FEUQ

Ensemble pour l'éducation !

# *Bill C-11: Copyright Bill*

***Study on bill C-11***

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**Fédération étudiante universitaire du Québec**

*The Fédération étudiante universitaire du Québec (FEUQ) is an organization that brings together 15 student associations with more than 125,000 students from all levels of and every region of Quebec. Established since 1989, its main mandate has been to defend the rights and interests of students with governments and education stakeholders. Throughout its twenty years of existence, it has endeavored to defend a humanistic education as a societal choice. It focuses particularly on defending its members before, during and after their passage in university by demanding, above all, an accessible and quality education.*

**Fédération étudiante universitaire du Québec**

15, rue Marie-Anne Ouest
2e étage
Montréal (Québec)
H2W 1B6
Telephone: (514) 396-3380
Fax: (514) 396-7140

| | |
|---|---|
| Supervision | Martine Desjardins, president of the FEUQ (2011-2012) |
| Analysis and writing | Samy Mesli, attaché of the Conseil national des cycles supérieurs<br>Lysiane Boucher, coordinator of federal and international affairs (2009-2010)<br>Guillaume Houle, vice-president of university affairs (2010-2011)<br>Louis-Philippe Savoie, vice-president of university affairs (2009-2010) |

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That the federal government specify that fair use for the purposes of education (including multiple copies for distribution in class) does not constitute a violation of copyright.

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That the federal government specify that students are part of the exception for the purposes of education and all the exceptions that affect non-profit educational institutions, libraries and museums.

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That the federal government ensure in its legislation on copyright that institutions, their academic personnel and their students are not be subject to penal sanctions or pre-established damages. (CNCS-092)

**CNCS-361 (7.2.)**

That the federal government ensure that new types of work (notably works created and disseminated digitally) be covered by the exceptions which university institutions benefit from for educational purposes, research and study. (CNCS-092)

## *List of recommendations for Bill C-11*

**Recommendation 1**

That article 29 of the Copyright Act be amended to specify that students act under the authority of the educational institution for their work and that consequently they are covered by the exception included to this effect.

**Recommendation 2**

That the Copyright Act promote the just remuneration of creators and enable agreements between collective licensing body and the other contractual parties of the regular use that is made of works.

**Recommendation 3**

That article 30.01 (1) introduced to the *Copyright Act* by bill C-11 read as follows:

To this article, "lesson" is understood all or part of a lesson, **a communication, oral or posted, of a symposium, a formal or informal training**, an exam or control in which an educational institution or a person acting under its authority accomplished in regard to a work or any other object of copyright an act that, without the exceptions and restrictions stipulated in this Act, would have constituted a violation of copyright.

**Recommendation 4**

That article 30.01 (3) introduced to the *Copyright Act* by bill C-11 be modified as follows:

(3) ~~Subject to subsection (6),~~ ***D***oes not constitute a violation of copyright the fact (…)

**Recommendation 5**

That article 30.01 (5) introduced to the *Copyright Act* by bill C-11 be modified as follows:

(3) Does not constitute a violation of copyright the fact, for the student who receives a lesson through a communication by telecommunication in clause (3)a), to make a reproduction to listen or view at the most opportune time ~~The student must nevertheless destroy the reproduction in the thirty days following the date in which students enrolled in the course to which the lesson is related receive their final evaluation.~~

**Recommendation 6**

That article 30.01 (6) introduced to the *Copyright Act* by bill C-11 be deleted from the bill.

**Recommendation 7**

That article 30.02 (1) introduced in the *Copyright Act* by bill C-11 be modified as follows:

30.02 (1) Subject to subsection (5), does not constitute a violation of copyright the fact (…)

**Recommendation 8**

That paragraphs (3) and (4) of article 30.02 introduced to the *Copyright Act* by bill C-11 be deleted from the bill.

