

Government of Canada Introduces Proposals to Modernize the *Copyright Act*

Montréal, Quebec, June 2, 2010 — The Honourable Tony Clement, Minister of Industry, and the Honourable James Moore, Minister of Canadian Heritage and Official Languages, today announced the introduction of legislation to modernize the *Copyright Act*. This legislation is a key pillar in the government's commitment in the 2010 Speech from the Throne to position Canada as a leader in the global digital economy.

"Our government promised to introduce legislation that will modernize Canadian copyright law for the digital age while protecting and creating jobs, promoting innovation and attracting new investment to Canada," said Minister Clement. "This legislation will ensure that Canada's copyright laws are forward-looking and responsive in a fast-paced digital world."

"Today we are introducing a copyright bill that offers a common-sense balance between the interests of consumers and the rights of the creative community," said Minister Moore. "The bill is flexible, reflects the changing behaviours of consumers and the evolution of technology, and responds to what we heard in the consultations."

The popularity of Web 2.0, social media, and new technologies such as the MP3 player and digital books have changed the way Canadians create and make use of copyrighted material. This bill recognizes the many new ways in which teachers, students, artists, software companies, consumers, families, copyright owners and many others use technology. It gives creators and copyright owners the tools to protect their work and grow their business models. It provides clearer rules that will enable all Canadians to fully participate in the digital economy, now and into the future.

This legislation will bring Canada in line with international standards and promote home-grown innovation and creativity. It is a fair, balanced, and common-sense approach, respecting both the rights of creators and the interests of consumers in a modern marketplace. The Government of Canada is working to secure Canada's place in the digital economy and to promote a more prosperous and competitive Canada.

For more information, visit www.balancedcopyright.gc.ca.

Visit <http://www.ic.gc.ca/eic/site/crp-prda.nsf/eng/home>

Questions and Answers

Table of Contents

General

[Why is the *Copyright Act* being amended? How are the proposed changes good for Canadians?](#)

[How is this bill different from Bill C-61, the government's previous attempt to modernize copyright?](#)

[How will this bill foster creativity and innovation?](#)

Consumers

[What is in the bill to address consumer needs?](#)

[Will we be able to record TV shows on PVRs in order to watch them at a later time?](#)

[Will copying CDs on MP3 players for personal use become legal?](#)

[Will the bill allow record labels to sue individuals and groups for large amounts, like in the U.S.?](#)

Copyright Owners

[How does this bill address copyright owners' concerns?](#)

[What is the impact of new exceptions on creators?](#)

Education

[How will educational institutions, libraries, archives and museums benefit from this bill?](#)

[What is fair dealing, and why is it being expanded?](#)

Innovative Business

[What is in this bill for innovative companies?](#)

Intermediaries

[How does this bill affect the status of Internet Service Providers \(ISPs\)?](#)

[Why has the government chosen a "notice and notice" approach rather than the U.S. "notice and takedown" approach for ISPs?](#)

[Why has the government introduced a provision targeting "enablers" of copyright infringement, and how will it affect ISPs and Internet search engines?](#)

Technological Protection Measures (Digital Locks)

[Why does this bill favour strong protections for TPMs?](#)

Piracy

[What does this bill do to stop Internet piracy?](#)

International

[How will Canada compare internationally if this legislation is passed?](#)

[What are the 1996 World Intellectual Property Organization \(WIPO\) Internet treaties?](#)

[What is the relationship between the Anti-Counterfeiting Trade Agreement \(ACTA\) negotiations and copyright reform in Canada?](#)

General

Why is the *Copyright Act* being amended? How are the proposed changes good for Canadians?

We are modernizing Canada's *Copyright Act* to better address the challenges and opportunities presented by the digital age.

We live in a global, digital environment, yet have copyright laws last updated in the late 1990s, before the "dot-com" era, before social media, and before MP3 players allowed us to access thousands of songs at the touch of a button.

These changes will enhance the ability of copyright owners to benefit from their work. They also offer Internet service providers (ISPs), educators, students and businesses the tools they need to use new technologies in innovative ways, allowing Canadian consumers to fully engage in the digital age.

