



CANADIAN PUBLISHERS' COUNCIL
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Canadian Educational
Resources Council

An Economic Perspective

on

COPYRIGHT POLICY

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Submitted by

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Representing book publishing in Canada since 1910

An Economic Perspective on Copyright Policy

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 school students and teachers, colleges and university students and faculty, the professional and reference markets (law, medicine, accounting), and the general interest retail and library sectors.

CPC and CERC members employ nearly 4500 Canadians. Canadian authors annually earn more than \$50 million in royalties from the sale of works in which our 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. Moreover, our member publishers are now generating many millions of dollars for digital production while annually spending more than \$70 million dollars for Canadian-based manufacturing of books in print formats, which remain in huge demand within the Canadian educational community and the public. A statistical survey of members' remarkable contribution to the industry's infrastructure and to Canada's economy has just been completed.

We have an absolute interest in ensuring that the modernization of our Copyright Act to accommodate new technologies does not result in a serious undermining of Canada's information and content industries. Projections from Canada 3.0 2010 (May 10-11, Stratford), Canada's premier digital media forum **and** the government's consultation process that followed, Improving Canada's Digital Advantage clearly endorsed and respected the importance of the economic contribution of the publishing community.

Copyright Reform

We see positives and negatives in Bill C-11's proposed amendments. We welcome this opportunity to highlight the business and economic consequences of those proposals. We acknowledge the Government's stated objectives in its Backgrounders. We are **not** opposed to the context for several proposed exceptions; we **are, however**, very concerned about lack of clarity in defining the scope of those exceptions. We all benefit from access to copyright content — writers and publishers are consumers too — but clarity is required to ensure that the Government's stated objectives are met without unintended negative consequences.

Technological Protection Measures (TPMs) and Digital Rights Management

As required by the WIPO treaties¹, protection for TPMs and DRM has been included in Bill C-11. This proposed protection of TPMs and DRM is gratifying as many business models for digitally published works depend upon both. That said, we sincerely hope that it will not be necessary to resort to TPMs (somewhat antithetical to publishers' raison d'être which is to "make available") in order to have reliable

¹ World Intellectual Property Organization, WIPO Copyright Treaty, (1996) http://www.wipo.int/treaties/en/ip/wct/trtdocs_wo033.html , World Intellectual Property Organization, WIPO Performances and Phonograms Treaty, (1996) http://www.wipo.int/treaties/en/ip/wppt/trtdocs_wo034.html

copyright protection. 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 every business model. Product design, market dynamics and customer wishes should determine where "digital locks" are appropriate rather than leaving the rights holder with only one method to protect copyright.

Consumer Exceptions

As drafted, Bill C-11 enshrines consumer uses in exceptions, "for free". We believe this was done in the firm belief that there would be no, or minimal, economic consequences to condoning what *appear to be* existing consumer behaviours. We believe that expansion of exceptions and insufficient consideration of the outcomes of the possible interactions of those exceptions would seriously undermine copyright protection. In fact, existing consumer practices are currently causing various degrees of harm to entertainment and publishing businesses. It is essential that scope be clearly defined, that consumers understand and accept accountability and that there be clear consequences for non-compliance. Without this clarity the business models that support the availability of these products and services cannot be sustained. Existing distribution models (such as collective licensing – which is really about pre-approving permissions to use copyright material) provide expanded consumer access. The proposed exceptions give rights holders the unpalatable choice of managing rights directly with the user, at an untenable enforcement cost, or locking everything up.

The Government's effort to endorse personal use of copyright material (such as UGC -- the "YouTube exception") is another example where scope, accountability and consequences need to be clearly defined. It must be understood that this is a deviation from the traditional view of the purpose of copyright in the marketplace and it may be a serious impediment to the normal evolution of business models and to investment in new ventures. Deeming such activity to be "non-commercial" fails to reflect the enormous opportunities presented by rapidly changing technologies and consumer appetites. The consequence would be a loss of economic growth and diversity in the Canadian publishing and entertainment industries.

