CAMI Submission – Bill C-11

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Parliament of Canada

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The Coalition des ayants droit musicaux sur Internet (hereinafter "CAMI") is a coalition of Internet music right owners bringing together the five author, composer, performer, producer, publisher and musician trade associations of GMMQ, PMPA, SPACQ, ADISQ and UDA, and the four music right collectives of SOCAN, SODRAC, SOPROQ and ARTISTI. CAMI therefore is the unified voice of the entire Quebec music industry, representing over 100,000 music right owners.

Our Coalition has made a thorough review of Bill C-11, *An Act to amend the Copyright Act*, which was introduced into the House of Commons by the Honourable Christian Paradis, and had its first reading on September 29, 2011 and its second reading on February 13, 2011. Bill C-11 has now been sent to a Parliamentary Committee.

We are aware that one of your Government's priorities is to find a balance between the interests of users and the rights of creators. Knowing how delicate such a balance can be we are also aware of the need to make sure that seemingly harmless changes do not take away from long-held principles that are vital to the survival of the music industry. In this regard, we respectfully submit to you that some of the legislative amendments being proposed in Bill C-11 would have the unforeseen consequence of bringing about significant losses of revenues for our sector by conflicting with a normal exploitation of the works. However, in order for your overall goal of wealth creation to be achieved, right owners need to be able to operate in a legislative environment that is both stable and stimulating.

Our recommendations, therefore, focus on five crucial issues, including:

1. *Make Internet service providers liable*
2. *Private Copying regime*
3. *Consolidate the right of reproduction*
4. *Modify the user-generated content exception*
5. *Define educational fair use*

We applaud the Government's intention to conform to international copyright and intellectual property treaties. Without ratifying these, Canada would be breaking with an international community that has been exerting pressure on our country for some time now. With this in mind, we advocate inserting the Berne Convention's three-step test to in the wording of the proposed legislation.

Finally, in order for our shared intentions to yield convincing results, we respectfully submit to your kind attention a brief list of concise specific amendments that, in our opinion, would make it possible both for the Government and for our industry to reach our contemplated objectives. These proposed amendments are listed in the Appendix below.

We hope that our submission will steer your reflection onto the validity of the amendments we are seeking in order to protect our industry against potential damaging effects that, while not being planned as such by the Government, would cripple our industry.

MAKE INTERNET SERVICE PROVIDERS LIABLE

The lack of liability of Internet service providers (ISPs) is a major concern of our Coalition. The proposed legislation excludes the ISPs from the debate in spite of the fact that they are the main beneficiaries of all illegal music file-sharing activities online.

We do not only believe that network owners have been monetizing the online streaming of cultural contents since the beginning of the 21st century through high-speed Internet subscriptions – we also believe that they are the only industry players capable of bringing an effective solution to the problem that our industry is saddled with today.

Bill C-11 would reduce ISP liability to the mere sending of notices to their customers, thus placing the responsibility of reporting and prosecuting infringers squarely on the shoulders of right owners. ISPs have access to enormous resources that could be used to fight piracy, educate consumers and compensate the music industry for losses sustained. Yet, the proposed legislation stops short of asking ISPs to take any such actions or to compensate right owners in any way for being duped by a technology that they have no way of curbing or controlling.

Henceforth, the digital distribution of musical contents and its related revenues escape the control of music creators, publishers and producers while there is nothing in the proposed legislation to correct, mitigate or compensate the musical industry's loss of control over its own future.

The balance between the rights of creators and the interests of users that the Government claims to be seeking by proposing an amended legislation has not been achieved – far from it. Instead, the gap between music lovers and content creators is widening dangerously. What is happening is the official legalization of copying without any compensation for rights owners and without any business liability for the digital distribution network owners known as ISPs. Thus music, a product that quickly became the loss leader of choice to help sell high-speed Internet subscriptions and mobile phones, is being devalued in the very eyes of both those using it for enjoyment and those who use it to make money. The music industry has been footing a large part of the bill of this misappropriation of value for the last decade.

No new revenue streams are to be expected in spite of the fact that the proposed legislation would create two new rights – a making-available right and a distribution right.

Contrary to the Government's assurances on that score, consumers stand to pay no new money for their digital subscriptions, and unauthorized auditions and downloads will not be prosecutable. It must be understood that right owners have next to no capability of tracking illegal uses of their property and that it has never been in their interest to prosecute their respective client-bases in the first place.

Why not bring the people who are monetizing the bandwidth to introduce practices to protect the rights of the people who produce the contents that circulate on it? How could we possibly

allow ISPs devoid of any liability to highjack the commercial appeal of contents for the purpose of selling more subscriptions? How can Bill C-11 afford such little protection to creations by providing users with a huge package of copyright exceptions whose combined effect would be to destroy the lean revenues that have survived to date?

These questions remain unanswered, and Parliament itself appears to remain unresponsive.

Technological development and the ISP's market penetration now seem to have largely outpaced the right protection our industry has spent more than one hundred years fighting for.

