From: Brendan Moore
Sent: March 13, 2012 1:44 AM
To: Menegakis, Costas - M.P.; Menegakis, Costas - Riding 1
Cc: ~Legislative Committee Bill C-11/Comité législatif loi C-11; Angus, Charlie - M.P.; Thibeault, Glenn - M.P.; Scheer, Andrew - M.P.
Subject: Amendments to problematic portions of C-11: Copyright Modernization

March 12th, 2012

Dear Mr. Costas Menegakis,

As my elected representative for the riding of Richmond Hill, I urge you to consider offering and/or supporting technical amendments to parts of bill C-11 which I, and many of my peers, consider problematic. While on the whole, I think the Canadian C-11 approach is superior to that of the American DMCA (especially with regards to the Notice and Notice system), there are considerable issues to be addressed. I would specifically like to address the issues of anti-circumvention and commercial vs non-commercial use.

Anti-circumvention
It is imperative that circumvention be linked to otherwise infringing uses. It is absurd to leave in place the current language which makes otherwise perfectly legal activity magically illegal when a digital lock is circumvented. This makes absolutely no sense, and is difficult for one to argue that the result of the current language is reasonable. The new private copying provisions (such as time and format shifting) are all subject to anti-circumvention clauses, which massively erode their intended purpose before they are even made into law.

By way of example, please consider the so-called "format shifting" and "backup copies" sections (29.22 and 29.24, respectively) and a DVD you purchased of your favourite movie. According to (1)(a), (b), (d) and (e) of those sections, one could reasonably conclude that it is perfectly legal to either use your computer to convert that DVD into a format compatible with your mobile phone or tablet, or to make a backup copy to be used by children without worrying about ruining the original. Indeed, this is precisely the intended purpose of these sections. However, 29.22(1)(c) and 29.24(1)(c) subject these newly minted rights to private activity (which many Canadians already perform) to anti-circumvention provisions. That is, that perfectly reasonable and legal act of transferring the movie to bought to your tablet, or making a backup, is rendered illegal because the user circumvents a technical protection measure.

In case you were not aware, practically all commercially released DVDs since their debut have employed a cursory "technical protection measure" known as CSS: Content Scrambling System. This means that our perfectly reasonable example is verboten by the new law, even as it pretends to enable such acts. Even worse, since CSS is trivially broken, many format shifting and backup applications available to consumers circumvent CSS without even alerting the user, so one might never know they have done something "illegal" by making the copy. Is this the intent of Parliament, to present us with new rights, but also to dismantle them with the same law? I hope this is not the case. Circumvention must be linked to otherwise infringing activities.

Please support the proposed amendments by the Liberals and the NDP to link circumvention to infringement.

Commercial vs non-commercial use
There needs to be some clarification of the language surrounding so-called "commercial use" to identify what exactly triggers that condition. Reading section 46. (1) (replacing subsections 38.1(1) to (3)), we see drastically different statutory damages for commercial vs non-commercial infringement in the proposed replacement subsections 38.1(1)(a) and (b). I believe such language is wide open to interpretation, and there should be an amendment to clarify what exactly qualifies as commercial use, and who exactly that can potentially apply to. Such a definition should consider the amount and scale of the infringement, to be sure, but also the intent, nature and impact of the infringement. That last point of impact is crucial. While statutory damages are meant to route around having to show actual damages, I believe we cannot consider whether an infringement was "commercial" in nature without looking at its actual impact on the market for the work in question. In order for this law to be applied fairly and uniformly, I think some clarification of "commercial use" must be provided.

I would be happy to discuss these issues further if you wish for me to elaborate on my position, or to provide additional information.

Thank you for your time.

Yours sincerely,
Brendan Moore