

What is Bill c-32?

Bill c-32 is officially known as the Copyright Modernization Act. It was an attempt at a “Balanced Copyright” act introduced in Parliament on June 2, 2010, by the Conservative Party — Honourable Tony Clement, Minister of Industry, and the Honourable James Moore, Minister of Canadian Heritage and Official Languages. It contains changes to Canadian Copyright Law that are hotly contested by artists and authors of cultural media. The Bloc, NDP and Liberal parties are opposed to the act being passed in its current state, and are calling for amendments to be made.

What are the core issues?

Users of culture v. holders of copyright.

The bill is structured to favour the users of cultural media by broadening the scope of Fair Dealing to include education, parody, and satire; allowing for time shifting (recording a TV show) and format shifting (downloading a cd to a computer); allowing the creation of non-commercial “mash-ups” (youtube collage videos); putting a cap on statutory damages for infringement on copyright — but the main criticism of bill c-32 is that it is unbalanced by its failure to adequately support the rights of the authors of the content being used.

Many are concerned that the bills fails to sufficiently deter pirate sites on the internet, that the responsibilities of Internet Service Providers (ISPs) are too lenient with regard to the transmissions of copy-written materials, and that the expansion of fair dealing will result in the loss of income for authors and publishers of cultural content.

1) New Fair Dealing exceptions

In accordance with current Canadian copyright law, the use of a work for the purposes of research, private study, news reporting, criticism and review does not infringe on copyright laws in Canada. Bill c-32 proposes to expand the scope of Fair Dealing to include satire, parody, and (most-noted) education as applications of Fair Dealing.

(Fair Dealing outlines the terms under which the use of material protected by copyright is not considered an infringement of Canadian Copyright Law. The equivalent term in the U.S. is ‘Fair Use’ —

a term that is different in scope from Fair Dealing, and is at times used incorrectly by Canadians. FAIR DEALING (Can.) v. FAIR USE (U.S.) : www.library.concordia.ca/help/copyright)

What's the impact of expanding the scope of Fair Dealing?

The inclusion of Fair Dealing to include education will absolve the education sector of the requirement to pay fees for the use of materials protected by copyright. This allowance would affect all audio-visual material and copied or re-printed content (ex. literary works, photos, prints, essays, opinion columns, etc., used to compile coursepacks). Currently Copyright Collective Societies —such as Copibec— are responsible for arranging fees for the educational reproduction of materials under copyright, and this money is distributed to the holders of the copyrights being used.

“Creators, performers, publishers and the associations that represent them will not be on the sidelines because they are of course the big losers in this reform featuring a multitude of exceptions without compensation. More than \$9 million collected annually by Copibec is in danger and a similar impact will be felt in the music, dramatic works and artistic sectors.”

- Hélène Messier, from *It's time to mobilize against Bill C-32*,
COPIBEC
www1.copibec.qc.ca/pdf/Newsletter%20october%202010.pdf

2) New private use exceptions

- Time shifting (ex: recording a TV episode)
- Format shifting (ex: transferring tracks from cd to mp3 player)
- Making back-up copies (ex: software, dvds)

How will the changes affect users?

The copying and sharing of software and music through peer-to-peer websites remains illegal. Considered an infringement under current copyright law, copying for private use (such as backing up a dvd or software program) would be permissible under c-32. The same applies to Time shifting and format shifting — both are considered infringements under current copyright law, but would be included as exceptions for private use under bill c-32.

3) Expanding the blank media levy

Introduced to Canada in 1997, the blank media levy requires that Canadian consumers paying a private copying levy on recordable media, including CD-Rs (\$0.29), audio cassettes, and Mini-Discs — all popular technologies in 1997. Bill c-32 treats digital recorders and mp3 players differently from other recordable media — many Canadian musicians and associations representing authors' rights are lobbying for the government to introduce a levy for mp3 players in the same way that CD-Rs and cassettes are subject to fees.

How does this affect the authors of content?

“Since [1997], more than \$150 million has been paid to songwriters, composers, recording artists and other rights holders for the copying of their music. This money has been received by over 97,000 rights holders, most of whom would not be able to continue their careers without this revenue. This isn't money from government, but it is an important source of earned income for music creators — one of the ways they can make a living from the music they create.”

Today, the technology is dramatically different. MP3 players like the iPod are the new standard for making and playing copies of music. One of the problems with the most recent proposed amendments to the Copyright Act was that it did not treat these devices the same as CD-Rs and the other now largely outdated technologies covered by the 1997 legislation.”

- From 'The Issue' page of the *Save the Levy* website
www.savethelevy.ca/en/issues

4) Circumventing Digital Locks, or 'TPMs' (Technological Protection Measures)

Technological Prevention Measures (aka. Digital Rights Management, software licence managers, content protection, copy restriction, etc.) are forms of encryption applied to software, films, videogames, music and other technologies to safeguard against copying (ex: a commercial audio cd that is digitally encoded to be unreadable by a computer). Bill c-32 proposes that *all* circumventions of digital locks be considered an infringement of copyright.

