

**BRIEF PRESENTED TO THE
LEGISLATIVE COMMITTEE RESPONSIBLE FOR BILL C-32**

Critique of Bill C-32

On Copyright Protection

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CRITIQUE OF BILL C-32

ON COPYRIGHT PROTECTION

1. Introduction

As the author of school textbooks and a former college professor, I have a special interest in Bill C-32, which aims to improve the protection of copyright owners and promote creativity and technological innovation, among other things. I have two bachelor's degrees relating to psychopedagogy, and I have written about subjects as varied as typography, report writing, telecommunications, Internet use when it was a new phenomenon, and oral business communication, because of the lack of educational materials. The variety of subjects I have written about illustrates how dire the need is for French-language textbooks in Quebec. While I have been retired for four years, I am still involved in revising two textbooks for Modulo, headquartered in Toronto.

The goal of this brief is to critique how Bill C-32 approaches education. We¹ will first look at Bill C-32 and examine its innovative characteristics and its faults. We will present the impact this bill would have on authors, publishers, knowledge institutions and Internet service providers if it were enacted as it is written, and we will identify the long-term negative impact this bill would have on Quebec culture. As our objective is to defend our rights, especially as regards school textbooks, we will call for major amendments to this bill.

2. Presentation of Bill C-32

On June 2, 2010, Mr. Tony Clement, Minister of Industry, and Mr. James Moore, Minister of Canadian Heritage and Official Languages, introduced the *Copyright Modernization Act* in the House of Commons.² It aims to bring copyright legislation into the digital age, protect and create jobs, promote innovation, and attract investments to Canada. The objectives presented by these ministers are commendable, but the bill does not include adequate provisions regarding the book industry.

Specifically, in a news release published in June 2010, the two ministers emphasized the following:

It gives creators and copyright owners the tools to protect their work and grow their business models.

This legislation will bring Canada in line with international standards and promote home-grown innovation and creativity. It is a fair, balanced, and common-sense approach,

¹ The term "we" is used to show that all authors are concerned.

² [Bill C-32](#): *Copyright Modernization Act* (First Reading on June 2, 2010).

*respecting both the rights of creators and the interests of consumers in a modern marketplace.*³

According to the preamble of Bill C-32, the needs of consumers and the needs of creators must be considered, as well as economic factors.

Whereas the Government of Canada is committed to enhancing the protection of copyright works or other subject-matter, including through the recognition of technological protection measures, in a manner that promotes culture and innovation, competition and investment in the Canadian economy;

To ensure clarity, we referred to the definitions of the following words:

- ✓ **Consumer:** A person who uses a product or a service that was purchased for his or her personal use to directly satisfy a need. A user uses a product or a service without necessarily having purchased it. [Translation] (Source: *Office de la langue française* (OLF))
- ✓ **Creator:** A person who creates or invents something new in the field of science, art, etc. [Translation] (Source: *Dictionnaire Larousse*)
- ✓ **Economy:** All the activities of a human community involving the production, division, distribution and consumption of wealth. [Translation] (Source: OLF)

Therefore, we can conclude that consumers must pay for products and services of their choice, unless these products and services are being offered for free by the persons who physically or morally own the products or services.

3. Technological innovations

We live in a digital era, with e-books, social networks, MP3 files and mass consumption of works that are still under copyright. For this reason, in July 2009, Modulo asked its authors to sign an addendum to their contract stating that *royalties also cover digitizing the book to make it available electronically*. We agree with making as many books as possible accessible to the public online, as long as intellectual property rights are respected. After reading the following points, you will have to agree that authors no longer have very many rights, that consumers, educational institutions and libraries no longer have very many responsibilities, and that Internet service providers care very little what documents they make available online.

3.1 Making works available by telecommunication

Clause 3 of the bill amends section 2.4 of the *Copyright Act* by adding a new subsection to indicate that the communication of a work or other subject-matter to the public by telecommunication includes making it available to the public by telecommunication in a way that allows a member of the public to have access to it from a place and at a time individually chosen by that member of the public. This creates a right for the public to have access to intangible objects. According to the French dictionary Larousse, “intangible” is

³ Government of Canada News Release, <http://www.ic.gc.ca/eic/site/ic1.nsf/eng/05605.html>, accessed on January 18, 2011.

“something that must remain intact: sacred, inviolable” [Translation]. The book, intact, whole, completely unchanged, is therefore available to everyone by telecommunication.

3.2 Reproduction for educational purposes

First of all, clause 23 of the bill allows educational institutions, for the purposes of education, to reproduce a work, or do any other necessary act, in order to display it.

Second of all, clause 28 of the bill allows libraries, archives or museums to make a copy in a different format of a work that is part of their permanent collection if they consider that the original is currently in a format that is obsolete or is becoming obsolete, or that the technology required to use the original is unavailable or is becoming unavailable. Clause 29 of the bill allows libraries to provide a copy in digital form to a person, but they must take measures to **prevent** the person who has requested it **from making more than one copy**, from communicating the digital copy to another person, and from using the digital copy for more than five business days from the day on which the person first uses it. Digital distribution is not permitted unless it has a digital lock. Can libraries really prevent mass copying?

