

BILL C-32: AN ACT TO AMEND THE COPYRIGHT ACT

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LEGISLATIVE HISTORY OF BILL C-32

HOUSE OF COMMONS

Bill Stage	Date
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N.B. Any substantive changes in this Legislative Summary which have been made since the preceding issue are indicated in **bold print**.

Legislative history by Peter Niemczak

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BILL C-32: AN ACT TO AMEND THE COPYRIGHT ACT

BACKGROUND

Bill C-32, introduced in the House of Commons on 25 April 1996, represents the second phase of copyright revisions. The first phase was completed with the passage of Bill C-60 in 1988.

Copyright is that arm of the law on intellectual property that protects works of creative endeavour, notably in the field of arts and letters, as those terms are understood in the broad sense. Copyright protects eligible works by conferring on their creators, or other rightful copyright owners, an array of exclusive rights in relation to their works, thereby enabling them to control and exploit these more fully.

In Canada, the copyright sector contributes about \$16 billion to the economy; it employs nearly 670,000 people.

A. Basic Features of Canada's Copyright Law

Section 5 of the *Copyright Act* (hereinafter the "Act") provides that copyright "shall subsist...in every original literary, dramatic, musical or artistic work." These four basic categories of protected subject-matter encompass a broad spectrum of works, only some of which are expressly mentioned under the Act (e.g., books, sheet music, maps, paintings, photographs, choreographic works, woodcuts and computer programs). Works that are not expressly mentioned may still qualify for copyright protection if they are found to come within one of the four basic categories. In addition to being eligible subject-matter, a work must also be created by a person who satisfies the nationality criteria under the Act, or must have been first published in a prescribed country. Provided these criteria are met, copyright will vest automatically in an eligible work. Registration is not a prerequisite to protection, although there are provisions for the registration of works under the Act.

The rights conferred on the creators of eligible subject-matter are at the heart of copyright. These rights are of two types. First are the “moral rights,” which enable creators to protect their reputation and safeguard the integrity of their works. Creators may not, during their lifetime, transfer these rights to another party, but they may waive them. Second are the “economic” or “pecuniary” rights, which enable creators or other rightful copyright owners to determine how their works may be used and to derive economic benefits from such use. Chief among the economic rights are:

- the exclusive right to reproduce the protected material or any substantial part thereof; this entitles copyright owners to prevent the unauthorized reproduction of their works, whether by means of manual transcription, photocopiers, VCRs or other copying devices.
- the exclusive right to perform the protected material or any substantial part thereof in public; this entitles copyright owners to prevent unauthorized public performances of their works, for example, the unauthorized playing of music in public, whether it be a “live” performance of a song at a cabaret, or a “televised” performance of a rock concert at a local youth centre.
- the exclusive right to communicate a work to the public by telecommunication; this entitles copyright owners to prevent unauthorized transmissions of their works to the public, whether by means of off-air broadcasts, cable or satellite transmission.

While the foregoing are perhaps the most important of the economic rights, there are other rights under the legislation for specified categories of works, such as the “rental right” for sound recordings and computer programs and the “public exhibition right” for selected artistic works. Unlike the moral rights, the economic rights may be transferred to another party by assignment or licence.

Copyright subsists for the term set out under the Act. While the life of the creator plus 50 years after his or her death (the “life plus 50” rule) is the most commonly prescribed term, shorter terms have been prescribed for specified works, such as the straight 50-year term of protection that applies to photographs. Moral rights subsist for the same term as the copyright. Where the applicable term has expired, the work may be used without fear of infringement of the Act.

Unless the practice is otherwise allowed under one of the Act’s exceptions or

compulsory licences, a person who uses the protected material in contravention of the creator's exclusive rights commits an infringement for which he or she may have to answer either civilly or criminally, or both.

In recognition of the difficulty for copyright owners to enforce their rights individually against users, the Act provides for the "collective administration" of copyright, which enables copyright owners to form a "collective" for the purposes of providing users with copyright clearances and, depending on the nature of the agreement, to take enforcement action on the copyright owner's behalf in cases of infringement. At present, three different types of collectives are recognized and regulated under the Act: the "performing rights societies," which administer the public performance right and part of the communication to the public by telecommunication right in relation to "musical works;" the "collecting bodies," which administer that part of the telecommunication right dealing with the retransmission of distant signals; and the "licensing bodies," which administer all the other copyright rights not covered by the two foregoing regimes. The first two types of collectives must in all cases have their proposed tariff of fees approved by the Copyright Board before being able to collect from the users; however, the "licensing bodies" are free to reach voluntary agreements with the users. Where a voluntary agreement cannot be reached, an application may be made to the Board for it to set the applicable rates.

