

January 31st, 2011

To: The Legislative Committee on Bill C-32 (CC32)

As a writer, one of the people copyright law is supposed to serve, I'm concerned with effects of Bill C-32 on my ability to use technology to create and disseminate my work.

I was willing to trade my creative sovereignty for the opportunity to have my work produced and distributed on television when I was young, because it was the only game in town. That was then. Today, advances in digital technology and the Internet have made a host of new options available to creators. And even though Canada's current copyright law is problematic, Creative Commons has introduced work-arounds which make it possible for creators to release our "Intellectual Property" as we see fit.

Canada's current copyright law is harmful to me as a creator, and there is evidence that it is harmful Canadian culture as a whole from aspects like copyright terms that are so long they are detrimental to both creator and public interest. Yet Bill C-32 doesn't reduce copyright terms or protect the creator's right to share.

There is also no justification for the existence of Crown Copyright in a democracy. Why doesn't Bill C-32 follow the good American copyright example of releasing of government funded work directly into the public domain (on the understanding that taxpayers have already paid for it)?

Sharing

Culture grows through sharing. It used to be Canadians bemoaned the lack of a Canadian "identity." This cultural void was certainly tied in to the limited exposure Canadians had to our own culture since a few corporations controlled all of our culture.

Today's combination of hardware, software, media devices, and the Internet makes it possible for creators to create and distribute our work directly to our audience. The new technology has been an incredible boon to both creators and consumers.

The independent Canadian music industry is ushering in an incredible golden age, in spite of the CD levy which penalizes independent creators. Canadians are leading the world with Independent music

production and distribution. And nobody is looking for a "Canadian Identity" anymore since Canadian culture is thriving--through sharing--on the Internet. For the first time in more than half a century, Canadian musicians don't have to sign away the rights to their music to get recorded and distributed.

#### Special Interest Groups

The major record labels find this a problem because as more musicians choose independence, the established record industry loses market share. CRIA used to own 99% of the recording industry. Now they're lucky if they have 70% of it.

It's a challenge for corporations. Historically it would have led to corporate adaptation or demise. Today's conglomerates have instead chosen to influence legal change.

but copyright law should not be employed to force creators into unsatisfactory arrangements in an attempt to prop up an industry unwilling to adapt.

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What is Copyright Law Supposed to Do?

Isn't copyright supposed to recognize and support the creator's authorship?

Where did the idea that copyright law was somehow responsible for monetizing the 'intellectual property' industry come from? It makes no sense at all. Isn't it customary for Industry to establish business practices through negotiations and contracts?

If we are to accept this as a valid premise, and proceed to impose Bill C-32 legislation that runs contrary to societal expectation, why stop there? Wouldn't it be reasonable to apply the same thinking to all other Canadian business endeavors? Instead of contracts and negotiation, the government could legislate precise terms for all industries. The government could set the rates of pay for each job, define the responsibilities. Is that what we want? I suspect we don't. Why is copyright treated this way?

Copyright Control

The needs and best interests of corporations are almost always very different from the needs and best interests of human creators. Copyright should not be transferable, certainly not to corporations. At most, corporations should be limited to licensing copyright for a limited time. A great many of the current problems with copyright law are directly attributable to undue influence of corporations and copyright collectives. We have seen little or no input or consideration for the two most important copyright stakeholders: creators and citizens.

Copyright Collectives

Like corporations, the interests of copyright collectives can differ from the interests of the people who are members. But if membership needs would be better served by removal/reduction of the collective, the existing collective will work to ensure continued existence, even if it is contrary to the best interests of the membership.

Yet some copyright collectives have been vocal in claims they speak on behalf of their entire membership, while others have claimed to speak for all Canadian authors.

There has been copyright collective support for both the CD levy, as well as expansion of it, as well as opposition to the expansion of fair dealing in Bill C-32. That isn't surprising because the collectives benefit financially from both of those misguided initiatives. That is my perspective as an independent writer, consumer and parent.

Technical Protection Measures, Digital Rights Management, Digital Locks

Regardless of what term you choose, digital locks should not fall under copyright jurisdiction for the simple reason that creators have no control over them.

As written in the current incarnation of Bill C-32, technical protection measures are the most important provision.

This effectively strips all authority from creators. Because creators--and most especially independent creators--don't hold the keys to these locks.

As an independent writer I oppose digital locks that can be used against me. Digital locks can be employed to prevent my utilization of digital media, devices or Internet protocols to distribute my work as I see fit. The freedom technology has lately made available to creators will be taken away by Bill C-32.

As a consumer I can't support a law that allows digital locks to prevent citizens from legitimately using media and devices. It should be illegal for digital locks to impede access to digital material that is in the public domain.

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Made In Canada?

Canadian cultural sovereignty should belong to creators, not corporations.

There have been some very persuasive arguments that Bill C32, like Bill C-60 and Bill C-61 before it, has been written to appease our American neighbors. In itself, sacrificing Canadian sovereignty to appease foreign interests would be problematic enough if Canadian copyright law were made to conform to the contours of the American DMCA.

Worse: Bill C-32's digital locks go far beyond the terms of the American DMCA provisions, so it would not simply be a case of leveling the playing field, Bill C-32 as will effectively put Canadians at a distinct disadvantage.

Iceland is contemplating putting all Icelandic literature online to foster and spread their culture. [<http://blog.archive.org/2011/01/29/all-icelandic-literature-to-go-online/>] I submit this would be a better model for copyright emulation than the American DMCA.

Unintended Consequences

The American DMCA contains provisions for mandatory adjustment every three years, and over time it has in fact been lightened up as unintended consequences have been addressed. Yet Canada's Bill C-32 simply contains a suggestion to look at it every five years. In terms of the speed of digital change, 5 year suggested revision term is horrendous. Bill C-32 would require annual review as a feature.

Independent Creators

Copyright needs to be simple enough for all citizens to understand, because more and more people participating in our shared culture. Many artists believe things must change. The existing law is too strong, but rushing to enact legislation as flawed as Bill C-32 because we are tired of copyright is not the answer.

There are many reasons to use Free-Libre Open Source software for our endeavors. Yet the primacy of digital locks will impede access to such software for all of us.

I want to be able to make my work freely available. My right to do so should not be sacrificed to special interests. Canadian copyright law must support all Canadian creators, even those of us who believe in the importance of sharing.

Conclusion

I cannot support Bill C-32 as it is.

Perhaps I could if you were to remove TPM/DRM/Digital locks altogether. Some people think amending the Bill to permit circumvention for lawful purposes would solve the problem. I disagree. I don't think consumers should have to circumvent digital locks. If digital locks are applied, it must be up to the parties holding the keys to guarantee the locks will be opened for lawful purposes.

Thank you for the opportunity to be heard. I will of course post my comments to my personal blog.  
[ <http://laurelrusswurm.wordpress.com/> ]

Regards,  
Laurel L. Russwurm

CC: The Right Honourable Stephen Harper  
CC: The Honourable Tony Clement  
CC: The Honourable James Moore  
CC: The Honourable Michael Ignatieff  
CC: Legislative Committee Members  
(Charlie Angus, Sylvie Boucher, Peter Braid, Gordon Brown, Serge Cardin, Dean Del Mastro, Marc Garneau, Daryl Kramp, Mike Lake, Carole Lavallée, Dan McTeague and Pablo Rodriguez)

CC: Harold Albrecht