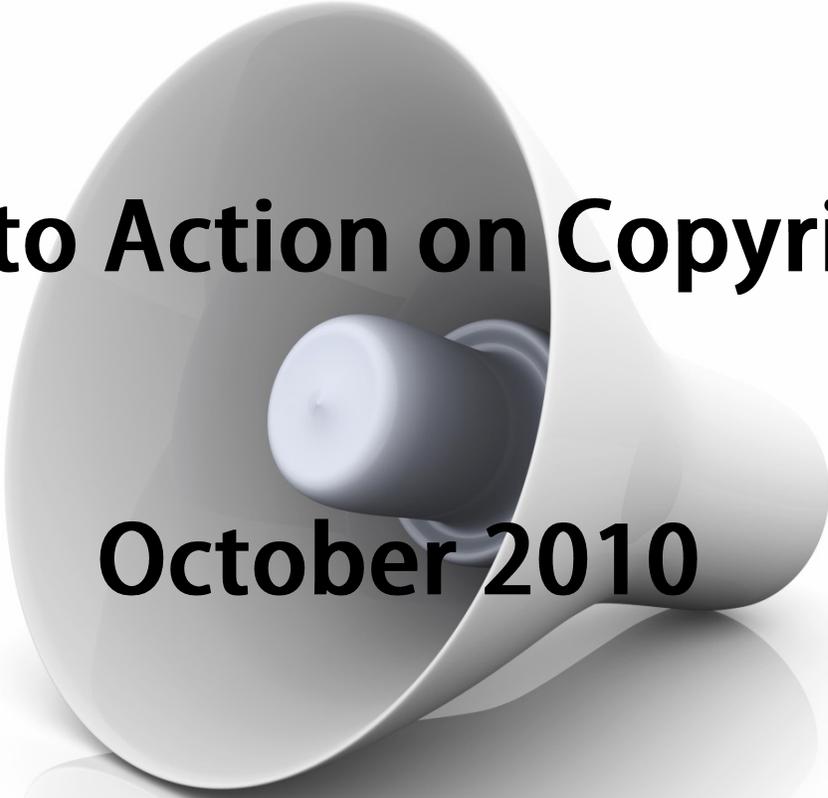




Canadian
Library
Association

Association
canadienne
des bibliothèques



Call to Action on Copyright

October 2010

Update on Bill C-32

www.CLA.ca

Call to Action

There is no doubt that Canadians continue to voice their concerns when it comes to the critical issue of copyright. Librarians across the country have heard and continue to hear from public library users that copyright laws must reflect the public interest. In fact, over 21 million library users are seriously concerned about the shape Canadian copyright legislation continues to take.

As the voice of library users and professionals, the Canadian Library Association (CLA) is committed to getting the crucial message across to the government that copyright issues do indeed strike a chord with the general public.

On June 2, 2010, the Minister of Canadian Heritage and Official Languages and the Minister of Industry jointly introduced Bill C-32, *An Act to Amend the Copyright Act*. CLA applauds significant improvements to Canada's copyright regime introduced in Bill C-32; however, significant modifications are required if the legislation is to ultimately succeed in its objectives.

As a CLA Member, we need your help to get our vital message across! In joining this grassroots fight, you will not be alone. You will be joined by other committed CLA members, who will be focused on ensuring that federal decision makers understand and hear the growing concerns of library users, member librarians, and many average Canadians.

Bill C-32: Key Messages

General Messaging

1. CLA applauds the addition of education, parody and satire in the fair dealing section of the Act. However the Government's insistence on reintroducing unnecessarily proscriptive protections for digital locks challenges this improvement along with other new and existing user rights to the extent that they are seriously undermined. Legislation which does not include the right to bypass digital locks for non-infringing purposes is fundamentally flawed.
2. CLA urges the government to address the copyright implications of the Internet and digital content with a balanced and thoughtful public policy-based approach that upholds and protects Canadian values and culture and user rights as reinforced by the Supreme Court of Canada.
3. The Bill does not go far enough to amend existing library, archive and museum exceptions and limitations made redundant by the fundamental principle of user fair dealing rights as clearly outlined in the unanimous Supreme Court of Canada judgment in *CCH Canadian Ltd. v. Law Society of Upper Canada, 2004 SCC 13* (the CCH case); instead it introduces significant constraints on the ability of individuals and libraries to exercise their rights in the digital environment.
4. While sections of Bill C-32 indicate that the concerns expressed by thousands of Canadians during the recent copyright consultations were heard, taken as a whole, the Bill does not achieve an acceptable balance from the user rights perspective.

