright owners and distributors in the music, movie and video game industries with a powerful set of tools that can be utilized to exercise absolute control over Canadians' interaction with media and technology and may even undermine Canadians' constitutional rights.

In a world where technology is changing so quickly and so many nations are reviewing this same issue, I do not believe any real benchmark \"international standards\" exist which Canada should be compelled to follow. There is no end of corporate overtures of what they would like us to believe those standards should be, but they don't elect you to represent us, we do.

I fully support the objections to this bill raised by individuals such as Michael Geist of the University of Ottawa and Mark Akrigg, founder of Project Gutenberg Canada, Dr. Meera Nair of Simon Fraser University and others.

The fundamental flaw with this piece of legislation is clause 41.1, making it illegal to circumvent copy protection even if it is for reasons that are covered under \"fair use\".

We are in an era of immense technological change and transition. It is quite conceivable that in the not too distant future, all electronic media and devices could be protected by some form of digital lock mechanism. At that point, all other provisions of copyright become moot as the circumvention provisions would trump all other rights. In a world where all digital distribution could be done with digital locks in place, does copyright even matter?

What would this legislation look like if that were the case? Where would the individual's rights to access content be? Imagine the stifling effects on free speech and the free and open exchange of ideas if distribution were limited those who met the distribution and consumption restrictions placed on information by the providers. How many variants and incompatible controls could arise? What if every news outlet placed digital locks on their news and consumers had to agree to their conditions in order to receive a key?

The interests reflected in this bill are those of industry and corporations, not the public and not the artists. In a just and moral world, it is the artists and creators would be compensated by all who consumed the work. Under the current proposal, the injustice is no longer that the artist is not fairly compensated for his creation as they would receive no greater compensation from those who break the law. That is because the violation would be one of circumventing a digital lock, not violating copyright and the beneficiaries become the corporations and industry.

One only has to look at concrete historic examples of past activities to see how the public interest is undermined by this proposal.

One could buy a physical magazine, newspaper or audio recording, read or listen to it, discard it, use it to start a fire, line a birdcage or keep it in whole or in part in my personal collection. I could even pass that on to other individuals if I chose to and even resell it. While certain options become unavailable to me when I get my electronic version, other equally viable options become available such as mash-ups. Electronic locks tying that content to a specific format and device exclude virtually all options except those the distributor allows me to. In fact, in some cases, I have been unable to comfortably even view the electronic material without changing the format, something I would not be able to do if locks were in place.

My cable provider has chosen to encrypt all digital content requiring me to use their devices to only access the content as they decide is appropriate for me. I can't even use the built-in capabilities of my TV because other constraints my provider has placed on their service. My PVR and VCR have become useless since all channel controls must be done using the cable provider's control box making it impossible to record a show for later viewing, an otherwise fair use provision and past practice. Even on their own provided devices, I am artificially constrained in amount or duration by the physical limitation of their device and that is without considering the content \"flags\" being rolled out.

My cell phone company has locked the devices I have purchased free and clear to their network so I can not use a phone with another provider despite the compatibility. They have also chosen to disable functionality the manufacturer built into the device restricting my use for rational reason. In the worst case, the capacity to use the high speed capabilities of the phone was permanently disabled because the carrier was late in rolling out the network and the phone arrived before they were ready!

Just as technology is now allowing users to consume content when and how we chose, you are proposing legislation which removes any consumer control and rights, and places all that control in the hands of corporations controlling the distribution.

Recall the humble radio. Once upon a time it pumped a constant stream of music over the airwaves. Choices were limited to your local stations. Now, radio has gone internet, enabling me to listen to stations all around the world. Children regularly made cassettes from those radio broadcasts for personal use and nobody was concerned this violated copyright - which it no doubt did, but radio was free

then. When we could afford it, all went and bought the albums anyway. The reality of today's internet radio is the data is repeatedly copied, stored and distributed in its legitimate "broadcast path" to the computer listener. But if the end user chooses to store and solo-cast that to themselves later, it becomes illegal. Making the equivalent internet cassette today is illegal, unless of course, the radio station provides it as a podcast, in which case is all right - for now.

I'm sure I am not the only one who made a cassette copy of an album I purchased so I could listen to it on my personal cassette player as I walked down the street and made another copy of it when that tape wore out and another copy of some songs on a mix tape when I got tired of listening to the same songs in the same order all the time. I considered that fair use - I had bought the album and only changed the medium to suit my needs. Yet if I try to do the same for today's electronic media I am somehow considered breaking the law with some serious financial penalties attached. That is, if I can even do that without circumventing an electronic lock!

Penalties for breaking those controls - for circumventing digital locks - will not benefit the artists and creators, only the corporations.

The recording industry has had a major problem with the uploading and distribution of music and I believe are a major proponent behind the proposed changes to copyright legislation. Let me suggest a possible future where that is no longer an issue. Internet radio has provided an essentially infinite choice of music to listen to. Combine that with ubiquitous connectivity and the psychic powers of Google Search and the day will come where I just submit my playlist and Google would search the entire internet radio universe and provide a customized audio stream without ever needing to buy or store an iTunes collection just by scanning the world's radio stations for what's playing now somewhere.

