



STAFF REPORT ACTION REQUIRED

17.

Bill C-32 – Amendments to the *Copyright Act*

Date:	June 21, 2010
To:	Toronto Public Library Board
From:	City Librarian

SUMMARY

The federal government recently introduced Bill C-32 representing its third attempt to modernize copyright law to deal with issues that have arisen in the digital age. Under the bill, fair dealing would be expanded to allow people to use copyrighted material for education, parody and satire. The bill would also create a general prohibition against the circumvention of technological protection measures (or “digital locks”) used by copyright owners to restrict access to digital materials. However, libraries would be exempt from fines for breaking digital locks. The bill also amends provisions regarding libraries and the use of digital copies for archival purposes, interlibrary loans and patrons engaged in research and private study.

The concerns the Toronto Public Library Board had with the bill’s predecessor, Bill C-61, regarding digital locks and interlibrary loans remain issues of concern with Bill C-32. The Library may wish to advocate for clear rights for libraries as “authorized circumventers” whereby librarians can circumvent digital locks on behalf of other users without criminal or civil repercussions.

In response to Bill C-32, the Canadian Library Association (CLA) issued a news release stating that it “finds much to applaud in the government’s newly announced copyright legislation.” The CLA endorsed the expansion of fair dealing, but expressed concerns regarding the “over-reach of digital locks” and advocates an exemption to allow the circumvention of digital locks for “legal purposes.” The CLA stated that it will “review the bill thoroughly and formulate a detailed response.”

Recommendation

The City Librarian recommends that the Toronto Public Library Board:

1. sends a letter in response to Bill C-32 to the Honourable Tony Clement, Minister of Industry, and to the Honourable James Moore, Minister of Canadian Heritage and Official Languages with copies to the Toronto area Members of Parliament.

The letter will acknowledge the importance of the expansion of fair dealing provisions and express continuing concern regarding the digital lock provisions that would prevent users from accessing material for which they have legitimate rights under the fair dealing provisions; and

2. that the letter from the Board be consistent with the position adopted by the Canadian Library Association (CLA) and the library community. The CLA's detailed response to Bill C-32 is expected shortly.

FINANCIAL IMPACT

There is no financial impact from this report.

The Director, Finance and Treasurer has reviewed the financial impact statement and is in agreement with it.

DECISION HISTORY

On June 2, 2010, the federal government introduced Bill C-32. To date, the bill has only gone through First Reading. The bill takes into consideration input from cross-Canada consultations held in the summer of 2009.

Bill C-32 follows two recent attempts to amend the *Copyright Act*. Bill C-60 was introduced in June 2005, but was not passed before Parliament was dissolved in November 2005. Bill C-61 was tabled in June 2008, but died on the order paper when an election was called in September 2008.

ISSUE BACKGROUND

In response to Bill C-61, the Board sent a letter in October 2008 to the Ministers responsible for the Bill, advocating changes on the following issues:

1. Fair Dealing – The bill should recognize fair dealing as a user right which cannot be superseded by technological protection measures.
2. Contract Law – The bill should not permit contracts to override legislative rights such as fair dealing.
3. Technological Protection Measures (TPM) – The bill should not make the circumvention of TPM illegal in all cases. There ought to be exceptions for non-infringing use.
4. Digital Interlibrary Loan – The bill should make the exceptions permitting libraries to make copies for interlibrary loans format neutral, in that digital copies should be treated the same as other formats.

COMMENTS

The issues which the Board expressed concern over in Bill C-61 are addressed in Bill C-32 as follows:

1. Fair Dealing – User rights under fair dealing have been expanded to include education, parody and satire. This is in addition to the current categories of fair dealing of research, private study, criticism or review, and news reporting.
2. Contract Law – The provisions allowing contracts to prevail over legislative rights in relation to particular mediums appear to have been eliminated.
3. Technological Protection Measures – As with Bill C-61, there is a general prohibition on the circumvention of TPMs. As with the previous bill, Bill C-32 contains provisions whereby libraries may be subject to suits and court injunctions related to the circumvention of TPMs, although libraries will not be subject to fines for TPM circumvention.

Although libraries enjoy some exemptions from the TPM provisions, the extent of the protection afforded to libraries requires additional clarity. The library community may advocate for “authorized circumventer” status - similar to what is used in New Zealand - where the law permits librarians to circumvent TPMs on behalf of other users. This special exemption could be premised on the idea that libraries have always purchased and shared intellectual property with the community and digital materials should not be treated differently than other formats.

4. Digital Interlibrary Loans – Also carried over from Bill C-61, libraries will be allowed to digitize print material and then send a copy electronically to another library’s client through an interlibrary loan. The requesting patron could either view the material on a computer or print one copy. The library must take measures to ensure that the client only prints one copy of the digital form, does not communicate the copy to another person and that the copy is destroyed within five days after first usage.

Bill C-32 also contains other provisions specifically related to libraries:

Alternate formats:

Libraries will be permitted to make copies of copyrighted material in an alternative format if there is a concern that the original material is in a format that is in danger of becoming obsolete. Currently, libraries must wait until a format is already obsolete. This proposed amendment is the same as in Bill C-61.

Research and private study:

With Bill C-32, libraries can provide copies of research articles as long as patrons are informed by the library that the copies are only for research or private study. Patrons

would no longer have to satisfy the library that they will not use the copy for illicit purposes.

Library Community Response

The CLA stated that it will “review the bill thoroughly and formulate a detailed response.” It is expected that this detailed response and any recommended advocacy plan on behalf of the Library community will be released shortly. The letter from the Library will be developed to be consistent with the position taken by the library community.

CONTACT

Katherine Palmer; Director, Planning, Policy & E-Service Delivery; Tel: 416-395-5602; Fax: 416-393-7083; Email: kpalmer@torontopubliclibrary.ca

SIGNATURE

Jane Pyper
City Librarian

ATTACHMENTS

Attachment 1. Canadian Library Association Press Release