



Bill C-32 and digital locks: more grist for the mill

October 1, 2010 by Stephen Zolf

Michael Geist has an opinion piece on Bill C-32 in the September 27, 2010 issue of *The Hill Times*. While Professor Geist likes the new consumer exceptions in the Bill that permit time shifting, format shifting, back up copies and UGC, he continues to be troubled by the Bill's digital lock provisions (known as the anti circumvention rules in Bill C-32). Geist strikes a somewhat alarmist tone on digital locks, arguing that these provisions: "effectively trump all other copyright (particularly fair dealing and the new consumer exceptions)"; are a "huge flaw that undermines many of the positive steps forward"; and that a "compromise" needs to be found.

However, a closer look at the new fair dealing exceptions and the digital lock provisions underscores why rights holders are so intent on seeking amendments to the Bill going in the other direction. Several commentators (Sookman, Gannon) have pointed out that on closer examination the prohibition against circumventing digital locks does not extend to circumventing copy-control protection measures. Therefore, in no way do the digital lock provisions "trump" any existing fair dealing exceptions or the new parody and satire fair dealing exceptions found in Section 21 of Bill C-32. Once you have legal access to a work, there is no provision in the new Bill that would prevent anyone from making use of the fair dealing copyright exceptions, digital lock or not. So one might reasonably take issue with Geist's assertion that creators will not face significant financial losses under the Bill's list of new fair dealing categories and consumer exceptions, suggesting that the need to fine tune these loopholes is clearly a matter of perspective. Rights holders continue to be adamant that the current exceptions in the Bill are too broad and potentially undermine other protections in the Bill against digital piracy.

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