Copyright issues most relevant to libraries and Bill C-32

1) Fair Dealing

CLA applauds and strongly supports Bill C-32's proposed inclusion of education, parody and satire into the fair dealing provisions in Section 29 of the Act. Education, parody and satire are appropriate purposes for fair dealing and are in line with similar provisions in other countries. CLA urges the Government not to bow to the pressure of commercial and economic interests that would seek to limit this fundamental user right.

CLA also strongly believes that fair dealing as a fundamental user right must not be superseded by a copyright holder's use of technological protection measures.

2) Digital Locks

[also known as Digital Rights Management (DRM) or Technological Measures (TMs) or Technical Protection Measures (TPMs)]

The prohibitions on the circumvention of digital locks in Bill C-32 exceed Canada's obligations under WIPO copyright treaties. Bill C-32 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 users' rights.

Bill C-32: Key Messages

3) Exceptions for the print disabled

CLA notes that Bill C-32 has made improvements to clarify and extend user rights relating to exceptions for people with perceptual disabilities. However, CLA believes the Bill as drafted has the potential to significantly constrain or render Section 32 (1) moot or inoperable. CLA strongly suggests the Bill provide that “it is not an infringement of copyright for a person with a perceptual disability, for a person acting at the request of such a person, or for a non-profit organization acting for the benefit of such a person, to make a copy of a work, and sound recording or another format suitable for persons with a perceptual disability provided that the item is not commercially available in the appropriate format.”

4) Libraries, Archives and Museums: Exceptions for Research and Private Study

Bill C-32 falls short of what is required for libraries to provide effective reference and interlibrary loan services in the digital era. The constraints it seeks to impose protect economic interests that are not threatened by the limited amount of “private research and study” materials copied by Canadian libraries for their patrons or for interlibrary loan. CLA proposes that the library, archive and museum exceptions for research and private study be truly format-neutral and allow these institutions to do anything on behalf of a patron, both directly and through interlibrary loan, that patrons can do for themselves.

5) Preservation: Exceptions for Management and Maintenance of Collections

Restrictions within the current exceptions in Section 30.1 of the Act, many of which are linked to older technologies, make it increasingly difficult for libraries to meet the challenges of preserving and making accessible the materials in their collections and to use digital technologies to provide the services their users need. Bill C-32 seeks to deal with this by changing wording to allow for the preservation of material the library considers is becoming obsolete or where the technology required to use that material is becoming unavailable. CLA applauds this positive step but notes that its application would be undermined unless the provisions for digital locks proposed in other parts of Bill C-32 can be circumvented for non-infringing purposes.

6) Educational Issues

CLA strongly supports the proposed inclusion of education in section 29 of the Act. The definition of "Educational Institution" in Section 2 of the Act should be broadened to include all such institutions, regardless of their ownership and, therefore, that the extensions of rights to "educational institutions" proposed in Bill C-32 would extend to all Canadian educational institutions.

Bill C-32: Key Messages

7) Statutory Damages

CLA supports the proposed amendments in Bill C-32 to the statutory damages provisions in Section 38.1 and elsewhere in the Act.

8) Internet Service Provider (ISP) Liability

CLA supports the proposed requirement in Section 41.23 of Bill C-32 that ISPs notify a user of their network that a complaint has been received regarding the legality of content the user has mounted, rather than requiring them to remove the content (“notice and notice” versus “notice and takedown”). Placing the onus on the ISP to remove content on a network on the basis of unsubstantiated allegations from a self-declared rights owner would place the ISP in an untenable position: it is best left to the network user to determine and be liable for their actions.

Getting the Key Messages Across

Enclosed you will find a sample letter, along with key background information, for your local Member of Parliament (M.P.). We need you to personalize this letter to reflect your own views and situations. Then print your advocacy letter on your letterhead and mail or fax it to your M.P.'s Constituency Office(s). Do not forget that personalized letters have the greatest impact! You should also feel free to involve your colleagues and concerned citizens in the letter writing campaign.

Be sure to follow up with your local M.P. by requesting a meeting on these issues. If your M.P. is difficult to meet with, insist that you at least talk to him/her by telephone so that you can express your views directly.

