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From: Stephen Salomons

Sent: March 1, 2012 2:02 AM

To: ~Legislative Committee Bill C-11/Comité législatif loi C-11

Subject: Bill C-11 needs revisions to ensure a proper balance -- when digital locks trump all other rights, there are no other rights

I am a private Canadian Citizen, and am both a content creator and consumer. I am writing to urge the government to rethink its proposed copyright bill, Bill C-11. This need needs to be written such that it is in the best interests of Canadians. Legislation which does not include the right to bypass digital locks for non-infringing purposes is fundamentally flawed, and is not in the interest of Canadians and punishes paying customers.

By protecting strong digital locks and rejecting flexible fair dealing, the proposed bill C-11 will destroy the traditional balance between the interests of creators and the interests of the general public in the sectors of culture and technology, and will do great harm to the Canadian economy, stifling innovation and penalizing paying customers. Technical Protection Mechanisms (TPM) all too often only serve to enforce vendor lock-in monopolies and harm the free market with unintended consequences. TPMs add no value to paying customers, and destroy the property rights of paying consumers.

Consumers who wish to exercise their format shifting rights but cannot due to TPM may find that the only clear and legal option for them is to exit the marketplace. The copyright consultations in 2009 (and earlier) showed the vast majority of customers do not want TPM.

I am opposed to Section 41.1(1), as it places TPMs above any other right or provision. In promoting this bill to the public, the Ministers have lauded the additional rights that they think that they are granting on the public. However, when TPMs trump all other rights, there are no other rights. This may be fixed with the following changes to Section 42, adding subsection 41.1(5) and (6) as follows:

"Lawful purpose

(5) Paragraph (1)(a) does not apply if a technological protection measure is circumvented for any lawful purpose.

(6) Paragraphs (1)(b) and (c) do not apply to a person who supplies a service to a person referred to in paragraph (5) or who manufactures, imports or provides a technology, device or component, for the purposes of enabling anyone to circumvent a technological protection measure in accordance with this Act."

Sections 29.21(1)(c), 29.22(1)(c), 29.23(1)(c), 29.24(1)(c) and other similar sections would need to be removed.

This is a change that will still be WIPO-compliant. Article 11 of the WIPO Copyright Treaty (the anti-circumvention provision) was intentionally left broad in scope to allow for various implementations. The treaty merely requires "adequate legal protection and effective legal remedies against the circumvention of effective technological measures." WIPO does not require TPMs to trump other legal rights. Switzerland, a country more dependent on intellectual property than Canada, has linked circumvention to actual copyright infringement. Many other

countries have implemented flexible rules. Even the United States have issued exemptions to digital locks.

TPMs cannot tell the difference between infringing and non-infringing uses, and default to block everything. TPMs will have a negative impact on education and distance learning, making it difficult for Canadians to access educational content and upgrade their skills in the competitive international labour market. To restrict the ability of educational institutions to teach using media is to place Canada at an educational disadvantage in the global economy when we need to ensure that we have the highest skilled and most knowledgeable workers.

The language on Section 41.1(1) is not needed to be WIPO-compliant. In fact, this goes well beyond the WIPO requirements. Fewer than half of the WIPO signatories who have passed WIPO legislation have included such terms. Canada does not need these terms. A better balance and WIPO compliance may be achieved by allowing TPMs without stating that TPMs trump all other rights.

I would propose that additional provisions be added: - the identification of "qualified circumventers" to allow Canadians without technical expertise to exercise their rights - the removal of the lock requirements for digital lessons and digital inter-library loans

- the establishment of an impartial review process for new circumvention rights. This review should occur every three (3) years instead of the five (5) stated in Section 92. This is to ensure that the law may stay relevant with the fast-changing world of technology.

- the extension of the encryption research exception to all research

- fixing the privacy and perceptual disability exceptions so that circumvention devices can be lawfully obtained

- extension of the interoperability exception

- a requirement on rights holders to unlock locked content in appropriate circumstances

- exclude non-infringing access controls from their anti-circumvention legislation

- establish a new exception for personal use

- establish a new exception for preservation of digital materials

- establish a new exception for obsolete or broken locks

- establish a new exception for court cases, laws, and government documents

- establish a new exception for public domain works

- remove the lock requirements on the time shifting, format shifting, and backup copy provisions

- require businesses that use TPMs to include a prominent warning on their packaging

- removing explicit anti-circumvention provisions in new exceptions

- dropping the destruction and lock requirements for "lessons" and inter-library loans

I feel that with these provisions, bill C-11 can be passed and can strike a balance for Canadians. Canadian Citizens have spoken at multiple consultations, and have overwhelmingly opposed legal protection for TPMs. Bill C-11 needs to be written in the best interests of Canadians. Legislation which does not include the right to bypass digital locks for non-infringing purposes is fundamentally flawed.

Thank you for your time on this important issue. I look forward to your reply,

Stephen Salomons