

Brief to the Legislative Committee on Bill C-32

by Art Ortenburger on 2011-01-31

I am an 18-year-old student from PEI starting university later this year. I am a proponent of free [open-source] software, free culture (such as Creative Commons), and the public domain.

I commend the Committee for seeking input from Canadians on C-32. However, as a participant in the 2009 Copyright Consultation, I am disappointed that the government seems to have disregarded the Consultation consensus when drafting the bill.

The bill is not balanced in its protection of technological protection measures [TPMs] such as digital rights management [DRM] (digital locks).

I strongly support the amendments proposed by Michael Geist and Keith Rose in June 2010 (see endnote 1). They would restore balance to the bill's TPM protections while meeting WIPO requirements. To summarize the crucial amendments:

- TPM circumvention should only be unlawful when done to infringe copyright;
- Do not prohibit TPM-circumvention tools or devices;
- Exclude access controls from the definition of TPM (as distinguished from copy controls);
- Establish a impartial review process to add new circumvention rights as necessary.

The Fair Dealing sections should be revised to allow flexibility in interpretation, by inserting the phrase “such as” to lists of permissible activities, making them illustrative.

The Supreme Court's six-part fairness test could be amended to the law as well, as the second part of determining whether a use qualifies as fair dealing (see endnote 2).

Copyright terms should not be extended. The current bill would extend copyright terms for both corporation-owned photos and sound recordings (by counting from the date of publication).

Crown copyright should be dismantled, with government works released into the public domain.

Additional proposed amendments

1. **Make fair dealing illustrative**

Proposal:

Replace section 29 as follows.

Research, private study, etc.

29. Fair dealing, such as for the purpose of research, private study, education, parody or satire does not infringe copyright.

2. **Remove the limitation to private copying**

Proposal:

Drop subsection 29.22(3).

3. **Change destruction of backup copies to reflect practical realities**

Summary:

As drafted in Bill C-32, a person must “immediately destroy” all backup copies of a work if they no longer have the source copy. In real-world data redundancy systems, that is practically impossible.

For example, a person might back up a music collection to DVD-R discs. If the CD a song had been bought on was sold, the entire DVD-R (which could have over 1000 other songs on it) would have to be retrieved (if it was stored away from home, as is safer) and securely destroyed. The person would probably want to back up the 999 other songs to a new disc.

Another example – and far more difficult – involves incremental or differential backup systems. In these systems, regular backups are made containing only the files changed since the last backup. This results in backup archives which depend on the integrity of their predecessors: if any single backup was tampered with, all the data might be irretrievable. In most systems, it is very difficult or impossible to delete a single file from all of the backup versions. To comply with the destruction clause, a person with a differential or incremental backup system would probably have to delete the entire backup and start it over from scratch.

Below is a reasonable, good-faith alternative.

Proposal:

Replace subsection 29.24(3) as follows.

Destruction

(3) The person shall destroy all reproductions made under subsection (1) if practical immediately, or otherwise immediately after the retrieval or restoration

of a backup, after the person ceases to own, or to have a license to use, the source copy.

Replace subsection 30.6(b) as follows.

(b) reproduce for backup purposes the copy or a reproduced copy referred to in paragraph (a) if the person destroys all reproductions for backup purposes, if practical immediately, or otherwise immediately after the retrieval or restoration of a backup, after the person ceases to be the owner of the copy of the computer program or to have a license to use it.

4. **Link the prohibition of RMI removal to infringement**

Proposal:

Replace subsection 41.22(1) as follows.

Prohibition – rights management information

(1) No person shall knowingly remove or alter any rights management information in electronic form without the consent of the owner of the copyright in the work, the performer's performance or the sound recording, for any infringing purpose.

Thank you for your consideration. Reforming copyright law will be a continual process, and I hope to participate for the benefit of Canadians and their culture.

Sincerely,

Art Ortenburger

Endnotes

1. *Fixing Bill C-32: Proposed Amendments to the Digital Lock Provisions* by Michael Geist and Keith Rose, June 2010. PDF <http://www.michaelgeist.ca/component/option,com_docman/task,doc_download/gid,33/> linked to from <<http://www.michaelgeist.ca/content/view/5117/125/>>.
2. see *CCH Canadian Ltd. v. Law Society of Upper Canada*, 2004 SCC 13, [2004] 1 S.C.R. 339. <<http://scc.lexum.umontreal.ca/en/2004/2004scc13/2004scc13.html>> linked to from <<http://www.michaelgeist.ca/content/view/5519/125/>>.