**Recommendation 9**

That article 30.2 (5.02) introduced to the *Copyright Act* by bill C-11 be modified as follows:

(5.02) The library, museum or archive service, or all persons acting under their authority, can, under paragraph (5), provide a digital copy to a person having made the demand through another library, another museum or another archive service**.** ~~If they take, in this way, measures to prevent the person that received it to reproduce it, except by a single printing, to communicate it to another person or to use it for a period of more than five working days after the date of its first use.~~

**Recommendation 10**

That article 30.04 (3) introduced to the *Copyright Act* by bill C-11 be modified by the following addition:

(3) Paragraph (1) does not apply in the case where the Internet site on which is posted the work or other object of copyright, or the work or other object of copyright are protected by a technical protection measure that restrains access to the site or a work or other object of copyright, ***unless the protected content is the object of a license, individually or through a collective licensing body, to which are associated the user rights for the individual acting under the authority of an educational institution, library, museum or archive services.***

**Recommendation 11**

That there be inserted between paragraphs (16) and (17) of article 41 introduced to the *Copyright Act* by bill C-11, the following paragraph 41.16:

41.16 (repetition) Clause 41.1 (1)a) does not apply to educational institutions, libraries, museums, archive services or persons acting under their authority, which circumvent the technical protection measure with the sole aim of making the work accessible for a lesson, communication or a formal or informal training activity.

*"By adopting a fair law on copyright, by focusing on the needs of the student population and faculty, be favoring a greater access and by making other very important updates, Canada has the exceptional chance of multiplying learning possibilities for future generations."*

**Council of Ministers of Education of Canada, 2009**

## *1. Introduction*

The Copyright Act is a relatively complex law that applies as much to the field of industry in general as to the world of education. In fact, the different actors such as undergraduate students, graduate students, professors and librarians see their work affected by the various provisions of this law.

On June 12, 2008, Bill (C-61) aiming to modify the Copyright Act (C-42) was introduced by Mr. Jim Prentice, Minister of Industry at the time. This project was the victim of numerous critiques, and with the arrival of elections, was for all intents and purposes declared dead. It was therefore in a climate of dissatisfaction that the Conservatives declared in their election promises a desire to update Bill C-42.

It is thus on July 20, 2009, that the government announced the arrival of public consultations to consult the Canadian population on the subject of desired changes and general opinions on the current law. These consultations were made on the basis of the law in force, as an alternative to a bill on the table at this moment.

On June 2, 2010, the current Minister of Industry, Tony Clement, tabled a new bill on copyright (C-32), following the consultations held in the summer of 2009. This bill includes certain improvements in relation to the first draft and was the object of a new series of consultations in a Legislative Committee. The vote for bill C-32 was nevertheless pushed forward due to the dissolution of parliament in May 2011, for the holding of federal elections.

After the reelection of the Harper government, bill C-11, which takes up the provisions of bill C-32, was presented to the House of Commons by the Minister of Industry, Christian Paradis, and was adopted during the first reading of September 29, 2011.

Bill C-11 includes certain improvements in relation to the text initially presented in 2008, and, in this sense, the FEUQ hopes that this bill continues its progression in the House of Commons. There are, however, certain deficiencies for which we invite parliamentarians to perfect the current bill.

This document thus has the objectives of clarifying the analysis of the Federation in regard to bill C-11 and to determine the articles that must be amended during the debates of winter 2012 to make them comply with the needs expressed by the university milieu.

## 2. State of the situation

That last important modifications to the Copyright Act date back to the 1990s. Certain realities, which are current today, have changed access to works (cell phones, USB keys, Internet, MP3 readers, exchange sites of digital files). These are not thus taken into account, in a specific manner, by the present federal law on copyright[1] (R.S.C. 1985 C-42). Similarly, the creation of works in an exclusively digital format is not explicitly covered by the *Copyright Act* in its current form.

These new realities, however, have modified the situation of copyright and the remuneration of creators for many years now. In fact, the appearance of free exchange sites of digital files matched with the announced drop in the sales of records have particularly made major production companies of artistic content react these last few years (musical works and cinematography). The latter have started a certain number of legal proceedings against the owners of exchange sites and eventually against users. These actions have been taken in parallel to other steps with governmental authorities– here as elsewhere – with a view to hardening the laws concerning copyright in favor of the producers of content, notably artistic. The American *Digital Millennium Copyright Act* adopted in 1998, constitutes an example of such approaches. The DMCA stipulates restrictions on the use of electronic material such as the explicit interdiction to circumvent the technologies used to protect documents subject to copyright.

