



BRIEF TO COMMONS COMMITTEE REGARDING BILL C-32 (COPYRIGHT MODERNIZATION ACT)

EXECUTIVE SUMMARY

Canadian Home and School Federation (CHSF) has been advocating for Canadian students for more than 100 years. CHSF provides opportunities for provinces or territories to discuss issues regarding children's education, health, and social well being and proceed with action based on CHSF policy. We enjoy the benefits of working with our provincial and national education partners in promoting strong public education for the benefit of all students.

CHSF recognized the importance of copyright reform in 1990 and since then have partnered with national education organizations who are concerned about the impact copyright will have on education policies and practices in Canada. For years, leading national education organizations such as the Canadian Teachers Federation, Canadian School Boards Association, Association of Universities and Colleges of Canada, Association of Canadian Community Colleges, Copyright Consortium of the Council of Ministers of Education Canada have worked together to propose to the federal government a balanced approach to copyright, as it impacts teaching and learning at all levels throughout the country. The focus of these national organizations, which represent seven million Canadians, is to ensure the quality of education in Canada.

The education sector respects copyright. Educational institutions currently pay for content and for copying materials, and, for the education community copyright reform is not about getting material for free. Creators and the publishing and marketing companies that market artists' works should be remunerated. But the collectives' reach in our country should not come at all costs. Different rate-increase proposals by Access Copyright to the Copyright Board would substantially increase the costs of print material to the education sector.

Currently the education sector pays its fair share. Provinces and territories pay approximately \$20 million per year to Access Copyright under a photocopying tariff in the K – 12 education sector. In 2010 Access Copyright asked the Copyright Board to increase the royalty per student, an exorbitant increase which would triple the cost of what is currently paid. The dispute is **“How much more the education sector should pay?”** and in certain cases whether the education community should be paying for copied materials from on-line resources that are publicly available.

There is room for both collectives and the education amendment. The proposed amendments in Bill C-32 will permit the use of publicly accessible content legal in educational institutions. Collectives will continue to represent creators who seek remuneration for their creations and will act as a vehicle, for those institutions that desire it, for clearing rights and paying for content. Enactment of the amendments will clarify which materials can be used and under what conditions clearance and licences must be obtained. Adding “education (including multiple copies for class use)” to fair dealing does not mean that teachers and students would be able to copy whatever they want without paying copyright royalties. Copying under fair dealing would still need to be “fair” in accordance with the factors established by the Supreme Court of Canada in 2004.

The education community is very pleased that Copyright Bill C-32 has addressed the issues of copyright and education in Canada. Copyright legislation has a direct impact on policies and practices in classrooms across Canada. We seek fair and reasonable access for students and teachers in their educational pursuits as they move forward in a digital world. The new copyright legislation sets the necessary legal framework for learning in the digital age and, in doing so, improves Canada's competitive advantage with regard to on-line learning and skills development.

However, there is still a need to adjust certain amendments in the legislation. Our recommendations for making certain important changes to the bill are attached in the appendix. By enacting balanced copyright legislation, addressing the needs of students and teachers, promoting access, and making other much-needed updates, Parliament has an extraordinary opportunity to safeguard Canadians' learning objectives for generations to come.

Brief: Bill C-32 (Copyright Modernization Act) An Act to amend the Copyright Act

KEY COMPONENTS OF PROPOSED LEGISLATION

While many of the amendments contained in the proposed legislation introduced in Bill C-32 will impact the provision and delivery of education, those **amendments calling for new users' rights to educational use of publicly available internet material, and the addition of "education" as an allowable purpose under the fair dealing provision** will provide the most significant benefit for the educational community.