3.3 Fair dealing

Bill C-32 would change section 29 of the act to read “Fair dealing for the purpose of research, private study, education, parody or satire does not infringe copyright.” Just what is fair about this provision, I ask?

The new section 30.04 would allow educational institutions, for educational purposes, to reproduce, communicate and perform for students any work available on the Internet. However, this provision does not apply if the work has been posted online illegally, if its reproduction is prohibited or **if the educational institution is aware that the work was available through the internet without the consent of the copyright owner**. The copyright symbol is not enough, in itself, to notify people that the exception does not apply to a work. If we understand this provision correctly, people will not be responsible for not knowing.

4. Repercussions

The preceding paragraphs show beyond a shadow of a doubt that authors and publishing companies are the first to lose out in this bill, as educational institutions, libraries and Internet service providers have less or little responsibility.

4.1 Authors

Authors are well aware that their works are already being copied. We all know that the few dollars we receive for photocopying our books are merely the tip of the iceberg. If Bill C-32 is passed as written, our work will no longer be recognized. The absence of recognition causes a lack of motivation. Everyone has the right to be paid for their work. Creating is not a form of volunteer work. Most authors do not write best sellers. Sales revenue for books is usually divided in the following way: 40% goes to the book retailer, 20% goes to the distributor, 30% to the publisher and 10% to the author. The publisher pays for the production, copyright, layout, graphics and marketing.

4.2 Publishing houses

How will these numerous copies affect publishing houses, especially scholastic publishing houses? When books are mass produced, they can be sold for less. If fewer books are printed, there is less work. Where does that leave Copibec, whose mission is to manage the reproduction rights for printed works on behalf of Quebec authors and publishers?

4.3 Educational institutions and libraries

Bill C-32 plays favourites, giving some users almost all the rights without having to pay anything. Educational institutions can distribute information with broader authorization and/or fewer difficulties, and libraries can give permission for books to be copied in a limited time frame, as long as they take measures to ensure that clients only make one copy. What will users do with this copy? Don't forget that youth today are very computer savvy. Allow me to wax philosophical for a moment. What values are driving this new approach? Yes, we live in an age of mass dissemination, but we need to maintain some ethics. Copying is stealing.

4.4 Internet service providers (ISPs)

ISPs are for-profit organizations that do a very good business making artistic works available. This aspect of their business must include responsibilities that Bill C-32 does not give them. I am all in favour of promoting investment, but not at the expense of creators. This bill provides for the sending of a notice of claimed infringement and for a record of claimants in case the author wishes to prosecute. ISPs no longer have an obligation to filter illegal activities or retain information; now their sole responsibility is to make a notification, and the rest is up to the authors, who must prosecute the fraudsters. Is this an improvement on copyright protection? Other countries are more severe in similar situations.

5. The effect on Quebec culture

When the bill was introduced at first reading, many people and groups protested loud and clear. A busload of Quebec artists and songwriters made their way to Parliament Hill on November 30, 2010, to show their disagreement. They wanted to remind the government that these amendments will undermine our culture. In industrialized countries, we give a monetary value to our goods and services. When someone's work is allowed to be copied and distributed without regard for the owner, it is in some ways invalidating that person's work. As Quebec represents such a small number of Francophones compared with the rest of Anglophone North America, its works need to be protected. Bill C-32 as it now stands will impede creation in Quebec and harm the public.

6. Conclusion

We cannot disagree with the basic principles of Bill C-32. However, this bill will not improve copyright protection measures, which will mean that jobs and culture will suffer, especially in Quebec.

Ministers Clement and Moore talked of balancing the interests of consumers with the rights of the creative community. In this case, the balance is heavily skewed in favour of consumers, who do not merit this

position. We understand that educational institutions and libraries are mandated to make information available to the public. However, these institutions must not lose sight of the fact that a virtual or online document is still owned by its creator. These institutions are aware of this fact already and act accordingly, so why does Bill C-32 give them more latitude? In the same vein, consumers have a responsibility to pay when they wish to acquire a product or service: if they cannot pay or do not wish to pay, they can still borrow the document, without obtaining **permission** to make a copy *legally* (no one will check to see if it is legal or not).

If creators are not recognized or if their works are devalued, they will lose interest in producing new works and the publishing industry will suffer the consequences. A distinct Francophone people in a sea of Anglophones must continue to express itself to preserve its culture.

7. Recommendations

- We need strict, unambiguous rules to govern digital conversion in order to protect authors, and we need realistic methods to ensure these rules are respected.
- The government must develop these methods together with organizations that protect copyrighted material, such as Copibec, scholastic publishing companies and public libraries.
- Clause 29 of the bill, regarding fair dealing, must be redacted.
- Documents on loan through a library or used by an educational institution should not be allowed to be copied unless authors are compensated.
- Internet service providers must be made responsible for the dissemination of documents, rather than leaving it to the authors to prosecute fraudsters.
- The government must launch a campaign on the Internet and on television to increase awareness of copyright protection.

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