In Canada, the government has also been under pressure by these same producers to modify the Copyright Act and align itself to the DMCA. Bill C-11 is intended to respond to these new issues and tends to develop rules that are generally less strict on copyright, while imposing new clauses concerning the use of new technologies.

[1] There are six types of protection of intellectual property to which correspond as many Canadian laws: patents (invention) – Patent Act, R.S.C. (1985) ch. P-4; copyright (original expression of an idea in the form of a literary, artistic, dramatic or musical work) – Copyright Act, R.S.C. (1985) ch. C-42; trademark (words, symbols or images) – Trademarks Act, R.S.C. (1985) ch. T-13; industrial designs (characteristics of a useful object) – Industrial Design Act, R.S.C. (1985); integrated circuit topographies (three-dimensional configuration on an electronic circuit on a piece of paper) – Integrated Circuit Topography Act, L.C. (1990) ch. 37; plant breeders rights (new plant varieties) » (MRST, 2001 : 9) – Plant Breeders' Rights Act, R.S.C. (1985) ch. P-14.6.

## *3. The FEUQ and copyright*

During the last years, the FEUQ and the CNCS have focuses several times on the question of copyright and intellectual property (CNCS-FEUQ 2002, CNCS-FEUQ 2004, FEUQ 2005, CNCS-FEUQ 2008). The taking of positions of the FEUQ and the CNCS in this field rest on the status of students and student researchers and thus are based on the necessity of ensuring a balance between users and creators.

Thus, the student must benefit from the largest possible access to knowledge, whether it be in the form of articles, books artistic creations, computer or other. In this regard, the professor must have access to the necessary content to disseminate knowledge to his students. The student, for his part, must have access in an autonomous manner to the works made available by teachers and library resources and documentation centers of his university to perfect his training. Finally, in the case of the student researcher and the student creator, there is also a question of being able to ensure the respect of intellectual property related to the work accomplished in his academic course of studies. On the other hand, knowing that students today will be the researchers and creators of tomorrow, we can only be preoccupied by the issues related to the integrity of copyright, royalties collected and the problems posed by the introduction of new digital technologies in this regard.

Given the middle-ground position of the FEUQ and the CNCS in this file, the main subjects to which we committed in regard to the *Copyright Act* concern fair use and the academic exception. Fair use aims to adjust the balance between users and creators, and the academic exception allows us to define this balance in regard to its use in the university milieu.

The section that follows constitutes a reminder of certain positions of the FEUQ and the CNCS concerning the *Copyright Act*. The first axis of our discourse deals with the balance between creator and user that we have discussed. Subsequently, we will examine fair use, the academic exception, legal penalties incurred by students and the different types of works covered by the academic exception.

**CAU- 400 (17.1)**

That the FEUQ consider that the Copyright Act must search a just balance between the rights of holders of copyright, that of users and the interests of society in general.

In the current context, we are surrounded by different actors leading a fight to defend their own interests. On the one hand, we find the adepts of a more rigid protection around the works of creation. On the other hand, many demand an update of the law favoring a growth in accessibility to information.

In the university milieu, we are confronted with the two realities exposed above. In fact, graduate students, for example, perfectly reflect these two ideas that enter into conflict. The latter require a larger access to information since we know quite well that knowledge can only develop on the basis of other knowledge. Since all students of all levels of study are called at one time or another in their educational course of studies to consult various works, accessibility to information is an absolute necessity to be able to benefit from a quality education. However, these same graduate students eventually become creators of works and desire to be protected by the *Copyright Act*.

More generally, all students will be led, as of the undergraduate level and throughout their university path, to consult many works and scholarly publications. Accessibility to information is thus an absolute necessity to be able to benefit from a quality education.

Thus, for the advantage of all and to ensure an accessible education, the federal government has every interest in updating the law and searching for a balance between the different actors concerned by the *Copyright Act,* whether they be from the university milieu or not.

**CNCS-359 (7.2.)**

That the federal government specify that fair use for the purposes of education (including multiple copies for distribution in class) does not constitute a violation of copyright.

