



THE CANADIAN CHAMBER OF COMMERCE
LA CHAMBRE DE COMMERCE DU CANADA



Submission on Copyright Reform

September 11, 2009

The Canadian Chamber of Commerce is Canada's leading business organization, representing businesses of all sizes across the country. The importance of intellectual property rights to the Canadian public, including consumers, artists, authors and other creators, and to Canadian business led the Canadian Chamber to create in 2008 a coalition of businesses and organizations under the banner of the Canadian Intellectual Property Council (CIPC). The CIPC's principal focus is to ensure that Canada strengthens and modernizes its intellectual property laws in order to foster innovation and creativity in Canada and bolster Canada's knowledge and creative based businesses.

Since its inception, the CIPC's efforts to date have been directed primarily towards two main objectives. The first objective is to bring Canada's copyright legislation up to date and in line with other leading nations. The second is to enact legislation to end or impede the flow of counterfeit goods into Canada through the implementation of, among other things, a border enforcement system that would aid in the detection and deterrence of counterfeit goods.

Over two years ago, in the spring of 2007, both the House of Commons Standing Committees on Industry, Science and Technology and Public Safety studied the issue of pirated and counterfeit goods in Canada. Both committees heard from witnesses and produced solid, consistent reports containing many useful and practical recommendations that unfortunately have continued to go largely unnoticed. The Canadian Chamber and the CIPC were pleased that a bill to update copyright legislation was introduced in June 2008. However, that bill was de-railed with the calling of the 2008 federal election.

Notwithstanding the passage of time, the Canadian Chamber and the CIPC look forward to the introduction of a new bill updating the copyright legislation which we understand will be introduced in the House of Commons in the fall of 2009. We are appreciative of the opportunity to present our views on copyright reform at the recent series of roundtable consultations hosted by the Minister of Industry. On July 21st, 2009, we were represented at the roundtable consultation in Calgary by Mr. W. Lee Webster, Chair of the Canadian Chamber's Intellectual Property Committee and a member of the CIPC who presented our members views.

The business community understands the many challenges that the government faces in updating copyright legislation and the need to find the appropriate balance between rewarding innovators and creators with the needs of the consumer. However, it is important that the government not lose sight of the fact that the fundamental foundations of copyright remain sound. Copyright

rewards creativity. It provides an exclusive right to prevent the copying or publication of a work for a limited term in order to stimulate artistic and literary development. These principles are as sound today as they were one hundred and fifty years ago. The challenge faced by the government is to ensure that the well founded benefits of copyright law are maintained in the digital era.

There are several principles that the Canadian Chamber and the CIPC encourage the government to follow. First, any updates to the current *Copyright Act* must support creativity and innovation. This is critical to growing and maintaining the knowledge-based economy in Canada. Second, exclusive rights awarded under the *Copyright Act* must provide rights holders with the recognition and remuneration and protect the investments that are essential to sustain creativity and innovation. Three, the benefits of copyright protection are enhanced when countries adopt coordinated approaches based on internationally-recognized reforms and these norms are reflected in the World Intellectual Property Organization's (WIPO) treaties that Canada needs to implement.

These rights must be properly balanced with the ability to ensure that consumers have fair access to – and ease of use of – these works. The balance is not control of information versus freedom of information and the rights must be properly balanced. It's to balance the reward with ease of access in order to foster creation and innovation. Understanding the balance and getting it right is vital.

The concept of creating something and giving it away for free may be enticing for some. However, it is human nature that affords a reward for stimulating creativity. Copyright does not restrict the free flow of information. Copyright protects the form of that information, not the substance or ideas underlying that form. The debate is often cast by some as a conflict between big business, often big foreign business, and the consumer. However, this interpretation of the debate is a narrow one. Copyright is not aimed at just protecting big business interests; small businesses also benefit from copyright. Perhaps more importantly, copyright benefits those creators and innovators who are rewarded for their work - authors, musicians, artists, computer programmers, dancers, actors and so on. Moreover, copyright benefits consumers and furthers the public interest in the creation and dissemination of creative works by spurring investment of time, money and labour in the development of new works (leading to more works, more consumer choice and lower prices).

While successive governments have attempted to update the *Copyright Act*, reform remains long overdue. In 1997, Canada signed both the WIPO Copyright Treaty and the Performances and Phonograms Treaty, clearly signalling its

intention to accede to Treaties, but unlike its major trading partners and much of the developed world, it has yet to implement either into law. In 2007, the Industry and Public Safety Committees both noted that Canada needs to update its intellectual property rights laws including bringing copyright law up to date to conform to today's technology and international standards.

While it is true that the United States of America has been strongly encouraging Canada to update its copyright law, so have other countries - including other developed countries such as Australia, Japan, France, Italy and New Zealand. A made-in-Canada approach to copyright reform is the right way to go, but we must also be mindful of the fact that we are not an island; rather, we exist in a global context and participate in a global economy, and significant inconsistencies between legal regimes can generate uncertainty and conflict and lead to unfavourable results. Accordingly, experiences in other countries should not be ignored, and indeed can teach us the best practices.

Among other issues, Canada's copyright laws need to be updated in order to address the following:

- With the technological advances since the last updates to copyright legislation, the ability to file share and perform mass downloading via the internet has eroded legitimate sales of digital goods such as movies, music and games. When digital files are shared on peer-to-peer networks, creators are not paid for their works.
- The current law does not properly clarify what is and what is not acceptable behaviour for Canadian consumers and businesses on the internet with regard to downloading and sharing digital files.

These issues need to be rectified. Once clearer rules are established for digital files, businesses will be able to determine if there is a viable market and be able to develop new digital distribution services where a return on investment can be expected.

Canada's copyright reforms should also include:

- An online certainty and clarity of marketplace rules for both businesses and consumers.
- Provide strong copyright protection that provides incentives for small start-up companies to invest in innovative technologies and new digital products, services, distribution methods and business models.

- Prohibitions for hacking of digital protections of creative works, including both the act of circumvention and trafficking in circumvention devices and services.
- Implementation of the WIPO Internet Treaties in consideration of international best practices.
- Provide for clear rules on unauthorized file sharing services operating in Canada.

To summarize, most can agree that Canada should examine and identify best practices from around the globe that can be looked at as we update our copyright laws. More evidence and empirical data gathered from international examples can only be helpful in this case. Today's copyright laws are no longer viable in relation to today's available technology. The government must act now.