



## International Perspectives in Copyright Reform

**Recent developments** in reforming the Canadian *Copyright Act* are best understood from the perspective of international law, as Rob Tiessen points out in his article in this issue of *Feliciter*. Canada's reform efforts in 2005 and 2008 are viewed as failed attempts to further implement provisions of treaties signed at the World Intellectual Property Organization (WIPO) in the mid-1990s.

Given this context, looking at the current reform agenda at the international level will help us anticipate what the future holds for copyright reform in our country. As we will see, the outcome could be anything from a lockdown on the Internet through the Anti-Counterfeiting Trade Agreement (ACTA)<sup>1</sup> to something a bit more promising, such as an international agreement on exceptions and limitations to copyright<sup>2</sup> that would favour user groups such as libraries or disabled people, particularly visually impaired people. The failed reform efforts of 2005 and 2008 highlight the tension between economic imperatives and the importance of information, culture and knowledge in any vibrant civil society.

### ACTA

Not much has been said about this multilateral agreement in the press, probably because most requests for information about it were turned down in Canada and elsewhere on national security grounds. If it were not for the efforts of Michael Geist, a professor of law at the University of Ottawa and Canada Research Chair in Internet and E-commerce Law, and a few others, we would probably know almost nothing about these secret meetings between the governments of Australia, Canada, the European Union, Japan, Mexico, Morocco, New Zealand and the United Arab Emirates.

Professor Geist claims that ACTA poses four main threats.<sup>3</sup> First, the way it is being brought forward undermines the institutions that traditionally take care of copyright reform, such as WIPO, a recognized agency of the United Nations. Second, it is still unclear how this will affect WIPO's current review of its development and governance (called the WIPO Development Agenda).<sup>4</sup> Third, it is an example of the pitiful lack of government transparency in developing a wide-reaching policy framework. Finally, it ignores domestic copyright sovereignty.

In order to illustrate his case, Professor Geist highlights a few key elements that have been leaked so far. ACTA would implement, among others, the following provisions:

- **Digital locks:** The criminalization of anti-circumvention technologies would make it illegal to tamper with digital locks on a file (also called technological protection measures or TPMs) even for legal uses of locked content, including library services.
- **Third party liability:** Internet service providers (ISPs) would be liable if illicit content were hosted on their servers, even without their prior knowledge.
- **Notice and takedown:** ISPs would be obligated to take content off their servers simply upon receiving a complaint from a rights holder alleging violation of copyright; no judicial decision or court order would be required.
- **Protection of rights management information (RMI):** Tampering with RMI, essentially metadata about rights regarding a copyright-protected file, would become illegal.

These provisions would have direct implications for the asymmetrical relationship between those who own and those who need access to information. In fact, one has to wonder what impact the provisions might have on library services, such as interlibrary loans and digital delivery under fair dealings. Will ACTA hamper libraries' role in helping patrons to access content in a legal manner when computer files are encrypted and locked down? And what about the potential problems for preservation? More important, how will ACTA affect our rights and freedoms as citizens, such as freedom of expression or the right to privacy? These are pressing and yet unresolved questions that pose a great threat to our community.

Under the leadership of the *Union des consommateurs*, a not-for-profit group, a petition calling for increased transparency and openness in the ACTA negotiating process was launched in Montreal on January 22, 2010.<sup>5</sup> The Canadian Library Association was among the first to sign the petition, as were a few other groups from the library community.



## Exceptions and limitations

In a positive development, WIPO's Standing Committee on Copyright and Related Rights has held a series of meetings to discuss the role of limitations and exceptions to copyright.<sup>6</sup> The process has been vastly more transparent and open than the one behind ACTA, with international organizations such as the International Federation of Library Associations and Institutions (IFLA), the World Blind Union, and Electronic Information for Libraries being involved in the deliberations.

As IFLA rightly points out in a declaration approved by its executive board in August 2000,<sup>7</sup> the digital environment is not different from the paper environment with respect to applying the principles of copyright. Because copyright grants a monopoly on the use of a protected work, it gives much power to the rights holder (who may not be the original creator) in the marketplace. Economic imperatives could be used to stem criticism or analysis of a work, while individuals could be required to divulge personal information before consuming a work. Libraries, archives and museums – our heritage institutions – as well as other key stakeholders, such as journalists and researchers, need exceptions to copyright to make sure our civil society functions properly. The digital age exacerbates this issue with new possibilities and pitfalls.

Much could be said about the current negotiations, but the main point is that this transparent process recognizes the need to balance copyright in certain situations. This is not an easy task and much consideration should be given on how to define them. However, one can find hope in the many lengthy studies WIPO has prepared or commissioned in the past few years,<sup>8</sup> which were recently summarized for a meeting in December 2009.<sup>9</sup>


As well, more information about what our community is seeking can be found on the websites of Electronic Information for Libraries,<sup>10</sup> IFLA<sup>11</sup> and the Library Copyright Alliance.<sup>12</sup> Of particular interest is the joint *Statement of Principles on Copyright Exceptions and Limitations for Libraries and Archives*<sup>13</sup> produced by these three groups.

## Action items and conclusion

- *Stay informed:* The Canadian Library Association has developed useful information packages and campaigns.<sup>14</sup> Also, for those seeking an in-depth understanding of how copyright works with respect to libraries, the 2004 Supreme Court of Canada ruling *CCH Canadian Ltd. v. Law Society of Upper Canada* is well worth a read.<sup>15</sup> In this simple and interesting text, our highest court unanimously upholds the role of libraries and fair-dealing rights in providing access services to patrons and in

allowing exceptions to copyright in non-commercial situations. The various sources of information mentioned in the present article will also be of interest.