Prior to meeting with your local M.P., please review the enclosed guidelines to help you prepare. Once you have concluded the meeting, report on your efforts to CLA by filling out the enclosed feedback sheet.

If you need help finding your local M.P., please consult the website below. Simply enter your postal code where prompted, and it will provide you with your M.P. information. Remember to enter your office and home postal codes, as the M.P. may be different depending on your locations. The more M.P.'s we meet, the louder our message will be heard!

Website to find M.P.:

<http://www2.parl.gc.ca/Parlinfo/Compilations/HouseOfCommons/MemberByPostalCode.aspx?Language=E&Menu=HOC>

Meeting Guide

Most M.P.s will generally afford you only 15-30 minutes for your meeting, therefore you should be brief and to the point. Open your meeting by thanking the M.P. for having taken the time from his/her busy schedule to meet with you and discuss this important issue. Remind the M.P. of your name and who you represent.

Say a few words about the purpose and aim of your meeting:

- To discuss the serious concerns about the shape of Canadian copyright legislation.
- To encourage the creation of a balanced legislation that supports all three stakeholders: the creators of artistic works and information, the rights holders and the consumers.

Do not hesitate to share personal anecdotes with your M.P. They can be particularly receptive to information that evokes emotion. Pay attention to the time you have been allotted. Your M.P. will appreciate you respecting his/her many commitments and busy schedule.

At the end of the meeting, briefly summarize the key points discussed. Be sure to add that if he/she has any questions, to either personally contact you, or Kelly Moore, CLA Executive Director at (613) 232-9625.

Sample M.P. Letter

{insert address}

{insert date}

Dear {insert name}:

As a constituent in your riding and a {insert role} in your community, I want to take this opportunity to share with you the growing concerns of the Canadian Library Association (CLA), as well as many Canadians, regarding Bill C-32, *An Act to Amend the Copyright Act*.

CLA is Canada's largest national library association, representing the interests of public, academic, school and special libraries, professional librarians, library workers, library trustees, and all those concerned about enhancing the quality of life of Canadians through access to knowledge and literacy. CLA represents the interests of approximately 57,000 library staff and thousands of libraries of all kinds across Canada on a range of public policy issues. None is more critical at this time than copyright.

It is crucial to note that libraries and librarians speak on behalf of our users: millions of students, educators, scholars, researchers, lifelong learners, special library users and recreational readers, from children to seniors. Library users **are** the Canadian public: they are not members of a "special interest group" when it comes to copyright.

The Government has stated its intent to provide copyright legislation which is both balanced and technologically neutral. While CLA applauds significant improvements to Canada's copyright regime introduced in Bill C-32, critical modifications are required if the legislation is to ultimately succeed in its objectives.

There are several issues of concern that are relevant to libraries and Bill C-32, which include, but are not limited to Fair Dealing, Digital Locks, Exceptions for the Print Disabled, Preservation, and Educational Issues.

CLA applauds the addition of education, parody and satire in the fair dealing section of the Act. However the Government's insistence on reintroducing unnecessarily proscriptive protections for digital locks challenges this improvement along with other new and existing user rights to the extent that they are seriously undermined. Legislation which does not include the right to bypass digital locks for non-infringing purposes is fundamentally flawed.

While sections of Bill C-32 indicate that the concerns expressed by thousands of Canadians during the recent copyright consultations were heard, taken as a whole, the Bill does not achieve an acceptable balance from the user rights perspective.

I urge you, as a Member of Parliament, to not let our concerns go unheard. I would greatly appreciate the opportunity to meet with you to discuss these key concerns in greater detail and the role the library community plays in providing Canadians access to all forms of material. This access to information is integral to ensuring that Canadians are regular contributors to the economic, social and cultural success of their communities.

Please contact me at {insert phone number} to coordinate a meeting. As we build a relationship together, I look forward to your support.

Sincerely,

Key Background Information

Press Release

-For Immediate Release-

Canadian Library Association Gives Passing Grade to New Copyright Legislation User Rights Still Tempered by Digital Locks

(Ottawa, June 3, 2010) – The Canadian Library Association/Association canadienne des bibliothèques (CLA) finds much to applaud in the government's newly announced copyright legislation, Bill C-32.