Specifically, the *Copyright Modernization Act*:

- provides legal protection for businesses that choose to use technological protection measures (TPMs) or "digital locks", to protect their intellectual property as part of their business models;
- implements the rights and protections of the World Intellectual Property Organization (WIPO) Internet Treaties, which brings Canada in line with international standards;
- gives copyright owners the tools they need to combat piracy;
- clarifies the roles and responsibilities of ISPs and search engines;
- promotes creativity and new methods of teaching in the classroom by providing greatly expanded exceptions for education;
- encourages innovation in the private sector through exceptions for technical computer processes; and
- gives consumers the ability to, among other things, record their favourite TV shows to watch at a convenient time using the technology of their choice, put music from a CD on their MP3 player, or create a mash-up and post it on a social media website.

How is this bill different from Bill C-61, the government's previous attempt to modernize copyright?

Last summer, we held national consultations on copyright in which Canadians participated in unprecedented numbers.

Canadians will see that we have listened. For example:

- **Canadians told us that time shifting and format shifting exceptions were outdated because they referred to old technologies** — This bill is technology-neutral, permitting new uses of copyrighted material regardless of format.
- **Copyright owners told us that the Act did not give them strong enough tools to pursue those who knowingly enable infringement** — This bill will give copyright owners new tools to take legal action against commercial enablers. It also explicitly limits liability for intermediaries such as ISPs and search engines that do not enable infringement.
- **Businesses told us that the Act stood in the way of ordinary uses of technology, such as reformatting web pages to fit a smart phone screen** — This bill will provide companies with the tools they need to innovate by allowing temporary, technical and incidental reproductions of copyrighted material. This will allow companies to conduct security testing, encryption research, compatibility testing and reverse engineering.
- **Canadian consumers and creators told us that the Act prevented the creation of online mash-ups and other new works using existing works** — This bill allows for these uses by individuals for non-commercial purposes, so long as they do not harm the legitimate interests of the copyright owner.
- **Copyright owners told us that effective TPM protections were needed to encourage investment in new digital and online content** — This bill offers those businesses that rely on the use of digital locks to protect expensive investments the support of the law. The bill also gives Canadians with wireless devices the ability to unlock their devices in order to switch service providers. However, this does not affect any contractual relationship with the current service.
- **Canadians told us fair dealing should be expanded** — This bill builds on the existing fair dealing provision by expanding it to encompass education, parody and satire.

How will this bill foster creativity and innovation?

For creative industries, this bill provides a clear, predictable legal framework that allows them to combat online piracy and roll out new online business models.

For high-tech and software companies, this bill provides the certainty they need to develop new products and services that involve legitimate uses of copyrighted material.

For educators, students and researchers, this bill opens up greater access to copyrighted material by recognizing education as a legitimate purpose for fair dealing. New measures will allow more efficient ways to teach, conduct research, and deliver course material and lessons using the latest technologies. It will also allow teachers to distribute publicly available material from the Internet.

For entertainers and commentators, this bill includes parody and satire as purposes to which fair dealing applies.

For users, the bill will allow the creation of user-generated content using copyright materials, such as mash-up videos, for posting on a blog or video-sharing site.

Consumers

What is in the bill to address consumer needs?

This bill legitimizes activities that Canadians do every day. For example, it recognizes that Canadians who record TV programs for later viewing, copy their CDs to their MP3 players, or backup their data should not be liable for copyright infringement if they are doing so for their private use and have not broken a digital lock. This bill protects the uploading of user-generated content that includes copyrighted work.

This bill also ensures that digital locks on wireless devices will not prevent Canadians from switching their wireless service providers so long as existing contracts are respected. This will not affect any obligations under an existing contract.

It also provides greater opportunities for people with perceptual disabilities to develop or obtain works in an accessible format.

Will we be able to record TV shows on PVRs in order to watch them at a later time?

This bill will allow Canadians to "time shift," or record television, radio or Internet broadcasts, provided that it is done for private, non-commercial purposes. This bill does not restrict the types of devices and formats that can be used, making this exception technologically neutral.

Will copying CDs on MP3 players for personal use become legal?

The bill will allow "format shifting." Consumers will be able to copy legally acquired music onto devices that they own, provided that it is for private, non-commercial purposes and does not break a digital lock. This includes copying music from CDs onto MP3 players. To make the "time-shifting" exception technologically neutral, there is no restriction on the type of device and format that can be used.

Will the bill allow record labels to sue individuals and groups for large amounts, like in the U.S.?

This bill ensures that Canadians will not face disproportionate penalties for minor infringements of copyright by distinguishing between commercial and non-commercial infringement.

