

# Cover page

This cover page was created by Russell McOrmond. The following is a 4 page document that has been distributed to Green Party of Canada candidates during the 2008 general election. It is not intended to convey official party policy or a component of the platform, but inform candidates on an election issue.

I believe it is telling that the Green Party felt that this issue was important enough to coordinate the authoring of a candidate policy briefing. This briefing was coordinated by Jared Giesbrecht, Justice critic for the Green Party. The primary author is Andrew Joyce, a PhD student at Queen's University.

I first received this document from Cathy MacLellan, the Kitchener-Waterloo Federal Green Party Candidate, in response to some questions that I had asked her before a talk I gave at the University of Waterloo. She attended that talk and read specific excerpts from this document. Details at <http://www.flora.ca/waterloo2008/>

I am publishing this document with permission from Jared Giesbrecht.

Original filename: Industry+-+Copyright+Reform.doc

Russell McOrmond

Contact information: <http://www.flora.ca>

Host for <http://digital-copyright.ca>

**Subject: Copyright Reform**

**Issue:**

The state of Canadian copyright law has been an issue of growing concern. Increasing public awareness is largely predicated upon an evolving understanding of intellectual property. New technologies, particularly computers and the internet, have redefined our relationship with creative works. Empowered by these technologies, private individuals are able to engage and participate in culture through entirely new means. There is great potential for copyright reform to become an important election issue as both creators and consumers of intellectual works struggle to understand, and in some cases redefine, their relationship with one another.

**GPC Position:**

It is imperative that reforms of the copyright act respect the balance of granting privilege to the creators of intellectual works with the needs of the public to interact with, critique and enjoy these works. The Green Party recognizes that these interests are not always antagonistic: creators of intellectual property can, and have, benefited from controlled and well articulated levels of fluency with the public domain. Copyright legislation needs to be progressive in embracing technological evolution and permitting consumers to continue to exercise their fair dealing rights. Implementing the WCT is not an effective way to protect and stimulate our cultural institutions.

**GPC Solutions:**

Copyright legislation must evolve with the culture it is protecting, and the rapid evolution in technology has made it pertinent to revisit today. Tantamount to reforming copyright legislation is protecting the interests of Canadian producers and consumers of intellectual property. Responsible and reciprocal treatment of our international partners will follow from clearly defining our domestic interests.

In order to achieve these objectives the Green Party of Canada will:

- Oppose ratification of the WCT, recognizing both their imprecise definition of obligations and their incongruence with fair dealing;
- Establish a copyright registry that will facilitate tracking and protecting of copyrights where registration is optional for the original author, but mandatory upon the transfer of ownership or death of the author;
- Remove the Levy on Blank Audio Recording Media and replace it with private copying exemptions;
- Introduce a formal notice-and-notice mechanism for dealing with copyright infringement online, thereby affirming common carrier status for Internet Service Providers (ISPs);
- Renounce the Crown Copyright applied to all government produced documents, thereby immediately releasing them into the public domain;
- Hold consultations with music and movie industry artists, producers and distributors along with citizen's assemblies to address the issues of online peer-to-peer networks.

**Other Party Positions:**

*Liberal Party*

The Liberal Party tabled Bill C-60 in 2005, but this bill died with the dissolution of parliament. The bill would have introduced the WIPO obligations, including the legal protection of DRM technologies. In addition, the bill addressed issues of liability for content hosted on the internet by service providers, changes to copyright assignment for commissioned photos, and established “moral rights” for performers akin to those offered to authors.

*Conservative Party*

To date the Conservative party has articulated no clear stance on the issue of reforming the Copyright Act. It is widely expected that any legislation introduced by Stephen Harper’s government will bring the WIPO treaty into effect.

*New Democratic Party*

The NDP are asking that the government hold a vote on the WIPO treaty in the House of Commons before proceeding with any copyright reform. Following this, they suggest consultation with relevant stake-holders in intellectual property to find legislation which addresses the reality of current technological innovation.

*Bloc Québécois*

The Bloc has proposed a comprehensive review of the Copyright Act. They would have Canada introduce legislation in support of current international obligations, namely the WCT.

**Background:**

Copyright legislation is designed to form incentive for companies and individuals to create intellectual works. By granting exclusive rights to the reproduction and distribution of an intellectual work the creator is guaranteed a monopoly on their product. It is the expression of ideas which is protected by copyright law, not the ideas themselves. In order to allow cultural works to be effectively used by society a number of exemptions are provided to copyright which permit duplications of the work under certain circumstances. “Fair dealing” is one such exclusion which allows for copies to be made in the pursuit of private research, criticism and review, and for news reporting. In addition, exclusions are articulated for educational institutions, libraries, museums and archives which allow them to perform their responsibilities in an effective manner.

The basis of Canada’s current Copyright Act was established in 1985 and puts its legislation into alignment with the Berne Convention, the Universal Copyright Convention Geneva Act (UCC Geneva) and the World Trade Organization’s Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). Canada is presently a signatory to the United Nation’s World Intellectual Property Organization (WIPO) copyright treaties: the WIPO Copyright Treaties (WCT). The issue of bringing Canada into alignment with WCT will likely form the centre of many copyright reform debates.

The objective of the WCT is primarily to address the evolution of intellectual property into the realm of virtual property. Distribution of intellectual property over the internet — particularly music, books and movies — is quickly becoming accessible to home consumers with broadband internet access. Of concern to intellectual property owners is the ability to make exact duplicates of their work and distribute these copies at little to no cost.

