



Canadian Federation for the  
**Humanities and Social Sciences**

Fédération canadienne  
des **sciences humaines**

## **Responding to Bill C-32: An Act to Amend the Copyright Act**

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**Compiled by the CFHSS Taskforce on Copyright**

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## **About the Canadian Federation for the Humanities and Social Sciences**

Representing more than 50,000 researchers in 72 scholarly associations, 75 universities and colleges, and 6 affiliates, the Canadian Federation for the Humanities and Social Sciences is the national voice for the university research and learning community in these disciplines.

The opinions expressed in this paper are those of the Federation and not necessarily those of the members of its Taskforce on Copyright.

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## Executive Summary

Efforts to create fair and balanced copyright legislation have been in the works for many years. As researchers, creators and educators, the members of the Canadian Federation for the Humanities and Social Sciences appreciate the difficulty of shaping legislation that incorporates feedback from multiple interested parties and serves the public good for the foreseeable future.

Bill C-32, the most recent legislation proposed to amend the Copyright Act, sets out several changes that would achieve a more fair and balanced approach to copyright. Our community commends several proposed amendments in Bill C-32, including the expansion of the definition of fair dealing to include parody and satire, and the amendment stating that an individual does not infringe copyright when using existing copyright-protected material in the creation of new work (provided that certain conditions are satisfied).

At the same time, we believe there are some areas of the Bill that would greatly benefit from minor adjustments. The following document contains recommendations that we believe will strengthen Canadian copyright law. In particular, we recommend that two general changes should be adopted: first, that the phrase “such as” or “including, but not limited to” be included in the list of fair dealing exceptions; and second, that with regards to technological protection measures (TPMs), it is only an offence to circumvent a TPM for infringing purposes.

In addition to these general changes, the Federation also recommends the following changes to Bill C-32:

- Libraries, archives and museums should be allowed to retain intermediate copies for the purpose of maintenance;
- Libraries, archives and museums should be allowed to copy items licensed for individual use for the purpose of preservation;
- Constraints on interlibrary loans should be removed;
- Impairment of a TPM should be allowed in adapting works in any format or medium for persons with perceptual disabilities;
- The requirement to destroy course materials 30 days after students receive their final course evaluations should be removed;
- The requirements for control and monitoring of digital teaching materials should be struck;
- Such phrases as ‘has a reprographic reproduction licence’ should be expanded to ‘has an agreement with the relevant rights holder(s) or has a digital reproduction licence’;
- Private educational institutions and their associated libraries, archives and museums should be included within the definitions of “educational institution” and “library, archive or museum”;
- Bill C-32 should explicitly specify that private study legitimately involves ‘performing’ or otherwise displaying or using copies in the presence of others;
- A general research exception to Bill C-32’s anti-circumvention provisions should be included with regards to TPMs;
- Anti-circumvention provisions should be accompanied by stipulations concerning the feasibility of circumvention options and clear visibility of notices regarding TPMs; and
- Crown copyright should be abolished.

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## Introduction

Through networked digital technologies, Canadian researchers, creators and educators as well as the librarians, archivists, and museologists with whom they work can access a large and growing array of materials, advancing scholarship and furthering public policy goals. They can store their resources online through cloud computing, allowing researchers to work from anywhere and contribute to meaningful dialogue around the world. As a result, researchers connect more easily with colleagues throughout Canada and in other countries, developing new ideas in the process. Canadian creators use networked digital technologies to find inspiration in diverse sources, to incorporate those sources into their own works, and to disseminate their works around the world. A forward-looking copyright policy will help researchers and creators take advantage of the opportunities presented by networked digital technologies while ensuring that copyright owners are fairly compensated.