For us, consumer education, the eradication of piracy and the legal and financial liability of ISPs are goals that our copyright legislation must pursue in a concerted manner with the Canadian music industry. ISPs are part of the solution, and should in no way be excluded from the socio-political debate surrounding the issues of piracy and the highly significant economic impacts associated with the devastating effects of the illegal activities of downloading and sharing copyright protected contents. We ask Parliament to revise its proposed legislation from the angle of the creation and production of contents and put the protection of Canadian and Quebec musical contents ahead of the financial support of digital distribution networks.

The proposed legislation also provides for a voluntary "notice and notice" regime. All that such a system accomplishes is forcing ISPs to notify alleged offenders when right owners report potential infringements of their rights.

Unfortunately, this right will not be enforceable as rights owners do not have the ability or resources required to police the web. Moreover, habitual offenders would not be deterred by such a system and would simply keep up their illegal activity knowing that all they are facing are minimal statutory damages with no penalty from their ISPs, which will simply go on hosting and allowing the unauthorized use of their works.

Although the introduction of a "notice and take down" procedure would have been better, as suggested by the Supreme Court of Canada and the May 2004 Report of the of the Standing Committee on Canadian Heritage, to make the proposed "notice and notice" more effective, we propose that ISPs be required to divulge the names and addresses of potential offenders and that notices must be published in a register and kept there for a minimum of three years so that the efficiency of the system in place can be verified and revision can be made if it proves to be unable to curb piracy while fostering the development of legal access to works.

RECOMMENDATION

CAMI recommends that Internet service providers be made liable as they are definitely part of the solution and have largely benefited up until now from the circulation of works provided by rights owners without any remuneration or compensation in return.

To improve the efficiency of the proposed "notice and notice" regime, CAMI recommends forcing ESPs to disclose the names and addresses of potential offenders, and providing for the mandatory publication of such notices in a register where they would be kept for at least three years.

PRIVATE COPYING REGIME

The current *Copyright Act* provides a mechanism making it possible not only for consumers to make reproductions of musical works for private use, but also for right owners to be remunerated for this use of their works. At the time of the previous reform of the current *Copyright Art* in 1997, a measure – already adopted in a number of countries – was introduced in Canada to provide music right owners with a right of remuneration in return for the granting to consumers of the right to make copies of their music, which is known as the Private Copying regime, and makes up Part VIII of the *Copyright Act*. It is also worth noting that, since 1999, the private copying levy has wholly respected the spirit of the law, which is the provision of a fair compensation for that specific music use. Until recently, the levy has generated yearly revenues of approximately $30 million for music right owners.

Initially, the private copying levy was collected from importers and manufacturers of blank audio cassettes and CDs. Today, only blank CDs are eligible. However, the way copies are being made has changed tremendously over the last few years. Hardly anyone uses CDs any more, preferring to make their copies onto digital audio recording devices such as MP3 walkmans and iPods.

In fact, out of the 1,9 billion songs being copied each year in Canada, fully 72% (and counting)[1] are copied onto digital audio recording devices. As these have become the recording support of choice and since the private copying levy does not apply to them, right owners receive no compensation for copies made on such devices, which means that the revenue stream provided by the current Private Copying regime is eroding at an alarming rate. Between 2008 and the end of 2011, the distributable income from the private copying revenue stream has fallen by nearly 70%.[2]

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[1] *CPCC Addendum to Submission on C-32 (now C-11), original submission made December 6, 2010.*
[2] *Ibid.*

The private copying levy should be extended to the new recording supports in order to reflect the new ways music is being copied, which would not be accomplished by Bill C-11 as it stands now.

What the federal Government is trying to do it to update the legislation by legalizing reproductions made for personal use across the board. The new legislation, however, stops short of providing right owners with proper remuneration when their music is being copied that way.

The enactment of Bill C-11 in its present form would be catastrophic for music creators since the levy that currently applies to copies of musical works made onto blank CDs would not apply to similar copies made on digital audio recording devices. How can the Government believe that right owners have a right of remuneration where someone copies their songs on a blank CD, but not where the songs are copied onto an iPod?

A copy is a copy. Each of those copies has a value no matter what technology has been used to produce it. Rights owners are entitled to derive an income from that use of their music. With many of them, the money made thanks to the private copying levy is used to keep recording new works.

We, of CAMI, are in agreement with two CPCC recommendations, and submit that, should it prove impossible to amend the legislation in order to allow this compensation, Parliament should "Ensure that the provisions found in Section 29.22 are eliminated, so that copies of musical works are not allowed to be made without compensation." By not legalizing copies made on devices, the government will be avoiding the fatal mistake of leading consumers to believe that the works of music creators may be used for free.

The other CPCC recommendation that CAMI is making its own is to "Incorporate the so-called 'Berne Convention three-step test' into the Copyright Act, in order to ensure that Canada complies with international treaty obligations. Under these obligations, exceptions to copyright protection are only permitted if the exceptions a) are limited to special cases, b) do not conflict with a normal exploitation of the work, and c) do not unreasonably prejudice the legitimate interests of the rights holder."

RECOMMENDATION

CAMI recommends that the *Copyright Act* be amended to eliminate the provisions found in Section 29.22 and replace them with the "Berne Convention's three-step test."

