Comment to committee examining Bill C-32, 2011-01-31

I am a professional software developer of 20 years and two-time software entrepreneur. I have developed award-winning education software used by institutions of higher education on at least four continents. In addition, I am a PhD student studying the Internet and collaborative creative production, including role of copyright.
My recommendations to the committee for bill C-32 are as follows:

1. Legal measures protecting TPMs (technical protection measures, or "digital locks") should only apply to activities that would otherwise be illegal - i.e., where the underlying purpose is to infringe copyright. The current text permits arbitrary TPMs to institute whatever restrictions the manufacturer sees fit, including those that have nothing to do with preventing copyright infringement. The bill recognizes this problem with an exemption for unlocking cell phones. But this technology-specific approach to exemptions cannot possibly keep pace with technological change, especially when manufacturers can leverage TPMs to, in effect, create private law about how technology can be used. This would institute prior restraint on subsequent legitimate innovation and creativity.

2. The bill should retain the proposed extensions to fair dealing. This includes fair dealing for educational purposes. Education is the basis for an informed and capable citizenry. It is also at the foundation of Canadian creative and intellectual activity and the economic benefits that follow. I have spoken to educators who have told me that the current regime effectively prevents them from using materials covered by copyright. The administrative complexity of asking for permission is high and institutions limit use in order to save money. Requests to copyright holders for permission often go unanswered. This is particularly true for American copyright holders: the U.S. permits educational use, so copyright holders there often ignore such requests as an unnecessary waste of time because permission is already assumed.

3. The provision to permit user-generated content should clarify what constitutes non-commercial use. A copyright lawyer has warned me that the current text is ambiguous and likely to lead to extensive litigation. Furthermore, copyright is intended to allow artists to be compensated for their work. The current wording forbids this, cutting off many artists from the market. Indeed, artists may not even be able to recover the costs of distribution. Does hosting a video on YouTube, a site funded by advertising, qualify as commercial use? The provision in the bill is a good step towards acknowledging an important widespread creative practice. The definition of non-commercial use should be clarified in such a way that artists - particularly new artists without the benefit of lawyers or complex licensing arrangements - are free to create and distribute their work without fear of litigation. To permit artists to profit from their work the committee should consider a compulsory license regime that would kick in once a work became commercially significant. The compulsory license system for musical "cover" songs might be a useful model for other artistic forms, such as video.

4. I strongly support the notice-and-notice provision shielding ISPs from liability if they notify users of accusations of infringement. I oppose a notice-and-takedown system, which would give rise to problems of prior restraint, false accusations, and the removal of time-critical material. (For example, in the United States John McCain had a campaign ad removed due to an accusation of infringement. His team had the ad reinstated on the basis that it was fair use, but it remained down for critical days during an election campaign.)

Sincerely,
Geoffrey Glass