



The WGC on Bill C-32

The Copyright Modernization Act

The federal government has introduced an amendment to the Copyright Act, Bill C-32. There is very little in the Bill for the audio-visual sector. It grants new uses (backing up, time-shifting, private copying) to consumers without any form of compensation to creators for the additional copying.

This runs contrary to the position advocated by the Writers Guild of Canada (WGC) since copyright became an issue several years ago. The WGC has been a vocal proponent of allowing a wide variety of consumer uses of content as long as there is a complementary revenue stream to creators.

Audience access and creator compensation – that's true balance.

The following covers some of the key copyright issues for the WGC:

1. Copyright and the National Digital Strategy should be hand in glove. They are not.
2. There is nothing for creators in this Bill. The government is giving away copies of copyright work for free, saying they have no value.
3. Collective Licensing – newly allowed consumers uses should be balanced with additional creator compensation.
4. Bill C-32 is silent on the issue of the authorship of the audio-visual work. Without that definition, the creators of audio-visual works are cut off from author-based protections and royalties collected through collective licensing.
5. Private Purposes Exemption – or “Why buy DVDs when copying and sharing is free?”
6. A User-Generated Content (UGC) exception tramples on the rights of creators and allows intermediaries like YouTube to financially benefit from the abuse of copyright material.
7. Exceptions for Education in Fair Dealing – The expansion of fair dealing to include “education,” and the addition of many more exceptions for educational purposes, subsidizes education at the expense of creators.

What follows is a more detailed backgrounder on the WGC's concerns about the Bill and the ways it will impact creators in general and screenwriters in particular. The government is saying that the Bill is addressing the concerns

of the creative community – but they mean copyright owners, like software producers, record labels, film & TV producers, and these groups are not the same as copyright creators, and their concerns are not the same.

Backgrounder

1. Copyright and the National Digital Strategy should be hand in glove.

The WGC supports the government's desire to create a national digital strategy. Such a strategy should at its heart be about accessing content in all its different forms. The WGC believes that a primary pillar for the National Digital Strategy is copyright legislation that encourages the creation of content. By diminishing compensation for creators of content, Bill C-32 fails to provide that central building block for a National Digital Strategy for Canada.

Canadian screenwriters are compensated for the primary uses of their material (broadcast, video sales, iTunes download) through negotiated contracts and collective agreements. However, Canadian consumers have become accustomed to uses beyond the reach of these negotiated and licenced terms – uses not considered 'allowed' under current copyright law. Consumers are now copying TV shows, movies, DVDs, videogames, radio programs, photographs, print and audiobooks and every sort of copyright work to a wide variety of distribution and storage media (such as iPods, iPads, PVRs, hard drives, etc.). But music on cassette tapes and CDs is the only thing covered by the current private copying levy, and the only technologies going forward as covered through Bill C-32. If Bill C-32 does not bring us up to the present, how can it take us into the future? What good is building a national digital strategy when you're looking in the rear-view mirror on copyright?

A forward-thinking copyright law will reflect this new reality, legalize these new uses, and build new compensation streams for creators tied to these new uses. Bill C-32 does not acknowledge the evolution of the marketplace, the evolution of consumer behavior. Where are the protections and revenues that encourage the creation of new content? By expanding uses without providing for an appropriate revenue stream to creators or a framework that will allow the marketplace to develop, this Bill will stifle creativity.

2. There is nothing for creators in this Bill. The government is giving away copies of copyright work for free, saying they have no value.

Bill C-32 legalizes time-shifting, format-shifting, copying for private purposes and more – all without any mechanisms to compensate creators. These may already be common uses, but they are not legal uses. If they're legalized without some sort of revenue stream for creators, it's changing the revenue model in earnest. **Copies have value.**

The only option that Bill C-32 offers creators is digital locks, which freezes current revenue streams for creators, and creates an illogical loophole in the copyright Bill by taking away the very rights the Bill grants to consumers in its other sections. Digital locks may work for software but they are not forward thinking and they are not popular with consumers. Digital locks are not a substitute for a clear revenue stream for creators.

3. **Collective Licensing – newly allowed consumers uses should be balanced with additional creator compensation.**

Collective licensing along the model of the private copying regime is a practical, reasonable and fair solution. It provides consumers with an easy and modest payment mechanism, promotes the legal use of works and provides fair compensation to creators.

The existing private copying regime provides a working model for a technology-neutral, forward-thinking solution that could balance these expanded uses (and future uses through technologies yet to come) with a system of royalties paid to authors through collective licensing.