Under current law, for commercial and non-commercial infringements, copyright owners can sue for statutory damages ranging from \$500 to \$20,000 for each work that is infringed. For example, a case involving 50 works would translate into a minimum payment of \$25,000, and a maximum of \$1,000,000. Statutory damages are pre-established damages in civil litigation.

This bill will dramatically reduce an individual's exposure in cases of non-commercial infringement. In such cases, statutory damages will be reduced to a one-time payment of between \$100 and \$5000 **for all infringements that took place prior to the lawsuit**. For commercial infringement, there will be no change from the current law.

Copyright Owners

How does this bill address copyright owners' concerns?

Creators will have new rights and protections that respond to the realities of the digital environment. For example:

Copyright owners will have stronger legal tools to go after online pirate sites that facilitate copyright infringement. This will make it clear that those who knowingly facilitate infringement are liable in Canada.

Creators will have new *making-available rights* to allow them to control how their works are made available online. For example, a creator would have the right to prevent someone else from posting his or her work online. Creators will also be given *distribution rights*, which will enable a copyright holder to prevent a retailer from "jumping the gun" in advance of the official release date of a work.

Performers will be given *moral rights*, which will ensure that their performance is not altered in a way that harms the artist's reputation.

Photographers will be given the same rights as other creators. They will be the first owner of copyright in all their photographs and will receive the same benefits as other creators. However, when photographs are commissioned, those who commission them will be able to use them for private, non-commercial use, unless they enter into an agreement otherwise.

If creators decide to use digital locks to better protect their works, they will have the support of the law to do so.

Creators will also benefit from legal protection for rights management information, which ensures that the creator's identity and key information is connected to the work.

What is the impact of new exceptions on creators?

The exceptions for consumers (such as time shifting, format shifting, making backup copies) and educational exceptions (such as distance learning, reproduction for instruction, etc.), recognize the everyday uses of common technologies. By allowing these activities in a technologically neutral way, this bill recognizes that they have become commonplace the world over and are a regular part of Canadians' lives.

At the same time, copyright owners and creators need to be fairly compensated for their work. The bill ensures that these activities must only be for non-commercial use. Consumers will not be able to break a digital lock to exercise these exceptions.

Education

How will educational institutions, libraries, archives and museums benefit from this bill?

This bill includes a number of measures that will allow educators and students to take advantage of digital technologies.

Most significantly:

It expands fair dealing to recognize education in a structured context as a legitimate purpose.

It provides for a specific exception permitting educators to use publicly available material from the Internet.

Teachers will be able to connect with students in remote communities across the country through technology-enhanced learning. The bill will allow learning institutions to offer the same opportunities to a student in Nunavut as to one in Edmonton.

Libraries will no longer be required to deliver interlibrary loan material in paper form; electronic desktop delivery of materials such as scholarly or scientific journal articles will be permitted.

By permitting expanded access to copyrighted materials, this bill will help enrich the educational experience for Canadian students and allow teachers to be more creative in their lesson planning. At the same time, there are safeguards to protect the interests of copyright owners.

What is fair dealing, and why is it being expanded?

Fair dealing is a long-standing feature of Canadian copyright law that permits certain uses of copyrighted material in ways that do not unduly threaten the interests of copyright owners, but which could have significant social benefits.

Currently, fair dealing in Canada is limited to five purposes: research, private study, news reporting, criticism and review. To recognize the important societal benefits of education, parody and satire, the proposed bill would add these three elements as new purposes to which fair dealing applies.

Innovative Businesses

What is in this bill for innovative companies?

This bill gives innovative companies the certainty they need to develop new products and services that involve legitimate uses of copyright material.

For example, with respect to software companies, the bill explicitly allows activities like encryption research, security testing, compatibility testing and reverse engineering. This will support the growth of a competitive third-party software market in Canada.

In addition, the bill will make it clear that automatic, technical and incidental reproductions are not a violation of copyright. For example, smart phone providers will be assured that certain activities that support the usefulness of their products for consumers are allowed, such as reformatting a webpage so it can be better read on a smart phone.

Similarly, innovative companies such as video game developers will have the legal tools to protect the investments they have made, reinvest in further innovation and create jobs for Canadians.

Intermediaries

How does this bill affect the status of Internet Service Providers (ISPs)?

