Dear committee members:

I am a Canadian novelist and journalist whose books have been recent New York Times bestsellers. I am also a globally recognised copyright expert, having represented the Electronic Frontier Foundation, an international NGO, at the World Intellectual Property Organisation; I have also spoke on the subject at diverse locations including DFAIT's 2009 Fulbright event (I was the Canada-US Fulbright Chair in Public Diplomacy at the University of Southern California in 2006/7; I am presently a Visiting Senior Lecturer at Open University UK and a Scholar in Virtual Residence at the University of Waterloo).

All of my books are distributed as free and open Creative Commons downloads simultaneous with their commercial print releases. I do this in recognition that cultural sharing of creative works is a net good for artists and society and because allowing free noncommercial redistribution has spurred sales of my print books, which have sold in the hundreds of thousands of copies and been commercially translated into dozens of languages.

Additionally, I do not ever allow my works to be released with DRM ("digital locks") because this technology is extremely dangerous to artists and the public interest. Restrictive implementations of the TPM provisions of the WCT (such as are contemplated in C-32) allow for sui generis protection of TPMs even when no underlying infringement is taking place. This has had the effect of concentrating distribution power in a few hands. For example, 90% of the audiobook market is controlled by iTunes and its partner Audible. These firms non-negotiably require rightsholders to agree to have their works encumbered with iTunes/Audible's proprietary DRM as a condition of carriage. This creates the paradoxical situation in which the right to authorize copying (for backup), transcoding (for playback on a competing device) and other critical, commercially vital rights are transferred from creators and publishers to companies who are mere intermediaries, contributing nothing to the work except admission to a monopolistic distribution channel. Every time a publisher's audiobook is sold in a locked iTunes wrapper, it raises the public's switching costs for moving to a competing store or platform.

This market-distorting effect of DRM is deadly to a healthy creative marketplace. We wouldn't allow Indigo to demand that every book sold from its stores be shelved on a bookcase from the Brick (though both Indigo and the Brick would benefit from such an arrangement) because artists and publishers lose negotiating power when their creative work is artificially tied to some intermediary's products.

The deal is just as bad for the users of information (authors included - -- creators being avid consumers of books as well). If Ingis started turning out refrigerators with the butter-dish bolted shut with a special kind of nut, and charged an "upgrade fee" for the right to unlock your own fridge's butter dish, it would quickly run up against

the public's capacity to unlock their own fridges in their homes without help from the manufacturer.

But if the state intervened to punish anyone who figured out how to do legitimate, lawful things with his property, it would be an affront to the very nature of private property rights -- it would establish that the act of purchasing a product wasn't sufficient to transfer title to that object to you. You would be a tenant of your property, the ultimate ownership vesting with a distant corporation that would have the ultimate right to control the goods in your home. It would be a moral hazard, inviting every manufacturer to sharecrop out measly dribbles of value to the poor souls foolish enough to buy their products, and the state owuld fit the bill for enforcing this dreadful business model.

And yet, this is precisely what C-32 contemplates. The digital locks provisions in C-32 won't stop unlawful copying (the US record on 12 years with the DMCA is clear on this), but it will continue to distort markets and alienate Canadians from their cultural goods.

It is trivial to fix this: simply confine the legal prohibition on breaking digital locks to acts where there is an underlying act of infringement. This is all the WCT requires, and it is consistent with Canada's trading partners' approach to WCT compliance around the world. The extremist American position (which is eroding -- see, for example, the outcome of last year's triennial DMCA review by the Copyright Office) is a dead letter; Canada should formulate its own, made-in-Canada WCT implementation, not chase after the stupid mistakes our southern neighbour has come to regret for the past 12 years.

Thank you,

Cory Doctorow