"Canadians will appreciate the expansion of fair dealing to include parody, satire, and education," says CLA President John Teskey, "and with some important modifications to the provisions on digital locks, this bill addresses a number of the concerns brought forward by librarians across the country."

CLA is heartened that Bill C-32 gives users some new rights, but is disappointed that longstanding rights, the heart of copyright's balance, as well as the new rights, are all tempered by the over-reach of digital locks.

In essence, the bill protects digital locks so they cannot be circumvented for legal uses. The government has, perhaps unwittingly, placed a barrier to the bill's achievement of its objective to promote innovation and support culture, by prohibiting Canadians from exercising their legitimate, statutory rights to copy material for research, study and education. Fortunately, this can be corrected by simply allowing circumvention for legal purposes.

CLA is pleased that Canadians with perceptual disabilities will have use of material in accessible formats imported from other jurisdictions. The bill clarified that importation of such materials would not constitute infringement.

"While the additional fair dealing uses, limitations on liability, and the ability to import accessible formats give CLA reason for initial optimism," adds Teskey, "we will review the bill thoroughly and formulate a detailed response."

As well, the bill's attempt to be technologically neutral appears to be incomplete, leaving parts of the Copyright Act still based on various media. CLA will be looking for format neutral language to facilitate the library's role in providing access and in preserving Canada's cultural heritage.

CLA is also mindful that in previous rounds of copyright reform, user rights became significantly eroded as the bill went through the committee review process. The library community will be vigilant and engaged in the process to ensure that the gains to Canadian users will not be undermined and derailed as the bill moves through its review.

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The Canadian Library Association/Association canadienne des bibliothèques (CLA) is Canada's largest national and broad-based library association, representing the interests of public, academic, school and special libraries, professional librarians and library workers, and all those concerned about enhancing the quality of life of Canadians through information and literacy.

For more information or to schedule an interview, please contact:

Kelly Moore, CLA Executive Director or Victoria Owen, CLA Copyright Committee Chair

Key Background Information

Letter to Minister Moore

6 August 2010

The Honourable James Moore, M.P.
Minister of Canadian Heritage and Official Languages
Canadian Heritage
15 Eddy Street
Gatineau, Quebec K1A 0M5

Dear Minister Moore,

The Canadian Library Association (CLA) is Canada's largest national and broad-based library association, representing the interests of public, academic, school and special libraries, professional librarians, library workers, library trustees, and all those concerned about enhancing the quality of life of Canadians through information and literacy.

Libraries and librarians speak on behalf of all users: millions of students, educators, scholars, researchers, lifelong learners, special library users, and recreational readers, from children to seniors. CLA, along with our wide community of library users, continues to embrace copyright legislation as one of our key priorities. The need for balance between the rights of copyright holders and those who wish to make use of copyrighted material is essential for the economic, social and cultural well-being of our country.

In the context of the recently announced copyright legislation, Bill C-32, enclosed you will find CLA's Position Statement, "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*". This Statement outlines the copyright issues of greatest importance and concern to the library community.

I would greatly appreciate the opportunity to meet with you to discuss our concerns and the crucial role the library community plays in providing access to information and all forms of material to the 21 million Canadians who are members and regular users of libraries in this country.

Please have your scheduling assistant contact Alana Fontaine at (613) 233-8906 to discuss your availability. If you have any immediate questions about copyright or other issues of importance to the Canadian library community, please contact me at (613) 232-9625 ext.306.

Sincerely,



Kelly Moore
Executive Director

Key Background Information

Letter to Minister Clement

6 August 2010

The Honourable Tony Clement, M.P.
Minister of Industry
Industry Canada
C.D. Howe Building
235 Queen Street
Ottawa, Ontario K1A 0H5

Dear Minister Clement,

The Canadian Library Association (CLA) is Canada's largest national and broad-based library association, representing the interests of public, academic, school and special libraries, professional librarians, library workers, library trustees, and all those concerned about enhancing the quality of life of Canadians through information and literacy.

Libraries and librarians speak on behalf of all users: millions of students, educators, scholars, researchers, lifelong learners, special library users, and recreational readers, from children to seniors. CLA, along with our wide community of library users, continues to embrace copyright legislation as one of our key priorities. The need for balance between the rights of copyright holders and those who wish to make use of copyrighted material is essential for the economic, social and cultural well-being of our country.