There are numerous examples where individuals have purchased "rights of electronic use" which have then lost those rights when the company has shut down and taken the digital lock or distribution mechanism along with them. Imagine a world where Time-Warner went out of business and every physical copy of Life and Time magazines around the world suddenly disappeared from the world's bookshelves and libraries! Would libraries exist today if the Babylonians and the Greeks had electronic libraries and digital locks? What about copyright? Where would our civilization be today if the keys to those digital locks didn't survive the Dark Ages? What rights remain with the consumer of electronic goods when digital locks control access and what does that have to do with the copyright? Nothing, so don't mix the two in this legislation.

The reality is I believe the proposed legislation has not properly evaluated the historic effects copyright legislation has had on traditional analogue media and how it has affected the producers (artists and creators), the distributors and the consumers. One must also analyze how the consumers came to use the analogue media and what effects their fair use and other consumption patterns had on artists and distributors. A comprehensive analysis and mapping of those traditional analogue media and consumption patterns must be mapped not to today's technology, but to the possible future technology and their equivalent electronic patterns and future possibilities which do not exist today.

Keep in mind that for the most part, those violations of copyright were historically not pursued by the copyright holder even in the cases of mass violations for profit because it was primarily simply not convenient to the corporations and the recovery costs were relatively small and comparatively small to their overall profits. Simply put, they were lazy and it did not bother them.

Today, these dinosaur oligopolies have seen dramatic shifts in cost structures where production and distribution costs have been dramatically decreased thanks to technology, cost entry barriers have been decreased creating more competition, forcing more resources into finding and developing artists, content and to promote them in a fractured and diverse consumer world. In this new landscape they claim artists are not sufficiently protected under existing copyright laws.

Yet as the above examples have shown, they are quite happy to inflict constraint and cost on an individual. Furthermore, despite claims to the contrary, corporate oligarchies and existing copyright restrict the free choice of alternative access.

Any modifications to copyright must also look at the existing mechanisms industries have use to constrain and restrict user's rights of access, control and ownership under the guise of copyright protection or some other ruse.

Any changes to copyright and specifically the use of digital locks must envision not what the implications are for today's world as this world is built on yesterday's technology. Imagine the technical possibilities of the world of the future, a truly connected, electronic world. A world in which the transmission medium becomes cheaper than a storage medium. A world in which iTunes is obsolete because there is essentially instant access to everything from anywhere and it only needs to be stored in a single place and not downloaded. If you no longer need "a copy" of something in order to consume it, what does copyright look like and what does it address then? Now imagine a world where every source is protected by some form of digital lock, where access is only granted arbitrarily on conditions decided by the provider for remuneration only for as long as the provider decides.

Finally, consider the "Internet service providers' liability and make the enabling of online copyright infringement itself an infringement of copyright;" in comparison to other industries and offenses. Even the wording of that sentence, taken straight from the House of Commons News release, is so biased it is a preposterous foundation to begin the dialog on. Should we hold ISPs liable for the collapse of the recent world financial systems? Did ISPs play any different a role in that circle than this one other than provide a platform for service? Could we make ISPs liable for allowing those so-called Nigerian scams to flow by email?

Would anyone sanction legislation which made automobile manufacturers liable for damages caused by enabling their vehicles to kill and maim in high-speed accidents? What about gun manufacturers for the harm their weapons caused in the process of criminal activities? What about the responsibility of baseball bat manufacturers? Internet service providers are no more responsible for the content they provide than traditional telcos are for the content of the phone calls they

carry. After all, technology now exists to scan all voice calls as easily as all internet data.

Even the controls and lawsuits faced by the tobacco industry pale compared to the onus this legislation proposes on ISPs. I challenge you to weigh the impacts the tobacco industry has had on the population of Canada and the limited burdens governments have placed on them to combat those problems versus what you are proposing to burden ISPs with to combat what is an impact to private corporations who have failed to do anything to address the damages themselves.

In respect to this issue, again do not write legislation based on today's reality, it is based on yesterday's technology. Full secure encryption is readily available but not in widespread use. Such encryption technology will always be far ahead of the processing power and capabilities required to decrypt it. When the landscape changes will the practical limitations of this bill be moot or will the ISPs be burdened with compliance damned the costs?

I do not believe the true nature of the concerns with existing Canadian copyright laws have been explored prior to undertaking this review process. I do not believe the proposals to revise copyright will have any meaningful effect if ultimately any rights are trumped by the presence of digital locks or similar controls. I do not believe the burdens placed on ISPs by this legislation are consistent with the nature and the costs of the suggested problems they are trying to address and I further believe they are entirely inconsistent with any other industry.

I urge you to listen to the concerns expressed by me and those individuals who have more closely examined the issues of circumventing copy protection mechanisms and the burden of ISPs regarding the "enabling of online copyright infringement". Ultimately any proposed legislation must be in the best interests of Canadians and in the advancement of Canadian society. I do not believe the legislation in its current form does this.

Sincerely,

Ian Williams

CC: The Right Honourable Stephen Harper
CC: The Honourable Tony Clement Minister of Industry
CC: The Honourable James Moore Minister of Canadian Heritage
CC: The Honourable Michael Ignatieff
CC: Legislative Committee Members (Charlie Angus, Sylvie Boucher, Peter Braid, Gordon Brown, Serge Cardin, Dean Del Mastro, Marc Garneau, Daryl Kramp, Mike Lake, Carole Lavallee, Dan McTeague and Pablo Rodriguez)
CC: Saxton.A@parl.gc.ca