The Copyright Board is an administrative body set up for the express purpose of regulating the rates that collectives can charge for the use of the materials comprised in their respective repertoire of works. Its mandate has since been expanded to authorize the use of works in cases where the copyright owner cannot be located.

B. Copyright Reform⁽¹⁾

The current *Copyright Act* was proclaimed in force in 1924 and, although it withstood the passage of time surprisingly well, the need for its revision in order to reflect the changing times and technologies became increasingly apparent over the years. Copyright reform in Canada started in earnest in the late 1970s, when the department responsible for copyright policy - the now defunct Department of Consumer and Corporate Affairs - issued a report entitled *Copyright in Canada, Proposals for a Revision of the Law* (the Keyes/Brunet report). This seminal report was followed by the publication of over a dozen reports commissioned by the Department on specified aspects of copyright reform, which, in turn, led to the tabling in 1984 of a White Paper on copyright reform, *From Gutenberg to Telidon*. General elections intervened, however, and the successor government converted the White Paper into a discussion paper and sent it for study to the House of Commons Standing Committee on Communications and Culture. The Sub-Committee on the Revision of Copyright was subsequently established to carry out the review; it issued its report, *A Charter of Rights for Creators*, in October 1985. Some 15 months later, on 27 May 1987, Bill C-60 was introduced in the House of Commons and was passed into law in June 1988.

Bill C-60 represented the first phase of the promised reform, the government of the day having decided to split the reform process in two. The changes effected by this bill included: the conferral of explicit statutory protection for computer programs; the creation of a public exhibition right for certain types of artistic works; an expansion and strengthening of moral rights; the repeal of the controversial compulsory licence for sound recordings; the establishment of a regulatory regime for “licensing body” collectives administering any right or rights, other than the performing rights respecting musical works; and a compulsory licensing system for unlocatable copyright owners.

Although phase two of copyright reform was to handle the remaining changes, the delays incurred in introducing the legislation enabled several other amending bills to be passed in the interim. Noteworthy among these were:

- Bill C-2 (the Canada -U.S. Free Trade implementation legislation) which, among other things, created a retransmission right by replacing the narrower “radio communication

(1) For a more detailed discussion of the provisions of the *Copyright Act* and of the evolution of copyright reform in Canada, see: M. Hébert, *Copyright Reform*, Library of Parliament, Research Branch, Background Paper BP-413E, March 1996.

right” with the current “communication to the public by telecommunication right” (passed in 1988);

- Bill C-88, which clarified the application of the telecommunications right to certain kinds of users (passed in 1993);
- Bill C-115 (the North American Free Trade implementation legislation) which, among other things, created a commercial “rental right” for computer programs and sound recordings (passed in 1993); and
- Bill C- 57 (the World Trade Organization Agreement implementation legislation) which, among other things, extended limited protection to the performances of performers.

C. Bill C-32, An Act to amend the Copyright Act

Bill C-32 would implement phase two of copyright reform. It is a substantial piece of legislation that would effect many important and long-awaited changes. Notably, the bill would prescribe a specific term of protection for unpublished works which, at present, are thought to be protected in perpetuity. It would allow sound recordings to be copied for private use in exchange for a levy imposed on the blank recording material, such as blank audio cassettes. It would create special exemptions for non-profit educational institutions, libraries, archives and museums, and for people with perceptual disabilities. In this regard, the bill would, among other things, allow educational institutions to tape radio and television programs for educational purposes under specified conditions; it would enable libraries to provide a patron with a copy of an article under specified circumstances; and it would allow the production of alternative format materials for people with perceptual disabilities. Further, it would protect exclusive book distributors in Canada by enabling them to block the entry of “parallel book imports” into the country. It would introduce “statutory damages” that would effectively guarantee a minimum award in cases of infringement. It would also revise the regimes for the three types of collectives currently regulated under the Act. Perhaps the most significant change under the bill, however, would be the enactment of “neighbouring rights.”