1. Amendment on the Educational Use of the Internet

The educational use of the Internet has been a priority concern for national education organizations. There is an immense need to have fair and reasonable access to publicly available Internet material. CHSF, in support of strong public education, sees expansion of the use of copyrighted materials critical to provision of strong public education. The education community supports the amendment of the educational use of the Internet as it appears in Bill C-32. This education amendment provides Canadian teachers and students with the ability, during their routine educational activities, to use material made publicly available on the Internet, without breaking the law. The amendment on the educational use of the Internet establishes the legal framework for students and teachers to conduct the common everyday activities that are essential in our schools, colleges, universities, and technical institutions. These include activities such as copying publicly available material from the Internet, incorporating it into assignments, and exchanging it electronically with teachers or students. The proposed education amendment in Bill C-32 would permit teachers and students to access material on the Internet for public use in the process of teaching and learning, while respecting the rights of those creators and other copyright holders who post materials on-line for commercial purposes. This is a reasonable, balanced approach to copyright legislation. The proposed amendment applies only to material that has been posted on the Internet with the authorization of the copyright holder and without any barriers to restrict access such as encryption or password protection. It would not exempt institutions from paying for digital materials such as purchasable CD-ROMS, subscription databases, licensed software, on-line courses, or other curriculum resources. Copyright owners who wish to sell or otherwise limit access and distribution of their digital or on-line materials can continue to do this through subscription, password, and payment technologies. The proposed education amendment would not apply to materials that are not publicly accessible, which allows content creators and copyright owners to continue to sell and receive payment for their works when they intend to do so.

Copyright infringement is of key concern to educators across the country. The education sector believes that clarity and balance in the *Copyright Act* must be vigorously championed, such that copyright infringement is eliminated and that every student and teacher can be assured of timely and fair access to Internet materials. It is very important that Canada's *Copyright Act* establish the necessary legal framework to allow educators and students to use and copy publicly available digital materials. We were very pleased to see the inclusion of this essential

amendment in Bill C-61 and now in Bill C-32 — and commend the government for maintaining this principled approach to education and copyright through the last two drafts of this legislation.

National education organizations have long maintained that a modern and balanced copyright framework will protect the public interest. The amendment is essential in a time when federal and provincial/territorial governments are simultaneously increasing our levels of connectivity, positioning the country to be a leader in the information age, and supporting the use of the Internet in classrooms. The amendment on the educational use of the Internet will ensure that students reap the full benefits of governments' investment without harming the interests of copyright owners.

2. Inclusion of Education in Fair-Dealing Provision

The amendment to add “education” to the list of allowable purposes in the fair-dealing provision is an important amendment for education. This amendment would make it clear that fair dealing is available to students and teachers. However, we seek further clarification with this amendment and request that the fair-dealing provision expressly state that adding “education” as an allowable fair-dealing purpose includes “making multiple copies for class use.”

Fair dealing is a users' right in the *Copyright Act* that permits the use of copyrighted material without permission or payment of royalties, provided the “dealing” is for a purpose set out in the fair-dealing section of the *Copyright Act* and provided the “dealing” is “fair”. Currently, there are five allowable purposes: research; private study; criticism; review; and news reporting. Bill C-32 proposes to add “education” as a new enumerated purpose.

The Supreme Court of Canada established how fair dealing should be interpreted in the landmark *CCH* case in 2004. The Supreme Court established a two-step test that must be used to determine whether the fair-dealing provision applies. Both steps of the test must be met:

1. Is the use of the copyrighted material for an *enumerated purpose*?
2. Is the use of the copyrighted material *fair*, using the factors set out in *CCH*?

The claim that adding “education” as an additional fair-dealing purpose would allow teachers to copy whatever they want without having to pay copyright royalties ignores the second test laid down by the Supreme Court in the *CCH* case. Therefore, this claim is unfounded. Adding “education” to the list of allowable purposes, as Bill C-32 proposes, would ensure that copying by teachers for educational purposes meets the **first test**. A teacher copying for students would not meet the **second test** unless the dealing was “fair”.

Whether the dealing is “fair” must be determined by conducting a fairness analysis using the six factors established by the Supreme Court in the *CCH* case: the purpose, character, and amount of the dealing; alternatives to the dealing; the nature of the work; and the effect of the dealing on the market for the work. It is only if a teacher can conclude on the basis of such an analysis that the dealing is “fair” that no copyright royalties are payable. Whether the dealing is “fair” must be assessed in accordance with the six factors established in *CCH* under the second test.

Adding “education (including multiple copies for class use)” to the list of enumerated fair-dealing purposes will **not** affect the second test - is the dealing “fair” - in any way.

