

## Copyright bill would ban breaking digital locks

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The government has introduced new copyright legislation that would legalize activities commonly engaged in by thousands of Canadians — such as copying a CD — but which would prohibit breaking digital locks placed on gadgets and media.

The legislation, Bill C-32, proposes enshrining in law some of the following measures:

The express legalization of format shifting, or the copying of content from one device to another, such as a CD to a computer or an iPod.

The express legalization of time shifting, or recording television programs for later viewing but not for the purposes of building up a library.

Allowing consumers to make a back-up copy of content to protect against loss or damage.

A YouTube clause that allows people to mash up media under certain circumstances, as long as it's not for commercial gain.

A "notice-and-notice" system where copyright holders will inform internet providers of possible piracy from their customers. The ISP would then be required to notify the customer that he or she was violating the law. The violator's personal information could then be released to the copyright holder with a court order.

ISPs and search engines would be immune from the copyright violations of their users.

A differentiation of commercial copyright violation versus individual violation.

Individuals found violating copyright law could be liable for penalties between \$100 and \$5,000, which is below the current \$20,000 maximum.

New exceptions to fair dealing that will allow copyright violations for the purposes of parody, satire and education.

A key clause regarding the breaking of digital locks, however, could trump many of those other permissions. The bill would make it illegal for a person to crack a digital lock placed on a device, disc or file. It would be illegal to copy a CD or digital song sold with copy protection on it, for example.

A television broadcaster could also air a program with a code inserted into it

that would prevent it from being recorded, or that would delete it from a PVR after a certain amount of time. It would be illegal for consumers to attempt to circumvent those codes.

The bill would also make illegal the sale or importation of tools designed to break digital locks, and allow copyright holders to go after websites designed to encourage violations and piracy.

Industry Minister Tony Clement and Heritage Minister James Moore introduced the legislation at the Electronic Arts video game studio in Montreal on Wednesday. The duo veered from standard protocol, where ministers introduce bills in the House of Commons, to illustrate the importance of copyright to Canada's cultural industries. The EA studio in Montreal employs more than 700 people.

Earlier in the day, Moore told reporters in Ottawa that the proposed law represented a balanced approach to updating Canada's laws so that they are in line with other developed nations.

"Consumers and creators both need to be empowered. Every day consumers have to have reassurance what they're doing isn't illegal, that what they want to do with their own information is their own choice," he said.

"But at the same time, we also want to make reassurances that Canada is not going to be an outlier on the international stage when it comes to allowing piracy and the theft of people's creations."

### **Reactions mixed**

Reaction to the bill was mixed. Consumer and education advocates were critical of the lock provisions while entertainment companies cheered them.

"To put it bluntly, the legislation presented today will make it even more difficult for university and college teachers and students to have access to and use copyrighted materials for teaching and learning," said David Robinson, associate executive director of the Canadian Association of University Teachers, in a statement.

"By imposing a blanket provision against all circumvention, the government will lock down a vast amount of digital material, effectively preventing its use for research, education and innovation and curtailing the user rights of Canadians."

The Entertainment Software Association of Canada said the legislation will help limit piracy of digital content such as video games.

"Without strong protection for our intellectual property, we're basically operating

in a digital Wild West," said executive director Danielle Parr in a statement. "Promoting piracy under the guise of 'user rights' does nothing to defend the livelihood of thousands of Canadians who rely on turning great ideas into world class entertainment."

The Canadian Film and Television Production Association said the new bill will help protect the 160,000 jobs in the areas of film, television and online content creation.

"While we will need to study the bill in detail, we believe that today's announcement is an important first step in bringing Canada in line with our competitors around the world, allowing our creative industries to flourish," said president and chief executive Norm Bolen.

### **Bill is government's third attempt**

The new bill is the government's third attempt at updating copyright laws. In 2005, the Liberal government introduced Bill C-60, which also contained a clause that prohibited the breaking of digital locks. The bill was criticized for favouring the interests of copyright holders over consumers and died when Parliament was dissolved in the fall of that year.

In 2008, the Conservative government tried again with Bill C-61, which also had anti-circumvention rules and faced similar criticism. That bill died when Parliament was prorogued.

In each case, critics said the government was catering to the U.S. entertainment industry, which has lobbied hard for strong anti-circumvention laws similar to those found in the United States. The U.S. Digital Millennium Copyright Act makes it illegal to break digital locks on devices and content, although there are some exceptions. Consumers are allowed, for example, to crack the locks placed on their cellphones. Bill C-32 proposes a similar exception.

The legislation's introduction follows a lengthy cross-country consultation held by Clement and Moore last year. Thousands of Canadians took part in the process, and many said they did not want restrictive locks put on their electronic devices and digital goods.

Clement has said the legislation is not a done deal and that he hopes to further discuss it with opposition parties over the summer.

The Liberals have said they are willing to do so, but the NDP could take a hard-line stance. The party's copyright critic Charlie Angus, the MP for Timmins-James Bay, in March introduced a private member's bill that proposed an additional tax be placed on digital devices such as iPods and laptops.

The tax would be an extension of the private copying levy, a fee that Canadians currently pay on blank media such as CDs, that is used to compensate copyright holders for the copies being made on that media. Angus argued that extending the fee to devices would effectively make copying legal yet still compensate content creators.

In an interview, Angus criticized the digital lock provisions.

"The only rights you will get under this bill are those that U.S.-based entertainment concerns decide you get," he said. "If the technological protections override those rights, then you have no rights."

Angus, a musician himself, also said the proposed legislation makes no provisions for artists, despite broadening consumers' ability to copy media. His view was echoed by the Alliance of Canadian Cinema, Television and Radio Artists.

"How is it balanced to allow people to make copies of our work without giving us anything in return? Half the bill is missing, the half that respects and pays creators," said ACTRA president Ferne Downey. "The simple step of extending the private copying levy to digital devices is a win-win solution for consumers and artists, it seems like it would have been a no-brainer."

Liberal copyright critic Marc Garneau, the MP for Westmount-Ville-Marie, said the bill seems to be missing an exception that would allow people to break digital locks if it was for private, non-commercial use, but added that his party will have to study it further.

"This is a bill that needs to go through the parliamentary process," he said. "It's going to take us a little while to assess what is being proposed."

Clement has said he would like to fast-track Bill C-32 and has invited opposition parties to the table in hopes of hammering out its kinks over the summer. Angus and Garneau both expressed doubts that proper discussion over the legislation can be done quickly. Both said it would likely be fall before any real work is done.

Michael Geist, a law professor at the University of Ottawa and staunch advocate of balanced copyright, said the proposed legislation was flawed but fixable. The fair dealing definitions and exceptions need to be broadened and consumers need to be given the right to break locks for personal uses, he wrote on his blog.

"There will undoubtedly be attacks on the fair dealing reforms and pressure to repeal them, along with the U.S. and the copyright lobby demanding that their

digital lock provisions be left untouched," Geist said. "If Canadians stay quiet, both are distinct possibilities. If they speak out, perhaps the bill can be fixed."