

2011-03-01

C-32 Amendments

Enabling Infringement (Provision of Services). **Object:** To ensure that the enablement provision will apply to the wealth destroyers by including services that are primarily operated to enable infringement or which induce infringement.

Non-Commercial User-Generated Content. **Object:** To ensure that all dealings with existing works and new works (UGC works) are fair and will not harm or undermine legitimate markets.

Ephemeral Recordings — Broadcasting Undertaking. **Object:** To enable rights holders to continue to collectively license broadcasters to copy music for their operations by re-inserting deleted para. (6).

Statutory damages. **Object:** (1) to lower the caps for statutory damages where the infringement is for the defendant's own private purposes; (2) where the infringement is for the defendant's private purposes, the damages caps now in the Act should apply, but the judge should be able reduce the damages to zero by making such private purposes a special case to which s. 38.1(3) applies; and (3) to remove the exclusion of statutory damages for those that enable infringement.

Reproduction for Private Purposes. **Object:** (1) to limit private copying to copies of content a person owns or has a license to use; (2) to limit private copying by the individual for his/ her purpose or for a member of his/her household; (3) to permit the circumvention of a copy control TPM of a sound recording that a person has purchased where the circumvention does not undermine subscription markets or other agreed to use limitations and to enable regulations to expand the classes of content for which circumvention would be possible; and (4) to ensure that the exception does not undermine subscription markets or permit copying from illegal sources made under the existing private copying regime.

Fixing Signals and Recording Programs for Later Listening or Viewing. **Object:** (1) to limit copying to sources that are legal; (2) to limit copying by the individual for his/ her purpose or for a member of his/her household; and (3) to ensure that copies made do not undermine subscription markets.

Backup Copies. **Object:** To ensure that the backup copy is used only for back-up purposes.

Network Services Safe Harbour. **Object:** To limit the exception to innocent intermediaries by using language already interpreted by the Supreme Court.

Caching Safe Harbour. **Object:** (1) to limit the exception to innocent intermediaries who do not enable infringement; and (2) condition the exception on the internationally standard condition that requires removal of infringing files from a cache if the provider knows it is infringing in order for the exception to apply.

Hosting Safe Harbour. **Object:** (1) to limit the exception only to innocent hosting providers who do not enable infringement; and (2) condition the exception on the internationally standard condition that requires removal of infringing files if the provider knows it is infringing in order for the exception to apply.

Condition for Eligibility. Object: To incent service providers to cooperate in stemming piracy by requiring them to adopt and reasonably implement a policy to prevent the use of their services by repeat infringers and by conditioning the availability of service provider exceptions on this being done..

Injunctive Relief (All new). Object: (1) to ensure that rights holders are not prevented from going to court to obtain orders stopping infringements e.g., an order removing an infringing file that is being hosted, and (2) to permit a court to make an order blocking a pirate site such as The Pirate Bay to protect the Canadian marketplace from foreign pirate sites, as can now be done in the EU under Article 8(3) of the EU Copyright Directive.

Information Location Tool Safe Harbour. Object: To limit the exception to innocent search engines whose dealings with works are fair (as in the US).

Making Available Right. Object: Technical amendments to properly implement the WIPO Treaties including to ensure that makers of sound recordings have an exclusive making available right required by the WPPT.

Submitted by: Grant Dexter, Chair, Canadian Independent Music Association