The term “neighbouring rights” is used in reference to the rights accorded to the following three categories of subject-matter: the performances of performers, sound recordings, and broadcast signals. Until recently, only sound recordings had some measure of protection

under the Act (i.e., the reproduction right only). This changed, however, with the passage of the NAFTA implementation legislation, which broadened the protection for sound recordings by including a commercial rental right, and the WTO implementation legislation, which extended protection to performers against bootleg audio recordings and unauthorized live transmissions of their performances. Bill C-32 would broaden the protection afforded to performances and sound recordings, notably by granting eligible recording artists and the makers of sound recordings the right to be paid royalties for the public performance and broadcasts of their works. Currently, only music composers and lyricists are entitled to payment when their music is played in public or broadcast.

By enacting neighbouring rights, Canada would be able to adhere to the 1961 International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (otherwise known as the Rome Convention) - adherence to which would be mandated under new section 91 of the Act. At present, Canada is a party to the two *copyright* conventions only, that is, the 1886 Convention for the Protection of Literary and Artistic Works (the Berne Convention), and the 1952 Universal Copyright Convention (the UCC), neither of which is considered to apply to neighbouring rights works.

By adhering to the Rome Convention for the neighbouring rights works, Canada would be joining some 50 other nations that are party to this Convention. Canadian recording artists and record producers might thus be able to receive royalties when their recordings were played in these countries (just as Canadians might have to pay for the use of recorded music from those countries). Of the major industrialized nations, the United States is the only country that is not a party to the Rome Convention.

DESCRIPTION AND ANALYSIS

Bill C-32 would divide the Act into nine parts - a restructuring that was effected in part to accommodate the new regime for the neighbouring rights works, - that is, the performances of performers, sound recordings and communication signals. The neighbouring rights works, generically termed "other subject-matter" under the bill, would be treated differently from the traditional works protected by copyright, - that is, original "literary, dramatic, musical and artistic works," generically termed "works" under the bill. The revised

legislation uses these different terms to emphasize the different status accorded to these two broad categories of subject-matter. This important distinction must be remembered when reading the legislation, for some of the bill's provisions apply only to "works" or only to "other subject-matter," while other provisions apply to both.

The bill contains 63 clauses and would divide the Act into the following nine parts:

Part I: Copyright and Moral Rights in Works (sections 3 to 14.2).

Part II: Copyright in Performer's Performances, Sound Recordings and Communication Signals (sections 15 to 26).

Part III: Infringement of Copyright and Moral Rights and Exceptions to Infringement (sections 27 to 33).

Part IV: Remedies (sections 34 to 45).

Part V: Administration (sections 46 to 59).

Part VI: Miscellaneous Provisions (sections 60 to 64.2).

Part VII: Copyright Board and Collective Administration of Copyright (sections 66 to 78).

Part VIII: Private Copying (sections 79 to 88).

Part IX: General Provisions (sections 89 to 92).

Clauses 1 and 2: Definitions, Publication and Other Matters

Clause 1 of the bill would revise some of the existing definitions under the Act and introduce new ones. Noteworthy among these is the definition of the word "book," which would be changed to accommodate the new provisions respecting the parallel importation of books. As redefined, the word "book" would apply exclusively to printed material and would exclude a number of works that might otherwise be considered to come within its ambit, such as magazines and periodicals, instruction and repair manuals accompanying a product or supplied as an accessory to a service, and maps, charts, plans and sheet music, if separately published.

These works, as well as the other ones expressly excluded under the definition, would not be subject to the proposed importation restrictions in relation to books.

A further definition related to the proposed book importation restrictions is that of “exclusive distributor.” This term would denote a person who had been appointed in writing by the owner or exclusive licensee of the copyright in a book in Canada, as the only distributor of the book in Canada (or any part of Canada) or as the only distributor of the book in Canada (or any part of Canada) in respect of a “particular sector of the market.” In addition, exclusive distributors would have to satisfy the criteria established by regulations; if no regulations had been developed in this regard, no one could qualify as an “exclusive distributor.” This requirement would make the development of the related regulations a pre-condition to the application of the proposed book importation restrictions, although temporary measures (discussed later) would apply in the interim.