CONSOLIDATE THE RIGHT OF REPRODUCTION

Allowing temporary reproduction for technological processes (Section 32 of Bill C-11 providing for the addition of a Section 30.71 to the current *Copyright Act*)

The government's intention is to stimulate innovation and allow some technical reproductions by making sure that some temporary reproductions are not an infringement of copyright. However, some conditions apply:

- These reproductions must not be the essential element of a technical process;
- They must only exist to facilitate a use that is not an infringement of copyright
- They can only exist for the duration of the technological process.

In the government's opinion, this provision would have no impact on the rights of authors. The government believes that this provision would have no copyright implications because it deals with "temporary, technical and incidental digital reproductions made as party of a technical process, such as cached transmissions over the Internet."

However, on the practical level, the wording of the exception is so broad as to threaten numerous digital reproductions **with already established value**. This would definitely harm the market, work exploitation and the compensation received by right holders.

What we are particularly afraid of is the possibility that many would claim that almost all of their reproduction activities represent "an essential element of a technological process whose only utility is to facilitate a particular use for the duration of the process." What would then be left of the reproduction and of the related royalties?

So, in order to achieve the objective set by the government without introducing any uncertainties as to the scope of the exception, we believe it necessary for the *duration* of the technological process to be defined too. This section is under the heading "Temporary Reproductions," but the concept is not included in the wording of the provision itself. What is mentioned is simply the "duration of the technological process." The word temporary, however, connotes *momentary* or *limited in time*. This clear notion must be included in the wording of the provision.

Consequently, we propose introducing this notion in the wording of the law. It must be specified that the reproduction's duration should be **less than transitory**. This notion is being imported

from a 2008 U.S. Appeals Court judgement in Cablevision, which states that "a work must be embodied in a medium, i.e. placed in a medium such that it can be perceived, reproduced, etc... from that medium... It must remain thus embodied **for a period of no more than transitory duration.**"

It is also necessary to clarify that these reproduction have a technical and accessory character, and therefore have **no value in themselves**. This would make it possible better to identify the scope of this exception in accordance with the examples provided in the fiches techniques. This important clarification would also result in leaving out acts of reproduction that are already being protected. We must keep in mind that these reproductions have an economic value and provide users with actual benefits.

Finally, the current wording could be interpreted as also applying to reproductions made by a "programming or broadcasting undertaking" in the meaning of the *Act*. This would create confusion with the application of Section 30.71 besides the specific exceptions granted to such undertakings in Sections 30.8 and 30.9.

RECOMMENDATION

We recommend that the notion of the *duration* of the technological process be defined, and we propose that such definition be provided as part of the wording of the law. It must be clarified that the reproduction's duration must be less than transitory.

Repealing the requirement for broadcasters to compensate copyright owners for making ephemeral reproductions (Section 34 of Bill C-11 amending Section 30.9 of the current *Copyright Act*.).

The government wishes to bring broadcasting rules up-to-date by making sure that "Radio broadcasters will no longer be requested to compensate copyright owners for making temporary reproductions of sound recordings required for digital operations."

In our opinion, the financial burden for broadcasters is not heavy, as it only represents 1.4% of their annual revenues.[3] Consequently, the repeal of Section 30.9(6) is not justified.

Also, a reading of the proposed legislation and related documents clearly shows that the government's desire is to provide right owners with fair compensation and an interest in the revenues flowing from the right of reproduction. So there should be no question of not including reproductions made by radio stations and kept for over 30 days (i.e. for the storing of musical works onto their main servers).

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[3] Copyright Board news release. *The Copyright Board of Canada sets royalties to be paid by cmmercial radio stations for the use of music for the years 2008-2012*. July 9, 2010

Yet, in spite of the government's best intentions, current technologies could make it possible to circumvent the law by creating automated systems of alternate reproduction and destruction of recordings that would allow broadcasters to do indirectly, and with impunity, what the proposed legislation is trying to prevent.

RECOMMENDATION

Amend the proposed legislation to make sure that the government's objective is not circumvented thanks to technologies making it possible for broadcasters to use automated systems of alternate reproduction and destruction of recordings.

MODIFY THE USER-GENERATED CONTENT EXCEPTION

The so-called "YouTube exception" makes it possible, for instance, for individuals to disseminate family videos on a pop music soundtrack. Individuals may also post any new work derived from an existing work such as a translation, an adaptation or synchronization, and insert new works in a series, thus causing authors and creators almost completely to lose control over their own works. There are no requirements for that transformative use or fair dealing requirements. Any individual to cause considerable harm a work's distribution. Overall, the market for works and new works could be completely destroyed. It is unfair.

Commercial distributors taking advantage of that method would be free of any obligation to remunerate the creators of the works being used in that fashion. This, too, is inequitable. Currently, websites whose contents are managed by users, such as YouTube, are requires by law to negotiate conditions either with copyright owners individually or with organizations representing authors, composers, artists and other copyright owners collectively. Yet, if Bill C-11 were to become law, Canada would become the first country in the world where companies such as YouTube would have the right to use copyright protected works to generate revenues without any obligation to compensate content creators.

We believe that the current scope of this exception is too wide and causes irreparable harm to right owners, who have a right to benefit from this economic model in the making. It is essential to limit the scope of this exception to acts accomplished for personal use and to limit this practice to works that have already been published or made available to the public with the agreement of the right owner.

RECOMMENDATION

CAMI recommends that the scope of this exception be restricted to acts accomplished for personal use and that this practice be limited to works that have already been published or made available to the public with the agreement of the right owner.