Fair use such as described in the present law specifically includes use for private study purposes or research. The text, in fact, defines the concept of fair use as follows:

> **29.** The fair use of a work or any other object of copyright for the purposes of private study or research does not constitute a violation of copyright. (R.S.C. 1985 C-42, art. 29)

The use of protected works by copyright without restriction remained confined to a relatively slender field. To preserve a high-quality university education and promote student access to scholarly documentation, teaching must be included in the exceptions stipulated by the Act, notably to facilitate and improve activities unfolding in class. On the other hand, various provisions must be taken to limit the use of protected works through specific exceptions.

**CNCS-358 (5.2.)**

That the federal government specify that students are part of the exception for the purposes of education and the set of exceptions that affect non-profit educational institutions, libraries and museums.

With the absence of a clear concept of "education," the current law puts the emphasis on educational institutions that are presented as being:

"educational institutions":

a) Accredited non-profit institution in terms of federal or provincial law to dispense education at the preschool, elementary, secondary or postsecondary levels, or recognized as such;

b) non-profit institution placed under the authority of a school board governed by a provincial law and that dispenses education courses or continuous education, technical or professional;

c) ministry or organization, whatever the level of government, or non-profit entity that exercises authority over education and training set out in provisions a) and b);

d) all other non-profit institution targeted by regulation. (R.S.C. 1985 C-42, art. 2)

Article 29.4 of the law allows exceptions to the copyright rules, and thus are authorized the reproduction of manuscripts and the projection of a work, on the condition that they are the fact of "*an educational institution or a person acting under its authority for pedagogical purposes and in the rooms of the institution.*"

On the one hand, we can state that the definition of rooms of institutions, considered as *" […] the locations where [the educational institution] dispenses education or training set out in the definition of this term or exercises its authority over them"* (R.S.C. 1985 C-42, art. 2), a definition that appears inappropriate given the expansion of distance education.

But the most prejudicial aspect comes from the fact that the Act makes no mention of the case of students 29.5, that the "direct and public execution of a work [interpreted] mainly by students of the institution, [and] in its rooms" does not constitute a violation of copyright.

The current copyright law thus does not allow for the integration of students in the framework of exceptions in educational institutions, and they remain disassociated from the notion of "person acting under the authority" of an educational institution.

Students being important actors in the use and creation of diverse works, it will be relevant and primordial to specify their presence within the academic exception in the future law. At the present time, this notion remains imprecise and nebulous. Although we can consider the student acting under the authority of a university, this lack of precision could eventually exclude students from the exceptions stipulated in a too narrow interpretation that would cause major legal consequences. The FEUQ thus requires that students be clearly identified as actors acting under the authority of educational institutions.

**CNCS-360 (7.2)**

That the federal government ensure in its legislations on copyright that institutions, their academic personnel and their students are not be subject to penal sanctions or pre-established damages. (CNCS-092)

Since the *Copyright Act* has not been updated with new technologies such as the Internet and MP3 readers, a fight over pirating has been initiated by the various creators desiring to protect their copyright as well as the income that depends on it.

However, in a university context where research is omnipresent and necessary for the standing of institutions– and ultimately of Canada – on the global scene, the objective of the advancement and sharing of knowledge between different institutions, both at the local and international level, frequently demands the complete or partial use of works by professors and students in their researches. It goes without saying that this use targets the development of knowledge and not the pirating of works for commercial ends.

It will thus be necessary that the federal government specify, through fair use for example, that researchers and students be excluded from the lawsuits and damages and interests stipulated by the law.

**CNCS-361 (7.2.)**

That the federal government ensure that new types of work (notably works created or disseminated digitally) be covered by the exceptions from which benefit university institutions for educational purposes, research or study. (CNCS-092)

Learning and education evolve in a strongly dynamic system, thus in constant and rapid evolution, and it is necessary to update the Copyright Act so that access to technological tools become legally accessible for pedagogical purposes, such as education, teaching, research, innovation, or the dissemination of knowledge.

If such a demand were refused during the refashioning of the future law, schools and postsecondary institutions of the country could see themselves be forced to forbid the use of the Internet in training activities, which would harm the transmission of knowledge in Canada. This proposal was even formulated by the ministers of education of the provinces and territories of Canada (CMEC 2009), in partnership with the teaching personnel, school boards, colleges and universities and faculty.

