

Canadian Council of Music Industry Associations (CCMIA)

SUMMARY

February 28, 2011

The CCMIA's Position on Bill C-32, the *Copyright Modernization Act*

Who We Are

The Canadian Council of Music Industry Associations (CCMIA) is an alliance of 10 provincial music industry associations: Music Newfoundland and Labrador, Music Nova Scotia, Music Prince Edward Island, Music New Brunswick, Music and Film in Motion (Northern Ontario), Manitoba Music, SaskMusic, Alberta Music, Music B.C. and Music Yukon. The CCMIA was established in 2004 and through its association partners represents more than 8,000 members. All of these members are actively engaged in the music industry and include labels, publishers, artists, managers, publicists, agents, educators, promoters and other music industry entrepreneurs.

Introduction

The CCMIA is grateful that the federal government is working to modernize the *Copyright Act*. Bill C-32 *does* address some of the needs of Canadian copyright holders and creators, but it also proposes changes to copyright which will greatly weaken copyrights generally at a time when copyright holders and creators are at their greatest need of copyright protection.

The internet has put the entire recorded and published music industry under siege. Pirated music through digital downloads has crippled the music industry at all levels, resulting in massive income losses worldwide. Music has been one of the hardest hit in terms of economic loss as a result of digital download piracy and weak copyright laws.

The federal government in attempting to give consumers more access to copyrighted works cannot at the same time deny copyright owners and creators the right to fair remuneration for the use of their works.

While the CCMIA is not attempting to resolve all of the issues presented by the proposed Bill C-32, the following represents the organizations position in regard to a number of possible amendments to make Bill C-32 achieve the goal of protecting copyright owners and creators.

A. *Reproduction for Private Purposes*

Issue:

Part VIII (Private Copying) of the present *Copyright Act* is a model that has been used for the past ten (10) years to compensate creators for individual private use of copyrighted materials in their possession. Bill C-32 proposes that private copying on a wide variety of storage devices be exempt from the private copying levy.

Solution:

The CCMIA takes the position that copyright owners and creators should be fairly compensated for private use of music by consumers. The private copying levy should be extended to all fixed or mobile music storage devices. This would allow consumers the right to privately use the legitimately purchased music in their possession on multiple devices while balancing this with copyright owner and creator rights to receive fair compensation for their work.

B. *User-Generated Content (UGC)*

Issue:

The so-called “mash-up” exception introduced by Bill C-32 is an attempt to allow consumers to use copyrighted materials in creating new works to be posted online. Allowing the “mash-up” exception would allow the public to by-pass long established licensing and collective bargaining practices in Canada. It would walk on the rights of labels and publishers and would impact on a creator’s right to enforce their moral rights in their creation.

Solution:

The User-Generated Content Exception should not be included in Bill C-32. It should be up to individual copyright owners and creators if they want their works to be used by consumers for such things as “mash-ups”.

As an alternative solution, the Creative Commons approach which has been gaining momentum in the USA is one possible solution to this issue. If a legislative mechanism could be created to allow owners and creators to opt in to various levels of non-monetized public use of their copyrights, then this might create the balance needed to deal with this issue. The point is that it should always be at the owner or creators option how a copyright is used and exploited.

C. Statutory Damages

Issue:

Bill C-32 proposes the dramatic reduction of statutory damages for copyright infringement to a range of \$100 to \$5000 for infringements of non-commercial purposes. One of the biggest causes of loss in the music industry is the downloading of music through peer to peer networks. The users of these services are not receiving any commercial gain from their file sharing, but it is this very practice that is destroying the recorded music industry. In terms of losses to the music industry there is no distinction between commercial and non-commercial infringement of copyright. The reduction of these statutory damages will not only fail to deter people from pirating music, it will encourage them. With the cost of court proceedings and legal fees being so high and the resulting reduced damages being so low, parties who have suffered infringements will have no incentive to pursue these matters in court. The result will be consumers downloading with impunity knowing that the result of their illegal activities will at the least be no action and at the worst a small fine. The Bill will create a regime where damages for copyright infringement will become an “acceptable cost of doing business.”

Solution:

Do not introduce the proposed distinction between commercial and non-commercial infringement, but ensure that the courts continue to have the discretion to reduce damages in appropriate circumstances. Do not exempt copyright infringement enablers from statutory damages: delete proposed exemption 38.1(6)(d).

D. ISP Liability

Issue:

Bill C-32 provides for a ‘notice and notice’ regime under which ISPs would be obligated to send a notice to potential copyright infringers after receiving a notice of alleged infringement. ISPs would also be required to retain information identifying the alleged infringer for a prescribed period of time. The notice and notice regime is contrasted with a ‘notice and takedown’ regime prevalent in the United States, Europe and many other jurisdictions. The CCMIA questions the efficacy of the proposed notice and notice regime.

Solution:

Implement a 'graduated response' or another collaborative system in co-operation with ISPs that relies on educating alleged infringers before more stringent measures are imposed. This could include limiting an infringer's internet connection speed or capacity, blocking access to particular material or sites, or suspending access to specific sites, all after due process. Additional measures could also include escalating consequences after due process if an infringer or an enabler continues to engage in copyright infringement notwithstanding repeated warnings. In short, ISPs and other "intermediaries" should lose their "immunity status" if they fail to act reasonably to deter copyright infringement.

E. Proposed Elimination of Collective Licensing Mechanisms

Issue:

This proposed broadcast mechanical amendment would eliminate subsection 30.9(6) of the *Act*, which provides that the ephemeral recording exception does not apply if a licence is available from a collective society. Accordingly if made law, the proposed amendment would reduce royalties payable to rights-holders

Solution:

Don't eliminate 30.9(6) of the Copyright Act. Look for ways to strengthen collective licensing mechanisms, rather than weaken or eliminate them.

Conclusion

The CCMIA welcomes the introduction of amendments to the *Copyright Act* which will bring the act into compliance with the World Intellectual Property Organization 'Internet Treaties' agreements for which Canada is a signatory. Further, modernization of the *Copyright Act* is essential to the development of Canada's \$46 billion arts and culture industry. Modernization does not mean eroding the already challenged copyrights of creators.

Copyright owners and creators need to be properly compensated for their works. This is the cornerstone of a thriving knowledge-based digital economy. The music industry is on the front lines of the battle over eroding copyrights worldwide. With leadership from the federal government, Bill C-32 could be amended to achieve the goals of strengthening copyrights and ensuring the proper compensation for the use of such copyrights.