

My Bill C-32 brief

Does copyright really need any reform in Canada?

I begin by challenge the government that very little copyright reform is actually needed. I am convinced that any new copyright bill that try to take new technologies into account will be rendered obsolete by the time they are passed or shortly thereafter. I would suggest that copyright reform which makes copyright law **less restrictive** in Canada and more accommodating to current and future realities is more practical. But I have little faith in this outcome.

What has led to the government's plan to reform copyright? Canada has not met its WIPO obligations since 1996, when they were signed. What effect has this had? I challenge anyone to explain to Canadians what the ramifications are of not fully ratifying the WIPO treaty. Who is insisting that we ratify it? The American based entertainment industry (which I will refer to in the rest of this brief as 'Big E')? Who are they to dictate our sovereign national policies? I predict that we could carry on indefinitely, having never ratified WIPO and nothing would ever come of it. Do we have the courage to set our own agenda?

Big E has too much influence

I strongly feel that Big E are the masters of their own demise. A history lesson is required, but in short, their decades old business model depends on finding, producing, promoting and distributing talent and content. When these tasks were done by specialists in a domain under their complete control, the business model was sound. Today these tasks can be done by anyone with a computer. Thanks to technology, artists can produce their own content without assistance from Big E. Thanks to the internet, these same artists can promote and distribute their own material without assistance from Big E. Meanwhile, Big E has lost its monopoly on (especially) the role of distribution and it sees technology and the internet as a direct threat. So what has Big E done? Have they adapted to and embraced the new reality? No. They choose instead to fight to put restrictions on the technology itself. They choose to maintain the status quo. They choose to sue their own customers. Please stop and think about that for a moment. They choose to place restrictions on media. They choose to enlist the help of government in prolonging an antiquated business model and it appears that governments are willing to accommodate them. Artists aren't even siding with Big E anymore as they see the industry speaking 'on behalf of artists' but realizing little benefit from any initiative Big E has undertaken. So why is the government siding with them? Why does Big E seem to have so much influence on government? What makes their content so special that it has to be protected so vigorously, consumers' rights be damned? Why is it necessary for copyrights to be extended beyond the lifetimes of the original artists? Imagine if patents lasted as long as copyrights.

Copying stifles innovation? How quickly we forget history

Big E argues that copyright in the digital age must become more restrictive to foster innovation. What they forget to tell you is that art has always been influenced by previous art. Artists have always been inspired by or paid homage to previous creators and Big E's biggest successes were based on borrowed ideas – just ask Disney. Now that their ideas are able to be used much more easily thanks to technology, they feel threatened. It all boils down to money. Technology is diluting their intellectual property value and instead of being reasonable, it seems that Big E will

only be satisfied if restrictions actually stifle innovation. Don't take my word for it — study the history of the expiration of copyright on Mickey Mouse for an insight into the greed that has become entrenched in Big E and the collusion of the US government.

They lie to try to prove their point and the lying is no longer confined to the industry

Big E tries to convince government and the public that they are hurting financially and that the hurt is directly related to piracy via internet file sharing. Their own studies show that sales slumps are directly tied to file sharing. Yet independent studies completely contradict this. In fact, independent studies have shown that those who share their files the most are also the biggest legal consumers of content. The US have recently accused Canada of being one of the worst 'pirates' in the world, but the figures fall flat under scrutiny. Our government did not challenge those figures and show Canadians that the accusations were false. They protected the lie. Then the Conference Board of Canada was caught promulgating falsehoods about the state of copyright in Canada based on figures produced by Big E's own US lobbyists and tried to pass it off as official research. Luckily, we have some very sharp people in this country who saw past the deception right away. Nothing came of this blatant deception. Does the government wish to construct ever more fantastic yet completely false sets of evidence to support new, restrictive measures in copyright reform? I can offer one quick example of file sharing being demonstrated in a positive light – the release of the band Radiohead's last album, In Rainbows. The band made the entire album available to the world for whatever they wanted to pay — for free if one so chose, for many weeks via the internet. They then released the album in the traditional way and still made millions of dollars, much to the chagrin of Big E.