The clarification that fair dealing for the purpose of education includes making multiple copies for a class use would mean that Canadian “fair dealing” is the same as the United States’ “fair use.” The “fair use” provision, like “fair dealing” in Canada, also involves two tests to determine whether a “use” is fair. Under the first test, the enumerated purposes are “criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research.” Education organizations want Bill C-32 to provide a similar provision - that the new enumerated purpose be “education (including multiple copies for class use),” rather than simply “education.” Such an amendment would make it clear that Canadian teachers, like their US counterparts, would be able to make copies for students in their class under the first test. The dealing would still have to be “fair” under the second test.

Canadian schools should be afforded the same rights enjoyed by teachers and students in other countries - that is, teachers should have the ability to make multiple copies for class use provided, of course, that the dealing is “fair” under the second test established by the Supreme Court of Canada.

In a knowledge world access to information is crucial to success and the cost of technology and resources to access and deliver information to students in order to develop critical thinking skills is tantamount. The opportunity and affordability of a first class public education for **all** students is at stake if new legislation results in significant additional cost to the system

When explaining what fair dealing in the Bill means, reference is given to it taking place “in a structured environment”. This may have the potential to eliminate the opportunity to provide education for students outside the traditional formal school setting (classroom/teacher), as this is no longer the only avenue for instruction. Provision of necessary curriculum at the secondary level is being offered through online learning and distance education. Additionally, students who are unable to learn in “traditional settings” and have their programs modified may be denied the opportunity for education depending on what is determined to be a “structured environment”. Opportunities for learning in a non-traditional setting have and will continue to grow as the cost of education continues to escalate.

Technology provides educational opportunities for learning in non-traditional settings, and therefore the need not to restrict where and how learning is provided is required. We do not support any limitation of where and how learning takes place and therefore request the Bill does not restrict learning through stringent regulation.

3. Digital Locks

The issue of what, how, where, why, and whom is able to utilize today’s technology in a rapidly expanding and complex digital world is a question many people have difficulty answering. Many parents struggle with being comfortable in a world where their children are exposed to, and are using technologies they have not experienced; have difficulty understanding much of the language and implications implied in accessing and using the various forms of technology, and

to a great extent depend on their children to know the limitations of the technologies they are using. Even more complicated are the tools and devices, structure and language, and laws governing copyright protection.

For the most part, adults who buy or rent music and videos understand the rental or purchase of that material entitles the owner to enjoy the material personally and that it is not intended to be copied or shown commercially. Warnings regarding copyright are clearly noted. Computer programs specify the terms of use and limitations for copying. When it comes to copyrighted material, especially that available on a website, the terms of use or copyright information is not readily available or only comes to the forefront after it has been accessed.

Bill C-32 establishes a complex framework that gives rights holders new legal protection that has nothing to do with copyright protection for creative content – materials such as books, music, and movies. In essence, the new legislative measures extend protection to technology. Digital locks are devices or services that permit circumvention of measures employed to limit or prevent access to copyrighted material. Bill C-32 defines two types of digital locks, those that **control access** and those which **control use**. Access control digital locks employed by a rights holder make it illegal for any user to circumvent the digital lock for any reason, **even if circumvention is allowed under the Copyright Act**, while circumvention is allowed if a user control digital lock is employed. In practice, this would mean that educational institutions, teachers and students would lose their rights under fair dealing, educational and library exceptions, or other users' rights in copyright law to copy, perform, or share electronically a digital work that has been locked by a "technological measure". They can make copies if a user control digital lock is in place.

Educational users of copyrighted materials have expressed concern that the section on digital locks of the legislation needs to be amended to provide that "circumvention of technological protection measures is prohibited only when the circumvention is for the purpose of infringing copyright. The provisions relating to digital locks outlined in this Bill currently exceed those required under the World Intellectual Property Organization's Copyright Treaty and the Performances and Phonograms Treaty which Canada has signed - but not yet ratified. That it exceeds what is necessary is supported by a 1998 Department of Canadian Heritage and Industry Canada discussion paper which recommends possible prohibition against bypassing or removal of digital locks for the purpose of infringing copyright.

