

CLA Op-Ed in The Hill Times

Dear Member,

The Canadian Library Association / Association canadienne des bibliothèques (CLA) is pleased to announce that an opinion piece highlighting critical messages related to copyright legislation ran in this week's edition of *The Hill Times*, a weekly publication with a circulation in excess of 12,000. *The Hill Times* is one of Ottawa's most noteworthy publications in terms of its analysis of Canada's government and political system.

The Hill Times is distributed nationally and sent to all Members of Parliament, Ministers, Senators, and other notable figures within the Canadian government including Cabinet ministers and political staffers. Other readers include some of the top decision-makers in the country, including influential players in the Prime Minister's Office, the Privy Council, the Finance Department, Treasury Board, the Department of National Defence, the Department of Industry, and more.

Thanks to the members of the CLA Copyright Committee who worked on this submission.

OPINION: COPYRIGHT

Copyright: it's time to get on with it

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BY VICTORIA OWEN

Bill C-32, the Copyright Modernization Act, was introduced in the House of Commons by Canadian Heritage Minister James Moore and Industry Minister Tony Clement last June. Of the three copyright reform acts introduced since 2006, the current bill

is by far the most interesting and forward looking. To the surprise of some, the legislation actually reflected a number of things the ministers, along with Heritage and Industry staff, heard during the Canada-wide consultations which commenced in July 2009.

Reaction from user rights organizations and education, library and archive representatives has been cautiously supportive. Michael Geist's characterization of the bill as "flawed but fixable" best represents the reception. The responses from creator and content provider associations are far more aggressively negative.

While numerous shortcomings have been identified in user rights submissions on the bill, the overriding concern is its unnecessary and overreaching protection for digital locks. It is ironic that the Canadian government is pursuing this 20th century approach in the name of

protecting the interests of copyright owners in the face of last year's move by the U.S. government to ease digital lock protection requirements. Content providers are increasingly coming to understand that restrictive digital locks suppress sales and are counter-productive to their commercial interests.

Does the government believe that maximum protection for digital locks will achieve anything other than to frustrate Canadians and the institutions which serve them in their attempts to exercise their legislated rights—including preserving or even accessing lawfully acquired content? Digital locks are ignored by pirates and legislated protection for digital locks is not necessary to permit the prosecution of piracy.

One of the advantages in updating Canadian copyright law in 2011 is that we have the opportunity to learn from the earlier experiences of others. In the case of C-32 digital lock language, the legislation is not building on that knowledge.

Moore has stated that anything less than C-32 digital lock protection language will place Canada in violation of its WIPO Treaty obligations. This is not correct nor is there sufficient evidence, including legislative language in other WIPO signatory states, to demonstrate that this is the case. The Liberal government and Heritage and Industry staff in 2006 did not hold this view as the copyright bill tabled in that year permitted the circumvention of digital locks for non-infringing purposes.

Introducing similar language in the current bill is the single most important amendment which should be made.

Creator and content provider opposition to Bill C-32 has been vociferous, inflammatory, and willfully blind to the implications of recent jurisprudence on how the bill would change practice in education institutions, libraries, archives and museums.

For example, the suggestion that the inclusion of education in the act's fair dealing defence will result in wholesale copying in schools and universities without compensation ignores the carefully defined interpretation of user rights with respect to fair dealing provided in the landmark Supreme Court "CCH" ruling.

Creators denounce Bill C-32 for taking away their rights in the name of modernization. There is little acknowledgement given to the support from Canadians through governments at all levels to creators and the content providers. Better to properly fund the Canada Council, cultural industry support and programs such as the Public Lending Right Commission than place unnecessary restrictions on how content can be accessed and used by Canadians.

Just as the government is reviewing publishing ownership regulations in light of the changing international context, so copyright must change to reflect the still emerging digital environment.

Unnecessarily restricting the rights of Canadians, and the schools, libraries, archives and museums which serve them, to access content is unacceptable.

Curtailing these rights in the name of supporting Canadian creators and content providers will ultimately benefit no one and could have the unintended consequence of creating a backlash which places cultural support programs and revenue streams at risk. Recent publicity on the resistance of Canadian universities to the aggressive revenue and use demands by a copyright collective is an example of unrealistic expectations resulting in the potential undermining of a significant revenue stream, especially for creators.

Space does not permit a detailed examination of the progressive elements, deficiencies and omissions in Bill C-32. One MP consulted on the prospects for the bill didn't hold out much hope for it progressing as copyright is a no-win file as it is impossible to achieve consensus.

MPs need to take action on this bill and represent the interests of their constituents by passing progressive 21st century copyright law. Bill C-32 is close to achieving this goal and it will deliver—with amended digital lock language.

Victoria Owen is chair of the Copyright Committee, Canadian Library Association.

news@hilltimes.com
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