## *4. Analysis and criticism of bill C-11*

Three major elements are found in bill C-11 in regard to students: increase of the number of academic exceptions, enlargement of fair use and the implementation of sanctions concerning digital locks.

### *4.1. Fair use*

The enlargement of fair use, among other things, for academic purposes, is part of the proposals of the FEUQ to make copyright conform more to the reality lived in the university world. By proposing a modification to the definition of fair use, the government of Canada is partially responding to this concern. In fact, bill C-11, currently being debated in the House of Commons, offers an important advance by integrating the notion of. In fact, article 29 of the Copyright Act would become the following (additions underlined):

> *29. The fair use of a work or any other object of copyright for the purposes of private study, research, <u>education, parody or satire</u> does not constitute a violation of copyright.*

This change is positive and has the effect of enlarging the notion of fair use to education. However, it is necessary to underline that this measure is an opening of the practices of fair use to educational activities and in no way is an authorization for the violation of copyright.

This modification should be a relief to educational institutions and students**.** It allows the reasonable use of material under copyright for the education and research mission of universities. On the other hand, the wording is relatively vague and the articles of the subsequent bill could tend towards a narrow interpretation, as we underlined earlier. We thus wish that there be added a clause to this article specifying that students act explicitly under the authority of the educational institution, libraries, museums or archiving services.

**Recommendation 1**

That article 29 of the Copyright Act be amended to specify that students act under the authority of the educational institution for their work and that consequently they are covered by the exception included to this effect.

### *4.2. Academic exceptions*

Articles 29.4 to 30 of the current Copyright Act define the criteria of the academic exception. Most of these measures should be amended by the new bill C-11 that, in its articles 23 to 27, allows for the enlargement of academic exception. Certain norms would thus be made more flexible, with a view to notably:

a) Allowing education institutions to reproduce a work, whether by means previously defined by the law – manuscript reproduction or presentation by overhead projector – or by other means, thus opening the path to Internet use in order to visually present to students;

b) Facilitate the dissemination of protected works, such as theater works, films or current-event programs, in a course (articles 24, 25, 26), on the condition of not relying on counterfeited recordings;

c) Allow educational institutions and teachers to communicate to students or to disseminate through the Internet online "lessons" including documents subject to copyright. Institutions that have licenses for the reproduction of works can, additionally, make digital copies of these and disseminate them through the Internet (article 27). These measures aim to promote distance education, but they are matched with various legal provisions aiming institutions – which must install digital locks to these lessons and destroy them 30 days following the submission of final grades to students. Finally, educational institutions can reproduce and disseminate works that are accessible on the Internet, on condition of mentioning the source and ensuring that these documents are not protected by digital locks or do not come from sites where access is limited.

These provisions are, overall, improvements to the current situation**.**

### *4.3. Fair remuneration*

In a context where we are asking the government to "seek a fair balance between social actors," it is essential for the future of scholarly and scientific research that the use of protected work be made while respecting accomplished work, especially as students are also producers of protected works by copyright. Thus, fair remuneration, also called "neighboring-right" (Léger, 1992), is defined as being financial compensation for the use of works (artistic or scholarly) on a large scale. For example, when there is reproduction of a work with the goal of mass distribution, all users should pay for the use of this work. From a formal point of view, it is collective licensing bodies that collect the amounts to then fairly redistribute them to creators.

In this regard, the FEUQ is favorable to fair remuneration for creators when the their copyright sis managed by thus type of institution, with the signature of an agreement between the parties concerned allowing, by this very fact, the awarding of financial compensation for use and reproduction on a large scale of the work. Thus, the FEUQ contends that the use of works must be made in a framework prescribed to this effect so that creators receive adequate dividends. In brief, the FEUQ recommends:

**Recommendation 2**

That the Copyright Act promote the just remuneration of creators and enable agreements between collective licensing body and the other contractual parties of the regular use that is made of works.