In the proposed legislation, circumvention of a digital lock is considered a violation of the law and subject to criminal prosecution. If differentiation between access and use controls makes use of copyrighted materials too complicated or practical, the result could be avoidance of many educational materials that "could have important economic, societal and cultural benefits", and diminish the desired outcome of the amendment providing "education" as a purpose under fair dealing. The effect may also negate the ability to reduce administrative and financial costs for users of copyrighted materials that enrich the educational environment. The technological advances over the past ten years suggest that use of technological distinction between access and use control as a pillar for copyright reform legislation is not in keeping with reform that is consistent with "technologically neutral principles" outlined in a 2001 report "Consultation on Digital Copyright Issues" by the Department of Heritage and Industry Canada,

and could result in needed revision of the Copyright Act much sooner than would be necessary without inclusion of the distinction.

4. Reproduction for Instruction

Bill C-32 has been amended in that specific technologies used for reproduction of materials (flip charts, overhead projectors etc.) are removed and any technologies available on the educational institutions' premises are able to be used to reproduce/display the educational materials. The rapid advances in new technologies makes the restrictions outlined in the current Copyright Act obsolete. We recommend deleting references to specific technologies rendering the Copyright Act more technologically neutral. This allows the enhancement of the traditional classroom experience and facilitates new models for education outside the physical classroom

5. Performing Audiovisual Materials in Schools

CHSF believes in educating students to be socially responsible and this responsibility includes understanding the importance of adhering to the laws of the nation including those falling under copyright. It is important that any violation of the law be dealt with in an appropriate manner so as to hold those responsible accountable while those unaware of the action not accountable.

Therefore, CHSF supports the passage of the amendment to the performance exception, *which grants an exception so long as the copy is not an infringing copy or the person responsible for the performance has no reasonable grounds to believe that it is an infringing copy*, provides educational institutions with protection from liability for charges of infringement, and places more accountability on the provider of the copied material to be performed.

Under current legislation, the performance of audiovisual works (rented or purchased movies, television programs and videos, and other audiovisual material) is not included in the performance exception. The passage of the amendment to the performance exception to add to the Copyright Act a new paragraph (d) extending the performance exception to audiovisual works will correct the present disparity and provide for greater exposure for students. CHSF supports this amendment as this in turn enhances teaching and improves learning opportunities.

6. News and News Commentary Programs

The news and news commentary exception which was introduced in 1999 allows for the single taping and performance of news and news commentary programs (excluding documentaries) under certain restrictions. The current necessity of keeping a record of such programming material, and especially that of erasing the material or paying royalties after one year requires the expenditure of time and resources. News and news commentary programs which are recorded may provide important material for discussion long after they are recorded and they are worthy of consideration as "enriching the education environment." As the collective that was charged with administration of rights of the owners of educational programming

(Educational Rights Collective of Canada) is no longer in existence and the cost for any new collective to set-up and administer the program of questionable cost/benefit, the amendments in the proposed Bill which eliminate the need to pay royalties for news and news commentary programs, along with the elimination of the need for educational facilities to keep records of this programming are welcome. Therefore, CHSF supports this amendment.

7. Online Learning

Bill C-32 allows “*distance education students*” to receive instruction through classroom activity permitted by current copyright exceptions as if they were in the classroom. In an era of technological advance, and the inability to offer specialized programming without significant expenditure in all locations, this exception is key to the provision of equality of opportunity for students. It is also a significant step towards ensuring technical/vocational programs are available to all students including the acquisition of quality literacy and numeracy skills, the right of disabled to equal access to educational opportunities, the availability of Canadian universities and colleges, facilities and programs for deaf Canadian students, and opportunities for First Nation Peoples in academic, trade and professional training equitable to that of other children and adults in Canada. As courses are often offered more than one semester/year the requirement to destroy any recordings of online sessions within 30 days after the students who are enrolled in the course receive their evaluation would be very costly in terms of time and resources. This is also inconsistent with current online course offering practices and we would not support its passage. Therefore, CHSF would support an amendment to this subsection of the Copyright Act.