Fair dealing, referred to by the Supreme Court of Canada as a user’s right, is integral to both the research process and to the continued development of creative work. However, fair dealing has been criticized for failing to protect certain types of socially valuable expression from claims of copyright infringement. For instance, under the current Copyright Act, it is plausible that many acts relating to parody and satire would be found to infringe copyright. Through parody and satire, individuals can critique, celebrate, and challenge. We commend the proposed amendment in Bill C-32 stating that that fair dealing for the purpose of parody or satire does not infringe copyright.

We also commend the proposed amendment stating that it does not infringe copyright for an individual to use existing copyright-protected expression in the creation of a new work, provided certain conditions are satisfied – including that the act is done for non-commercial purposes. In creating new works, individuals inevitably build upon existing works. This proposed amendment allows individuals to do so without infringing copyright. This amendment will render non-infringing many of the mashups, machinima, fan fiction, remixes and digital collages that are currently being created using digital technologies and disseminated online.

We welcome as well the proposed amendments stating that the act of reproducing a work which one has legally obtained for private purposes does not infringe copyright, provided certain conditions are satisfied; that fixing signals and recording programs for later listening or viewing, under certain conditions, does not infringe copyright; and that it does not infringe copyright to make a backup copy of a work which a person owns or has a licence to use, provided certain conditions are satisfied. It is plausible that these acts, when done for the

purpose of research, are protected by the right to fair dealing. However, these amendments would ensure that all individuals who engage in these acts – which are commonplace in today's networked digital world – will not infringe copyright in so doing.

These exceptions to owners' rights, however, are undermined by the protection granted, in Bill C-32, to technological protection measures (TPMs). TPMs are measures that restrict access to works or the use of works. Bill C-32 makes it an infringing act to circumvent an access control TPM for all purposes save those that are expressly excepted. Fair dealing is not included in the list of exceptions. Neither is the ability to access works that are no longer protected by copyright. Thus, an individual who circumvents a TPM in order to exercise their right to fair dealing, or to access a work that is no longer protected by copyright, would be committing an offence under the Copyright Act.

As well, other rights – including the right to reproduce works for private purposes, the right to fix signals and record programs for later listening or viewing, and the right to make a backup copy of a work – are not available if the individual has to circumvent a TPM in order to exercise that right. In attempting to achieve a balance between the rights of publishers, creators, and users, the provisions of Bill C-32 that grant protection to TPMs should be revised to indicate that it is not an offence to circumvent a TPM in order to do something which is otherwise non-infringing. As emphasized below, such a revision is consistent with the 1996 World Intellectual Property Organization (WIPO) Internet Treaties that Canada has signed but not yet ratified.

In what follows, we provide details in support of the preceding general observations from the vantage points of our members who work in Canada's libraries, archives and museums and who teach and undertake research and creative work in Canada's universities.

## Libraries, Archives, and Museums

### General Comments

Our members who serve libraries, archives, and museums especially applaud Bill C-32's intention to 'permit ... libraries to make greater use of copyright material in digital form.' Nonetheless, members we represent have concerns about the direction and wording of certain parts of the Bill.

### Management and Maintenance of Collections (Preservation): S. 30.1

It is commendable that Bill C-32 acknowledges the need to preserve materials in libraries, archives and museums. In particular, libraries, archives and museums require that a copy be made as the format and/or its associated technology becomes obsolete—as opposed to having already become obsolete, as s. 30.1(1)(c) of the current Copyright Act stipulates. However, the effectiveness of this provision is reduced by the primacy the Bill accords to technological protection measures (TPMs, commonly known as “digital locks”).

If a work is fixed digitally, its fixation is not necessarily permanent. Digital materials, the physical carriers on which they are usually stored, and the technology that must be used to access them are continually in a state of change. Moreover, the rate of degradation in a digital medium is not known nor is it easily determined. For example, in the United States, the Smithsonian Institution did not discover until several years after it began transferring analogue recordings to digital form that the plastic medium of CDs flowed substantially, rendering them unplayable. In Canada, a similar fate befell a large-scale project of transferring the contents of a Crown corporation's analogue recordings to Digital Audio Tape (DAT).

