NEW MEDIA & COPYRIGHT POLICY BRIEFING: ACCESSIBILITY

The A2K problem: copyright, accessibility and the future of copyright in Canada

Bill C-32 contains provisions that would expand access for the visually impaired. But Canada could do more to allow the international dissemination of accessible works.

BY SARA BANNERMAN

Remember Y2K? It was the year 2000 that kicked off the new millennium—an age that could potentially become a new era of access to knowledge (A2K)—an age of wider, broader and more universal access to many types of knowledge than ever thought possible.

Yet, there are many obstacles to a broad and egalitarian access to knowledge. One obstacle is accessibility. According to World Health Organization (WHO) estimates, 314 million people are visually impaired. Some 45 million are blind and, of those 90 per cent live in low-income countries.

Copyright plays a role in making works accessible, but it can also stand in the way of accessibility. While it may be permissible under copyright legislation to make an accessible-format copy of a work, it may also be a copyright infringement to make accessible-format works available to others, especially to share such works across national borders among organizations operating on behalf of the visually impaired. This means that the same work may need to be transformed into an accessible-format many times by various organizations and may remain inaccessible in many locations.

In September, musician Stevie Wonder called on copyright policy-makers worldwide to fix copyright to enable greater accessibility—to enact "a declaration of freedom to secure to every single human being the opportunity to live the freedom knowing that they have accessibility to information throughout the world." He called for "a declaration of freedom for those who are blind or visually impaired [and] those who are deaf, those who are paraplegic, quadriplegic or other." Wonder's call echoes other calls for international minimum standards of access to knowledge for the visually impaired, educational use and a variety of public interest uses.

However, efforts to address these problems face many hurdles. Publishers' efforts have sometimes interrupted technology's potential to make works available in more accessible formats. When Amazon introduced the text-to-speech feature of the Kindle that proved useful to many visually impaired consumers, copyright owners protested that their rights were being infringed and prevented ubiquitous adoption of the technology. When the World Blind Union introduced a treaty that would make it easier to make accessible works available for the visually impaired, especially in low-income countries, copyright owners also protested. Leadership is needed to address these problems now.

It is in the context of worldwide efforts to address these problems that Canada's new copyright bill is being formed. Canada's Bill C-32 contains provisions that would expand access for the visually impaired. However, Canada could do more to allow the international dissemination of accessible works. Bill C-32 allows only non-profit entities to send a copy of specially-formatted works to a non-profit organization in another country for use by persons with print disabilities. It restricts this to apply only to the works of Canadian authors—large print books are excluded and payment of royalties is required.

Canada could do more. Canada's move on accessibility could be an early foray among international efforts to address the needs of the visually impaired, setting an example for other countries and international negotiations to follow. This is an opportunity for Canada to show leadership and vision. It would be unfortunate if Canada's contribution were to create provisions that are too narrow or burdensome to be truly useful in addressing the problems currently at the forefront of the international agenda. Canada's efforts should rise to the standard of a new age of access to knowledge, instead of becoming part of the A2K problem.

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NEW MEDIA & COPYRIGHT POLICY BRIEFING: BALANCE

It's time to find a balance between new media and copyright

In framing the debate in terms of a battle between the rights of copyright owners and those of consumers, critics run the risk of diverting attention from the fundamental rights of citizens.

BY JOHN SHIGA

Thanks to a decade of hard-hitting anti-piracy campaigning, Canadians are all too familiar with the destructive potential of new media. The copyright lobby in Canada encourages the view that "digital piracy" will end careers, topple industries, lead to mass "theft" of intellectual property and undermine Canadian culture.

Although updated and Canadianized, copyright owners have been selling governments around the world on this story for more than a century. And who can blame them? The more owners play the piracy card, the more control governments usually hand to them.

The trouble is, many policy-makers and members of the public aren't buying the piracy story anymore. The rights of consumers, instead of copyright owners, are increasingly taking centre stage in the copyright debate.