In the context of the recently announced copyright legislation, Bill C-32, enclosed you will find CLA's Position Statement, "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*". This Statement outlines the copyright issues of greatest importance and concern to the library community.

I would greatly appreciate the opportunity to meet with you to discuss our concerns and the crucial role the library community plays in providing access to information and all forms of material to the 21 million Canadians who are members and regular users of libraries in this country.

Please have your scheduling assistant contact Alana Fontaine at (613) 233-8906 to discuss your availability. If you have any immediate questions about copyright or other issues of importance to the Canadian library community, please contact me at (613) 232-9625 ext.306.

Sincerely,



Kelly Moore
Executive Director

Key Background Information

CLA Position Statement - July 29, 2010

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*

Preamble

This analysis of Bill C-32, *An Act to Amend the Copyright Act*, has been prepared by the Canadian Library Association / Association canadienne des bibliothèques (CLA) for its members, the Canadian library and information community, and all those interested in the creation, dissemination and preservation of Canadian culture. It identifies the provisions of the legislation that would appear to be of most direct interest to librarians, libraries, and others in the information community; and provides some analysis of those provisions from this perspective.

CLA is Canada's largest national library association, representing the interests of public, academic, school and special libraries, professional librarians, library workers, library trustees, and all those concerned about enhancing the quality of life of Canadians through access to knowledge and literacy.

CLA represents the interests of approximately 57,000 library staff and thousands of libraries of all kinds across Canada on a range of public policy issues. None is more critical at this time than copyright.

But more importantly, libraries and librarians speak on behalf of our users: millions of students, educators, scholars, researchers, lifelong learners, special library users and recreational readers, from children to seniors. Library users **are** the Canadian public: they are not members of a "special interest group" when it comes to copyright. The majority of CLA members work in publicly funded institutions serving the citizens of this country. The public interest is at the core of our work and it is on behalf of the millions of Canadians who regularly access our collections, services (tangible and virtual) and buildings that CLA presents its analysis of Bill C-32, *An Act to Amend the Copyright Act*.

The Government has stated its intent to provide copyright legislation which is both balanced and technologically neutral. While CLA applauds significant improvements to Canada's copyright regime introduced in Bill C-32, we note that changes are required if the legislation is to ultimately succeed in its objectives.

Key Background Information

CLA Position Statement - July 29, 2010

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*

General Comments

As an instrument of public policy, the *Copyright Act* (the Act) has two primary objectives: to encourage the creation and dissemination of original works, and to promote access to knowledge for the benefit of Canadian society as a whole. It is essential, therefore, that copyright reform respect the underlying principle of balance and equity among the content industries, the creators and the users of the content.

CLA applauds the addition of education, parody and satire in the fair dealing section of the Act. However the Government's insistence on reintroducing unnecessarily proscriptive protections for digital locks undermines this improvement along with other new and existing user rights to the extent that they are seriously undermined. Legislation which does not include the right to bypass digital locks for non-infringing purposes is fundamentally flawed.

CLA urges the government to address the copyright implications of the Internet and digital content with a balanced and thoughtful public policy-based approach that upholds and protects Canadian values and culture and user rights as reinforced by the Supreme Court of Canada. Technology and the content provision industries are rapidly evolving and legislative attempts to force existing business models on Canadians by placing constraints on their use of technology are both wrong and ultimately quixotic. The core principles in the WIPO Copyright treaties not already recognized in Canadian law do not require such a maximalist approach and can be incorporated without resorting to the type of barriers on the use of technology found in Bill C-32.

The Bill does not go far enough to amend existing library, archive and museum exceptions and limitations made redundant by the fundamental principle of user fair dealing rights as clearly outlined in the unanimous Supreme Court of Canada judgment in *CCH Canadian Ltd. v. Law Society of Upper Canada, 2004 SCC 13* (the CCH case); instead it introduces significant constraints on the ability of individuals and libraries to exercise their rights in the digital environment.

Canadians will not – and should not – accept digital locks and imposed contracts that interfere with their statutory rights under fair dealing for any format of content, nor limits on how long legally acquired content may be retained by users for research and private study. Bill C-32's silence on the issue of imposed contracts overriding user legislated rights combined with the overarching protections given digital locks undermine the progressive sections of the legislation.