In their capacity as public repositories, libraries, archives and museums must be permitted to access and migrate digital material in order to ensure its long-term preservation and thereby conserve valuable resources, including those which are part of Canada's heritage. Without that ability these materials will disappear, rendering the copyright moot. Accordingly, it is essential that the Bill ***allow libraries, archives and museums to retain intermediate copies for the purpose of maintenance*** (as distinguished from use in s. 30.1 (3) of the current Copyright Act). In order to do so, TPMs may have to be circumvented. If heritage institutions are not legally permitted to circumvent digital locks, the preservation of born-digital materials will be threatened.

Certain materials that libraries, archives and museums would wish to acquire are only available through individual-use licenses (e.g., bonus MP3 tracks on a CD, digital downloads, and official proceedings of scholarly conferences issued on CD-ROM). As institutions, libraries are not contractually eligible to purchase, access or preserve these items. However, to ensure that future generations of students and researchers will be able to utilize all the materials being created thus giving a comprehensive account of Canadian society, the Bill should include a provision that ***libraries, archives and museums be allowed to copy these items for the purpose of preservation.***

Finally, the exceptions to Bill C-32's anti-circumvention provisions do not provide a remedy for digital locks that are broken or that become obsolete. Even if the various exceptions to the Bill's anti-circumvention provisions detailed in this submission are adopted, the role of libraries, archives, and museums as repositories of Canada's heritage of research and criticism will be frustrated at the outset.

### **Patrons of Other Libraries (Interlibrary Loan): S. 30.2(5)**

According to the current Copyright Act (30.2(1)), "it is not an infringement of copyright for a library, archive or museum, or a person acting under its authority to do anything on behalf of any person that the person may do personally under section 29 or 29.1," and Bill C-32 does not propose to change this important provision. The current Act goes on to outline what libraries, archives or museums may do for their own patrons (30.2) and for patrons of other institutions (30.2(5)).

Commendably, Bill C-32 proposes to permit digital copies for interlibrary loan. However, s. 30.2(5.02) of the proposed changes describes controls that the loaning institution must place on the digital copies: e.g., a patron can only make a single print copy from a digital copy, a digital copy cannot be communicated, and a digital copy cannot be used for more than five days. These limits are very restrictive, especially insofar as Bill C-32 does not propose to change s. 30.2(1) of the current Act, which, as indicated above, allows "a library, archive or museum, or a person acting under its authority to do anything on behalf of any person that the person may do personally under section 29 or 29.1."

Serious research on a complex topic cannot and should not be limited to five days. Researchers should be able to use the digital copy to assist with their research for the duration of their work. For example, for research that focuses on a digital collection or that involves concordance software, the digital copy should be available for the same amount of time as the printed copy. Indeed, the proposed requirement is contrary to Bill C-32's intention "to ensure that [the Copyright Act] remains technologically neutral" (Summary, g).

Further, research in the humanities and social sciences has become increasingly collaborative. Indeed, federally funded programs have encouraged projects that involve teams of researchers in several parts of the country. In such a setting, loaning institutions cannot be expected to monitor, enforce, or report on how many prints a patron makes in another institution many miles away. As above, we stress that according to s. 30.2(1) of the current Act, "a library, archive or museum, or a person acting under its authority" may "do anything on behalf of any person that the person may do personally under section 29 or 29.1." Accordingly, we believe that **s. 30.2(5.02)'s constraints on interlibrary loan should be removed from the Bill.**

### **Perceptual Disabilities: S. 41.16(2)**

We agree with the provision in s. 41.16(1) that allows individuals with perceptual disabilities or a non-profit organization acting on their behalf to circumvent a technological protection measure "for the sole purpose of making a work, a performer's performance fixed in a sound recording or

a sound recording perceptible to the person with a perceptual disability.” However, s. 41.16(2) requires that the services, technology, device or component used to create a work for someone with perceptual disabilities, “not unduly impair the technological protection measure.”

