

Copyright Summary: for meeting with David McGuinty, November 15, 2005 @ 11:30 (Center Block, Lobby)

## What Changed to spark new round of copyright revision?

New communications technology reduced the marginal cost (cost per additional "unit") for the production, reproduction and distribution. With advanced peer distribution (P2P) techniques the reproduction/distribution costs approach zero. With peer production the cost of production reduced.

<i>Seen as Opportunity</i>	<i>Seen as Threat</i>
<ul style="list-style-type: none"> <li>Allows the exploration of one-time payment options (no per-unit cost), alternative motivations for creativity</li> <li>explosion of Free/Libre and Open Source Software, Open Access journal/educational publishing, Creative Commons, self-publishing by individual Canadians</li> <li>Breaks down harmful media concentration</li> </ul>	<ul style="list-style-type: none"> <li>Threatens established distribution industries and per-copy (royalty, monopoly-rent) business models.</li> <li>Increased competition from smaller, independent creators and distributors.</li> <li>Disrupts established media concentration, control over current methods of distribution and funding of creativity (US/European labels of CRIA have 95% market share with less than 2% Cdn artists signed)</li> </ul>

Incumbent content, media and "software manufacturing" industries understood competitive threat, and found ally in USPTO in 1995 with their National Information Infrastructure working group on "Intellectual Property" (By Bruce A. Lehman). NII Copyright Protection Act of 1995 (S. 1284 and H.R. 2441) did not pass, so **USPTO/USTR laundered policy through WIPO in 1996** (WIPO Copyright Treaty, WIPO Performances and Phonograms Treaty). Bill C-60 seeks to implement this laundered policy in Canada.

<i>Policy that would benefit Canadians</i>	<i>Policy that benefits incumbent (Primarily US) content, media and "software manufacturing" lobby</i>
Simplify. Since more people can participate in creating and disseminating culture, the regulations must be simplified. <b>We need "lawyer-free" zones of creativity</b>	C-60 makes copyright more complex than the already excessively complex Copyright Act. The bill creates new rights including parallel rights such that a single activity may require negotiating with many different copyright holders simultaneously
Creativity always builds on the past. Need to clarify and shorten term of copyright to access past. Need expansion of public domain, and limited fair dealings (fully attributed royalty-free non-commercial reproduction and derivatives) for "out-of-print" works that are no longer offered commercially	C-60 increases and obscures the "cultural recycling date" (expiry date) of copyright. This includes music and photographs, with the obscured photographic term being the most offensive. Unlike literary works, photographs lack identification of the photographer and thus "life+" terms are unworkable
Make it easier for current copyright holders to authorize uses, including indications that do not require complex lawyer-friendly license agreements	Lawyers for the incumbents refuse to recognize "implied licenses" (Access Copyright vs. Internet), insisting on complex lawyer-friendly license agreements
Protect the rights of the owners of technology to be in full personal control of technology (privacy, security)	C-60 offers legal protection for techniques which grant incumbent media/content companies "remote control" of technology. Circumvents privacy and property rights

Heritage Minister Frulla (and Ms. Copps before her) have the right idea with the UNESCO treaty. UNESCO cultural diversity treaty recognizes that cultural policy is about far more than protecting existing (and proposed future) business models of incumbent industries. 1996 WIPO treaties written entirely to protect incumbents, and is in direct conflict with both UNESCO treaty and "Development Agenda" to reform WIPO. Minister confuses special interests of incumbent media/content industries with the very different (conflicting) interests of Canadian creators and cultural sovereignty.

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## "Education amendment"

Received considerable media attention. Joy Smith, Conservative MP for Kildonan–St. Paul has spoken out on this issue in the house, and launched a petition calling for an "educational amendment"

Two major proposals for an educational amendment have been discussed.

<i>Expansion of "fair dealings" to include educational "fair use"</i>	<i>Institutional exception</i>
<ul style="list-style-type: none"><li>• Canada should move towards a more robust "fair use" regime from the current limited "fair dealings" regime</li><li>• Expand on Supreme Court of Canada case "CCH Canadian Ltd. v. Law Society of Upper" which suggested that fair dealings were "user rights" and should be interpreted liberally.</li><li>• Educators/librarians need clear right to "step into shoes" of students or patrons</li></ul>	<ul style="list-style-type: none"><li>• Does not recognize that education can happen outside of institutions. Life-long learning, home-schooling, day-school students and staff while at home</li><li>• Can mis-educate students and staff on copyright issues, leading to bad habits which increase likelihood of infringement when outside of institution.</li><li>• NIMBY - education sector has greater ability to defend itself from frivolous lawsuits than private citizens</li></ul>

Without an amendment it is legitimately feared that the option proposed by Access Copyright will be followed. Access Copyright does not represent Internet authors, but old-economy book publishers. They have been lobbying for an "extended" or "statutory" license to be able to collect royalties on behalf on the majority who are non-members, destroying the possibility of alternative business models emerging. Access Copyright is the opposite of Open Access, Creative Commons, and open collaborative models for the production of public goods.

## "technical measures"

Described as "Paracopyright", which are laws that are not directly related to the traditional substance of copyright but that exist alongside copyright and extend copyright.

- Copyright law regulates creation/distribution of copies, communication to the public, performance, etc. Copyright does not regulate "access", but the activities of people who already have access. Technical measures can limit access, and can indicate identity and authenticity.
- Limiting access to only those who agree to conform to specific licensing/contractual terms is **contract law, not copyright**. Contract law protects both valid contracts, as well as protects consumers from bad and/or unenforceable contracts. Contract law a provincial responsibility (Is C-60 constitutional?)
- Sony BMG recently used a "RootKit" auto-installed from a "music" CD to hide their Digital Restrictions Management (DRM) software. Anti-virus companies have identified this harmful software as "SpyWare"
- Stewart Baker, recently appointed as the Department of Homeland Security's assistant secretary for policy, said:

**"It's very important to remember that it's your intellectual property -- it's not your computer. And in the pursuit of protection of intellectual property, it's important not to defeat or undermine the security measures that people need to adopt in these days."**

For more details see: **In the Public Interest: The Future of Canadian Copyright Law** (ISBN: 1-55221-113-4)

Chapter 4: Constitutional Jurisdiction over Paracopyright Laws - Jeremy F. DeBeer

Chapter 6: If Left to Their Own Devices...: How DRM and Anti-Circumvention Laws Can Be Used to Hack Privacy - Ian Kerr

Chapter 7: Anti-Circumvention Legislation and Competition Policy: Defining A Canadian Way? - Michael Geist