DEFINE EDUCATIONAL FAIR USE

The proposed legislation, while being represented by the Government as a balanced approach to copyright, contains many exceptions in favour of education institutions, libraries and consumers without providing for monetary compensation for right owners.

Copyright exceptions can sometimes be made on behalf of overriding interests. However, under the international treaties that Canada has adhered to, they must be confined to "certain special cases that do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder" (TRIPS, Article 13, and Berne Convention, Article 9). As these exceptions represent a form of expropriation of creators' property, they generally come with fair remuneration. This, at any rate, is the case everywhere, but not in Canada.

The group of exceptions provided by Bill C-11 is very large and not confined to special cases. Moreover, by depriving content creators of any kind of remuneration, the exceptions provided by Bill C-11 conflict with a normal exploitation of the work and unreasonably prejudice the legitimate interests of the right holder.

In order to eliminate these exceptions, some sections of the proposed legislation should be amended to provide content creators with a right of fair remuneration where copyright management collectives exist. Agreements are already in place between collectives such as Copibec, SOCAN, SODRAC and SOPROQ and education institutions for the use of musical contents. Such agreements are negotiated in good faith between parties, and in case of disagreements, the Copyright Board provides a fair mechanism for the setting of royalties and the provision of a fair balance between the interests of content creators and the needs of users.

Why challenge a system that is working well?

Bill C-11 proposes an extension of the notion of educational fair use. Since this new educational fair use exception is not clearly defined in the proposed legislation, the Courts will have to determine their actual scope, which will entail lengthy and costly legal debates. In 2004, the Supreme Court of Canada, in the CCH ruling, found that exceptions were user rights to which a large interpretation must be given. As "education" is not defined in the law, this new exception could apply to any form of educational activity instead of only to activities taking place in a school setting. Moreover, as this exception is not found in the special section on education institutions, many types or users, corporations in particular, could claim that "education"

includes any act of training. This exception could potentially have a large impact on some collectives whose revenues are partly derived from the education sector.

The new exceptions go contrary to our obligations under international treaties as they radically broaden the exceptions that are now provided by the *Copyright Act* and by reducing the rights of content creators and their ability to make a living through their art.

RECOMMENDATION

CAMI objects to the inclusion in the *Copyright Art* of any exception meant to broaden the scope of the notion of education fair dealing.

CONCLUSION

In conclusion, CAMI asks Parliament:

Regarding Internet service provider (ISP) liability, CAMI recommends not to free Internet service providers from liability as they are definitely part of the solution and have largely benefited up until now from the circulation works provided by content creators without any remuneration or compensation in return.

To improve the efficiency of the proposed "notice and notice" regime, CAMI recommends forcing ESPs to disclose the names and addresses of potential offenders, and providing for the mandatory publication of such notices in a register where they would be kept for at least three years.

Regarding the Private Copying regime, CAMI recommends that the *Copyright Act* be amended to eliminate the provisions found in Section 29.22 and replace them with the "Berne Convention's three-step test."

Regarding the right or reproduction, we recommend:

We recommend that the notion of the *duration* of the technological process be defined, and we propose that such definition be provided as part of the wording of the law. It must be clarified that the reproduction's duration must be less than transitory.

And amending the proposed legislation to make sure that the government's objective is not circumvented thanks to technologies making it possible for broadcasters to use automated systems of alternate reproduction and destruction of recordings.

Regarding the use-generated content exception, we recommend that the scope of this exception be restricted to acts accomplished for personal use and that this practice be limited to works that have already been published or made available to the public with the agreement of the right owner.

Finally, regarding the notion of fair dealing, CAMI objects to the inclusion in the *Copyright Act* of any exception meant to broaden the scope of the notion of education fair dealing.

APPENDIX – PROPOSED LEGISLATIVE AMENDMENTS

ISP-related Infringements

C-11	Amended Act / Loi modifiée	Amendements proposés / Proposed Amendments	
18	27(2.3)	27(2.3) Constitue une violation de droit d'auteur le fait pour une personne de fournir sur Internet ou tout autre réseau numérique un service dont elle sait ou devrait savoir qu'il est ~~principalement~~ destiné habituellement à encourager ou faciliter l'accomplissement d'actes qui constituent une violation du droit d'auteur. ~~si une autre personne commet une telle violation sur Internet ou tout autre réseau numérique en utilisant ce service~~.	27(2.3) It is an infringement of copyright for a person to provide, by means of the Internet or another digital network, a service that the person knows or should have known is ~~designed primarily~~ intended or ordinarily used to promote or enable acts of copyright infringement ~~if an actual infringement of copyright occurs by means of the Internet or another network as a result of the use of that service.~~