One of the most controversial aspects of the WCT is to provide legal remedies for the circumvention of technological measures of protection. These technologies are colloquially referred to as Digital Rights Management (DRM), and have typically manifested as a method of requiring a consumer to secure permission from the author prior to use of the work. This technique of protecting the work can make the exclusions and rights provided to consumers moot by not allowing them sufficient access to exercise these rights. This creates problems in a number of situations, such as personal copying for technology conversion (ex. copying from CD to MP3), using excerpts of the material for criticism and review, transcription of the material for perceptually impaired individuals, and archiving of the works. Further, there have been concerns raised by the Privacy Commissioner of Canada that DRM could permit systemic abuses against the Personal Information Protection and Electronic Documents Act (PIPEDA).

A mechanism currently employed in the Canadian Copyright Act as a conceit to the ever difficult act of balancing consumer and creator interests is the Levy on Blank Audio Recording Media. The levy collects proceeds from the sale of blank audio medium, regardless of the intended use, and allocates it to the music industry in a manner proportional to an artist's radio playtime and disc sales. This levy was introduced in 1997 following a rather protracted lobbying effort from the music industry. By collecting a small levy on all blank medium, Canadian consumers have been able to utilize music content in a variety of manners which qualify as "personal use," including direct copying of the content. The music industry has shown some level of reluctance to sue those sharing music in Canada through peer-to-peer (P2P) networks, and the potential of undermining this levy is believed to be the rationale for this. The levy has been profitable, benefiting both labels through remuneration and consumers through greater freedoms. The levy was partially weakened in 2005 when the Supreme Court decided not to hear an appeal which sought to have the levy applied to hard-drive based music players, such as the Apple iPod series of products. This currently leaves some ambiguity as to whether consumers are protected by the copying levy when transferring music from CDs onto their MP3 players.

In pursuing copyright enforcement on the internet, a notice-and-notice scheme has become commonplace within Canada. This means that a notice of copyright infringement is sent to the Internet Service Provider (ISP), they subsequently forward this notice to their customer. The ISP does not take action to remove the content or determine the legitimacy of the claim, rather they act as the intermediary to prevent inappropriate disclosure of identities. The legal status of ISPs in this interaction has not been tested, but this behaviour is consistent with their role as a common carrier. Common carrier status for ISPs is in agreement with other Green Party of Canada policies, notably net neutrality. Asking ISPs to filter and selectively deliver content imposes additional technological burdens and pits them in a perpetual battle issues such as censorship and categorizing encrypted transmissions. Moving the burden of copyright enforcement onto these information carriers has been proposed in other countries, such as the United Kingdom and Australia, and has been mandated in others, such as Belgium, but these initiatives have met with outcry from both ISPs and consumers for their overly broad expectations and impacts.

All documents currently produced by the Canadian government or under its direction are subject to Crown Copyright. This requires that permission be granted to reproduce any document

created by the government. Claims of jurisdiction for Crown Copyright are far reaching and loosely defined. In some instances, such as laws administered by the Department of Justice, free license has been given for reproduction. This is not always the case; in a most egregious example, Crown Copyright was used to claim ownership over a prisoner's original artwork since he was considered to be in the employ of Her Majesty. Further, Crown Copyright has the potential to be used to censor politically unfavourable material, working against the concept of a transparent government.

For private authors, copyright is automatically granted to new works. One does not need to apply to receive the protections of copyright. This has been effective to ensure that an author's interests are guarded, but means that works have become "orphaned" when the owner of the copyright cannot be located and the work is no longer being published. This is a growing concern with copyright terms now extending up to fifty-years beyond the death of the author. Instead of automatically granting such expansive terms, it has been suggested that a registry be established to track works. Being in the registry would not be a requirement for initial copyright protection, but would become necessary after a certain time-frame; for instance, the death of the author or the transfer of copyright to a new owner would be a natural point for this transition. If a work is still profitable the current holder may register the work for protection, otherwise it would default to the public domain. This would permit the holders of copyright to be easily located as licenses change hands, but would not undermine any of the privileges that are currently enjoyed.

**Sources:**

Michael Geist's Blog - <http://www.michaelgeist.ca>

Russel McOrmond's Blog. - <http://www.digital-copyright.ca>

Copyright Act ( R.S., 1985, c. C-42 ). URL: <http://laws.justice.gc.ca/en/C-42/index.html>

Privacy Commissioner of Canada. "Letter with respect to possible amendments to the Copyright Act." January 18, 2008. Accessed: February 26, 2008.

[http://www.privcom.gc.ca/parl/2008/let\\_080118\\_e.asp](http://www.privcom.gc.ca/parl/2008/let_080118_e.asp)

Vaver, David. Copyright and the state in Canada and the United States. June 6, 1995. Accessed: February 26, 2008. URL: <http://www.lexum.umontreal.ca/conf/dac/en/vaver/vaver.html>

Lessig, Lawrence. Fair Use and Licensing. August 23, 2004. Accessed: February 26, 2008. URL: [http://lessig.org/blog/2004/08/fair\\_use\\_and\\_licensing.html](http://lessig.org/blog/2004/08/fair_use_and_licensing.html)

CBC.ca. E-mail warnings deter Canadians from illegal file sharing. February 15, 2007.

Accessed: February 26, 2007. URL: <http://www.cbc.ca/consumer/story/2007/02/14/software-warnings.html>

The Register. Belgian ISP will appeal order to block file-sharing. July 23, 2007.

[http://www.theregister.co.uk/2007/07/23/scarlet\\_file\\_sharing\\_appeal/](http://www.theregister.co.uk/2007/07/23/scarlet_file_sharing_appeal/)