

Jeffrey Streifling

Dear Committee Members,

Re: Proposal to Amend Bill C-11 (the Copyright Modernization Act)

Please consider amending the definition of “Technological Protection Measures” in Bill C-11 so that it does not apply to very old works (more than 20 years) to mitigate difficulties with technological obsolescence.

Technological Protection Measures exist within a framework of standards and market dynamics that evolve continuously. As works become very old, it becomes increasingly difficult to access works or play sound recordings protected by technological protection measures, even legitimately, because the technologies, devices, and components that the Technological Protection Measures are designed to interact with are no longer commercially available. By defining Technological Protection Measures as applying only within the first twenty years of the life of a work or sound recording, this proposed amendment permits works or sound recordings to be legitimately accessed or played with the technologies, devices, or components available at that time, even if doing so bypasses or avoids a Technological Protection Measure in a way that was not contemplated when the measure was applied to the work or sound recording. As a side effect, the amendment permits old works to be reproduced for private purposes and backups to be made, even if obsolete Technological Protection Measures had been applied and need to be bypassed or avoided; this simplifies dealing with old works and sound recordings that are no longer commercially available.

The amendment I propose is to revise the the definition of “technological protection measure” in Section 47 of the *Copyright Modernization Act* (which would be in Section 41 of the *Copyright Act* as amended by it) to read as follows (the only difference is the restriction appended to the end):

“technological protection measure” means any effective technology, device or component that, in the ordinary course of its operation,

(a) controls access to a work, to a performer’s performance fixed in a sound recording or to a sound recording and whose use is authorized by the copyright owner; or

(b) restricts the doing — with respect to a work, to a performer’s performance fixed in a sound recording or to a sound recording — of any act referred to in section 3, 15 or 18 and any act for which remuneration is payable under section 19,

but does not include a technology, device, or component applied to a work, to a performer's performance fixed in a sound recording, or to a sound recording that is more than twenty years old.

Sincerely yours,

Jeffrey Streifling, P.Eng.
(transmitted by email)