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## Canada's New Copyright Bill: More Spin than 'Win-Win'

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## Canada's new copyright bill: More spin than 'win-win'

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**Abstract (Abstract):** Here's a practical example. Want to rip a CD to your iPod? No problem. But only if you own the original CD and keep it indefinitely (no garage sales to get rid of that dusty disc collection in the basement without first wiping your iPod clean). And it has to be your iPod, as well. Technically, you can't rip songs to your sister's iPod, nor can your kids load up your Father's Day gift with any songs before they give it to you. If you want to make a backup library of tracks that you downloaded legally from the Web, you'd better check that contract you "agreed" to (probably with a single click and without reading the fine print), first. Your backups might very well be prohibited -- though you'd probably never know it until you got sued. Is all this consumer friendly? You tell me.

Legal protection for locks could conceivably boost confidence and investment in Canada's online marketplace, but innovative services like online movie rentals are already being rolled out without these laws. Anti-circumvention provisions have a serious downside. In addition to the unintended future consequences, digital locks facilitate anti-competitive behaviour and practices like "tied selling." That's where consumers are locked into a particular product or service because the content is technologically incompatible with any other vendors' offerings. This reduces competition, consumer choice and creators' access to new markets.

**Abstract:** When Canada's reform copyright Bill C-61 was tabled last week, Industry Minister Jim Prentice called it a "win-win approach" that balanced the needs of users and creators. Legal protection for locks could conceivably boost confidence and investment in Canada's online marketplace, but innovative services like online movie rentals are already being rolled out without these laws.

**Links:** [Check for full text via 360 Link](#), [First Search Authorization](#)

**Full text:** When Canada's reform copyright Bill C-61 was tabled last week, Industry Minister Jim Prentice called it a "win-win approach" that balanced the needs of users and creators. Anyone who actually reads the bill, however, will quickly realize that claims about balance are simply spin. I have attempted to cut through the government's poor drafting, public relations gloss and conflicting reports to figure out what the proposed reforms would actually mean in practice.

To be fair, there are some interesting and promising principles buried in the bill. The idea of lower damages for non-commercial infringements compared to commercial piracy is a good one. Likewise, attempting to add provisions that legalize the everyday activities of ordinary Canadians is the right way to go. And librarians and educators need more flexibility to carry out their jobs without violating copyright law.

But sadly, the potential promise of these ideas is entirely negated by the technical limitations.

Here's a practical example. Want to rip a CD to your iPod? No problem. But only if you own the original CD and keep it indefinitely (no garage sales to get rid of that dusty disc collection in the basement without first wiping your iPod clean). And it has to be your iPod, as well. Technically, you can't rip songs to your sister's iPod, nor can your kids load up your Father's Day gift with any songs before they give it to you. If you want to make a backup library of tracks that you downloaded legally from the Web, you'd better check that contract you "agreed" to (probably with a single click and without reading the fine print), first. Your backups might very well be prohibited -- though you'd probably never know it until you got sued. Is all this consumer friendly? You tell me.

The worst thing about the bill is that it makes its own balancing provisions irrelevant. The bill essentially says

that technology trumps whatever rights consumers or competitors might have otherwise had. So the law no longer matters. People only have whatever rights content owners choose for them. For instance, if the CD you're now allowed to shift to your iPod is technologically locked down, then, well, sorry - you're completely out of luck. Try to circumvent the access and copy controls, and the well-publicized provision to limit damages to \$500 for noncommercial infringements no longer applies. You're on the hook for up to \$20,000 per infringement, which is actually \$60,000 per song by the time you account for the composer, performer and record label. Multiply that by a dozen or so songs and you get a sense of the damage awards really possible if this bill becomes law.

There are very few exceptions to the prohibitions on accessing locked-down content -- two examples are protecting yourself from privacy-invasive spyware and giving access to visually impaired persons. But even the few exceptions are probably useless because it is forbidden for anyone to create or distribute the tools to make access or privacy protection possible if the tools "unduly impair" the technological measure, whatever that means.

The provisions protecting digital locks are not just bad for consumers, educators, librarians and other ordinary Canadians. They're bad for businesses, too.

Legal protection for locks could conceivably boost confidence and investment in Canada's online marketplace, but innovative services like online movie rentals are already being rolled out without these laws. Anti-circumvention provisions have a serious downside. In addition to the unintended future consequences, digital locks facilitate anti-competitive behaviour and practices like "tied selling." That's where consumers are locked into a particular product or service because the content is technologically incompatible with any other vendors' offerings. This reduces competition, consumer choice and creators' access to new markets.

It's no wonder so many content creators -- songwriters, performers, filmmakers, authors and others -- have come out against the new copyright bill. There's nothing in it that would actually help most creators earn the living they deserve.

There are alternatives: What we need are not convoluted new provisions and protection for digital locks. We need creative legal strategies to profit -- economically, socially and culturally -- from the vast potential of the networked information economy. The government can help by streamlining and simplifying copyright licensing instead of making it even more complex. Let's hope the government listens to the overwhelming outcry against Bill C-61 before the proposal becomes law. - Jeremy de Beer is an associate professor at the University of Ottawa's Faculty of Law. He teaches, among other things, digital music law, and is online at [www.jeremydebeer.ca](http://www.jeremydebeer.ca).

Credit: Jeremy De Beer; National Post

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