Fair Dealing Exception

C-11	Amended Act / Loi modifiée	Amendements proposés / Proposed Amendments	
21	29	29. (1) L'utilisation équitable d'une œuvre ou de tout autre objet du droit d'auteur aux fins d'étude privée, de recherche, d'éducation, de parodie ou de satire ne constitue pas une violation du droit d'auteur. (2) Le paragraphe (1) s'applique à une utilisation à des fins d'éducation seulement si elle est faite à des fins d'enseignement par un établissement d'enseignement, ou par une personne agissant sous son autorité. (3) Le paragraphe (1) ne s'applique pas à une utilisation qui ne constitue pas une violation dans le cadre d'une autre exception ou limitation de la Loi ou ne constituerait pas une violation, en présumant que les conditions de cette autre exception ou limitation soient remplies. (4) Pour plus de précision, l'alinéa (1) ne s'applique pas à une utilisation qui, considérée isolément ou avec des utilisations similaires, aurait un effet négatif, pécuniaire ou autre, sur l'exploitation actuelle ou éventuelle de l'œuvre ou de l'autre objet, ou sur tout marché actuel ou éventuel à leur égard, notamment parce que l'utilisation peut se substituer à l'œuvre ou l'autre objet.	29. (1) Fair dealing for the purpose of research, private study, education, parody or satire does not infringe copyright. (2) Subsection (1) applies to education only if it is for the purpose of educational instruction by an educational institution or a person acting under its authority. (3) Subsection (1) does not apply where a dealing is not an infringement under another exception or limitation in the Act, or would not be an infringement if the conditions or requirements of that other exception or limitation were met. 4) For clarity, subsection (1) does not apply to a dealing if the dealing by itself or together with similar dealings would have an adverse effect, financial or otherwise, on the exploitation or potential exploitation of the work or other subject-matter or on an existing or potential market for it, including that the dealing would substitute for the work or other subject-matter.

C-11	Amended Act / Loi modifiée	Amendements proposés / Proposed Amendments	
		29.21 (1) Ne constitue pas une violation du droit d'auteur le fait, pour une personne physique, d'utiliser une œuvre ou tout autre objet du droit d'auteur ou une copie de ceux-ci — déjà publiés ou mis à la disposition du public avec l'accord du titulaire de droit — pour créer une autre œuvre ou un autre objet du droit d'auteur protégés et, pour cette personne de même que, si elle les y autorise, celles qui résident habituellement avec elle, d'utiliser la nouvelle œuvre ou le nouvel objet ou d'autoriser un intermédiaire à le diffuser dans un format numérique sur Internet ou tout autre réseau numérique, si les conditions suivantes sont réunies :	29.21(1) It is not an infringement of copyright for an individual to use an existing work or other subject-matter or copy of one, which has been published or otherwise made available to the public with the consent of the copyright owner, in the creation of a new work or other subject-matter in which copyright subsists and for the individual – or, with the individual's authorization, a member of their household – to use the new work or other subject-matter or to authorize an intermediary to disseminate it in digital format, by means of the Internet or other digital network, if
22	29.21	a) la nouvelle œuvre ou le nouvel objet n'est utilisé qu'aux fins personnelles et non commerciales de cette personne ou l'autorisation de le diffuser n'est donnée qu'à de telles fins ;	a) the use of, or the authorization to disseminate, the new work or other subject-matter is ~~done~~ solely for the non-commercial, personal purposes of the individual;
		b) si cela est possible dans les circonstances, la source de l'œuvre ou de l'autre objet ou de la copie de ceux-ci et, si ces renseignements figurent dans la source, les noms de chaque ~~l'~~auteur, ~~de l'~~artiste-interprète, ~~du~~ producteur ou du radiodiffuseur, selon le cas, sont mentionnés ;	(b) the source — and, if given in the source, the name of ~~the~~ each author, performer, maker or broadcaster — of the existing work or other subject-matter or copy of it are mentioned, if it is reasonable in the circumstances to do so;
		c) la personne croit, pour des motifs raisonnables, que l'œuvre ou l'objet ou la copie de ceux-ci, ayant servi à la création de la nouvelle œuvre ou du nouvel objet, n'était pas contrefait ;	(c) the individual had reasonable grounds to believe that the existing work or other subject-matter or copy of it, as the case may be, was not infringing copyright; ~~and~~

C-11	Amended Act / Loi modifiée	Amendements proposés / Proposed Amendments	
		d) la personne a obtenu la copie de l'œuvre ou un autre objet du droit d'auteur protégés déjà publiés ou mis à la disposition du public légalement, autrement que par emprunt ou location ; et afin d'utiliser l'œuvre ou l'objet ou une copie de ceux-ci, n'a pas contourner ou fait contourner une mesure technique de protection, tel que ces termes sont définis à l'article 41 ; et	(d) the individual legally obtained the copy of the existing work or other subject-matter, other than by borrowing or renting it, and, in order to use the existing work or other subject-matter or copy of it, did not circumvent, as defined in section 41, a technological protection measure, as defined in that section, or cause one to be circumvented; and
		~~d~~e) l'utilisation de la nouvelle œuvre ou du nouvel objet, ou l'autorisation de les diffuser, ou la diffusion de la nouvelle œuvre ou du nouvel objet, considérée isolément ou avec des utilisations similaires :	~~d~~e) the use of, or the authorization to disseminate, or the dissemination of, the new work or other subject-matter, by itself or together with similar dealings,
22	29.21	(i) n'a aucun effet négatif ~~important~~, pécuniaire ou autre, sur l'exploitation — actuelle ou éventuelle — de l'œuvre ou autre objet ou de la copie de ceux-ci ayant servi à la création ou sur tout marché actuel ou éventuel à son égard, notamment parce que l'œuvre ou l'objet nouvellement créé ne contient pas un substitut à ceux-ci et ne peut s'y substituer ;	~~does~~ (i) would not have ~~a substantial~~ an adverse effect, financial or otherwise, on the exploitation or potential exploitation of the existing work or other subject-matter – or copy of it – or on an existing or potential market for it, including that the new work or other subject-matter is not, and does not contain, a substitute for the existing one;
		(ii) n'a aucun effet négatif, financier ou autre, sur l'intérêt du titulaire du droit, producteur, auteur ou artiste-interprète de l'œuvre ou autre objet ayant servi à la création, incluant le droit moral de quiconque ;	(ii) would not have an adverse effect, financial or otherwise, on the interests of the copyright owner, maker, author, or performer of the existing work or other subject-matter, including the moral rights of any person;
		(iii) n'est pas faite dans quelque intention de faire un gain sans le consentement du titulaire de droit ; et	(iii) is not done for any motive of gain without the consent of the copyright owner; and
		(iv) est autrement une utilisation qui est équitable par ou pour cette personne.	(iv) is otherwise a dealing, by or for the individual, that is fair.

