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Significant and Controversial Proposed Amendments to Canadian *Copyright Act*

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On June 12, 2008, the Conservative federal government tabled Bill C-61 to amend the *Copyright Act*, describing it as a “made in Canada” solution to bring it in line with advances in telecommunications technology and current international standards.

The bill is complex and covers many different issues, but in the following summary we focus on some of the changes that most directly affect businesses, including content providers:

- Internet service providers (ISPs) would be obligated to adhere to a statutory “notice and notice” system. An ISP would have to immediately forward a copyright owner’s notice of infringement to the alleged infringer and retain records on the identity of the alleged infringer. An ISP that fails to do so could be liable to the copyright holder for statutory damages ranging from \$5,000 to \$10,000.
- Educational institutions would be permitted to use and reproduce material from the Internet for teaching purposes only. However, if the Internet site restricts the use of the material, either through a specific notice or digital lock, the institution may not use the material. A simple copyright notice on the material would not suffice as a prohibition against using the material.
- Copyright owners would be able to sue for statutory damages up to a maximum of \$500 for all an infringer’s illegal downloads for private use or up to \$20,000 per work if the infringer made the work publicly available, possibly through actions such as uploading a copyright-protected video or picture to peer-to-peer sites, YouTube or social networking sites such as Facebook.
- The amendments introduce the offence of disabling digital locks (such as Digital Rights Management technology), as “circumventing a technological measure.” Copyright infringers who disable a digital lock may face damages of up to \$20,000 if this infringement is for personal use or a possible prison sentence and fine of up to \$1 million for doing this “knowingly and for commercial purposes.” The amendments do, however, include several exemptions from the offence of disabling a digital lock: for security testing; for encryption research; to overcome interoperability between different computer programs; to enable those who are disabled to access material; and to protect personal information.

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- Individuals would be permitted to copy legally obtained music to each device they own (such as an MP3 player or personal computer). Individuals may also make a single copy of legally obtained music, photographs, books, newspapers, periodicals and videocassettes (but notably not DVDs) to devices they own (known as “format shifting”). In each case, these permissions would be subject to any contractual or licence obligations that may govern the use and reproduction of downloaded material. Moreover, the proposed legislation does not permit a person to disable a digital lock to make such copies.
- Recording television or audio broadcasts would generally not be considered copyright infringement; however, the recording must not be kept longer than necessary to watch the broadcast later, and must not contravene any contract terms of any video-on-demand services that may limit the right to record such broadcasts.

Bill C-61 is undergoing only a first reading, and there is a strong possibility it may not come into force given the current political situation. Nonetheless, even if the amendments do not come into force, they may in fact signify a substantive shift in Canada’s policy on copyright law. Any developments on this topic should be monitored closely over the next several months. **1**