How does this affect private use?

While certain copying would be permitted - such as recording TV programs, copying music to an iPod, or making parody or satire - these would be meaningless for content protected with a digital lock. The implication of this is that even for the application Fair Dealing (research,

private study, news reporting, criticism —and soon education, satire and parody—), it would be illegal to circumvent anything with a security encryption. What’s more, the decision to apply a digital lock would be made by the *commercial distributors* of content, and not left to the discretion of the authors.

5) Internet Service Providers (ISPs)

ISPs would remain exempt from copyright liability for material circulating over their networks that infringes on copyright — the liability would remain with the individuals who post or transmit the infringed material. The responsibility of ISPs would be to maintain the “notice-and-notice” system.

What is the notice-and-notice system?

“Under the proposed "notice and notice" regime, an ISP will be required to forward any notice it receives from a copyright owner to a subscriber who is alleged to be engaging in infringing activities online. The ISP will also be required to retain, for a set period of time, information sufficient to identify the subscriber in question. Through this regime, rights holders will have a mechanism for notifying Internet users that their activities may be infringing the rights holders' copyright. In the event that such activities lead to litigation, the record-keeping requirement will better enable identification of the parties alleged to be involved. In this respect, however, the regime will not require disclosure of the identity of a subscriber; in order to protect Internet users' legitimate expectations of privacy, a court order will be required.”

- Answer to question 9, FAQ for Amendments to the Copyright Act
www.strategis.ic.gc.ca/eic/site/crp-prda.nsf/eng/rp01146.html

Read about c-32’s impact on specific sectors in the arts:

MUSIC:

SODRAC, Society for Reproduction Rights of Authors, Composers, and Publishers in Canada: www.sodrac.ca/Telechargement/SODRAC_LDA_2010_06_08_ENG.pdf

SOCAN, Society of Composers, Authors and Music Publishers of Canada:

www.socan.ca/pdf/pub/Bill_C32_Summary_EN.pdf

VISUAL ARTS:

RAAV, Regroupement des artistes en arts visuels du Quebec

CARFAC, Canadian Artists Representation: www.carcc.ca/documents/C-32-positionCARFAC-RAAV.pdf

Artist Resale Right (ARR):

[www.raav.org/pls/htmldb/f?p=105:39:764683019074077::NO::P39_ID_NOUVELLE,LAST_P
AGE:31514,34](http://www.raav.org/pls/htmldb/f?p=105:39:764683019074077::NO::P39_ID_NOUVELLE,LAST_PAGE:31514,34)

www.carfac.ca/2010/10/1047/lang-pref/en

-Photography:

“Ownership of Photographs: The CMA would provide that photographers own copyright in their commissioned works. Currently, the first owner of copyright in a photograph is generally the person who commissions the photograph unless the parties contract to the contrary.” – Blakes

www.blakes.com/english/view_disc.asp?ID=4011

WRITING:

WGC, Writers’ Guild of Canada:

www.wgc.ca//files/WGC%20on%20Copyright.pdf

COALITION OF ENGLISH-LANGUAGE WRITERS’ ORGANIZATIONS :

www.writersunion.ca/pdfs/briefccccopyright.pdf

FILM / PERFORMANCE / MULTIMEDIA:

ACTRA:

www.actra.ca/main/wp-content/uploads/ACTRA-BILL-C-32-1.pdf

“Moral Rights for Performers: The CMA would grant performers the right to protect the integrity of their recorded works and to have them attributed (or not attributed) to them as they choose.” – Blakes

www.blakes.com/english/view_disc.asp?ID=4011

Some extra FYI:

Blakes – a great summary of the amendments proposed in bill c-32, in point-form:

www.blakes.com/english/view_disc.asp?ID=4011

Creative Commons – everything you ever wondered about current Canadian Copyright Law:

www.creativecommons.ca/index.php?p=cacopyright

Harry Hillman Chartrand, PhD (Cultural Economist & Publisher) – thorough research on Canadian Copyright Reform Policy. For a quick overview, read the ‘Summary Conclusions’ section from pages 30 to 35:

www.compilerpress.ca/CCR%20PRN/3.%20The%20CMA%20&%20Licensing%20Act%20of%201662%20Final.pdf

Canadian Heritage - details about fair dealing as it stands currently:

www.pch.gc.ca/pc-ch/org/sectr/ac-ca/pda-cpb/publctn/cch-2007/102-eng.cfm

Canadian Intellectual Property Office – the differences between copyright, patent, trademark., etc.:

www.ic.gc.ca/eic/site/cipointernet-internetopic.nsf/eng/wr02393.html#whatis

List of Canadian Copyright Collective Societies:

www.cb-cda.gc.ca/societies-societes/index-e.html