Another noteworthy definition is that of “copyright.” This term would apply not only to the rights granted in relation to the traditional works protected by copyright, but also to the rights granted in relation to the three neighbouring rights works that would be protected under the Act. Thus, performers, broadcasters and the makers of sound recordings would respectively be vested with a “copyright” - *as defined under clause 1-* in relation to their performances, communication signals and sound recordings, although it would be a copyright in name only, for the rights involved would go no further than what is usually prescribed under the “neighbouring rights” regime.

Definitions are also provided for some of the terms used in several of the new measures that would be introduced under the Act. For example, definitions are provided for the terms “educational institution,” “library, archive or museum,” and “perceptual disability,” because specific exemptions are proposed in relation to these institutional users and the perceptually disabled. These and other relevant definitions will be discussed as they appear under the relevant sections of the bill.

Clause 2 would add greater specificity to the clause 1 definition of the term “maker” of sound recordings with respect to designated sections of the Act (new section 2.11). It defines what constitutes a “publication” of the various works and other subject-matter protected

under the Act (new section 2.2, which is a reworded version of current section 4). The clause further defines what constitutes a “communication to the public by telecommunication” and stipulates that persons responsible for such communications would not by that act alone “perform” or authorize the performance of the relevant material in public (new sections 2.3 and 2.4, which are reworded versions of current sections 3(1.2) to (1.5) and 3(4)). Clause 2 also defines what constitutes the “rental” of a computer program and a sound recording (new section 2.5, which is a reworded version of current section 3(2)). It would authorize the Governor in Council to make regulations establishing distribution criteria in relation to “exclusive distributors” (new section 2.6). Finally, clause 2 defines the term “exclusive licence,” which, for the purposes of the Act, would mean “an authorization to do any act that is subject to copyright to the exclusion of all others including the copyright owner, whether the authorization is granted by the owner or an exclusive licensee claiming under the owner” (new section 2.7).

PART I: COPYRIGHT AND MORAL RIGHTS

(Clauses 3 to 13 of the Bill: Sections 3 to 14.2 of the Revised Act)

Rights Subsisting in “Works” - Clause 3 of the bill would amend section 3 of the Act, which, among other things, sets out the “economic rights” granted in relation to copyright. This clause would reword current section 3 expressly to limit its application to “works” - a change that reflects the distinction that would be drawn under the revised legislation between “works” and “other subject-matter.” It would also modernize the language used in that section by referring to a “sound recording, cinematographic film” instead of using the more antiquated phrase “record, perforated roll, cinematograph film ...” Clause 3 would also create a “rental right” in relation to musical works embodied in a sound recording, thus putting music composers and lyricists on the same footing as the makers of sound recordings who were granted a rental right in relation to sound recordings under the NAFTA implementation legislation. Finally, this clause would repeal current sections 3(1.2) to (4), part of which, as noted above under clause 2, would become new sections 2.3 and 2.4 in slightly modified form.

Repeal - Clause 4 would repeal current section 4 of the Act, which defines when copyright material is published for the purposes of the Act. Current section 4, as noted above under clause 2, would become new section 2.2 in slightly modified form.

Nationality and Place of First Publication - Clause 5 would revise current section 5 of the Act, which sets out the criteria respecting nationality or place of first publication that must be met for copyright protection to be conferred in Canada. At present, copyright protection in Canada extends to works (including a cinematograph) created by persons who are British subjects, who are citizens or subjects of, or who reside in, a “treaty country” (i.e., a Berne Convention country, a UCC country or a WTO country), or who reside “within Her Majesty’s Realms and Territories” (or, in the case of a cinematograph, made by a corporation where the corporation is headquartered in a treaty country or within Her Majesty’s Realms and Territories). Clause 5(1) would revise these criteria by extending copyright protection in Canada to works (including “cinematographic works,” which would replace the term “cinematographs”) created by persons who were citizens or subjects of a treaty country or who resided in a treaty country (or, in the case of a “cinematographic work,” made by a corporation headquartered in a treaty country). Similarly, the criterion respecting place of first publication would be revised to apply exclusively to works (including “cinematographic works”) first published in a treaty country. In other words, this clause would eliminate the existing references to “British subjects” and “Her Majesty’s Realms and Territories,” thus making the prescribed affiliation with a “treaty” country the sole nationality criterion for determining eligibility for copyright protection in Canada.