8. Digital Delivery of Course Materials

A new section to Bill C-32 would allow *schools to share copyright material with their students online digitally/electronically under certain conditions*. The amendment is commonly referred to as the “course-pack provision” and is used primarily for post-secondary and distance education programs. The complexity of how it would operate, the uncertainty over costs being determined sometime in the future, and current educational institution practice of entering into direct publisher license agreements covering digital copying and delivery makes this exception unpalatable and potentially cost restrictive. In light of continued cost pressures for students to attend post-secondary education, this uncertainty does not warrant CHSF’s support for passage of this particular section.

9. Circumvention Services and Devices

In the proposed legislation, *the offering or provision of services, and importation, manufacturing and provision of any technological device or component designed for the purpose of circumvention is prohibited*. As circumvention is necessary and allowable under certain provisions in the proposed copyright legislation, the prohibition of such services and devices is contrary to the desired outcome of being able to use copyrighted materials more easily and effectively. CHSF does not support the proposed legislation; however in conjunction with other national education organizations have made a recommendation which will provide consistency with the recommendations for digital locks.

10. Print and Perceptually Disabled Exception

In the proposed Bill it's added "*a person with a perceptual disability*" to those already able to copy material in a special format for use by a person with a perceptual disability. As technology evolves, the ability of persons with disabilities to produce their own special-format materials has the potential to create enhanced learning opportunities

A new section in the proposed legislation creates opportunity for non-profit organizations acting on behalf of persons with a print disability, to make a copy of special-format material available to non-profit organizations in another country provided the materials are not commercially available in that country and royalties are paid to the copyright owner under a compulsory license agreement. At the same time, the ability to create certain special-format materials such as Braille while not allowing large print books to be sent out of the country can be seen as defeating the intent of the amendment *which creates technology neutrality*. A search for commercially available materials with documentation of same is required before the materials can be copied leading to higher costs and delay in provision of materials. Current international copyright laws provide owners of copyrighted materials control over the import and export of these materials. The exchange of special-format materials which are free of import and export control by copyright owners, the need for and documentation of searches for other commercially available materials, and provision of these materials without payment of royalties is desirable if the best Canadian education experience for **all** students is to be realized. CHSF supports the changes contained in "Consortium" Recommendations related to print for the perceptually disabled. Cost savings and benefits associated with producing and providing these materials could also be realized.

11. Rights Management Information

Proposed legislation in Bill C-32 must contain remedies for the removal or alteration of "rights management information" forming part of the copyrighted materials. It must also provide for remedy if distribution of materials is done with the knowledge this information has been removed or altered. One difficulty with "management rights information" is that it may not be legally binding in Canada. The protection provided should not extend beyond what is outside the information provided by the copyright owner, and the copyright owner should be equally responsible for remedies due to false or misleading statements contained in the "rights management information" attached to that copyrighted material. In the education community, there are circumstances where it is desirable to remove all or a portion of the information so the display or reproduction is not unduly compromised. CHSF supports recommendations of the Education Copyright Consortium related to rights management information.

12. Internet Service Provider (ISP) Liability

Bill C-32 currently contains provisions to address the role and liability of ISP's. Since libraries and educational facilities may, and do act as ISP's, they should be afforded the same protections as other ISP's (telephone and cable companies) who are only intermediaries and provide access to the internet. Bill C-32 as proposed provides protection against liability for infringement by subscribers and clarifies that this protection extends to educational facilities and libraries.

Passage of proposed amendments related to ISP's will offer protection for educational facilities and libraries acting as ISP's, and at the same time hold users accountable for alleged infringement activities. The result is enhanced learning opportunities through access to a broader range of materials. The proposed legislation also places the responsibility for monitoring for copyright infringement on the copyright holder, with the ISP only being responsible to provide notice to any subscriber accused of copyright infringement. Since the copyright owner is the one who makes any accusation of copyright infringement, the costs associated with the notice sent by the ISP at their request should rightfully be assigned to the copyright holder. CHSF supports the amendment **that** fees to be paid related to notices forwarded by ISPs at the request of a rights holder be borne by the rights holder.

