



CANADIAN PUBLISHERS' COUNCIL  
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Canadian Educational  
Resources Council

Executive Summary of Submission

On The

**COPYRIGHT MODERNIZATION ACT**

**BILL C-11**

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***A healthy creative community supports a vibrant knowledge economy. A copyright regime that undermines our creators' ability to be remunerated for their creations will poison the well.***

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## **Executive Summary**

As Canada's primary English-language book publishing industry associations, the Canadian Publishers' Council (CPC) and the Canadian Educational Resources Council (CERC) have long represented the interests of companies which publish books and digital and other electronic media for elementary and secondary schools' students and teachers, colleges and universities' students and faculty, the professional (law, medicine, accounting) and reference markets, as well as the retail and library sectors.

As employers of nearly 4500 Canadians, our members have much at stake in the Copyright Modernization Act (Bill C-11). Last year alone, Canadian authors received more than \$50 million in royalties from works in which CPC and CERC members have invested. More than three-quarters of all new and original English-language Canadian works published in Canada annually across all educational disciplines and across all genres are published (print and electronic) by our member firms. Furthermore, our member publishers deliver \$70 million of business each year to Canadian-based book print production and many millions more to rapidly growing digital development.

We have a vested interest in ensuring that modernization of the Copyright Act to accommodate new technologies does not result in a serious undermining of our industry. ***A lack of confidence in the integrity of the market combined with a lack of necessary remedies would reduce publisher investment, innovation and development of original print and digital Canadian content.*** This would be the opposite of the desired outcomes articulated at [Canada 3.0 2010](#) (May 10-11, Stratford), Canada's premier digital media forum or those in the government's consultation process that followed, [Improving Canada's Digital Advantage](#).

Copyright reform is necessary to implement the WIPO treaties by introducing protection for technological protection measures (TPM) and digital rights management (DRM). The protection of TPMs is essential as many business models for creative works depend on TPMs. However, it should not be necessary to resort to TPMs (somewhat antithetical to publishers' raison d'être which is to make available) in order to have reliable copyright protection. Copyright reform also needs to support the rights of copyright owners, publishers, distributors, etc. with clear definitions and effective remedies.

***With care in the definition of any exceptions and the delivery of effective means to control infringement, TPMs do not have to be an indispensable part of a business model.<sup>1</sup>***

Enshrining consumer uses in exceptions with ill-defined scope, minimal and vague accountability and, even more concerning, limited consequences for non-compliance will be devastating to the knowledge

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<sup>1</sup> [CPC and CERC intend to propose draft amendments but will submit those in a separate document]

industries. This approach undermines existing distribution models (such as collective licensing). There is little recognition of the self-interest of new players (Internet Service Providers (ISPs), libraries and educational institutions) so their role in infringing activities, whether active or passive non-enforcement) is not adequately addressed. The rights holder appears to be expected to manage rights directly with the user, at an untenable enforcement cost, or to lock everything up.

An apparently intended, and distressing, consequence of a multi-pronged expansion of educational exceptions — expanding fair dealing by adding "education" as a purpose, and expanding exceptions for educational use and library use — is the repudiation of collective licensing. Collective licensing has developed worldwide to address the volume and complexity of permissions for re-use and to mitigate the negative impact on creator compensation of copying of works using ever-higher-quality copying technologies. Collective licensing plays a key role in the context of education.

Expanding educational exceptions is not about a market failure on the part of publishers to provide access. Rather, it is about saving money for the educational community, out of the pockets of the publishers, domestic and global. This will put Canada seriously out of step with its international partners.

In a similar vein, the expansion of library exceptions to encompass digital reproduction and circulation is being proposed. Ironically, there was supposed to be a formal review and assessment of the inter-library loan impact 3 years after the Copyright Act was amended in 1997. It did not occur. We still believe that the formal review and assessment is required.

**The government has stated as an objective that copyright reform should be technology-neutral. There is a regrettable lack of sensitivity to the self-interest of the disparate interest groups connected to the new technologies that test fundamental copyright principles.**

1. The **intermediary community**, no longer neutral 'middlemen'
2. The **end-user** with peer-to-peer distribution systems to share copyright works — no compensation to rights holders
3. **ISPs and telecoms** surging into active content distribution — no licensing, no compensation to rights holders
4. **Search engine services** expanding their information location tools, digitizing content and providing parts of that content which may exceed a "fair" amount both qualitatively and quantitatively — and no compensation to rights holders

There is also a clear trend to support the creation of numerous exceptions for personal uses of copyright material, "for free". This is a completely unrealistic reflection of the purpose of copyright in the marketplace and a serious impediment to the normal evolution of business models.

**In summary, we need to remind ourselves at every juncture of the original purpose of copyright — to incent the development of and ensure the access to creative works.**

New concepts, exceptions and uses must be clearly defined. Leaving clarification to the courts is not a solution – costly, time-consuming and decisions, limited by the facts of the case, are frequently inadequate to deliver predictable rules to the commercial sector who are attempting to manage risk in

their future endeavours. Onerous processes of initiating an action for infringement and dramatic reduction of available statutory damages are equally unsatisfactory. **For the business-community, the judicial approach is no substitute for clear scope and clear consequences incorporated in legislation.**

Rights holders will only make their works available in Canada if they are confident that their economic and moral rights will be protected. Our knowledge economy is ill served by suggesting that the creators, the rights holders, the publishers, the producers are ... the “bad guys”. It is equally ill served by encouraging the notion that copyright is a zero-sum game whereby any protections given to the creator somehow deprive the user and are, therefore, contrary to the public interest.

A healthy creative community supports a vibrant knowledge economy. A copyright regime that undermines the creators' ability to be remunerated for their creations will poison the well.