This bill provides legal clarity for ISPs and will encourage the continued growth of Internet services in Canada. The bill will clarify that ISPs and search engines are exempt from liability when they act strictly as intermediaries in communication, caching and hosting activities.

In Canada, courts have the ability to order the blocking of access to infringing material. Under the new bill, ISPs will be required to discourage infringing uses of their facilities by participating in a "notice and notice" regime, which will require them to forward any notice they receive from a copyright owner to a subscriber who is alleged to be engaging in infringing activities.

Additionally, ISPs will be required to retain a record of this notification, including the identity of the alleged infringer, for use if court proceedings were to follow. ISPs that do not retain such records or fail to forward notices would be liable for civil damages.

Why has the government chosen a "notice and notice" approach rather than the U.S. "notice and takedown" approach for ISPs?

The proposed "notice and notice" regime is the right approach for Canada. It is current industry practice and better addresses peer-to-peer file sharing. It requires ISPs to forward any notice of infringement they receive from copyright owners to the subscriber in question.

A "notice and takedown" regime, however, typically requires an ISP to block access to material upon receiving a notice from a rights holder. No court order is required.

It typically applies only to material posted on websites. It is not well suited to files shared on peer-to-peer networks, the most prevalent source of infringing material, since the files are actually located on the computers of the persons engaged in sharing.

Why has the government introduced a provision targeting "enablers" of copyright infringement, and how will it affect ISPs and Internet search engines?

The bill introduces a new civil remedy for copyright owners against those who knowingly enable infringement of copyright. This new remedy supplements existing criminal powers to deal with pirate sites with new stronger tools for copyright owners that make liability for enabling of infringement clear.

Search engines and ISPs will be unaffected by this provision, to the extent that they act as true, neutral intermediaries.

Technological Protection Measures (Digital Locks)

Why does this bill favour strong protections for TPMs?

TPMs are an important tool for creators and copyright owners to protect their work.

There are some business models that rely on digital locks to protect their investments. These industries need to have the protection of the law. However, in other markets, in light of consumer demands, some businesses have chosen not to use TPMs. Creators may decide whether to use a TPM, and consumers can then decide whether to buy the product.

Software producers, video games, and movie distributors, for example, continue to use TPMs as part of their business model because they wish to protect the significant investment each makes in developing the products. Canadian jobs depend on their ability to make a return on this investment.

Legal protections for TPMs are not unlimited. Software companies may circumvent TPMs for the purpose of undertaking encryption research and consumers, within the bounds of their contract, may circumvent TPMs to switch their wireless service provider.

The bill also provides a regulation-making power to allow the circumvention of TPMs in certain cases, for example, where the presence of a TPM would unduly restrict competition in an after-market sector.

The success of TPMs depends on market forces. Creators may decide whether or not to use a TPM, and consumers can then decide whether or not to buy the product.

Piracy

What does this bill do to stop Internet piracy?

This bill contains provisions that will improve the ability of copyright owners to control the uses of their works online.

For example, this bill contains legal protection for TPMs, or digital locks, and also introduces new provisions to allow copyright owners to pursue those who enable copyright infringement, such as illegal peer-to-peer file sharing sites.

International

How will Canada compare internationally if this legislation is passed?

Canada will be in line with its G8 partners and most of the major economies of the Organisation for Economic Co-operation and Development.

This bill presents a Canadian approach to copyright. Overall, the measures in this bill will help Canadian creators and innovators to compete and contribute to attracting foreign investment to Canada.

What are the 1996 World Intellectual Property Organization (WIPO) Internet treaties?

Negotiated in 1996, and consisting of the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty, the WIPO Internet Treaties established new rights and protections for authors, sound recording makers and performers of audio works, and built upon the existing international frameworks found in the Berne and Rome conventions.

Among our major trading partners, China, the European Union, Japan, Mexico, and the United States have ratified or adhere to the treaties. Implementing these rights and protections will position Canada for a future decision on whether to ratify the treaties.

What is the relationship between the *Anti-Counterfeiting Trade Agreement (ACTA)* negotiations and copyright reform in Canada?

This copyright reform bill is about modernizing Canada's copyright regime to respond to challenges presented by the Internet and new digital technologies.

The ACTA aims to enhance international cooperation, develop enforcement practices, and improve legal frameworks for protecting intellectual property rights to address the growing global illicit trade in counterfeit and pirated goods on a commercial scale.

Canada's position in the ACTA negotiations will be guided by our domestic interests.