Key Background Information

CLA Position Statement - July 29, 2010

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*

Copyright issues most relevant to libraries and Bill C-32

1) Fair Dealing

CLA applauds and strongly supports Bill C-32's proposed inclusion of education, parody and satire into the fair dealing provisions in Section 29 of the Act. Although a more flexible approach would be to include the words "such as" before the purposes enumerated in this section, the proposed amendment is a positive step towards reflecting the CCH case's recognition of this fundamental user right. Education, parody and satire are appropriate purposes for fair dealing and are in line with similar provisions in other countries. CLA urges the Government not to bow to the pressure of commercial and economic interests that would seek to limit this fundamental user right.

CLA also strongly believes that fair dealing as a fundamental user right must not be superseded by a copyright holder's use of technological protection measures, as more fully outlined below.

CLA notes Bill C-32 proposes the addition of Sections 29.21 to 29.24 to the Fair Dealing provisions of the Act. These sections properly attempt to recognize various emerging uses of new technology and are a step in the right direction. However, these uses contain various limitations and counter exceptions which would not necessarily preclude a full fair dealing analysis. Rather than legislate specific limits or counter exceptions, these would be better dealt with as part of the entire fair dealing analysis. We are also concerned that these provisions may be read as substitutive rather than additive to Section 29, and therefore suggest that these specific sections be moved to a different sub-heading.

In particular: while Section 29.21 is a positive recognition of the growing importance of user generated content, the language is too restrictive and does not take into account the importance of this emerging form of creativity. Section 29.22 not only contains the fundamental flaw of being superseded by digital locks and the inclusion of overly broad destruction requirements, but it also excludes typical lawful uses of library materials. Section 29.24 is similarly flawed.

Key Background Information

CLA Position Statement - July 29, 2010

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*

2) Digital Locks

[also known as Digital Rights Management (DRM) or Technological Measures (TMs) or Technical Protection Measures (TPMs)]

The prohibitions on the circumvention of digital locks in Bill C-32 exceed Canada's obligations under WIPO copyright treaties. Canada agreed to distinctive wording and flexibilities inherent in WIPO Internet Treaties. WCT art.11 and WPPT art. 18 both protect the right holders but also allow flexibility in national laws for permitted legal uses. Bill C-32 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 users' rights.

Bill C-32 makes it illegal to circumvent digital locks for most legal purposes including quotation, parody and satire (fair dealing uses), library preservation, and the copying of content for which there is no copyright (facts and information) or copyright has expired. The Government's attempt to exempt persons with perceptual disabilities from the constraints of digital locks (Section 41.16(1)) is nullified by the condition "to not unduly impair the technological protection measure." There is no efficient way to remove the TPMs and restore them after an alternate format has been created.

CLA believes Canadians deserve regard for their statutory rights in the digital environment. Section 41 of Bill C-32 can be simply amended. The definition of "circumvent" in Section 41 (a) and (b) must include the words "for any infringing use" thus insuring Canadians' ability to invoke their full rights as information users.

CLA appreciates the Government's special treatment of libraries, archives, museums and educational institutions in Section 41.2. However, we note this section could be strengthened by the creation of an exception to deal with this issue rather than relying on the section as a mere defence.

Key Background Information

CLA Position Statement - July 29, 2010

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*

3) Exceptions for the print disabled

CLA notes that Bill C-32 has made improvements to clarify and extend user rights relating to exceptions for people with perceptual disabilities. There is an explicit right for a “person with a perceptual disability, for a person acting at the request of such a person, or for a non-profit organization acting for the benefit of such a person to make a copy of a work for the purpose of creating an alternate format.” There is a conditional exception to the prohibition of circumventing technological protection measures for the “sole purpose of making a work, a performer’s performance fixed in a sound recording or a sound recording perceptible to the person with a perceptual disability.” (Section 41.16(1)). Sending copies of alternate formats outside Canada is permitted under specific conditions (Section 32.0.1.1) The Bill preserves the continued exemption from the Blank Audio Recording Media levy for societies, associations or corporations that represent persons with a perceptual disability. (Section 82).

However, CLA believes the Bill as drafted has the potential to significantly constrain or render Section 32 (1) moot or inoperable. For example, despite the Government’s intent that the Bill be technologically neutral, it does not provide a generic exception for all alternate format materials for people with print disabilities. CLA strongly suggests the Bill provide that “it is not an infringement of copyright for a person with a perceptual disability, for a person acting at the request of such a person, or for a non-profit organization acting for the benefit of such a person, to make a copy of a work, and sound recording or another format suitable for persons with a perceptual disability provided that the item is not commercially available in the appropriate format.” There should be no prohibition on sign language or captioning of cinematographic works (motion pictures) by a non-profit organization.

