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Bill C-11: Canada's *Copyright Modernization Act* Revisited

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On September 29, 2011, the Canadian government introduced Bill C-11, the *Copyright Modernization Act*. This proposed legislation is intended to align Canada's *Copyright Act* with the perceived realities of the digital era, as well as provide a framework for Canadian copyright law that is forward-looking and technologically neutral.

Bill C-11 represents Parliament's fourth attempt to amend the *Copyright Act* since 2005.¹ It reintroduces the identical provisions proposed in the last Parliament as Bill C-32. This predecessor bill was the topic of Torys' bulletin "[Canada Proposes Major Changes to Copyright Law](#)," June 15, 2010, which reviewed many of the proposed legislation's most significant reforms.

The *Copyright Modernization Act* addresses two other aspects of Canada's copyright law: the country's international treaty obligations and an expansion of the fair dealing exception to cover certain educational uses.

Canada has already ratified and acceded to a number of international treaties relating to copyright.² It has also signed, but has yet to ratify, the *WIPO Copyright Treaty* and the *WIPO Performances and Phonograms Treaty*. These two treaties, commonly referred to as the "WIPO Internet Treaties," were signed in 2002 and cover, among other things, protection for authors of literary and artistic works, as well as performers and producers of sound recordings. The Canadian government has stated that much of the motivation behind its *Copyright Modernization Act* is to enable ratification and implementation of treaty obligations under the WIPO Internet Treaties. Some of the more controversial provisions of the *Copyright Modernization Act*, such as the prohibitions on circumventing technological protection measures, have their genesis in the government's attempt to craft provisions that would satisfy Canada's treaty obligations, while also providing for fair dealing rights to Canadians.

The *Copyright Modernization Act* also expands the fair dealing exception to copyright infringement, to include exemptions for the purposes of education, parody and satire. The characterization of fair dealing for the purposes of "research or private study" has recently been the topic of judicial consideration in *Alberta (Minister of Education) v. Canadian Copyright Licensing Agency (Access Copyright)*, a case that is now before the Supreme Court of Canada. The issue under consideration in *Access Copyright* is

¹ Bill C-60 died on the order paper after dissolution of Parliament on December 1, 2005; Bill C-61 died on the order paper after dissolution of Parliament on September 7, 2008; Bill C-32 died on the order paper after dissolution of Parliament on March 25, 2011.

² A list of all international treaties relating to intellectual property that Canada has signed, ratified or acceded to can be accessed [here](#).

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whether the use of copyrighted materials in classrooms fell within the private study fair dealing exception. The *Copyright Modernization Act's* express inclusion of "education" as a fair dealing exception, if passed into law, would settle this issue legislatively by eliminating uncertainty regarding use of copyrighted material in educational settings.

Further information on Bill C-11 can be found [here](#). 