Role of Intermediaries

Clarity is also required in the role, definition and accountability of "intermediaries". The government must be conscious of the commercial self-interest of these new players (Internet Service Providers (ISPs), libraries and educational institutions). The role of these intermediaries and redistributors in infringing activities, whether by active or passive non-enforcement, is not adequately addressed. There must be appropriate accountability and consequences as intermediaries' own interests may impede rights holders' ability to seek accountability from infringing end-users.

Education, Library Exceptions and Collective Licensing

The distressing consequence of the proposed multi-pronged expansion of education exceptions — expanding fair dealing by adding "education" as a purpose, and expanding existing exceptions for education and library use — would be, **if unamended**, a repudiation of creator and publisher property rights and of collective licensing. Collective licensing has developed worldwide to address the volume and complexity of permissions for re-use of copyright works. The publishers of those works choose to

license collectives to manage peripheral uses on their behalf — to improve consumer access but to mitigate negative impact on compensation for the copying of works using ever-higher-quality copying technologies.

The reduction of the cost of education must not be achieved by the devaluing of the creators' and producers' marketplace. Exceptions that devastate legitimate, existing and developing, business models will do immeasurable harm to publishers and, in the process, reduce the wonderful variety of Canadian works available and accessible to education, to students, to the public.

This strategy would also put Canada seriously out of step with its international partners. Its impact on the economic well-being of the information industries, domestic and global, must not be underestimated.

Specific to the library market, we believe that the formal review and assessment of the economic impact of inter-library loan, which was promised after the Copyright Act was amended in 1997, is still required. That review will undoubtedly show marked damage to Canadian journal and periodical publishing over the intervening years. ***Therefore, an expansion of the inter-library loan exception, as proposed, would exacerbate an already existing problem.***

New Landscape

We laud the government's objective of technologically-neutral copyright reform. That said, the multiplicity of interest groups aligning with the new technologies and supply chains but which are, by their nature, antagonistic to copyright, cannot be ignored. Their impact on traditional and morphing business models would undermine the efforts of the rights holder community.

Examples of the impact of such interest groups include:

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 — without compensation to rights holders

Enforcement of Rights

The ability of a business to protect its investment and its property is the most crucial factor in investment decisions. No business likes to be in the position of threatening or suing its customers. Where new concepts and exceptions are not clearly stated in legislation, obtaining that clarity by spending years in the courts is the only option — costly and time-consuming and more reasonably managed in the normal course of business relationships. Decisions, limited by the facts of the case, are frequently inadequate to deliver predictable rules to the commercial sector attempting to manage risk

in its future endeavours. For the business community this judicial approach is no substitute for clear scope and clear consequences incorporated in legislation.

The government should recognize that introducing onerous requirements to identify and pursue infringers at the same time as reducing available statutory damages would have a chilling effect on business.

Policy Balance

A balanced copyright model supports a vibrant and innovative knowledge economy.

A lack of confidence in the integrity and predictability of the marketplace and the regulatory environment, combined with a lack of effective remedies would reduce publisher investment, innovation and development of original Canadian content. Without safeguards for the investors in the content industries, Canada would suffer greatly diminished diversity in the market and fewer publishers to serve it.

Rights holders will only make their works available in Canada if they are confident that their economic and moral rights will be valued. Our knowledge economy is ill-served by suggesting that rights holders, publishers, producers are ... “bad guys”. It is equally ill-served by encouraging the notion that copyright is a zero-sum game whereby any protections given to the rights holder somehow deprive the user and are, therefore, contrary to the public interest. This also creates a false perception that “user” good and “public” good are one and the same. In fact, a healthy copyright regime that creates a nurturing environment for creativity and innovation is in the “public” good although it may impede the uses of some. The needs of users are scarcely homogeneous.

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