

# The New Copyright Bill: It Giveth, and Taketh Away?

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June 2, 2010 marked the latest chapter in the proposed changes to Canadian copyright law. Bill C-32 (the "Bill") is the Government's latest attempt to modernize legislation that has not been substantially amended since 1997, which was well before the advent of DVRs, PVRs, iPod, YouTube, Google and most other significant digital and internet-based technologies.

## Clarification of Consumer Rights

The Bill clarifies consumer rights: providing certainty as to the legality of some common activities. In what has been called the "YouTube" or "mash-up" provision, the Bill permits, with conditions, the use of published copyrighted material to generate and distribute new copyrightable works for non-commercial purposes. It further permits the non-commercial reproduction of copyrighted material for "private" purposes where the copyrighted material is "legally obtained" (other than borrowed or rented) and the consumer does not give away the reproduction. Therefore, "format shifting" (for example, transferring music from a purchased CD to a MP3 player) would be expressly permitted for private, non-commercial purposes, and the legality of creating backup copies of copyrightable material that the user owns (or is licensed to use) would be confirmed. The proposed legislation would also permit a consumer to record copyrighted material for later listening or viewing. Therefore, "time shifting" (recording a television program on a PVR or DVR) would be expressly permitted provided it is not retained longer than is reasonably necessary to watch or listen to the recorded material.

"Fair-dealing" rights are extended by this proposed legislation, by confirming Canadians' right to use copyrighted material for satire, parody, and education (in addition to the current fair dealing provisions for research, private study, criticism, review and news reporting). Educational institutions are provided with expanded rights to distribute copyrighted material for distance education and to reproduce, publish and perform

copyrighted material when such is for instruction purposes to an audience of its students, subject to specific time restrictions and other conditions. Similarly, libraries, archives and museums receive additional rights to translate copyrighted works to new media, where such are in a format that is becoming obsolete, and to reproduce copyrighted materials, all subject to significant restrictions.

## Internet Service Providers

The Bill attempts to clarify the liability of Internet Service Providers (ISPs) by confirming that ISPs will not be held liable for the infringement of their users where they follow specific notice protocols. Under the provisions, a copyright owner provides notice to the ISP that the ISP's end user is believed to be infringing copyright through the Internet. To avoid liability, the ISP must give notice to their end user of the copyright owner's allegation, and undertake certain monitoring activities. However, stringent new penalties are imposed on websites that facilitate infringement, such as sites that enable rapid file sharing, and presumably ISPs that knew or should have known that their customers were engaging in large-scale file sharing will not be immune from liability.

## Digital Locks

Critics of the new Bill believe that the rights the proposed legislation gives to consumers is diminished by the Bill's aggressive stance against all circumvention of technological protection measures or "digital locks". The Bill prohibits circumvention of a digital lock to access copyrighted content - even where such circumvention is for otherwise permitted purposes. The anti-circumvention provisions would also make it illegal to import or sell devices that could circumvent the digital locks. Currently, the only exceptions to the anti-circumvention provisions are for law enforcement, testing of network security, to conduct encryption research, disabling the digital lock from collecting personal information, reverse engineering the digital lock to make it compatible with a company's other software or systems, or to adapt the copyrighted materials to Braille or other formats to provide access to those with perceptual disabilities.

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Therefore, the copyright holder can dictate the precise limits of what can and cannot be done with the copyright material. If a digital lock prevents a purchaser from transferring material on a CD or DVD to a digital media player (which is the case with most recent commercially-available CDs and DVDs), it would be illegal for the purchaser to circumvent the lock and download the music or movies to the digital media player (even though transferring the material from a CD or DVD to a digital media player is otherwise expressly permitted). The result is that the activities permitted in the proposed legislation are made illegal, if exercising the right granted in the proposed legislation involves circumventing a digital lock.

Bill C-32 will be hotly debated in the upcoming session of Parliament. Previous attempts at copyright reform quickly died out after national copyright consultation. This Bill seems to make a more serious attempt at striking a balance between consumer and corporate interests; however, it is likely that stakeholders on both sides of the debate will drive further changes to the proposed legislation as it slowly progresses through Parliament.

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