

**INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES, MOVING PICTURE TECHNICIANS,
ARTISTS AND ALLIED CRAFTS OF THE UNITED STATES, ITS TERRITORIES AND CANADA**

1430 Broadway, 20th Floor, New York, NY 10018 • (212) 730-1770 • Fax: (212) 730-7809 • Finance Dept. Fax: (212) 921-7699



Affiliated with
the AFL-CIO, CLC



MATTHEW D. LOEB
International President

JAMES B. WOOD
General Secretary-
Treasurer

TIMOTHY F. MAGEE
First Vice President

MICHAEL BARNES
Second Vice President

J. WALTER CAHILL
Third Vice President

THOM DAVIS
Fourth Vice President

ANTHONY DE PAULO
Fifth Vice President

DAMIAN PETTI
Sixth Vice President

BRIAN J. LAWLOR
Seventh Vice President

MICHAEL F. MILLER, JR.
Eighth Vice President

JOHN T. BECKMAN, JR.
Ninth Vice President

DANIEL DI TOLLA
Tenth Vice President

JOHN FORD
Eleventh Vice President

JOHN M. LEWIS
Twelfth Vice President

CRAIG P. CARLSON
Thirteenth Vice President

February 07, 2011

Introduction

The International Alliance of Theatrical and Stage Employees (IATSE) appreciates this opportunity to provide the Legislative Committee with these submissions regarding Bill C-32, "The Copyright Modernization Act".

As a trade union representing workers in Canada's entertainment industry, the IATSE has been advocating for years for stronger Copyright legislation to protect and create new jobs in Canada's film and television industry—which, according to the Canadian Media Production Association, reached a total production volume in 2009-10 of more than \$4.9 billion, generating more than 117,000 full-time equivalent jobs.

IATSE members are an integral part of this industry: we are not actors, writers or producers but rather production coordinators, set designers, costumers, editors, special effects technicians, camera operators, grips, scenic artists, transportation and set builders (to name a few of our classifications) who work on big budgeted foreign service productions from the United States such as *Twilight: New Moon* in Vancouver and *Mummy: Tomb of the Dragon Emperor* in Montreal, as well as on Canadian television and motion picture productions such as *Being Erica* in Toronto, *Republic of Doyle* in St. John's, *Heartland* in Calgary, and *Keep Your Head Up Kid: The Don Cherry Story* in Winnipeg.

The IATSE supports the objectives of Bill C-32 and welcomed the government's promise that "(the Bill) will provide a framework that is forward-looking and flexible, which will help protect and create jobs, stimulate our economy and attract new investment to Canada". However, we have serious concerns that the Bill as drafted will fall short of meeting these objectives.

1. Technological Protection Measures

The IATSE supports the Bill's strong approach to technological protection measures ("TPMs"). TPMs are needed to support new business models and thereby job creation in Canada's film and television industries. Most IATSE members are freelance workers who depend on a healthy industry to find enough employment to make ends meet. Without protection for TPMs, new business models will falter and the necessary economic support for job creation in Canada will be eroded. We cannot allow online theft to further compromise legitimate markets, Canadian jobs and tax revenues. The negative link between online theft and job creation is undeniable: online theft eats away at industry revenues, which results in fewer movies getting made and fewer jobs being created.

Without strong protections for technical protection measures, both access control and copy control, new business models like Netflix would not be possible in Canada. These business models provide critical revenues to the creative industries and are a platform for providing greater choice to consumers. Allowing TPMs to be broken for private purposes or other non-infringing uses would totally undermine these business models.