C-11	Amended Act / Loi modifiée	Amendements proposés / Proposed Amendments	
		Définitions (2) Les définitions qui suivent s'appliquent au paragraphe (1) :	**Definitions** (2) The following definitions apply in subsection (1):
		« diffuser » "disseminate" « diffuser » Permettre la mise à la disposition, la communication au public par télécommunication sur Internet ou tout autre réseau numérique de la nouvelle œuvre ou nouvel objet du droit d'auteur créée en vertu du paragraphe (1).	"disseminate" « diffuser » "disseminate" means, in relation to a new work or other subject-matter created pursuant to subsection (1), to make it available, communicate it to the public by telecommunication, or otherwise distribute it by means of the Internet or other digital network.
22	29.21	« intermédiaire » "intermediary" « intermédiaire » Personne ou entité qui fournit ~~régulièrement un espace~~ une mémoire numérique ou des moyens similaires pour permettre au public de voir ou d'écouter sur Internet ou tout autre réseau numérique des œuvres ou d'autres objets du droit d'auteur.	"intermediary"« intermédiaire » "intermediary" means a person or entity who ~~regularly~~ provides ~~space~~ digital memory or other similar means for works or other subject-matter to be ~~enjoyed~~ viewed or heard by the public by means of the Internet or other digital network.
		« utiliser » "use" « utiliser » S'entend du fait d'accomplir tous actes qu'en vertu de la présente loi seul le titulaire du droit d'auteur a la faculté d'accomplir, sauf celui d'en autoriser l'accomplissement, incluant la diffusion des œuvres en vertu du paragraphe (1).	"use" « utiliser » "use" means to do anything that by this Act the owner of the copyright has the sole right to do, other than the right to authorize anything, and includes the dissemination of a work or other subject-matter pursuant to subsection (1).

Reproduction for Private Purposes

C-11	Amended Act / Loi modifiée	Amendements proposés / Proposed Amendments	
		29.22 (1) Ne constitue pas une violation du droit d'auteur le fait, pour une personne physique, de reproduire l'intégralité ou toute partie importante d'une œuvre ou d'un autre objet du droit d'auteur si les conditions suivantes sont réunies : a) la copie de l'œuvre ou de l'autre objet du droit d'auteur reproduite n'est pas contrefaite; b) la personne a obtenu la copie légalement, autrement que par emprunt ou location, et soit est propriétaire du support ou de l'appareil sur lequel elle est reproduite, soit est autorisée à l'utiliser; c) elle ne contourne pas ni ne fait contourner une mesure technique de protection, au sens de ces termes à l'article 41, pour faire la reproduction; d) elle ne donne la reproduction à personne; e) la reproduction n'est utilisée qu'à des fins privées.	29.22 (1) It is not an infringement of copyright for an individual to reproduce a work or other subject-matter or any substantial part of a work or other subject-matter if (a) the copy of the work or other subjectmatter from which the reproduction is made is not an infringing copy; (b) the individual legally obtained the copy of the work or other subject-matter from which the reproduction is made, other than by borrowing it or renting it, and owns or is authorized to use the medium or device on which it is reproduced; (c) the individual, in order to make the reproduction, did not circumvent, as defined in section 41, a technological protection measure, as defined in that section, or cause one to be circumvented; (d) the individual does not give the reproduction away; and (e) the reproduction is used only for private purposes.
22	29.22	(2) À l'alinéa (1)b), la mention « du support ou de l'appareil » s'entend notamment de la mémoire numérique dans laquelle il est possible de stocker une œuvre ou un autre objet du droit d'auteur pour en permettre la communication par télécommunication sur Internet ou tout autre réseau numérique.	(2) For the purposes of paragraph (1)(b), a "medium or device" includes digital memory in which a work or subject-matter may be stored for the purpose of allowing the telecommunication of the work or other subject-matter through the Internet or other digital network.
		(3) Dans le cas où l'œuvre ou l'autre objet est l'enregistrement sonore d'une œuvre musicale ou de la prestation d'une œuvre musicale ou l'œuvre musicale, ou la prestation d'une œuvre musicale fixée au moyen d'un enregistrement sonore, le paragraphe (1) ne s'applique pas si la reproduction est faite sur un support audio, au sens de l'article 79.	3) In the case of a work or other subjectmatter that is a musical work embodied in a sound recording, a performer's performance of a musical work embodied in a sound recording or a sound recording in which a musical work or a performer's performance of a musical work is embodied, subsection (1) does not apply if the reproduction is made onto an audio recording medium as defined in section 79
		(4) Le paragraphe (1) ne s'applique pas si la personne donne, loue ou vend la copie reproduite sans en avoir au préalable détruit toutes les reproductions faites au titre de ce paragraphe.	(4) Subsection (1) does not apply if the individual gives away, rents or sells the copy of the work or other subject-matter from which the reproduction is made without first destroying all reproductions of that copy that the individual has made under that subsection.