Dominant players in cultural production and distribution are behaving as they always do when new media emerge. Since their dominance depends in part on the control of copyrights, the cultural industries typically claim that the new medium will lead to a piracy epidemic and that the cultural industries will collapse—unless governments make quick and drastic changes to copyright legislation.

From piano rolls in the 19th century onwards, virtually every new medium has been presented by copyright owners as a tool of mass piracy. In most cases, owners succeeded in acquiring stronger, internationally-enforced and longer-term rights over the use of cultural works. Ironically, copyright still tends to be justified on the grounds that it encourages cultural production even though it actually provides an incentive to exploit the rights to existing works on new platforms.

The balance that copyright supposedly maintains between copyright owners and audiences has steadily shifted towards owners. Since creators often do not own all of the rights to their works, many worry how they will fair in the current tug-of-war between owners and consumers.

In their first two attempts, Industry Canada and Heritage Canada proposed legislation that fit this pattern of owner-driven policy change. Bill C-32, the current copyright reform bill, bucks the trend. Unlike its predecessors, it does not provide unbridled support for the interests of corporate copyright owners.

The bill also contains some rather innovative provisions for user-generated content and fair-dealing. If these provisions survive, Canadians may finally be able to remix content for non-commercial purposes and use their personal video recorders without deleting content immediately after viewing and without fear of being sued.

These provisions offer modest protection to Canadians for cultural activities they engage in every day. But given copyright's history as an instrument for protecting the interests of copyright owners, the government's inclusion of these provisions is a bold move in favour of consumers.

The dramatic policy shift between 2005 and 2010 can be attributed to successful reframing of the copyright debate as a consumer rights issue. The news media produce a steady stream of stories and columns about copyright, many of which focus on the expansion of copyright restrictions in the U.S. at the expense of consumer rights.

News coverage of the American music industry's "shock and awe"-style litigation campaign against individual file-sharers has been a public relations disaster for corporate copyright owners in both the U.S. and Canada. The Canadian context of these PR disasters matters more right now since the copyright lobby is seeking public support for its "get tough on piracy" approach to copyright reform.

The first two bills tabled by Industry Canada and Heritage Canada were popularly characterized as "DMCA clones," referring to the similarities between the proposed legislation and the highly-restrictive U.S. Digital Millennium Copyright Act.

In a bid to restore confidence in the reform process, the federal departments held a series of public consultations.

By Prof. Michael Geist's count, the vast majority of submissions opposed key amendments sought by the copyright lobby, including strong legal protection of digital locks and the "notice and takedown" system. The strategy of linking a restrictive copyright to an erosion of consumer rights seems to be paying off for critics of U.S.-style legislation.

Bill C-32 is far from a DMCA clone. However, the bill does have at least one disconcerting similarity with the DMCA: it gives strong legal protection to technological protection measures, or "digital locks," which restrict access and copying.

Since technological protection measures are becoming more sophisticated and widely-used, citizens will require some cleverly-programmed software in order to bypass those locks on content. Since C-32 prohibits the distribution of circumvention software, citizens will need to brush up on their programming skills in order to make use of the bill's fair dealing and private copying provisions.

The bill gives firms seeking to lock down and monitor use of digital content the backing of the state. As for citizens seeking to circumvent locks for lawful purposes, the bill essentially says, "good luck."

Copyright's currency in the news media and in public discussion has made it difficult for copyright owners to monopolize the copyright reform debate. Despite millions of dollars spent on anti-piracy public relations campaigns, owner's claims about piracy fall flat when more citizens recognize that there are important differences between intellectual property and absolute property, between infringement and theft and, between the interests of copyright owners and consumers.

In framing the debate in terms of a battle between the rights of copyright owners and those of consumers, critics run the risk of diverting attention from the fundamental rights of citizens. Intellectual freedom, freedom of expression and privacy rights, which are also at stake in the reform process, are now on the sidelines. But at least there is a growing recognition among policy-makers and commentators that copyright should do more than simply serve the interests of copyright owners.

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