13. Remedies

The current Canadian Copyright Act provides for damages for each instance of copyright infringement even when the person is not aware they may be infringing copyright. Damages for infringement by not-for-profit educational institutions could therefore be astronomical based on the number of students. Protection against damages for infringement when an individual believes their copying is fair dealing is possible if the proposed amendment was expanded. CHSF supports recommendations from the Education Copyright Consortium related to remedies.

Education Community's Recommendations on Copyright Legislation

1. To ensure consistency with the wording of the current *Copyright Act*, section 30.04(5) should be amended to provide:

(5) Subsection (1) does not apply if the educational institution or a person acting under its authority knew or could reasonably have been expected to know that the work or other subject matter was made available through the Internet without the consent of the copyright owner.
2. The relationship between fair dealing and specific user rights should be clarified by amending the act to provide:

Nothing in sections 29.4 through 32.2 of this Act is intended to limit or otherwise alter the scope of fair dealing.
3. Support the amendment that deletes references to specific technologies in section 29.4, with a goal to rendering the *Copyright Act* more technologically neutral.
4. Support the amendment to the performance exception in section 29.5 of the *Copyright Act*, providing that the exception would apply only if the copy being performed is a non-infringing copy, or that the person responsible for the performance has no reasonable grounds to believe that the copy is an infringing copy.
5. Support the amendment to the performance exception to add to section 29.5 of the *Copyright Act* a new subsection (d) that extends the exception to audiovisual works.
6. Support eliminating the obligations to pay royalties and keep records of the making, erasing, performing, and method of identification of the copy of news and news commentary programs.
7. Section 30.01(5) should be amended to delete the requirement that any recording of an on-line lesson be destroyed within 30 days after students who are enrolled in a course receive their evaluations.
8. Reject the enactment of sections 30.02 and 30.03.
9. Clause 47 should be deleted and replaced by a regime that provides for the circumvention for the purpose of infringing copyright to be prohibited. This would be accomplished by the following amendment to Bill C-32:

41.1 (1) An owner of copyright in a work, a performer's performance fixed in a sound recording, or a sound recording, and a holder of moral rights in respect of a work or such a performer's performance are, subject to this Act, entitled to all remedies by way of injunction, damages, accounts, delivery up, and otherwise that are or may be conferred by law for the infringement of a right against a person who, without the consent of the copyright owner or moral rights holder, circumvents, removes, or in any way renders ineffective a technological protection measure protecting any material form of the work, the performer's performance, or the sound recording for the purpose

of an act that is an infringement of the copyright in it or the moral rights in respect of it or for the purpose of making a copy referred to in subsection 80(1).

(2) If a technological protection measure protecting a material form of a work, a performer's performance, or a sound recording referred to in subsection (1) is removed or rendered ineffective in a manner that does not give rise to the remedies under that subsection, the owner of copyright or holder of moral rights nevertheless has those remedies against a person who knew or could reasonably be expected to know that the measure has been removed or rendered ineffective and, without the owner's or holder's consent, does any of the following acts with respect to the material form in question:

(a) sells it or rents it out;

(b) distributes it to such an extent as to prejudicially affect the owner of the copyright;

(c) by way of trade, distributes, exposes, or offers it for sale or rental or exhibits it in public; or

(d) imports it into Canada for the purpose of doing anything referred to in any of paragraphs (a) to (c).

10. The definition of "technological measure" in Clause 31, section 41, should be deleted and the following substituted:

"technological measure" means any technology, device, or component that, in the ordinary course of its operation, restricts the doing — in respect of a material form of a work, a performer's performance fixed in a sound recording, or a sound recording — of any act that is mentioned in sections 3, 15, or 18 or that could constitute an infringement of any applicable moral rights;

11. Clause 47, sections 41 to 41.27, should be deleted and replaced with the following:

An owner of copyright in a work, a performer's performance fixed in a sound recording, or a sound recording, and a holder of moral rights in respect of a work or such a performer's performance are, subject to this Act, entitled to all remedies by way of injunction, damages, accounts, delivery up, and otherwise that are or may be conferred by law for the infringement of a right against a person who offers or provides a service to circumvent, remove, or render ineffective a technological protection measure protecting a material form of the work, the performer's performance, or the sound recording and knew or could reasonably be expected to know that providing the service will result in an infringement of the copyright or moral rights.