Backup Copies

C-11	Amended Act / Loi modifiée	Amendements proposés / Proposed Amendments	
22	29.24	29.24 (1) Ne constitue pas une violation du droit d'auteur le fait, pour la personne qui est propriétaire de la copie (au présent article appelée « copie originale ») d'une œuvre ou de tout autre objet du droit d'auteur, ou qui est titulaire d'une licence en autorisant l'utilisation, de faire une seule reproduction de cette copie originale ~~la reproduire~~ si les conditions ci-après sont réunies : a) la reproduction est effectuée exclusivement à des fins de sauvegarde au cas où il serait impossible d'utiliser la copie originale, notamment en raison de perte ou de dommage qui n'a pas été causé de façon délibérée par la personne ; c) dans l'éventualité où la personne est titulaire d'une licence qui autorise l'utilisation de la copie originale, et que cette licence n'interdit pas la création de copies de sauvegarde et que la personne respecte les autres conditions applicables de cette licence ; ~~c~~d) la personne ne contourne pas ni ne fait contourner une mesure technique de protection, au sens de ces termes à l'article 41, pour faire la reproduction ; ~~d~~e) elle ne vend, distribue, loue ou donne ~~aucune~~ la reproduction à personne. **Assimilation** (2) ~~Une des~~ La reproduction faite au titre du paragraphe (1) est assimilée à la copie originale en cas d'impossibilité d'utiliser celle-ci, notamment en raison de perte ou de dommage qui n'a pas été causé de façon délibérée par la personne.	29.24 (1) It is not an infringement of copyright in a work or other subject-matter for a person who owns – or has a licence to use – a copy of the work or subject-matter (in this section referred to as the "source copy") to ~~reproduce~~ make a single reproduction of the source copy if (a) the person does so solely for backup purposes in case the source copy is lost, damaged or otherwise rendered unusable, other than by the deliberate act of the person who made the reproduction; (c) where the person has a licence to use the source copy, the licence does not prohibit the making of backup copies and the person complies with all other material conditions of the licence; (~~c~~d) the person, in order to make the reproduction, did not circumvent, as defined in section 41, a technological protection measure, as defined in that section, or cause one to be circumvented; and (~~d~~e) the person does not ~~give any of the reproductions away~~ sell, distribute, rent out or give the reproduction away. **Backup copy becomes source copy** (2) If the source copy is lost, damaged or otherwise rendered unusable, other than by the deliberate act of the person who made the reproduction under subsection (1), ~~one of the reproductions~~ the reproduction made under subsection (1) becomes the source copy.

C-11	Amended Act / Loi modifiée	Amendements proposés / Proposed Amendments	
		Application (4) Le présent article ne s'applique pas aux reproductions prévues aux articles 30.71 ou celles de la Partie VIII ou qui sont faites par ou sous l'autorité d'un intermédiaire, au sens de la définition de ce terme à l'article 29.21, d'une entreprise de programmation au sens de la définition de ce terme au paragraphe 30.8(11) ou une entreprise de radiodiffusion au sens de la définition de ce terme au paragraphe 30.9(7).	**Application** (4) This section does not apply to reproductions that are subject to section 30.71 or to Part VIII, or that are made by or under the authority of an "intermediary," as that term is defined in subsection 29.21, a "programming undertaking," as that term is defined in subsection 30.8(11), or a "broadcasting undertaking," as that term is defined in subsection 30.9(7).
22	29.24	**Reproduction assujettie à une licence, contrat ou tarif** (5) Les termes et conditions énumérés dans une licence, entente ou tarif portant sur l'étendue du droit de faire une copie originale ont préséance sur les conditions décrites au paragraphe 29.24 (1) en cas de conflit entre ces conditions.	**Reproductions subject to licence, contract or tariff** (5) If the person is bound by a licence or other agreement that governs the extent to which the individual may reproduce the source copy for the purposes set out in subsection (1), or if the reproduction of the source copy is subject to the terms of an approved tariff, the licence, agreement or tariff prevails over subsection (1) to the extent of any inconsistency between them.