If Bill C-32 maintains its overreaching prohibition on the circumvention of digital locks, it should be made clear that the proposed requirement “to not unduly impair the technological protection measure” does not operationally hinder the exercise of the exception for people with print disabilities. Further, Bill C-32 should clarify the jurisdiction, royalties and reporting requirements for alternate formats related to collective societies.

CLA urges the Government to review all of the sections in the Bill that affect access for people with perceptual disabilities to ensure they do not make equitable access more difficult, or indeed impossible. The main point is to “do no harm” to any access available to users with print disabilities.

Key Background Information

CLA Position Statement - July 29, 2010

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*

4) Libraries, Archives and Museums: Exceptions for Research and Private Study...

Bill C-32 falls short of what is required for libraries to provide effective reference and interlibrary loan services in the digital era. The constraints it seeks to impose protect economic interests that are not threatened by the limited amount of "private research and study" materials copied by Canadian libraries for their patrons or for interlibrary loan. CLA proposes that the library, archive and museum exceptions for research and private study be truly format-neutral and allow these institutions to do anything on behalf of a patron, both directly and through interlibrary loan, that patrons can do for themselves.

The current exception for research and private study in Section 30.2(1) of the Act allows library staff to do anything on behalf of any person that the person may do personally under the fair dealing provisions in Sections 29 and 29.1.

There is a further exception in Section 30.2(2) that allows library staff to reproduce by reprographic means a work published in a scholarly, scientific or technical periodical, or a work (other than a work of fiction, or poetry or a dramatic or musical work) published in a newspaper or in any other type of periodical that was published more than one year before the copy is made. In order to exercise the exception in Section 30.2(2), Bill C-32 proposes an amendment to Section 30.2(4) that would require the library to inform the person making the request that the copy is to be used for research or private study and that use of the copy for another purpose may require the authorization of the copyright owner.

Currently, there is a restriction placed on the exercise of the exceptions provided in Sections 30.2(1) and 30.2(2) when the request is made by a patron of another library, archive or museum, as section 30.2(5) stipulates that the copy given to the patron in that case must not be in digital form. The amendments to Section 30.2(5), (5.01) and (5.02) proposed in Bill C-32 lift this restriction by allowing library staff to provide a digital copy of a work for interlibrary loan purposes. However under Section 30.2(5.02), the library must take measures to prevent the requesting patron from: a) making any reproduction of the digital copy (other than a single print copy), b) communicating the digital copy to anyone, and c) using the digital copy for more than five business days from the day on which it is first used.

Key Background Information

CLA Position Statement - July 29, 2010

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*

4) ...Libraries, Archives and Museums: Exceptions for Research and Private Study Continued

CLA believes the restrictions on library copying for users in the present and proposed Sections 30.2(2), 30.2(3) and 30.2(5) are unworkable and overly restrictive. These provisions are unworkable, as existing interlibrary loan software does not allow libraries to apply the unreasonable restrictions required under the proposed Section 30.2(5.02). Further, these provisions are overly restrictive when considering the liberal interpretation of research and private study set out in the CCH case, which, provided the dealing is fair, does not restrict the reproduction of single copies of works to the publications enumerated in Section 30.2(2) or only to print copies as provided in the current Section 30.2(5).

Bill C-32 continues the practice of segregating important Canadian institutions according to whether they are owned by non-profit organizations or not. This seems inconsistent with the federal Government's support in other initiatives for Private-Public Partnerships and is also completely inappropriate when the Government says that it is making the amendments to "permit ... educators and libraries to make greater use of copyright material in digital form" and "allow educators and students to make greater use of copyright material" ((c) and (d) from the Summary). In fact the Government in Bill C-32 is only allowing certain select libraries, educational institutions, archives and museums to have increased use. Users should have equitable access in all environments.