Prohibiting such impairment of a technological protection measure could significantly restrict the ability of non-profit organizations to provide their clients with perceptual disabilities to access these works. Instead, the Act should allow all formats and media to be adapted for persons with perceptual disabilities. For instance, cinematographic works are often used in academic institutions by both students and researchers; in this connection, non-profit organizations should be allowed to provide captions and sign language for these works. In this way, the Bill’s aim of technological neutrality would be realized for all citizens, regardless of their perceptual capacities. Accordingly, we recommend that ***impairment of a technological protection measure be allowed in adapting works in any format or medium for persons with perceptual disabilities.***



## University Teaching

### General

Our members, many of whom teach in Canadian universities, welcome the addition of education to the list of fair-dealing exceptions (29). Indeed, this purpose has been acknowledged in copyright law relevant to Canada since its beginning, for the Statute of Anne refers directly to education in its long title, which reads in part as follows: “An Act for the Encouragement of Learning.” Specification of education as a fair-dealing exception would go a long way to realizing Bill C-32’s aims of allowing “educators and students to make greater use of copyright material” (Summary, d) and would recognize the central importance of education as a common goal of Canadian society among sovereign nations with which we share agreements concerning intellectual life. Indeed, the Berne Convention accords to signatory countries the discretion to create uncompensated exceptions and limitations, subject to certain conditions, for use of copyrighted works for illustration in publications, broadcasts and sound recordings for teaching purposes (Article 10(2)).

Also welcome is Bill C-32’s recognition of the role that “the use of digital technologies for ... education” plays in “fostering Canada’s ability to participate in a knowledge economy” (Preamble) as well as the Bill’s goal of permitting “educators ... to make greater use of copyright material in digital form.” Nonetheless, our post-secondary members are concerned about certain provisions proposed in Bill C-32.

### Destruction of Teaching Materials: S. 30.01(6)

As proposed in Bill C-32, s. 30.01(6)(a) would require an educational institution to destroy course materials 30 days after students receive their final course evaluations. In longstanding practice, any number of individual students may appeal their evaluations or appeal to write a makeup exam or submit compensatory assignments, e.g., as a result of ill health. In doing so, students and the professors who are charged with their re-assessment may have to consult educational materials much more than a month after they have received their course evaluations. Indeed, university staff regularly archive course materials and examinations for at least a year in order to assess the bases of student petitions for deferred or revised grades. In this respect, the date when students receive their “final” course evaluations may differ considerably among those who have taken the same course during the same academic term.

As well, post-secondary teachers develop their course materials cumulatively, often over several years. In light of new knowledge and ongoing pedagogical experience, post-secondary teachers reshape course materials as a basis for future offerings. Moreover, offerings of a particular course may be rotated at intervals longer than a year. As well, due to changes in enrolment, particular courses and sections of courses are frequently cancelled or added just before a course or section would begin. Accordingly, we believe ***the requirement to destroy course materials 30 days after students receive their final course evaluations should be struck.***

### **Monitoring of Digital Teaching Materials: S. 30.01(6)(b-c)**

Subsequent parts of proposed s. 30.01(6), particularly b and c, would require educational institutions to monitor and control digital teaching materials in a manner that presumes, on one hand, that the institutions sustain state-of-the-art expertise in applying technological protection measures to digital course materials and on the other hand, that such TPMs and the related monitoring of course content can be undertaken in a way that would not conflict with professors' Academic Freedom or Librarians' Confidentiality. Both of these principles have been articulated as basic to professional ethics throughout the developed world.