Complex copyright law cannot keep pace with technology

I think that the government needs to be aware of an inescapable fact. Technology no longer moves at the same pace as it did decades ago. The rate of change, innovation and adaptation is moving so fast as to render any technological restriction obsolete within days. The '3 Strikes' law being forced upon consumers in France was rendered obsolete even before been passed into law. Patches were available within days for computers to randomly hop between wifi networks to prevent the monitoring of wireless internet connections. If lawmakers don't know what that last sentence means, then how can we be confident they're creating viable legislation when they don't even understand the technology and its capabilities? It has been suggested based on existing evidence that even if we permanently shut down the internet (something Big E would drool over), **sharing would still take place** via the swapping of portable media and portable, massive digital storage devices. When hard drives become big enough to store every song ever recorded – and that time is closer than most people realize, we won't need the internet for file sharing anymore. How will copyright law handle that eventuality? It cannot. In short, the only way Big E can maintain their antiquated business model is to outlaw or completely control technological innovation.

Speaking of technology, because few people understand it, crafty Big E lawyers are able to convince naive judges and jurors that because they found some songs downloaded or shared by a particular IP address, it's a fool-proof guarantee that it had to be Mrs. Jones (who was assigned said IP address) that did the infringing. Two such cases went to trial in the US and in those cases, the jury awarded that the defendants have to pay damages to the RIAA in the amount of \$675,000 for 30 songs; and \$1,920,000 for 24 songs. Both of those cases are being appealed.

Let's examine the reality of such an accusation. Just because a Big E lawyer has determined that a certain IP address has participated in (alleged) illegal file sharing, and used a legal loophole to get account information from the ISP, does not actually prove that said account holder is guilty. Because all it takes is for any of the following to happen for the proof to fall flat:

- The account holder's child's friend comes over and uses their internet connection to download a song.
- The account holder's wi-fi network is compromised and is used by a passer-by to download a song.
- The account holder is a public internet reseller or public hot-spot.
- The IP is a proxy being used for privacy protection to re-route packets from other computers at another location.

There are plenty of more situations that would qualify. So in essence, being able to determine that a certain IP (supposedly) downloaded a song doesn't prove anything. It would be like me stealing your license plate, attaching it to my car, robbing a bank and then you are proven guilty of robbing the bank.

Don't pretend to do us any favours

In Bill C-32, the government is quick to brag about including measures aimed at protecting consumers' rights. For example, consumers would still maintain the right to make personal copies of their own legally purchased content for personal use. Until you read the fine print. This right is only allowable ***unless it circumvents any type of digital lock*** (or DRM). The problem is that all commercial movies on DVD have DRM. So the consumer in fact has no right to copy any movie on a DVD. Big E has admitted that if they had their way, consumers of their content would be required to purchase multiple quantities of each piece of content for every separate use. So if you wanted to be able to listen to an album of music on your home stereo, your computer, your mp3 player and your car stereo, they would want payment for 4 uses. Imagine if the publishers of cookbooks only allowed you to use the recipe once, then pay again if you wanted subsequent uses and made it illegal to lend the cookbook to other people. Format shifting is a reasonable consumer right and it should be allowed in any new copyright law, no matter how loudly Big E protests. It gets worse. I have already seen cases where consumers own legally purchased DVD players cannot play some of the newest DVD content because of the type of DRM used. The packaging does not warn that the DRM may render the DVD unusable.

Speaking of locks

Anyone who has done any research on the digital locks Big E employs on music, movies, electronic books, etc. has seen overwhelming evidence that these measures are a recipe for disaster. DRM prevents consumers from doing things with legally owned content that most consumers feel are reasonable acts. Worse, when a type of DRM is no longer managed correctly, or abandoned altogether, consumers are left holding content that no longer works, with no recourse. I would prefer that our government come to the realization that DRM is bad for the consumer and would outlaw it in any new legislation, not support their enforcement. DRM extends beyond content and onto the technology itself. In Canada, you cannot use a cell phone from one mobile phone provider on another service without breaking the lock. Legislation proposed earlier (Bill C-61) would have made breaking those locks illegal. Yet in Europe, consumers swap providers using a single phone all the time to enjoy the benefits of competition in the marketplace. Bill C-32 gives consumers this right. So why the double standard? Shouldn't legal uses allow for any case of breaking DRM?

Copyright reform must empower educational institutions

As an educator, I am against any measure restricting educational material as it is counterproductive. Librarians have spoken out very loudly on this topic. So have teachers. There is nothing more to say on this matter.