But right now, private copying only covers sound recordings on cassette tapes and CDs. Our culture has moved way beyond cassette tapes and CDs. Private copying should be extended so that it applies to all works on all distribution and storage devices. Others are profiting from the reuse of work we created (iPod manufacturers, flash drive manufacturers, PVR manufacturers, etc.). This Bill benefits consumers, it benefits the manufacturers of digital storage and distribution devices, and by allowing ill-defined 'digital mashups' it benefits YouTube and other user-generated content sites – but it does all of this at the expense of artists.

4. Bill C-32 is silent on the issue of the authorship of the audio-visual work. Without that definition, the creators of audio-visual works are cut off from author-based royalties collected through collective licensing.

The system of collective licensing proposed by the WGC can only benefit the creators of cinematographic works (TV, films and audio-visual digital media content) if the Copyright Act is amended to define the authors of these works. An anomaly such as this was addressed in Bill C-32 with respect to photographers, but the Bill remains silent when it comes to a/v material.

The WGC and Directors Guild of Canada (DGC) have agreed that the credited writer(s) and director should be deemed in law the joint authors of these works. Once this has been recognized in the Copyright Act, then writers and directors can enjoy the benefits and protections provided to authors under the Act, including any collective licensing revenues.

5. Private Purposes Exemption – or “Why buy DVDs when copying and sharing is free?”

The Private Purposes exemption allows such broad copying and sharing – among an ill-defined ‘friends and family’ – that it will undermine the existing private copying regime and diminish the market for original sales. And just who your friend is will likely be left to the courts to decide because Bill C-32 offers no clarity.

This exemption undermines private copying by creating an exception for legal & free copying. Copyright law should build on the existing royalty system, and encourage and support the creation of new works. The best way to do that is to eliminate this exemption, and extend private copying so that it applies to all works on all distribution and storage devices. Others are profiting from the reuse of copyright material (iPod manufacturers, flash drive manufacturers, PVR manufacturers, etc.). And they are doing so at the expense of creators.

6. A User-Generated Content (UGC) exception allows consumers to use existing copyright-protected works to create 'new' works and distribute them for non-commercial purposes, trampling on the rights of creators and allowing intermediaries like YouTube to financially benefit from the abuse of copyright material.

Under this provision, someone might, for example, edit *The Trailer Park Boys* movie, cutting all the swearing and drug use – call it a mashup and circulate it, damaging the reputation of the film and its creators. At the same time, 'non-commercial use' functions as a smoke screen – the creator of the mashup might not profit from it, but YouTube or whatever other site it's posted to almost certainly will.

Like education in the fair dealing provision, and like copying for private purposes exception, this exception will force the issue of rights to the courts and shifts the burden of policing and enforcement to the individual creators.

7. Exceptions for Education in Fair Dealing – The expansion of fair dealing to include "education," and the addition of many more exceptions for educational purposes, subsidizes education at the expense of creators.

This exception is unfair to creators and discourages the creation of new works. Educational institutions pay the full cost of desks, computers and teacher salaries, why would they not pay for content valuable enough to use in teaching? For example, many different preschool shows are used in classrooms and a licence structure exists for these uses – this exception negates that existing and fair revenue stream. Copyright material should not be free simply because it is used in schools – Bill C-32 unfairly discriminates against content creators. The addition of ill-defined exceptions such as this will create legal uncertainty and increase the potential for litigation. We support Access Copyright on issues related to the educational use of copyright material.

The Bill's Process

Within ten days of the vote on second reading of the Bill (which will likely happen the first week of November), the Bill will be referred to a Special Legislative Committee for a detailed review of the Bill. This committee will be made up of six Conservative MPs and six from the Opposition (three Liberals, one NDP, one Bloc) plus a Chair (which may be of any party). This committee will itself decide how often it meets and who it will see. The WGC will try to present our concerns and our specific suggestions to the

committee. The goal of the committee work is to agree on specific amendments to the Bill in order to get it passed at third reading.

If we have to live with this Bill we recommend a number of amendments:

- Extend private copying to all works on all distribution and storage devices – screenwriters would not directly benefit from this until authorship of the a/v work is appropriately defined in the Copyright Act but at least the door would not be locked shut.
- Remove the digital mashup provision – far too open.
- Narrow the scope of the “private purposes” exemption
- Pair stronger infringement penalties (statutory damages) with collective licensing mechanisms that make licenced use easy. This will encourage legal use.
- Define “education” more narrowly in fair dealing provision.

Bring true balance to Bill C-32. Balance audience access with creator compensation.