Academic Freedom has not only been buttressed by substantial case law; it has also been enshrined for decades in existing collective agreements between universities' boards of governors on the one hand, and associations of professors and professional librarians on the other—not only in Canada, but also internationally. Indeed, for a university administration to abrogate academic freedom by requiring records of the materials a professor employs in her teaching would be sufficient basis for a university-wide policy grievance and for formal censure of the university's administration by professors around the world. Accordingly, we believe ***the requirements for control and monitoring of digital teaching materials should be struck.***

### **Compensation of Rights Holders: S. 30.02-03**

Educational institutions (and their associated libraries, archives, and museums) are charged with administering the provisions outlined for Literary Collections (30). Unfortunately, s. 30.02 and 30.03 proposed in Bill C-32 would give preference to only one method of compensating creators and their publishers for the use of their materials, namely, copyright collectives. Whereas collectives can be an effective means of compensating copyright holders, they have not been the only means.

Educational institutions as well as libraries, archives and museums can and do negotiate directly with creators or their licensed agents. This longstanding practice can result in arrangements that are specifically tailored to the needs and uses of an educational institution and still ensure that creators are fairly compensated. Whereas there has been no collective for digital reproduction rights, the provisions proposed as s. 30.02 and 30.03 presume that the single existing reprographic reproduction rights collective will license digital reproduction rights. Such a presumption is not only anti-competitive but also ignores the established alternative of negotiated transactions. Just as Bill C-32 attempts to be technologically neutral, it should also be 'compensation neutral' ensuring only that creators be acknowledged and duly compensated for the use of their work. Accordingly, ***such phrases as 'has a reprographic reproduction licence' should be expanded to 'has an agreement with the relevant rights holder(s) or has a digital reproduction licence.'***

### **Fair-Dealing and Technological Protection Measures: S. 29 and 41**

The provisions concerning TPMs include several exceptions, including those involving persons with perceptual disabilities (critiqued above). Such a list of specific exceptions raises the

prospect of a problematic ‘argumentum e contrario,’ especially with regard to works that otherwise would be copied for a fair-dealing purpose.

For instance, there is nothing in Bill C-32 that would prevent a publisher from applying a TPM to a digital copy of a work whose copyright has expired. Such works are of central importance to post-secondary teaching in the humanities and social sciences, comprising as they do the cumulative subject matter of courses in languages, literatures, and various branches of history, including social, political, and economic history. Indeed, ‘locking up’ previously accessible works would inhibit the free expression of all Canadian citizens and could precipitate a Charter challenge.

As well, relatively recent works whose licences explicitly permit copying for non-commercial purposes (e.g., Creative Commons licences, increasingly employed by university teachers) could be subject to an application of TPMs without consent of the copyright owner, thereby undermining their creators’ evident intention to foster free expression and denying post-secondary teachers and students access to their works. Without TPMs, such works could be copied as part of one’s teaching materials; however, applying a TPM would prevent such a use. In the case of born-digital works, such a ‘lock-up’ would offend their creators’ manifest intention. In the case of a work that originated in print form or some other non-digital medium (e.g., film or taped music), such a lock-up would conflict with Bill C-32’s aim of ensuring that the Copyright Act remains ‘technologically neutral’ (Summary, g).

As well, Bill C-32’s anti-circumvention provisions do not distinguish between copying and access. Properly, copyright legislation is concerned with copying works, not with access to works. In contrast, the TPMs applied to DVDs and to eBooks by such commercial vendors as Amazon and Apple control both access and copying. Nonetheless, there is already American case law that distinguishes between access and copying. Similarly, in its review of the Digital Millennium Copyright Act, the United States have already recognized as non-infringing the circumvention of, for instance, DVD TPMs to compile clips for educational purposes and for non-commercial videos. In contrast, Bill C-32’s stringent anti-circumvention provisions conflict with its first aim, namely, “to update the rights and protections of copyright owners to better address the challenges and opportunities of the Internet, so as to be in line with international standards” (Summary, a). Accordingly, we feel that to better serve the Bill’s aims, ***the current list of exceptions to anti-circumvention provisions should be replaced by a provision that technological protection measures may be circumvented for any non-infringing purpose.***

## **Educational Institutions**

Finally, the definitions of “educational institution” and “library, archive or museum” exclude private educational institutions and their associated libraries, archives and museums. With increasing emphasis on public-private partnerships, ***private educational institutions and their associated libraries, archives and museums should be included within the definitions.***

## Research and Creative Work

### General

As originators of research and creative works, our members welcome the continued affirmation of fair dealing for the purposes of research, private study, and criticism. In this regard, we welcome the expansion of Bill C-32's aim, from Bill C-61's goal of permitting certain uses of copyright material "by consumers," to such uses more generally "for private purposes" (Summary, e).