### *4.4. Informal trainings*

An important part of academic education unfolds in informal activities– meant by "non-credited." The role of the student is not limited to participation in courses in which he is enrolled: numerous seminars, colloquia, lectures and other activities take place and contribute to the intellectual and skills development of students. In this regard, the bill puts a lot of emphasis on formal education and the academic activities in which students are "enrolled." There is thus reason to modify article 30.01 (1) in the following manner:

**Recommendation 3**

That article 30.01 (1) introduced to the *Copyright Act* by bill C-11 read as follows:

To this article, "lesson" is understood all or part of a lesson, **a communication, oral or posted, of a symposium, a formal or informal training**, an exam or control in which an educational institution or a person acting under its authority accomplished in regard to a work or any other object of copyright an act that, without the exceptions and restrictions stipulated in this Act, would have constituted a violation of copyright.

### *4.5. Restrictions deemed excessive and limitations to the application of the academic exception and fair use*

In the same sense as the elements that we have just mentioned, article 27 of this bill, relative to the addition of articles 30.01 and 30.02, poses a problem in various regards concerning the restrictions that are imposed. In our opinion, this consists of an element where, on the one hand we apply an "academic exception" and on the other hand, we do everything possible to limit its effect. Article 30.01 (6)a) for example, specifies the necessity of destroying all academic content thirty days after the end of the lesson. This proposal seems prejudicial to us since, as stated by the Association of Universities and Colleges of Canada (AUCC), "certain courses are based on previous courses, followed in the framework of the same program. For students […], it would be useful to have access to documents of courses previously followed, and these documents could furthermore be precious resources in a career, once their degree is obtained" (AUCC, 2011)

We believe that in regard to digital documents and user licenses of databases and Internet sites, educational institutions are able to negotiate with copyright licensing bodies in order to agree on the modalities of use of works. In this sense, the FEUQ proposes:

**Recommendation 4**

That article 30.01 (3) introduced to the *Copyright Act* by bill C-11 be modified as follows:

(3) ~~Subject to subsection (6),~~ ***D***oes not constitute a violation of copyright the fact (…)

**Recommendation 5**

That article 30.01 (5) introduced to the *Copyright Act* by bill C-11 be modified as follows:

(3) Does not constitute a violation of copyright the fact, for the student who receives a lesson through a communication by telecommunication in clause (3)a), to make a reproduction to listen or view at the most opportune time ~~The student must nevertheless destroy the reproduction in the thirty days following the date in which students enrolled in the course to which the lesson is related receive their final evaluation.~~

**Recommendation 6**

That article 30.01 (6) introduced to the *Copyright Act* by bill C-11 be deleted from the bill.

**Recommendation 7**

That article 30.02 (1) introduced in the *Copyright Act* by bill C-11 be modified as follows:

30.02 (1) Subject to subsection (5), does not constitute a violation of copyright the fact (…)

**Recommendation 8**

That paragraphs (3) and (4) of article 30.02 introduced to the *Copyright Act* by bill C-11 be deleted from the bill.

In the same vein as the amendment recommendations that we have just presented, it seems to us that article 29 of the bill, modifying paragraphs (4) and (5) of article 30.2, turns out to be more restrictive than necessary, and risks dissuading the employees of these agencies to accept reproducing or lending works in digital format. While libraries are now authorized to transmit, in a loan between libraries, digital documents, and not only in a paper version, paragraph (5.02) specifies that librarians must ensure that users limit themselves to one copy of the work, and that this be destroyed after 5 working days, a clause that does not exist in paper version works.

Given this paradox, we estimate that these provisions are not justified and ask for the suppression de of this measure, which does not constitute any prejudice to holders of copyright. This is why the FEUQ recommends:

**Recommendation 9**

That article 30.2 (5.02) introduced to the *Copyright Act* by bill C-11 be modified as follows:

(5.02) The library, museum or archive service, or all persons acting under their authority, can, under paragraph (5), provide a digital copy to a person having made the demand through another library, another museum or another archive service. ~~If they take, in this way, measures to prevent the person that received it to reproduce it, except by a single printing, to communicate it to another person or to use it for a period of more than five working days after the date of its first use.~~

### *4.6. Works on the Internet*

Article 30.04 added to the Act aims to protect the copyright of works available on the Internet. We believe, of course, that in the current technological context, certain protection measures can be necessary. Having said this, for the introduction of an academic exception and a balancing at the level of the notion of fair use, accommodations must be sought. On the other hand, universities are major purchasers of access rights to secured sites containing periodicals, databases and the reproduction of works. In this sense, the latter conclude numerous contracts with licensing bodies, authors and companies that stock information on the Internet on secured sites.