12. Bill C-32 should be amended to provide that circumvention of technological measures and the provision of a circumvention service, technology, device, or component is prohibited only when the purpose of the circumvention is to infringe copyright. The wording of the necessary amendments to achieve this objective is set out earlier in recommendation 9.
13. Respecting persons with perceptual disabilities, support an amendment to Bill C-32 that deletes the "commercially availability" condition in section 32(3).

14. Support the introduction of technological neutrality in section 32, providing that it is not an infringement of copyright to produce materials in a format that is suitable for a person with a perceptual disability who requires the material.
15. Introduce an amendment to Bill C-32 to provide that no royalties are payable for sending a copy of special-format materials for a person with a print disability to another country.
16. The definition of “rights management information” in Clause 47, section 41.22(4), should be deleted and the following substituted:

“rights management information” means information that

 - (a) the copyright owner or the holder of any right under copyright has attached to or embodied in a material form of a work, a performer’s performance fixed in a sound recording, or a sound recording, or appears in connection with its communication to the public by telecommunication, and*
 - (b) identifies or permits the identification of the work or its author, the performance or its performer, the sound recording or its maker, or any of them, or concerns the terms or conditions of its use;*
17. Clause 47, sections 41.22(1), (2), and (3) should be deleted and the following substituted:
 - (1) The owner of copyright in a work, a performer’s performance fixed in a sound recording, or a sound recording is, subject to this Act, entitled to all remedies by way of injunction, damages, accounts, delivery up, and otherwise that are or may be conferred by law for the infringement of a right against a person who, during the term of copyright and without the consent of the copyright owner, knowingly removes or alters any rights management information in electronic form that is attached to or embodied in any material form of the work, the performer’s performance, or the sound recording, or appears in connection with its communication to the public by telecommunication and knows, or ought to know, that the removal or alteration will facilitate or conceal any infringement of the owner’s copyright.*
 - (2) The owner of copyright referred to in subsection (1) has the same remedies against a person who, without the owner’s consent, knowingly does any of the following acts with respect to any material form of the work, the performer’s performance, or the sound recording and knows or ought to know that the rights management information has been removed or altered in a way that would give rise to a remedy under subsection (1):*
 - (a) sells it or rents it out;*
 - (b) distributes it to such an extent as to prejudicially affect the owner of the copyright;*
 - (c) by way of trade, distributes, exposes, or offers it for sale or rental or exhibits it in public;*
 - (d) imports it into Canada for the purpose of doing anything referred to in any of paragraphs (a) to (c); or*
 - (e) communicates it to the public by telecommunication.*
 - (3) The removal or alteration of rights management information with respect to any material form of the work, the performer’s performance, or the sound recording is not*

an infringement of copyright where such information interferes unreasonably with the authorized display or reproduction of a copyright work or other subject matter.

(4) Rights management information is only an assertion made by a rights owner, which may or may not be legally binding in Canada.

(5) The owner of copyright in a work, a performer's performance fixed in a sound recording, or a sound recording is subject to this Act, entitled to all remedies by way of injunction, damages, accounts, delivery up, and otherwise that are or may be conferred by law for knowingly making false or misleading statements in rights management information that is attached to or embodied in any material form of the work, the performer's performance, or the sound recording, or appears in connection with its communication to the public by telecommunication.

18. Bill C-32 should be amended to provide that fees to be paid related to notices forwarded by ISPs at the request of a rights holder be borne by the rights holder.

19. Clause 47, section 41.2, should be amended as follows:

If a court finds that a defendant that is a library, archive, museum, or educational institution, or that is employed by or is a student or patron of such an institution, has contravened subsection 29, 29.1, 29.2, or 41.1(1), and the defendant satisfies the court that it, he, or she did not know, and could not reasonably be expected to know, that its, his, or her actions constituted a contravention of those sections, the plaintiff is not entitled to any remedy other than an injunction.