

# Copyright: Asking for a direction on the road to greater accountability



Amid the heated and polarized debate surrounding Bill C-61, amendments to Canada's *Copyright Act*, the implications for consumers attracted intense media attention whereas the implications for regulators—whose decisions on the valuation of rights touch more and more Canadians in the frenzied digital rights marketplace—attracted no public attention. That's because they were not mentioned.

It's an understandable omission, in some ways. If the amendments outlined in the bill come into force, Canadians would face a number of tighter controls and enjoy a few loosened rules around the copying, distribution, display and other uses of copyrighted works. Intellectual property issues would be in our faces—clearly spelled out, thanks to this bill—if we recorded TV shows, downloaded music or even borrowed copied digital content from the library.

The bill is intended to accomplish several things, but most obvious are its efforts to protect creators' rights in the expanding universe of digital media.

C-61 also aims to update the *Copyright Act* to allow Canada to comply with international copyright standards.

That's fine so far as it goes. But an inevitable by-product of this bill, with its

creation of new rights and the expansion of some existing rights, is an increased work load for the relevant economic regulator, in this case the Copyright Board of Canada. It's a complex new world for the regulator and for stakeholders such as artists and the collective societies that represent them before the Board, along with consumers and the many commercial users for whom paying copyright fees is part of doing business.

So it is at this moment, with C-61 headed to the Industry Committee for review, and with the Copyright Board valuing claims in an increasingly intricate rights landscape—for payments to a growing number of rights holders for a widening array of uses—that the government can benefit all stakeholders by providing some timely support to the Board.

The support should, first of all, take the form of a resource review to ensure that the Copyright Board is adequately equipped to discharge its important and expanding responsibilities.

An additional and equally valuable support should take the form of a Direction, issued by Cabinet to the Board, which would, as the Canadian Association of Broadcasters and other stakeholders said in a letter last fall to Industry Minister Jim Prentice, "provide criteria to guide its decisions and (would) increase accountability to government, to stakeholders and to the public."

A Direction would provide policy guidance to the Board, establish general criteria to be applied in setting copyright tariffs and furnish more transparent guidelines for setting a value for a right. Its impact would be wide-ranging, to say the least, as the policy influence and financial implications of the Board's decisions on copyright collectives, licensees and even members of the public are significant.

The Board is responsible for tariffs and proposed tariffs estimated to be worth hundreds of millions of dollars. These tariffs cover uses of music ranging from broadcasting, Internet downloading, ringtones, and private copying to concerts and many other uses. It's obvious

that the Board's resources are stretched thin, without considering the impact of C-61 becoming law and adding to its responsibilities.

The government has successfully issued Directions to many other organizations, including the CRTC, for many of the same reasons as stakeholders are now calling for a Direction to the Copyright Board. Guidance and clarity are required, although legislation is not since the *Copyright Act* already includes a section enabling the Governor-in-Council to issue Directions to the Board.

What better time to provide these than when the Board is faced with growing challenges and, potentially, a new roster of rights to address? The time is right and the need is great for improved certainty, clarity and predictability in the Copyright Board's tariff-setting process.

And, as always, copyright will be a hot topic at the CAB's annual convention, which will attract hundreds of the brightest and most visionary television minds from around the world to Ottawa November 2-4. Be sure to attend, and join the discussion.

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