Article 30.04 (3) specifies that the academic exception does not apply in the context of sites with secured content. It appears to us at this level that it is useful to leave negotiated contracts – between universities, copyright licensing bodies and companies allowing access to secured sites – allow us to regulate access to these sites. Consequently, we believe it can be useful to add the following elements to clarify the situation:

**Recommendation 10**

That article 30.04 (3) introduced to the *Copyright Act* by bill C-11 be modified by the following addition:

(3) Paragraph (1) does not apply in the case where the Internet site on which is posted the work or other object of copyright, or the work or other object of copyright are protected by a technical protection measure that restrains access to the site or a work or other object of copyright, ***unless the protected content is the object of a license, individually or through a collective licensing body, to which are associated the user rights for the individual acting under the authority of an educational institution, library, museum or archive services.***

### *4.7. Digital locks*

Another element that seems inopportune in the current bill is article 41 on digital locks, better known under the acronym DRM (*Digital rights management*). These technologies lock certain digital contents protected by copyright so that they cannot be reproduced. This article imposes a series of measures that forbid the unlocking of digital locks – for example, through the granting of a password allowing temporary access to database sites – as well as the commercialization and distribution of software allowing the circumvention DRM.

As stated by the AUCC, "these provisions could uselessly impede fair use and other exceptions stipulated in the Copyright Act," notably in the field of education. As such, only article 41.21(1) includes certain exceptions, in the case where the "impossibility of circumventing such a technical protection measure could harm criticism and all reports, news, comments, parodies, satires, *teaching, study or research* of which the work, the provision or registration can be the object," but under the reservation of the approval of the governor in council who must then adopt a regulation aiming to remove a work from the application de of article 41.1, a situation that can turn out to be long and complex.

Furthermore, while the law includes a series of exceptions to circumvent DRM, notably for persons presenting perceptual deficiencies, nothing indicates that educational institutions can have recourse to these provisions to help some of their handicapped students.

Following on the heels of the AUCC, which recommended the authorization of the "picking of digital locks for all purposes not contravening the Copyright Act as well as the delivery of picking and provision services, the marketing or importing of provisions allowing the circumvention off digital locks in the framework of activities not involving infringement," the FEUQ contends it is preferable to limit the problems to the source and include educational institutions for the exception planned other categories rather than wait for litigation which would result in acting in a regulatory manner and *ad hoc*.

**Recommendation 11**

That there be inserted between paragraphs (16) and (17) of article 41 introduced to the *Copyright Act* by bill C-11, the following paragraph 41.16:

41.16 (repetition) Clause 41.1 (1)a) does not apply to educational institutions, libraries, museums, archive services or persons acting under their authority, which circumvent the technical protection measure with the sole aim of making the work accessible for a lesson, communication or a formal or informal training activity.

## *5. Conclusion*

The *Copyright Act* is a very complex one, resting on principles that must balance one and other, whether it be the protection of the moral and economic rights of authors or again access to works and creations. Each epoch witnesses the birth of technological revolutions that fashion the understanding of this balance between creators and users. It is thus necessary to adapt this Act to these new issues.

For the FEUQ and the CNCS, we are situated at the very heart of the problem, namely straddling the defense of the interests of creators and that of users, as representatives of the rights and interests of Quebec students and student-researchers. We believe we have here been able to give an account of this balance by the proposals we made to bill C-11.

In regard to the reality of students, the current bill appears to us as being an advance in relation to the bill previously presented in 2008, bill C-61. However, like all bills, it is perfectible. It is in this sense that we are here trying to give constructive responses to specific elements contained in the bill.

To conclude, we would simply like to underline, one last time, that in this way, we are not placing ourselves in opposition to creators, artists and writers. We also represent them. The latter, however, must be aware of the inherent constraints of the academic world and the necessity of being able to benefit from available information to contribute to the advancement of art and science.

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