

# Copyright-related Policy summary for CLUE: Canada's Association for Open Source

**The Vision of CLUE** is to nurture a Canadian Information Technology environment which promotes collaborative innovation as well as open standards and the rights of consumers.

**The Mission of CLUE** is to promote the use and development of Free/Libre and Open Source Software (FLOSS), by providing a public voice to the community for its Canadian users, developers and supporters. CLUE will enhance this community's ability to share resources, define standards, and promote its values within Canadian society.

**Overall policy focus** is to protect the the right of the owners of digital technology to make their own software choices, and further to seek to remove any legal or other barriers that would favour non-FLOSS software over FLOSS.

**Petitions:** CLUE endorses both the "Petition for Users Rights (in Copyright)" and the "Petition to protect Information Technology property rights" as organized by the Digital Copyright Canada forum.  
<http://digital-copyright.ca>

## Primary Copyright related concerns:

- We disagree with the legalization or legal projection of techniques used by copyright holders to encode their content such that it can only be accessed with "authorized" technology brands.
- We disagree with the legalization or legal protection of techniques used by device manufacturers to lock down devices such that their owners are considered attackers, where owners are not able to control the technology or make their own software choices.
- We disagree with government promotion or mandating of royalty-based business models over fixed-cost based models used in peer production and peer distribution such as FLOSS.

## Policy proposals:

- Canada should take the lead from our trading partners and adopt a living "fair use" model. This should include carving out from copyright private activities such as time, space and device shifting of legally acquired content. Canadians should not need permission or payment to carry out these activities which most Canadians already believe is legal.
- Canada should put "clarifying and simplifying the act" as the top priority for the revision process. Many Canadians carry out activities which they believe are legal, but which the act doesn't allow, as well as not carrying out legal activities which they believe may be illegal.
- Canada should clarify and simplify the term of copyright, resisting any proposals to extend and/or obfuscate the expiry date of copyright. For example, the term for photography should remain a fixed 50 years from when the picture was taken, and not 50 years from the death of the (most often unknown) photographer.



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- Extended/statutory (compulsory) licenses should only be used in extreme cases of market failure, and never in marketplaces where competition is growing. Royalty-free business models are rapidly growing worldwide in software as well as scientific and educational material.
- The 1996 WIPO treaties were primarily aimed at protecting incumbent business models from disruption from competitors (1994/1995 National Information Infrastructure task force in the USA). While it is ideal that the 1996 treaties not be implemented or ratified at all since we are under no obligation to do so (Knopf, etc), there are ways to implement that are less harmful.
  - Do not extend copyright to include a new "right of interoperability" where authors can encode their content to only interoperate with chosen brands of access technology.
  - Ensure that legal protection for technical measures only extend to infringing acts, as proposed in C-60, and not simply "unauthorized" acts.
  - Clarify that software is neither a "device" (as interpreted in the USA with relation to their DMCA) nor a "service" (as could be misinterpreted in the context of C-60 ), and that there would be no prohibition over the authoring and distribution of software that had substantial non-infringing uses.
- Intermediaries should not be liable when they are simply acting on behalf of their customers, or providing solutions under the control of customers. The "notice and notice" regime for ISPs proposed in Bill C-60 should be retained. Authors of software with non-infringing uses should similarly not be held liable for any abuses of that software to infringe copyright.

### Language issues:

There are many misconceptions about terms such as Digital Rights Management (DRM) and Technical Protection Measures (TPMs), which are used to mean different things by different people. Many of the beliefs about DRM and TPMs are based in science fiction, and not science. I try to avoid using these terms to avoid confusion.

Technical people talk about technologies, such as cryptography, that can be used to protect the authenticity, integrity, and privacy of information, as well as ensure that only authorized access to computers and data are possible. Cryptographic theory documents why cryptography, the strongest of the technical measures, can not be used effectively to stop copyright infringement. There is no way to use this technology in the situation where the intended recipient of an encrypted message and the attacker are the same person.

Two important policy questions need about the use of these technologies: Who is deciding what is "authorized", and is the owner "authorized" to access and control their own hardware? We should not be enacting laws that allege to protect copyright at the expense of tangible property rights.

In any policy analysis we must separate the 4 possible owners involved in digital communications technology: content, media, hardware, software. This is required to ensure that the policy does not reduce the rights of one owner in order to allegedly protect the rights of another.

See: **Protecting property rights in a digital world**  
<http://www.flora.ca/documents/digital-ownership.html>



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