

# Citizen's comments on Bill C-32

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To: Members of the Legislative Committee on Bill C-32

From: Raphaël Freynet

I am an independent professional musician, performer and composer, based in Edmonton, Alberta. I also earn a living as a professional graphic designer for various mediums and platforms, and over the years I have worked in many artistic sectors including film and broadcast, live theatre and visual arts.

I am writing to you to express my views regarding Bill C-32, the new copyright legislation that was tabled last year. Given the technologies that are increasingly present throughout all the artistic sectors, the current copyright laws are severely outdated, and new legislation that reflect today's realities is therefore quite urgent. I am pleased that the initiative has been taken to update Canada's copyright laws.

As an artist, loss of revenue due to the unauthorized distribution of digitally copied works is indeed an area of concern for me. However, I do believe that it is a complex problem, and great care must be taken not to put in place rules that take away the flexibility and freedom that independent creators depend on to create and innovate.

My main concern with the proposed bill as it stands is that it favours draconian measures (encouraged by large and resourceful media companies) to retain control on digital content over the rights of independent creators and Canadian citizens to Fair Dealing and free speech. Another major concern for me is the absence of new mechanisms to help compensate artists for their loss of revenue due to unlawful digital copying and distribution of their works. Finally, I am also troubled by the admitted pressure on the current government by the United States to enact regulations that resemble their "Digital Millennium Copyright Act" (a problematic and controversial set of regulations which strongly favours the interests of the big entertainment industry over consumers and independent creators).

Bill C-32 does contains many good initiatives, such as the expansion of Fair Dealing, but fails on a number of key points. Here is an outline of the various problems, and how they can be fixed:

## **Digital locks**

My primary concern with the digital locks provision in the bill is that as it stands, the anti-circumvention rules would criminalize any LAWFUL use of protected content. This seems unfair, counterintuitive and downright absurd. This does not help independent creators whatsoever, and furthermore hinders our ability to use existing works for various lawful applications. This provision also threatens the preservation of digital heritage, the future accessibility of public domain works, the ability to make backup

copies, the use of protected content for research purposes, and many other important legitimate uses and consumer rights.

A simple improvement to the bill would be to clarify that **it is not an infringing act to circumvent digital locks for lawful purposes**. This would ensure that the laws surrounding digital locks would target the right problem, i.e. large scale infringement, and not consumers and creators exercising our rights.

Furthermore, since there are legitimate reasons for circumventing digital locks, the tools to do so should obviously be legally available. Therefore, the law should not prevent the distribution of devices that can be used to bypass these measures.

Other important fixes to the digital locks provision should include:

- Removing of the lock requirements for **digital lessons**
- Establishing an **impartial review process** for new circumvention rights
- Extending the “encryption research” exception to include **all research**
- Significantly broadening the “**interoperability**” exception to encourage innovation and development of open-source technology
- Requiring rights holders to **unlock locked content** in appropriate circumstances
- Requiring companies that sell digitally locked content to display a **prominent warning** on their packaging
- Including an exception for **personal use**
- Including an exception for **preservation of digital materials**
- Including an exception for **filtering software**
- Including an exception for **obsolete or broken locks**
- Including an exception for **public domain works**

## **Creators' Compensation**

I believe that creators and businesses that form the arts, entertainment and intellectual property industry should embrace the new digital distribution technologies that the internet offers. These technologies, and their inherent openness, inevitably lead to important innovations, and new business models are now being successfully employed that ensure new revenue streams for the industry going forward.

This is why the government should not take it upon itself to protect the old defunct business models of the entertainment industry by supporting their efforts to lock down their content (using methods of questionable effectiveness) and criminalize legitimate behaviour. Rather, **our country's policies should incentivize technological and economical innovation by supporting open and free (read “libre”) digital content.**

This is not to say, however, that Canada should not protect its artists. In the digital world, professional artists face enormous challenges, namely that their works are now

often widely distributed without any compensation making its way back to the creator. This threatens to erode Canada's strong professional arts community, not to mention our future cultural heritage.

I believe the government should play a role in ensuring that artists and creators receive fair compensation for their work by **extending the private copying levy to certain electronic devices such as digital music players**. However, one must resist the urge to blanket all sectors with one simplistic solution, as various forms of intellectual property each have their own unique challenges.

## **Conclusion**

It is obvious to me that in order to have a healthy and competitive Arts industry, and for Canadians to be truly innovative on the world stage going forward, our copyright legislation must be fair, flexible and technology-neutral. Canadians must be able to count on a legislative framework that gives them the freedom they need to create and to build upon their existing cultural heritage, and at the same time that allows them to receive fair compensation for their work, despite the challenges that we face with the digitalization of intellectual property. I believe that with the aforementioned recommendations, the Bill C-32 can strike a fair, enduring balance for all Canadians for years to come.

Sincerely,

Raphaël Freynet