

CORPORATE UPDATE

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Canada's New Copyright Bill and Consumer Rights – What's the Fuss?

By Ralph H. Kroman

CDs, DVDs, HDTVs, digital media players, smartphones, ringtones, and file-sharing technologies expand a consumer's ability to obtain, store and enjoy music, movies and television shows. There is no question that Canadian copyright law needs to be updated to reflect modern technologies, but debates have continued for years regarding the question of appropriate balance between consumers and copyright owners.

The Canadian government recently tabled new copyright legislation in the form of Bill C-32. Previous governments have introduced bills to modernize Canadian copyright legislation but, for various reasons, these bills have not passed. Bill C-32 expands consumers' rights by codifying many "day-to-day" activities (many of which are currently technically illegal) such as:

- *Format Shifting*: Under Bill C-32 "format shifting" is permitted so that a consumer may copy a movie or music or other copyrighted material to another format so that the consumer can enjoy the material on the other format; for example, copying a CD onto a computer hard drive, iPod or mp3 player.

- *Time Shifting*: Bill C-32 authorizes, "time shifting" (copying a television programme to a recorder such as a personal video recorder (PVR)). An important proviso is that the individual may keep the recording no longer than is reasonably necessary in order to listen to or view the programme at a more convenient time.
- *Backup Copying*: Backup copies of copyrighted works are expressly permitted by Bill C-32, in case the source copy is lost, damaged or otherwise rendered unusable.

Many have lauded these provisions as good "pro-consumer" steps; however, all of these provisions are subject to an important qualification: if the copyrighted source work contains a "digital lock", a consumer cannot engage in format shifting, time shifting or the making of backup copies. In other words, a consumer is not permitted to circumvent technological prevention measures such as digital locks to engage in copying activities which would otherwise be legal.

The implication of the digital lock provision is that the owner of the copyright will be able to stop a consumer from engaging

in many activities which would otherwise be expressly permitted by the legislation. The “digital lock provisions” have sparked the greatest amount of controversy.

Copyright is all about striking a balance. On one hand, content creators require copyright protection in order to create incentives for the creation of new works such as music and movies. Content creators like digital locks because they can control the extent to which

copies are made. They argue that, by having these controls, more attractive pricing can be offered to consumers. On the other hand, many consumers feel that, if they purchase a copyrighted work such as a DVD and Canadian copyright law permits backup copies and format shifting, it should be lawful to circumvent a digital lock to do so.

It is a matter of opinion regarding whether the consumer or the copyright holder “wins” under

the current proposals (or indeed whether it is “a draw”) and the discussion about the digital lock provisions will likely be escalated in the political arena over the next few months. It remains to be seen whether most consumers will feel strongly one way or the other.

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