

Backgrounder

The *Copyright Act* is an important marketplace framework law and cultural policy instrument that supports creativity and innovation. It strives to maintain an appropriate balance among copyright owners, intermediaries and users. Since the last major amendments to the *Copyright Act* in 1997, Canadians' use of the Internet has increased dramatically. The Government of Canada is updating the *Copyright Act* to ensure Canada has a copyright framework that enables copyright stakeholders to address the challenges and opportunities of the Internet.

As part of the 1997 amendments to the *Copyright Act*, section 92 called for a comprehensive review of the Act within five years. Accordingly, in October 2002, a report entitled *Supporting Culture and Innovation: Report on the Provisions and Operation of the Copyright Act* (the Section 92 report) was tabled in Parliament. Extensive public consultations were then undertaken by the Standing Committee on Canadian Heritage. On May 12, 2004, the Committee issued its *Interim Report on Copyright Reform* and re-adopted it on November 4, 2004. On March 24, 2005, the Ministers of Industry and Canadian Heritage tabled the Government's response to the Standing Committee on Canadian Heritage, including the Government Statement on Proposals for Copyright Reform. The Statement signalled the Government's intention to introduce this Bill later on in the spring. Highlights of the Bill include:

WORLD INTELLECTUAL PROPERTY ORGANIZATION (WIPO) TREATIES ISSUES

Bill C- X amends the *Copyright Act* to implement the copyright protections required by two World Intellectual Property Organization (WIPO) treaties: the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT). Amendments in this regard are as follows:

- the existing exclusive communication right of authors are clarified to include control over the making available of their material on the Internet;
- sound recording makers and performers are provided the right to control the making available of their sound recordings and performances on the Internet;
- the circumvention for infringing purposes of technological measures (TMs) applied to copyright material constitutes an infringement of copyright;
- the alteration or removal of rights management information (RMI) embedded in copyright material, when done to further or conceal infringement, constitutes an infringement of copyright;
- rights holders are provided with the ability to control the first distribution of their material in tangible form;
- the term of protection in photographs will always be the life of the photographer plus 50 years;
- a full reproduction right for performers in sound recordings is introduced;
- the term of protection provided to sound recording makers in respect of their sound recordings is modified so as to extend to 50 years from the publication of the sound recording (the term of protection provided to performers in respect of their recorded performances is modified in consequence); and
- performers are provided with moral rights in their fixed and live performances.

INTERNET SERVICE PROVIDER (ISP) LIABILITY

- ISPs are exempt from copyright liability in relation to their activities when they are acting merely as intermediaries.
- A “notice and notice” regime in relation to the hosting and file-sharing activities of an ISP’s subscribers is provided. When an ISP receives notice from a rights holder that one of its subscribers is allegedly hosting or sharing infringing material, the ISP is required to forward the notice to the subscriber, and to keep a record of relevant information for a specified time.

EDUCATIONAL AND RESEARCH ACCESS ISSUES

- The current exception that permits the performance or display of copyright material for educational purposes within the classroom is modified to enable students in remote locations to view a lecture using network technology, either live or at a more convenient time.
- Material that may be photocopied and provided to students pursuant to an educational institution’s blanket licence with a collective society is permitted to be delivered to the students electronically without additional copyright liability. Provisions in this regard apply until such time as the collective societies’ blanket licenses authorize such electronic delivery.
- In the above instances, educational institutions are required to adopt safeguards to prevent misuse of the copyright material.
- The electronic interlibrary desktop delivery of certain copyright material, notably academic articles, directly to library patrons is permitted, provided effective safeguards are in place to prevent misuse of the material.

PHOTOGRAPHY ISSUES

- Treatment of photographers is harmonized with other creators with respect to authorship and copyright ownership. At the same time, the interests of consumers in the use of photographs commissioned for domestic purposes is protected.

EDUCATIONAL USE OF INTERNET MATERIAL

- The Government will initiate a public consultation process on the issue of the educational use of publicly available Internet material as soon as possible.

PRIVATE COPYING AND OTHER MEDIUM-TERM ISSUES

- The Government will continue to work on other copyright matters as part of its ongoing process of updating the *Copyright Act*, and work on other medium-term issues, including the matter of reproductions made by broadcasters, will also intensify.