

Forging a copyright law for the future

The government of Canada recently released *A Framework for Copyright Reform*, which outlines the copyright reform process the departments of Industry and Canadian Heritage are undertaking for dealing with Canadian copyright legislation in the years to come. As part of the process, the government will consider issues, consult Canadians, and propose legislative amendments, where necessary, in a step-by-step manner.

Many amendments have been made since the Canadian Copyright Act of 1924 was first enacted. Modernization of the Copyright Act was achieved most recently through two massive phases of reform.

Phase I, passed in 1988, included the provision of statutory protection for computer software among other amendments.

In 1997, the government introduced another large package of amendments known as Phase II (Bill C-32). In the intervening years, the government also adopted a series of smaller legislative amendments, mainly to conform with our international trade agreements.

Part of the Phase II revisions

included a requirement (included in s. 92 of the act) that requires the minister of industry to report to Parliament by Sept. 1, 2001, on the provisions and operation of the act, including recommendations for amendments.

Issues that will be dealt with in future phases of copyright reform are expected to include:

- Access issues;
- Audio-visual works/photographs;
- Database protection;
- Digital issues;
- Government as owner and user of copyright works;
- Internet retransmission of broadcast programs;
- Performers' rights;
- Rights management in an online environment;
- Signal rights for broadcasters;
- Technology-enhanced learning;
- Term of protection;
- Traditional knowledge and folklore; and
- Transitional period for unpublished works (s. 7).

In order to better respond to the fast-changing technological and business environment, the review of the Copyright Act will be done through revisions involving manageable packages of issues



Bits and Bytes

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and narrowly focused bills.

As a first step in the reform process, the government has released two consultation papers on Internet issues: *Consultation Paper on Digital Copyright Issues* and *Consultation Paper on the Application of the Copyright Act's Compulsory Retransmission Licence to the Internet*.

Comments on these two consultation documents may be submitted by September 15 and will be posted on the Web (subject to consent). This will be followed by a brief opportunity to comment on the submissions received as well as various consultations meetings to be held later in the fall. Policy options would be developed, if necessary, by early 2002.

The Consultation Paper on Digital Copyright Issues seeks input from stakeholders on whether the act should be amended (in accordance with principles contained in two international WIPO treaties signed by

Canada in December 1997) to:

- Set out a new exclusive right in favour of copyright owners, including performers and record producers, to make their works available online to the public;
- Prevent the circumvention of technologies used to protect copyright material; and
- Prohibit tampering with rights management information.

Another important issue relates to the circumstances under which Internet service providers should be held liable for the transmission and storage of copyright material when their facilities are involved.

At present, the act does not clearly identify the conditions for imposing liability, nor does it explicitly limit such liability.

The Copyright Act currently sets out a compulsory licence that requires cable and satellite companies to pay royalties (set by the Copyright Board) to rights holders (mainly film and television producers and broadcasters) when they provide their subscribers with access to the programs contained in broadcast signals.

Because of this compulsory licence, cable and satellite companies are not required to obtain the consent of rights holders. The main issue addressed in the

future competitors who may wish to utilize similar business models. iCraveTV provided Internet users with access to nine Canadian and eight U.S. over-the-air television signals that were received off-air at a location in the Toronto area, converted to a compatible format and streamed over the Internet.

Users who visited the service's Web site could select a signal from a menu screen, which would then be displayed in a small box on the user's computer monitor. The service was provided free of charge and supported through advertising. iCraveTV ceased operations as part of a settlement with Canadian and U.S. broadcasters and producers who had initiated copyright infringement proceedings.

JumpTV, another Canadian company, has a similar business model. JumpTV's request for the certification of an Internet specific retransmission tariff is currently pending before the Copyright Board, with a public hearing scheduled to commence in December 2001, and could result in a determination by that body as to whether Internet-based retransmitters have the benefit of the licence.

More information is available from Industry Canada's intellectual property policy directorate's Web site at <http://strategis.ic.gc.ca/SSG/tp00001e.html> and the Web site of the copyright policy branch of Canadian Heritage at www.canadaheritage.gc.ca.

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