Peer to peer getting a bad rap

Peer to peer (P2P) file sharing technology, thanks to an effective campaign by Big E, has gotten a very bad rap. Ask a layperson on the street if they know about P2P. If they do, they'll likely suggest that it is only used for illegal purposes. This is not true. Whole new online business models have blossomed thanks to this efficient data transfer technology and I hope the government bears this in mind while crafting any new copyright law. As it applies to the questionably illegal sharing of copyrighted content, Big E have not learned its lesson with regards to distribution mechanisms. Big E still relies on the expensive, inefficient model of physical media sold in box stores to distribute their content, even after the mainstream public has demonstrated that the best and easiest way to distribute content is in digital form. Since the industry already gets a media levy to allow for the private copying of content in Canada, it makes me wonder if the industry should just lobby for a separate levy on ISP fees to allow for en masse sharing of all content, since this seems to be what most consumers desire in the first place. They dream of the freedom to get what they want, when they want it. All content on demand. A service that neither Big E nor the mainstream content providers (Cable TV, radio, etc.) seem to be able to provide. It's certainly not because the means do not exist.

Fair dealing in jeopardy

Current copyright law in Canada allows for fair dealing. Fair dealing is a sensible user right that allows for the use or reproduction of a portion of copyrighted work for private study, research, criticism, review, or reporting. Yet there are endless accounts of ordinary citizens being bullied by the entertainment industry on blogs, on video hosting sites like YouTube, and elsewhere. If Big E makes an accusation of online copyright infringement, the host site is obliged to take the content down, ***even if the material is being used under the terms of fair dealing***. This is partly due to the robotic nature with which infringements are sought out. Content may not be infringing, but if Big E's automated searches find anything resembling their content — they order it taken down. Due to strong-arm tactics by Big E and the capitulation of online content hosts, the innocent are presumed guilty unless they prove otherwise — after the fact. Accusers can request a takedown even without proving that they are the copyright holder. It's another example of 'shoot first, asks questions later, preferably never' mentality propagated by Big E. Mechanisms exist to challenge inappropriate take-downs, but what chance does the average consumer have against such a formidable machine? In one abusive take-down case involving a home-made video of a child dancing while a Prince song plays in the background, the family fought a Big E company for over 2 years in court and did so only with the help of the non-profit organization EFF. If copyright challenges involved due process and consumers didn't fear Big E and their massive legal and financial muscle, most of these incidents and capitulations would never happen. Why doesn't government want to challenge Big E's stranglehold on creativity?

Accusers are also the abusers

What really disgusts me is that the same Big E companies that use strong-arm tactics against supposed consumer infringers have themselves been caught breaking the law. Many music videos posted to YouTube were proven to have been seeded by Big E staff in an effort to promote their product. In Canada, the member music companies of the CRIA were finally forced by a lawsuit to pay artists the millions in back royalties they owed for compilation discs. It took a lawsuit to get Big E to pay up. Why does government stand up for this industry?

Copyright culture

And finally, the real danger is that the copyright culture has become so prevalent in our society now that it is even being quoted in matters having nothing to do with copyright. Just last year, someone in the UK was accused of violating copyright by the police. This accusation was for posting a photo-radar photo of someone supposedly caught speeding. This was done for the purposes of reporting how inaccurate the police's photo-radar methods are. There is no such thing as copyright on a photo-radar photograph, yet the police bandied the term about as a means of intimidation toward those critical of their practises.

Conclusion

In conclusion, I do not support any government action that gives more to the entertainment industry and takes away from the citizens of Canada. The entertainment industry has extended an antiquated business model well beyond its practical life and usefulness. Now that the business model is in its final death throes, Big E are banking on a group of people ignorant enough to prop them up a little bit longer - government. When you begin studying new copyright legislation, bear in mind that it is the consumers who really need protection. I believe that this is the role of government. As a result, copyright law needs to embrace technology and the digital reality, not shackle it and risk turning ordinary consumers into criminals.

Thank you.

Karl Plesz
Calgary

References:

<http://www.michaelgeist.ca>
<http://www.faircopyrightforcanada.ca>
<http://excesscopyright.blogspot.com>
<http://speakoutoncopyright.ca>
<http://arstechnica.com/tech-policy/news/2010/03/dancing-tot-prevails-over-umg-in-youtube-fair-use-case.ars>
<http://www.boingboing.net/2010/02/16/music-industry-to-mu.html>
<http://whitenois.blogspot.com/2010/06/another-example-of-why-law-that.html>
<http://www.michaelgeist.ca/content/view/5563/125/>