Digital Reproduction of Works

C-11	Amended Act / Loi modifiée	Amendements proposés / Proposed Amendments	
		30.02 (1) Sous réserve des paragraphes (3) à (5), ne constitue pas une violation du droit d'auteur le fait, pour l'établissement d'enseignement qui est titulaire d'une licence d'une société de gestion collective l'autorisant à reproduire par reprographie à des fins pédagogiques des œuvres faisant partie du répertoire ~~d'une~~ de la société de gestion :	30.02 (1) Subject to subsections (3) to (5), it is not an infringement of copyright for an educational institution that has a reprographic reproduction licence from a collective society, under which the institution is authorized to make reprographic reproductions of works in a the collective society's repertoire for an educational or training purpose:
		Conditions (3) L'établissement d'enseignement qui fait une reproduction numérique d'une œuvre au titre de l'alinéa (1)a) doit :	**Conditions** (3) An educational institution that makes a digital reproduction of a work under paragraph (1)(a) shall:
27	30.02	b) prendre des mesures ~~en vue d'empêcher~~ dont il est raisonnable de croire qu'elles empêcheront la communication par télécommunication de la reproduction numérique à des personnes autres que celles agissant sous son autorité;	b) take measures that can reasonably be expected to prevent the digital reproduction from being communicated by telecommunication to any persons who are not acting under the authority of the institution;
		c) prendre des mesures ~~en vue d'empêcher~~ dont il est raisonnable de croire qu'elles empêcheront l'impression de la reproduction numérique à plus d'un exemplaire par la personne à qui elle a été communiquée au titre de l'alinéa (1)b), et toute autre reproduction ou communication; et	c) take measures that can reasonably be expected to prevent a person to whom the work has been communicated under paragraph (1)(b) from printing more than one copy, and to prevent any other reproduction or communication of the digital reproduction; and

C-11	Amended Act / Loi modifiée	Amendements proposés / Proposed Amendments	
		Restriction 4) L'établissement d'enseignement n'est pas autorisé à faire une reproduction numérique d'une œuvre au titre de l'alinéa (1)a), ni à la communiquer au public par télécommunication au titre de l'alinéa 1(b), si, selon le cas :	**Restriction** (4) An educational institution may not make a digital reproduction of a work under paragraph (1)(a), or communicate it to the public by telecommunication under paragraph 1(b), if
27	30.02	b) un tarif homologué ou une redevance établie en vertu de l'article 70.15 ou 70.2, est applicable à la reproduction numérique de l'œuvre, à la communication de celle-ci par télécommunication aux personnes agissant sous son autorité et à l'impression par celles-ci d'un certain nombre d'exemplaires de l'œuvre ;	b) there is a tariff certified or royalties fixed under section 70.15 or 70.2, that is applicable to the digital reproduction of the work, to the communication of the digital reproduction by telecommunication to persons acting under the authority of the institution and to the printing by those persons of at least one copy of the work; or

Temporary Reproductions

C-11	Amended Act / Loi modifiée	Amendements proposés / Proposed Amendments	
		30.71 Ne constitue pas une violation du droit d'auteur le fait de reproduire une œuvre ou tout objet du droit d'auteur si les conditions suivantes sont réunies : (...)	30.71 It is not an infringement of copyright to make a reproduction of a work or other subject-matter if: (...)
		(b) elle a pour seul but de faciliter une utilisation qui ne constitue pas une violation du droit d'auteur et la copie en résultant n'a pas de valeur réelle ;	(b) the reproduction's only purpose is to facilitate a use that is not an infringement of copyright, and the resulting copy has no significant value; and
32	30.71	(c) elle n'existe que pour ~~la durée du processus technologique~~ une durée transitoire ;	(c) the reproduction exists only for ~~the duration of the technological process~~ a transitory duration;
		Pour plus de certitude, l'exception prévue à cet article ne s'applique pas aux reproductions effectuées par ou sous l'autorité d'une « entreprise de programmation », tel que défini au paragraphe 30.8(11) ou d'une « entreprise de radiodiffusion », tel que défini au paragraphe 30.9(7).	For greater certainty, this section does not apply to reproductions made by or under the authority of a "programming undertaking," as that term is defined in subsection 30.8(11), or a "broadcasting undertaking," as that term is defined in subsection 30.9(7).

Ephemeral Recordings

C-11	Amended Act / Loi modifiée	Amendements proposés / Proposed Amendments	
34(2)	30.9(4)	30.9 (4) Elle est tenue – sauf autorisation à l'effet contraire du titulaire du droit d'auteur – de détruire ~~la~~ toute reproduction dans les trente jours suivant sa première réalisation ou, si elle est antérieure, soit à la date où l'enregistrement sonore ou la prestation ou œuvre fixée au moyen d'un enregistrement sonore n'est plus en sa possession, soit à la date d'expiration de la licence permettant l'utilisation de l'enregistrement, de la prestation ou de l'œuvre et ne peut reproduire subséquemment ces mêmes enregistrements sonores, prestations ou œuvres fixées au moyen du même enregistrement sonore sauf si le titulaire de droit l'autorise à faire une telle reproduction subséquente.	30.9 (4) The broadcasting undertaking must destroy all reproductions when it no longer possesses the sound recording or performer's performance or work embodied in the sound recording, or its licence to use the sound recording, performer's performance or work expires, or at the latest within 30 days after making the first reproduction, unless the copyright owner authorizes the reproductions to be retained, and may not subsequently reproduce the same sound recording, or the performer's performance or work as embodied in the same sound recording, unless the copyright owner authorizes further reproductions to be made.