Clause 5(2) concerns current sections 5(1.01) and 5(1.02) of the Act, which deal with the protection of works made or first published in a country that becomes a Berne Convention country or a WTO country only after the work has been made or first published. Essentially, these sections extend copyright protection in Canada to such works, except those whose copyright had expired before the country in question became a Berne Convention country or a WTO country. Clause 5(2) would add new interpretive section 5(1.03) under the Act, to provide that current sections 5(1.01) and 5(1.02) would apply or be deemed to apply, regardless of whether the country in question had become a Berne Convention country or a WTO country before or after proclamation of those sections.

Repeal - Clause 5(3) of the bill would repeal current sections 5(3) to 5(6) of the Act, which set out the regime of protection for sound recordings (i.e., the exclusive right to reproduce, publish and rent commercially). These sections would be transferred to Part II of the

bill, which as noted earlier, is the part that would deal with the neighbouring rights works.

Term for Unpublished Works - Clause 6 of the bill would amend the Act to prescribe a copyright term for “unpublished” works. At present, the Act is silent on this issue and the consensus seems to be that such works are protected in perpetuity. Clause 6 would remedy this situation by modifying current section 7. This section essentially provides that works published posthumously are protected for a term of 50 years following the end of the calendar year in which the work is published (or performed in public or communicated to the public by telecommunication, as the case may be). While this measure would be retained under the revised legislation, it would be made subject to new section 7(2), which would limit its application to situations where the work was published (or performed or communicated by telecommunication) before new section 7 came into force (the “proclamation date”). For posthumous works published after the “proclamation date” or never published (or performed or communicated by telecommunication), new sections 7(3) and 7(4) would apply and would prescribe two different terms of protection depending on the date of the death of the author or authors of the work. On protected works that were unpublished on the “proclamation date” and whose author or authors died *within 50 years* of that date, new section 7(3) would confer a 50-year term of protection following the end of the calendar year of the date of death, irrespective of whether or not the work was published after the “proclamation date.” New section 7(4) would in turn apply to protected works that were unpublished on the “proclamation date,” but whose author or authors had died *more than 50 years* before that date. For these works, new section 7(4) would prescribe a five-year term of protection following the end of the calendar year of the “proclamation date,” irrespective of whether or not the work was published after this date.

Photographs - Clause 7 of the bill would revise the term of copyright protection for photographs, set out at section 10 of the Act. At present, photographs are protected for a straight 50-year term following the end of the calendar year in which they are made. This term would remain the same where the owner of the photograph was a corporation (new section 10(1)). Where, however, the owner of the photograph was either a natural person or a corporation the majority of whose voting shares were held by a natural person, the term of protection would be increased to cover the person’s life, plus 50 years after his or her death (new section 10(1.1)). Clause 7 would also slightly modify current section 10(2) of the Act, which

defines who is the author of a photograph. The existing reference to companies residing “within Her Majesty’s Realms and Territories” or “Berne Convention Country” would be replaced with a reference to residence in a “treaty country.” Similar changes, it may be recalled, were made under clause 5 of the bill.

Repeal - Clause 8 would repeal current section 11 of the Act, which sets out the term of copyright protection for sound recordings. This provision would be transferred to the neighbouring rights provisions under new Part II of the Act.

Term for Cinematographic Works - Clause 9 of the bill would modify current section 11.1 of the Act, which sets out the copyright term for “cinematographs.” It would replace the term “cinematograph” with the term “cinematographic work.” It would also limit the 50-year term of protection prescribed under that section to cinematographic works that did not have a dramatic character, having regard to the arrangement or acting form or the combination of incidents represented in the work. This limitation, it should be noted, is currently contained in the definition of “cinematograph” in section 2 of the Act. As this definition would be repealed by clause 1 of the bill and replaced with a new definition of “cinematographic work,” the reference to the work’s dramatic character would therefore be reinstated under new section 11.1.