IATSE Canadian Office: 22 St. Joseph Street, Toronto, Ontario M4Y 1J9 • (416) 362-3569 • Fax: (416) 362-3483

IATSE West Coast Office: 10045 Riverside Drive, Toluca Lake, California 91602 • (818) 980-3499 • Fax: (818) 980-3496

IATSE Western Canadian Office: 1000-355 Burrard Street, Vancouver, British Columbia V6C2G8 • (604) 608-6158 • Fax: (778) 331-8841

www.iatse-intl.org

2. Enabling Infringement

The IATSE supports the government's intention to clarify the liability of those who enable online copyright infringement. However, the Bill as currently drafted applies only to services that are "primarily designed" to enable online theft. The problem with this wording is that many of the services which are enabling the online theft of motion picture and television content, such as the illicit BitTorrent index sites, could claim that they are not "primarily designed" to enable infringement, but to be content neutral and, as such, they would not be captured by this provision. In order for the enablement provision to be an effective tool the legislation must target sites that are operated or used in a manner which enables or induces online infringement. The legislation should also be amended to make clear that the prohibition against enabling infringement also applies to those who host illicit content. The reality is that pirate sites that host and stream or permit downloading of illegitimate content are becoming the most significant source of illegal distribution of film and television content online.

Accordingly, this aspect of the Bill should be fixed to clarify that the enabling provisions apply to services that are "designed" or "operated" to enable or induce acts of infringement, including specific reference to hosting and caching service providers. Furthermore, as drafted, the Bill does not permit an award of statutory damages against an enabler. This aspect of the Bill should be removed to ensure that copyright owners can obtain statutory damages from infringement enablers.

3. User Generated Content Exception

The so-called "Youtube" or "mash-up" exception is without international precedent. While the government's intention was to permit harmless activities by individuals, the exception is so broadly drafted that it would permit wholesale appropriation of content without regard to moral rights, and violate Canada's international treaty obligations, notably the three-step test for exceptions set out in the Berne Convention as well as the World Trade Organization's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement and the WIPO Copyright Treaty (WCT).

The IATSE submits that this exception should either be scrapped or amended to ensure that it does not prejudice copyright owners; specifically, at a minimum the exception should be limited to only permit the creation of original (transformative) user-generated content for the individual's personal non-commercial use if all of the permitted acts can be considered "fair dealings" under the existing copyright law test and the permitted acts do not have any adverse effect on the market for the original.

4. Internet Service Provider (ISP) Liability

The Bill's ISP "safe harbour" provisions are overly broad and go beyond the government's intention of sheltering online intermediaries when they act as true neutral intermediaries. The IATSE submits that these provisions should be tightened up to ensure that illicit sites—such as those that encourage storage of infringing files, host, distribute or make available illegitimate copies of protected content—are not inadvertently immunized from liability.

Moreover, to ensure consistency with international standards, ISPs should be required to (i) have an effective policy to curb copyright infringement on their networks, particularly in the case of repeat offenders; and (ii) take action to remove or disable access to infringing works where they have actual or constructive knowledge of infringing activity, in keeping with the Supreme Court of Canada's comments in the *Tariff 22* decision; in order to qualify for safe harbour protection. Finally, the Bill should provide copyright holders

with injunctive relief against ISPs whose service is being used by a third party to infringe copyright; i.e., to block access to illegal sites.

5. Statutory Damages

While we understand the government's desire to distinguish between "commercial" and "non-commercial" infringers, the possibility of being required to make a one-time payment of between \$100 and \$5000 for all "non-commercial" infringements simply will not provide a deterrent for illegal file-sharing and is more likely to be regarded as a licence to steal unlimited content.

Furthermore, the distinction between "commercial" and "non-commercial" infringement is inappropriate since many of the enablers of online theft such as the Bit-Torrent index sites and those which traffic in circumvention technologies and services arguably have no "commercial" purpose and would qualify for these reduced statutory damages – even though they have a dramatic commercial impact. The Bill should therefore be amended to provide for effective statutory damages which will provide a real deterrent to illegal files-sharing and give copyright owners the ability to stop large-scale enablers of online theft.

If the government wishes to maintain a cap on statutory damages for individuals, it should apply (i) to infringement for "private purposes" rather than "non commercial purposes"; (ii) be on a per infringement basis as opposed to encompassing all infringements; and (iii) be available to all copyright owners rather than only the first rights holder to sue.

On behalf of the IATSE, thank you for the opportunity to make this written submission.

Sincerely,

A handwritten signature in black ink, appearing to read "John Lewis". The signature is written in a cursive style with a large, sweeping initial "J" and a long, thin tail extending downwards and to the left.

John M. Lewis
International Vice President
Director of Canadian Affairs