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CIPPIC Questions Unbalanced Copyright Bill

Rights-holders get more, longer, stronger rights – again Users get more liability and, grudgingly, some exceptions

Ottawa, ON – June 20, 2005 – The government of Canada today released its long-awaited Bill to amend the Canadian *Copyright Act*. Proposed amendments include:

- Creating new “anti-circumvention rights”, prohibiting circumvention of technological protection measures (“TPMs”) for infringing purposes;
- Creating a new “anti-tampering right”, prohibiting tampering with rights management information (“RMI”) for infringing purposes;
- Creating a “making available right”, granting copyright holders the exclusive right to make copies of copyright-protected materials available to the public in respect of “on-demand services” over the Internet;
- Formalizing the current “notice and notice” system for imposing liability on Internet Service Providers for the infringing activities of its customers;
- Expanding the nature, scope and term of rights afforded performers and sound recording makers;
- Expanding photographers’ rights at the expense of the rights of those – including consumers – who commission photographs; and
- Facilitating the electronic delivery of materials to students and library patrons.

“This is not a happy day for Canadians,” states Philippa Lawson, Executive Director of CIPPIC, the Canadian Internet Policy and Public Interest Clinic. “The Bill calls for a massive transfer of rights and entitlements out of the hands of the Canadian public, and into the hands of copyright holders. Foreign content industries should be very, very happy with the government’s draft legislation – they are the big winners here. Losers, unfortunately, include Canadian consumers, educators, students, Canada’s security research community, Canada’s public domain and Canadian innovators and creators, whose interests have been sacrificed to the wishes of collectives and multinational entertainment companies.”

David Fewer, staff counsel for CIPPIC, agrees. “The sweep of this Bill is really startling. The Bill is being characterized as merely implementing Canada’s obligation under the 1996 WIPO Internet Treaties, but in reality, this Bill ranges far from digital issues alone. In addition to digital issues, the Bill touches on photography, sound recordings, and performers’ rights issues. And on each issue, it is the rights holder community that benefits. Even the so-called user rights in the Bill – the electronic delivery of distance learning and interlibrary loan materials – are hobbled in ways that undermine their usefulness.”

“The good news story on this Bill is that it could have been a lot worse,” says Mr. Fewer.

“We can say three positive things about the government’s proposal: First, the government has not back-tracked significantly from its March 24, 2005, proposals. Second, this Bill suggests that the government continues to reject the one-sided approach to copyright we saw in the May, 2004, *Interim Report on Copyright Reform* of the Standing Committee on Canadian Heritage. Third, this Bill suggests that the government has learned from the disastrous US experience under the *US Digital Millennium Copyright Act*. This Bill falls short of the radical approach to many of these issues adopted by the United States. This is a dangerous road we are setting out on, but at least it is a Canadian road.”

“In many ways, this Bill is an opportunity lost,” concludes Mr. Fewer. “The government could have chosen to really improve the *Copyright Act* for all Canadians. Why isn’t the government fixing the statutory damages provisions, which continue to inappropriately apply to our public institutions and to file-sharing defendants in perversely disproportionate ways? Why isn’t the government expanding fair dealing to embrace parody, time- and media-shifting and other valuable uses? Why isn’t the government invalidating efforts by corporate interests to force consumers to contract out of their statutory rights, such as fair dealing and reverse engineering? Why not address Crown copyright? Why is the government continuing to erect legal barriers to access, instead of facilitating access? Copyright should work for all Canadians, not just the rights-holder community. We hope that the government will rethink its approach to these important issues.”

Background of CIPPIC

The Canadian Internet Policy and Public Interest Clinic (CIPPIC) is Canada’s only technology law clinic. CIPPIC was established in fall of 2003 at the University of Ottawa, Faculty of Law, Common Law Section. CIPPIC's mandate is to advocate for balance in policy and law-making on issues arising out of new technologies

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For more information, contact:

David A. Fewer
Staff Counsel
CIPPIC (Canadian Internet Policy and Public Interest Clinic)
Faculty of Law, University of Ottawa
57 Louis Pasteur Street
Ottawa, Ontario, K1N 6N5
Phone: 1-613-562-5800 ext. 2558
Mobile: 1-613-252-0665
Fax: 613-562-5417

Philippa Lawson
Executive Director
CIPPIC (Canadian Internet Policy and Public Interest Clinic)
Faculty of Law, University of Ottawa

57 Louis Pasteur Street
Ottawa, Ontario, K1N 6N5
Phone: 1-613-562-5800 ext. 2556
Fax: 613-562-5417

For the text of the bill (when available), see Industry Canada's Intellectual Property Policy Directorate Website:

http://strategis.ic.gc.ca/epic/internet/inippd-dppi.nsf/en/h_ip00002e.html

For the government's March 24, 2005, announcement on these proposed amendments, see:

<http://strategis.ic.gc.ca/epic/internet/incrp-prda.nsf/en/rp01140e.html>

For more information on CIPPIC's involvement in the copyright reform process, see:

<http://www.cippic.ca/en/projects-cases/copyright-law-reform/>