- *Sign the petition:* Add your name to the petition calling for transparency and openness in international negotiations that have an impact on copyright and our civil liberties.<sup>16</sup>
- *Be ready to act:* The threat of ACTA and the positive, yet uncertain, developments at WIPO pose a potential challenge to library services, as well as to the preservation of our intellectual liberties and other constitutionally guaranteed rights. Building a relationship with key stakeholders will enable you to advocate about the importance of a fair and balanced copyright regime in Canada and the role libraries should play. Stakeholders of particular importance are federal members of Parliament, because they will be called upon to ratify international developments in Canadian law. However, other groups are also important. These include seniors (who often need to access works in alternative formats) and youth (who are intensive users of technology). You can also keep abreast of relevant activities carried out by trustworthy organizations such as CLA or the Canadian National Institute for the Blind, with its current Right To Read campaign.<sup>17</sup>

Copyright is a fascinating and multipronged issue for our community. On the one hand, it enables creators and the industries that support them to prosper. On the other, it can become a barrier to a vibrant civil society. Any attempt to reform copyright must include a strong dose of public scrutiny and participation to ensure equitable reform. Librarians have the opportunity to play an important part in ensuring that this highly important information policy issue is looked at from many angles, not just the commercial one. 

## Notes

1. Michael Geist, "The ACTA Internet Chapter: Putting the Pieces Together," website content, November 3, 2009 ([www.michaelgeist.ca/content/view/4510/125/](http://www.michaelgeist.ca/content/view/4510/125/)); see also all posts on ACTA at Michael Geist's blog ([www.michaelgeist.ca/tags/acta/99999](http://www.michaelgeist.ca/tags/acta/99999)).
2. World Intellectual Property Organization, "Limitations and Exceptions," website content, n.d. ([www.wipo.int/copyright/en/limitations/index.html](http://www.wipo.int/copyright/en/limitations/index.html)).
3. Michael Geist, "The ACTA Threat: My Talk on Everything You Need to Know About ACTA, But Didn't Know to Ask," website content, November 12, 2009 ([www.michaelgeist.ca/content/view/4530/408/](http://www.michaelgeist.ca/content/view/4530/408/)).



4. World Intellectual Property Organization, "Development Agenda for WIPO," website content, n.d. ([www.wipo.int/ip-development/en/agenda/](http://www.wipo.int/ip-development/en/agenda/)).
5. Union des consommateurs "International protestation movement on Copyright secret negotiations," website content, 2010 ([www.consommateur.qc.ca/union-des-consommateurs/?page\\_id=344](http://www.consommateur.qc.ca/union-des-consommateurs/?page_id=344)).
6. World Intellectual Property Organization, "Limitations and Exceptions – Meetings by Topic," website content, n.d. ([www.wipo.int/meetings/en/topic.jsp?group\\_id=233](http://www.wipo.int/meetings/en/topic.jsp?group_id=233)).
7. International Federation of Library Associations and Institutions, "The IFLA Position on Copyright in the Digital Environment," website content, 2000 ([www.ifla.org/en/publications/the-ifla-position-on-copyright-in-the-digital-environment](http://www.ifla.org/en/publications/the-ifla-position-on-copyright-in-the-digital-environment)).
8. World Intellectual Property Organization, "Limitations and Exceptions – Studies and Presentations," website content, n.d. ([www.wipo.int/copyright/en/limitations/studies.html](http://www.wipo.int/copyright/en/limitations/studies.html)).
9. World Intellectual Property Organization, Standing Committee on Copyright and Related Rights, *Analytical Document on Limitations and Exceptions* (Geneva: WIPO, 2009) ([www.wipo.int/edocs/mdocs/copyright/en/sccr\\_19/sccr\\_19\\_3.pdf](http://www.wipo.int/edocs/mdocs/copyright/en/sccr_19/sccr_19_3.pdf)).
10. Electronic Information for Libraries, "eIFL-IP Draft Law on Copyright Including Model Exceptions and Limitations for Libraries and Consumers," website content, August 16, 2009 ([http://plip.eifl.net/docs/ip\\_docs/draft-law](http://plip.eifl.net/docs/ip_docs/draft-law)).
11. International Federation of Library Associations and Institutions website ([www.ifla.org/en/clm](http://www.ifla.org/en/clm)).
12. Library Copyright Alliance website ([www.librarycopyrightalliance.org](http://www.librarycopyrightalliance.org)).
13. International Federation of Library Associations and Institutions, *Statement of Principles on Copyright Exceptions and Limitations for Libraries and Archives* (The Hague: IFLA, May 2009) ([www.ifla.org/publications/statement-of-principles-on-copyright-exceptions-and-limitations-for-libraries-and-archi](http://www.ifla.org/publications/statement-of-principles-on-copyright-exceptions-and-limitations-for-libraries-and-archi)).
14. Canadian Library Association, "Copyright Information," website content, n.d. ([www.cla.ca/copyright](http://www.cla.ca/copyright)).
15. *CCH Canadian Ltd. v. Law Society of Upper Canada* [2004] 1 S.C.R. 339 2004 SCC 13 ([www.canlii.org/en/ca/scc/doc/2004/2004scc13/2004scc13.html](http://www.canlii.org/en/ca/scc/doc/2004/2004scc13/2004scc13.html)).
16. A2Knetwork, "Joint Declaration on ACTA," website content (<http://a2knetwork.org/joint-declaration-acta>).
17. Canadian National Institute for the Blind, website content (<http://righttoread.cnib.ca>).

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in Edmonton, Alberta  
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& Trade Show

Registration is now open online at  
[www.cla.ca/conference/2010/](http://www.cla.ca/conference/2010/)