CLA calls upon the Government to extend the exceptions now reserved for defined groups of institutions (i.e. a "Library, Archive or Museum" or "Educational Institution" as defined in Section 2 of the Act) to all users making educational uses of material or serving the needs of users of information or, at least, to broaden the definitions in Section 2 of the Act to encompass all educational institutions, both public and private, and all libraries, archives and museums, both public and private, regardless of whether a library, archive or museum holds a collection open to researchers or the public. Recent restructuring of the federal government's own Health Canada Library has recently caused it to be closed to "outsiders," likely disqualifying it for the "Libraries, Archives and Museums" exceptions in the Act.

Key Background Information

CLA Position Statement - July 29, 2010

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*

5) Preservation: Exceptions for Management and Maintenance of Collections

Restrictions within the current exceptions in Section 30.1 of the Act, many of which are linked to older technologies, make it increasingly difficult for libraries to meet the challenges of preserving and making accessible the materials in their collections and to use digital technologies to provide the services their users need. Libraries find they need to “refresh” or “migrate” content to match the evolution and availability of current technology and not have to wait until the older format technology is obsolete.

Bill C-32 seeks to deal with this by changing wording to allow for the preservation of material the library considers is becoming obsolete or where the technology required to use that material is becoming unavailable. CLA applauds this positive step but notes that its application would be undermined unless the provisions for digital locks proposed in other parts of Bill C-32 can be circumvented for non-infringing purposes.

Key Background Information

CLA Position Statement - July 29, 2010

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*

6) Educational Issues

Bill C-32 contains several new provisions that would create limited exemptions available to educational institutions as defined in the *Act* and to those acting on their behalf or under their authority. As indicated above, CLA strongly supports the proposed inclusion of education in section 29 of the Act. As also outlined above, we believe that the definition of "Educational Institution" in Section 2 of the Act should be broadened to include all such institutions, regardless of their ownership and, therefore, that the extensions of rights to "educational institutions" proposed in Bill C-32 would extend to all Canadian educational institutions.

CLA welcomes the amendments to section 29.4 as a move toward technological neutrality and recognition of the continuing advancement in classroom display technology. Similarly we see the additions of 29.5 as positive reflections of the importance of multimedia in the classroom. We support section 29.6 and 29.9(1)(a) and suggest the same treatment be afforded to section 29.7.

However, the provisions proposed for Sections 30.01 and 30.04 add unacceptable levels of complexity and will encourage an over-reliance on licensing. Any limited benefits for teachers and learners given in these sections quickly evaporate in the face of counter-limitations and requirements. As we have indicated above, we do not support digital locks that prohibit legitimate acts of circumvention or otherwise restrict existing user's rights. As drafted, these educational exceptions are vitiated where a technological protection measure has been employed. Even worse, they contain requirements for academic staff to impose and enforce these measures.

Although it does not explicitly mandate any particular level of record keeping, the effect of 30.03 would impose burdensome new record keeping requirements for institutions, contrary to the direction taken in sections 29.6 and 29.9(1)(a). We oppose sections 30.02 and 30.03 as the relationship between licensing collectives and institutions should not be unduly disrupted by legislation which favours one side.

Key Background Information

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7) Statutory Damages

CLA supports the proposed amendments in Bill C-32 to the statutory damages provisions in Section 38.1 and elsewhere in the Act.

8) Internet Service Provider (ISP) Liability

CLA supports the proposed requirement in Section 41.23 of Bill C-32 that ISPs notify a user of their network that a complaint has been received regarding the legality of content the user has mounted, rather than requiring them to remove the content (“notice and notice” versus “notice and takedown”). Placing the onus on the ISP to remove content on a network on the basis of unsubstantiated allegations from a self-declared rights owner would place the ISP in an untenable position: it is best left to the network user to determine and be liable for their actions. It is worth pointing out that in addition to the commercial ISPs there are many non-profit organizations that serve as ISPs including many public libraries, school boards, universities and colleges.

Summary

CLA acknowledges the complexity of copyright in the 21st century and applauds the Government’s attempt to define the balance between the concerns of creators, content providers and users as a key goal of continuing copyright reform. While sections of Bill C-32 indicate that the concerns expressed by thousands of Canadians during the recent copyright consultations were heard, taken as a whole, the Bill does not achieve an acceptable balance from the user rights perspective.

CLA will be pleased to continue to work with the Government to develop balanced copyright legislation in the public interest. As the Bill moves through the legislative process, CLA and its members will join with our users and a wide range of other institutions and organizations to vigorously support the progressive sections of the Bill and seek amendments to address the deficiencies outlined in this analysis.