We also applaud the addition of parody or satire to the previous fair-dealing exceptions (29). In this regard, it is noteworthy that according to the logic of the 2005-09 reprographic tariff for educational institutions, copying that would prepare the way for research, criticism, parody, or satire would be non-infringing whether or not a particular work of research, criticism, parody or satire was eventually based directly on such copying.

As well, we welcome the acknowledgment that, provided certain conditions are satisfied, copying for non-commercial purposes would not infringe copyright (29.21). In this regard, it should be emphasized that academic research, criticism, parody, and satire are, as academic activities, to be distinguished from commissioned or contracted work for compensation or profit.

### Private Study: S. 29

In the ongoing practice of professors and professional librarians, private study, non-commercial copying, research, parody, and satire are closely linked. The venues in which such activities take place are highly varied: informal study groups, graduate colloquia, research teams, experimental ensembles, and artists' collectives are only a few of the settings where collegial research and creative work occurs in universities. In this regard, it would be worthwhile for the Bill to specify that ***private study legitimately involves 'performing' or otherwise displaying or using copies in the presence of others*** (29.22(1)(e)). In research and creative work at the highest levels of achievement, there are many more dead ends, false starts and wrong turns than there are breakthroughs.

As well, the provision that copying for private purposes would be relevant to all works is a notable improvement on previous proposals for change to the Copyright Act, as is the removal of a limitation on the number of copies for private use and the earlier notion that contractual agreements would trump the right to make copies (29.22). These improvements will greatly facilitate forms of private study whose purposes can be anticipated to evolve into research, criticism, parody, or satire. As well, these improvements on past efforts at updating the Copyright Act should also help realize the Bill's admirable goal of 'encouraging the use of digital technologies for research' (Preamble). All the same, we have reservations about some of the Bill's provisions that bear on research at Canada's universities.

## Technological Protection Measures: S. 41

University-based research, including federally funded research, must satisfy an ethics review when it is first formally proposed. Such an ethics review includes an assessment of the legality of the proposed research methodology. If the work fails the review, there will be no grant funding and the research will never begin; in the instance of periodic ethics reviews during an extended research project, the research will stop. Without such exceptions to Bill C-32's anti-circumvention provisions as those outlined above, the research would be illegal and thereby stultified. Accordingly, we feel there must be ***a general research exception to Bill C-32's anti-circumvention provisions*** if Canada's university-based researchers are to be able to continue their work.

Section 41.14(1) attempts to provide a means for Canadians to deal with digitally published material that collects and communicates personal information relating to the owner of the material and that also includes a technological protection measure. For Canadian citizens, such 'spyware' poses an obvious threat to privacy. In a post-secondary context, it can also conflict with professors' Academic Freedom and Librarians' Confidentiality. As discussed above, both of these principles have been articulated as basic to professional ethics throughout the developed world.

Bill C-32's remedy (41.14.1) is far from adequate. An owner of such digital material may only circumvent the accompanying digital lock if a) it is accompanied by a notice concerning the collection and communication of personal information and it is not accompanied by an option to prevent the collection and communication or b) it is not accompanied by such a notice or option. In contrast to s. 30.04(4)(b) and 30.04(6), there is no requirement that such a notice be clearly visible as determined by the Governor in Council, nor is there a requirement that the option be feasible.

