

CLA Proposed Technical Amendments to Bill C-11

14 February 2012

The Canadian Library Association (CLA) is pleased that Bill C-11, *An Act to Amend the Copyright Act*, has passed at second reading and will now receive further scrutiny by the Legislative Committee.

CLA has previously prepared position statements on both Bill C-32 ("Protecting the Public Interest in the Digital World: the views of the Canadian Library Association / Association canadienne des bibliothèques on Bill C-32, *An Act to Amend the Copyright Act*") and Bill C-11 ("Protecting the Public Interest in the Digital World Revisited for Bill C-11: The views of the Canadian Library Association / Association canadienne des bibliothèques on Bill C-11, *An Act to Amend the Copyright Act*").

As we move into this critical round of debate, CLA suggests that the following technical amendments be made to Bill C-11:

1. Section 30.1(1)

(c) in ~~an~~ alternative formats

Rationale: This change will clarify that multiple alternative formats of materials can be made by libraries, archives and museums for preservation purposes. Data degradation rates for new digital formats are not certain. Best preservation practice dictates that some items may need to be kept in multiple formats until a stable medium can be determined.

2. Section 32.01

(1) Subject to this section, it is not an infringement of copyright for a non-profit organization acting for the benefit of persons with a print disability to make a copy, in a format specially designed for persons with a print disability, of a work and to send the copy to a non-profit organization in another country for use by persons with print disabilities in that country, ~~if the author of the work that is reformatted is~~

~~(a) a Canadian citizen or permanent resident within the meaning of subsection 2(1) of the Immigration and Refugee Protection Act; or~~

~~(b) a citizen or permanent resident of the country to which the copy is sent.~~

~~(2) Subsection (1) does not authorize a large print book or cinematographic work to be sent outside Canada.~~

~~(3) Subsection (1) does not authorize a copy to be sent to a country if the organization knows or has reason to believe that the work, in the format specially designed for persons with a print disability, is available in that country within a reasonable time and for a reasonable price, and may be located in that country with reasonable effort.~~

~~(4) The organization making and sending the copy shall pay, in accordance with the regulations, any royalty established under the regulations to the copyright owner in the work.~~

~~(5) If the organization cannot locate the copyright owner, despite making reasonable efforts to do so, the organization shall pay, in accordance with the regulations, any royalty established under the regulations to a collective society.~~

~~(6) The organization making and sending the copy shall submit reports to an authority in accordance with the regulations on the organization's activities under this section.~~

~~(7) The Governor in Council make regulations~~

~~(a) requiring a non-profit organization that seeks to send a copy outside Canada to, before doing so, enter into a contract with the recipient non-profit organization with respect to the use of the copy;~~

~~(b) respecting the form and content of such contracts;~~

~~(c) respecting any royalties to be paid under subsections (4) and (5);~~

~~(d) respecting to which collective society a royalty is payable in relation to works or classes of works for the purposes of subsection (5);~~

~~(e) respecting what constitutes reasonable efforts for the purposes of subsection (5); and~~

~~(f) respecting the reports to be made, and the authorities to which the reports are to be submitted, under subsection (6).~~

Rationale: While CLA is pleased with the proposed changes addressing the issue of cross border lending of alternative format content for use by individuals with a print disability, CLA does not endorse the constraints applied to this activity. WIPO is considering a [“Proposal on an international instrument on limitations and exceptions for persons with print disabilities”¹](#) which contains fewer restraints on the cross border movement of alternative format materials. The proposal permits the cross border movement of an alternative format “without the authorization of the rightholder” with no requirement for royalty payment or reporting to “an authority”. The Government of Canada should not introduce constraints into the Act exceeding those in the WIPO proposal while it is under active consideration.

3. Section 41

The following definitions apply in this section and in sections 41.1 to 41.21.

“circumvent” means,

...

(b) in respect of a technological protection measure within the meaning of paragraph (b) of the definition “technological protection measure”, to avoid, bypass, remove, deactivate or impair

¹ http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=170957

the technological protection measure for the purpose of an act that is an infringement of the copyright in it or the moral rights in respect of it or for the purpose of making a copy referred to in subsection 80(1).

Rationale: The prohibitions on the circumvention of digital locks in Bill C-11 exceed Canada's obligations under WIPO copyright treaties. Bill C-11 gives a new right to copyright owners negating the flexibilities in the Internet Treaties and directly contravening the basic, longstanding individual rights sanctioned in Canadian copyright law. With this provision, Canada is allowing a technical feature to override a nuanced information policy, permitting owners' rights to overreach their legitimate limits, and impinging on the ability of libraries to fulfill their public interest mandate. In the specific example of section 41.16(1), where the Government attempts to exempt persons with perceptual difficulties from the constraints of digital locks, the stipulation "to not unduly impair the technological protection measure" virtually nullifies the exemption. There is not efficient way to remove the TPMs and restore them after an alternate format has been created. This particular provision must be changed.

Bill C-11 makes it illegal to circumvent digital locks for other legal purposes including quotation, parody and satire (fair dealing uses), library preservation, and the copying of content for which there is no copyright (insubstantial reproduction, facts and information) or where copyright has expired. CLA believes Canadians deserve regard for their statutory rights in the digital environment. By amending the definition of "circumvent" in Section 41 as proposed above, the Bill will ensure Canadians' ability to invoke their full rights as information users.

CLA appreciates the consideration of the Legislative Committee members and all Members of Parliament of these proposed technical amendments. Should members have further questions, we would be happy to respond.

Sincerely

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