

Angus Introducing Private Copying Levy Bill, Flexible Fair Dealing Motion

Tuesday March 16, 2010

NDP MP Charlie Angus has shaken up the copyright reform process today with a pair of proposed measures. The first is a private member's bill that would expand the scope of the private copying levy to include digital audio recorders (DARs) such as iPods. Bill C-499 comes as a response to earlier court cases that ruled that DARs are beyond the scope of the current law. The second is a motion (M-506) that calls for support to reform the Copyright Act's fair dealing provision by adding the words "such as" to make the current list of fair dealing categories illustrative rather than exhaustive. In addition, the motion codifies the six criteria discussed in Canadian caselaw for determining whether a particular use of a work qualifies as fair dealing.

I'm certainly supportive of Angus' effort to push copyright issues into the spotlight. I'm particularly supportive of the motion on fair dealing. The motion states:

Fair Dealing Provisions within the Copyright Act

That, in the opinion of the House, the government should amend section 29 of the Copyright Act in such a way as to expand the Fair Dealing provisions of the act; specifically by deleting section 29. and inserting the words,

29. Fair dealing of a copyrighted work for purposes such as research, private study, criticism, news reporting or review, is not an infringement of copyright.

29.1 In determining whether the dealing made of a work in any particular case is fair dealing, the factors to be considered shall include,

- (a) the purpose of the dealing;
- (b) the character of the dealing;
- (c) the amount of the dealing;
- (d) alternatives to the dealing;
- (e) the nature of the work; and
- (f) the effect of the dealing on the work.

This approach is precisely what thousands of Canadians supported during last summer's copyright consultation. It strikes the right balance - it's fair dealing, not free dealing - and it is based on current Canadian jurisprudence. Greater fair dealing flexibility benefits creators, innovators, educators, and the broader public. The motion deserves strong support from all parties.

The attempt to expand the private copying levy in Bill C-499 is more problematic. I am not as opposed to private copying as some, but I think expanding the system in this manner raises real concerns. First, I think we need to work on fixing the system before we work on expanding it. There are ongoing concerns about distribution of proceeds, copying vs. making available, and overbroad coverage of the levy that should be addressed.

Second, the bill expands the levy to audio recording devices, defined in C-499 as "a device that contains a permanently embedded data storage medium, including solid state or hard disk, designed, manufactured and advertised for the purpose of copying sound recordings, excluding any prescribed kind of recording device." This covers everything - iPods, iPhones, Blackberries, Androids, iPads, personal computers. While the CPCC (the private copying collective) may not target all of these devices, there is nothing in the bill that prevents them from doing so.

Third, the bill deals solely with sound recordings, but there have already been calls to extend to video and other forms of content. Expanding the levy in this manner without addressing those issues leaves open the prospect of an even bigger levy in the future.

Fourth, the competitive concerns associated with levies on devices cannot be ignored. The last attempt to place a levy on iPods led to charges as high as \$75 per device. That market distortion leads consumers to purchase outside Canada, which means no levy, no sales taxes, and lost retail sales.

Fifth, we need to think about the interaction between private copying and anti-circumvention rules. The industry is pushing for anti-circumvention rules that would prohibit Canadians from picking the digital lock on copy controls found on CDs. If Canadians have paid for the right to copy via the levy, surely those rights should not be trumped by the use of DRM. Yet that is precisely what both Bills C-60 and C-61 proposed.

Sixth, the industry cannot have the levy and continue to claim that Canada is an illegal downloading haven. Canadians have paid more than \$250 million in fees associated with the levy and the Angus bill would ratchet that up dramatically.

Angus' comments in the House of Commons this morning are posted below:

Mr. Speaker,

I rise today to submit a bill to update the Canadian copyright Act, which extends the Private Copying Levy to the next generation of devices that consumers are using for copying sound recordings for personal use.

The private copying levy is a long-standing Canadian solution that has compensated artists for some of the enormous copying that is taking place.

At the same time, updating the levy will provide legal certainty for fans to copy songs onto an i-Pod or MP3 player.

The levy is a compromise that works. In a world of endless downloading and copying, it provides a monetizing stream for the artists who create such phenomenal cultural works.

Mr. Speaker, there are two dead end roads on the copyright debate. The first dead end is the belief that digital locks, predatory lawsuits and zero tolerance on access can push consumers back in time.

The other dead end is the belief that all the great works of film, music and art can be looted at will.

If we are going to move down the right road we must get serious about securing a monetizing stream for creators.

Canada has a chance to strike the right balance:

No. 1: artists have a right to get paid. This is why I am bringing forward the bill on updating copying levy.

No. 2. Consumers, educators and researchers have a right to access those works - which is why I will be tabling a motion on defining fair dealing to protect those rights.

Mr. Speaker, the New Democratic Party will continue to work to ensure that copyright laws are updated to protect artists while ensuring access to these amazing works.