On one hand, without a requirement of clear visibility, such a notice could be effectively concealed in a "boiler-plate" permission agreement and without a feasible option the possibility of circumvention could be effectively absent from such an agreement. On the other hand, Bill C-32 presumes that there will be widespread expertise in circumventing digital locks despite the Bill's other measures that would outlaw methods of circumvention. Accordingly, we believe any ***anti-circumvention provisions should be accompanied by stipulations concerning the feasibility of circumvention options and clear visibility of notices regarding technological protection measures.***

In combination with the latter stipulations, ***a general permission to circumvent technological protection measures for non-infringing purposes*** would be far preferable to the Bill's anti-circumvention provisions. Moreover, circumvention for non-infringing purposes would be consistent with the WIPO Internet Treaties and yet still provide legal protection.

In this regard, Bill C-60 of 2005 would only have made it an offence to circumvent a TPM for an infringing purpose. The amendment set out in Bill C-60 was consistent with the two 1996 World Intellectual Property Organization treaties that Canada has signed but not yet ratified. Were it to be incorporated into Bill C-32, the Bill C-60 amendment would provide copyright owners with an additional tool in their fight against copyright infringement while ensuring that other parties are not prevented from exercising their rights.

## Fair Dealing

Buttressing the concept of non-infringing purposes is the Canadian concept of fair dealing, a mechanism that resonates with the Charter right to freedom of expression. Fair dealing acknowledges that whereas creators hold rights to reproduction of their work, a public space of quotation must be maintained in order to allow study, critique and creation. In particular, fair dealing is integral to both the research process and to the continued development of creative work.

On the international stage, scholars throughout the world expect by long-established custom to quote without permission. Within Canada, the Supreme Court emphasized in 1997 the importance of balance in copyright law between creators' rights and users' rights (*Théberge v. Galerie d'Art du Petit Champlain*) and in 2004 the Supreme Court articulated tests of fair dealing, asserting that it is a "user's right," an "integral part" of the Copyright Act that "must not be interpreted restrictively" (*CCH v. Law Society of Upper Canada*). In the meantime, cases in which fair dealing has been argued as a defence to copyright infringement have helped delineate the boundaries between users' rights and the rights of copyright owners.

## Crown Copyright

Finally, Crown copyright remains a barrier to access and use of materials generated by Canadian taxpayers. According to s. 12 of the current Copyright Act, and unamended in Bill C-32, the Federal Government owns the copyright of "any work [that] is, or has been, prepared or published by or under the direction or control of" the Government. To be sure, questions of accuracy and the distinction between official and unofficial copies have been legitimately raised and answered with regard to statutes and judicial decisions. However, the many exceptions to Crown copyright in Commonwealth countries where it has obtained indicate that the notion of ownership is a blunt instrument for handling such issues. By contrast, it is of great importance for Canadians to have access to works that have originated in their Government, and these works should be readily available to Canadians, rather than having to be paid for a second time or effectively not being available at all. Indeed, removing Crown copyright would be consistent with the practice of other countries. Accordingly, ***we believe that Crown copyright should be abolished.***

## Conclusion

We believe that several aims of Bill C-32 are laudable and beneficial both to the academic community and Canadian public. Nevertheless, we also believe very strongly that the primary goal of the legislation, namely, “to update the rights and protections of copyright owners to better address the challenges and opportunities of the Internet, so as to be in line with international standards” (Summary) would be improved if two general changes were adopted. Specifically, we recommend that s. 29 of the current Act include in its list of fair-dealing exceptions the phrase “such as” or “including, but not limited to,” and that, as stated above, s. 41 indicate only that “it is an offence to circumvent a TPM for an infringing purpose.” The first change would accord with its fair-use counterpart in the US Copyright Act and the latter would satisfy the 1997 WIPO agreements. Both changes would result in an Act that would be more robust in meeting Canada’s future digital challenges and opportunities, both domestically and internationally. In addition, we have recommended a number of lesser changes to the proposed Act which address particular issues that may create unintended barriers to access or result in avoidable problems of compliance and implementation.