Commissioned Works. Clause 10(1) would amend current section 13(2) of the Act which provides that, in the case of an engraving, photograph, or portrait that has been ordered for valuable consideration, the person who commissions the work, and not the person who makes it, is the first copyright owner. While this provision would be retained under the revised legislation, a new amendment proposed in committee would entitle the person commissioning the work to be the first copyright owner only if the agreed upon sum was in fact paid. Otherwise, first copyright ownership would belong to the person who had made the engraving, photograph or painting and not to the person who had ordered it.

Assignments and Licences - Clause 10(2) of the bill would modify section 13(4) of the Act, which authorizes the transfer of copyright by assignment or licence. Pursuant to this section, such transfers may involve all of the copyright rights or only a part of them. They may also contain limitations as to time and territory. Clause 10(2) would modify this section by allowing further limitations to be made with respect to “medium or sector of the market or other limitations relating to the scope of the assignment.” This clause would also add several new provisions under section 13. New section 13(5) is a reworded version of current section 14(3).

It would provide that in the case of partial copyright assignments, both the assignee, as regards the rights assigned, and the assignor, as regards the rights not assigned, would be the copyright owner for the purposes of the Act. New section 13(6) would make clear that, when copyright was transferred by assignment or licence, it would be deemed always to have been the law in Canada that a right of action for copyright infringement could form part of the transfer. New section 13(7) would in turn provide that it had always been the law in Canada that the grant of an exclusive licence in a copyright constituted the grant of an interest in the copyright by licence.

Repeal - Clause 11 would repeal section 14(3) of the Act which, as noted above, would be re-enacted in slightly modified form as new section 13(5) under clause 10.

Repeal - Clause 12 would repeal current section 14.01 of the Act and the related heading. This section sets out the limited rights granted in relation to performers' performances under the WTO Agreement implementation legislation. A more extensive regime regarding performers' performances would be provided under proposed Part II of the Act.

Moral Rights - Clause 13 would modify current section 14.2 of the Act, which sets out the succession rights in relation to the moral rights of authors upon their death. The section, however, is silent on what happens if the successor in title dies. This lacuna would be remedied by clause 13, which would provide, under new section 14.2(3), that the same rules of succession that apply in relation to the author's death would apply in the event that his or her successor in title died.

PART 11: COPYRIGHT IN PERFORMER'S PERFORMANCES, SOUND RECORDINGS AND COMMUNICATION SIGNALS

(Clause 14 of the Bill: Sections 15 to 26 of the Revised Act)

Clause 14 of the bill would enact new Part II of the Act, which would deal exclusively with the three neighbouring rights works. If adopted, these measures would enable Canada to adhere to the 1961 International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (the Rome Convention), which the Governor in Council would be mandated to do under clause 50 of the bill (new section 91 of the Act).

Clause 14 contains 12 proposed new sections, the first of which sets out the rights

of performers. This term, it should be noted, is not defined under the bill. The term “performer’s performances,” however, is defined under clause 2 to mean any of the following when done by a performer: a performance of an artistic work, dramatic work or musical work, whether or not the work was previously fixed in any material form, and whether or not the work’s term of copyright protection under this Act has expired; a recitation or reading of a literary work, whether or not the works’s term of copyright protection under this Act has expired; or an improvisation of a dramatic work, musical or literary work, whether or not the improvised work is based on a pre-existing work.

Performers - Subject to a number of conditions outlined below, new section 15 of the Act would confer on performers the following rights in relation to their performances. As regards an “unfixed” performance (or any substantial part thereof), performers would have the sole right:

- to communicate it to the public by telecommunication;
- to perform it in public, where it was communicated to the public by telecommunication otherwise than by communication signal (i.e., otherwise than by transmission through space via radio waves without any artificial guide, for reception by the public);
- to fix it in any material form;
- and to authorize any of the foregoing acts (new section 15(1)(a)).

As regards a “fixed” performance (or any substantial part thereof), performers would in turn have the sole right:

- to reproduce any fixation of the performance that had not been authorized by the performer;
- to reproduce any fixation of a performance that had been authorized, if the reproduction was made for a different purpose than that authorized;
- to reproduce any fixation of the performance that was authorized under Part III (exemptions) or Part VIII (taping of a sound recording for private use), if the reproduction was made for other than the permitted use;
- and to authorize the foregoing acts (new section 15(1)(b)).

Performers would also have the right to rent out, or to authorize the rental of, a sound recording that embodied their performance (section 15(1)(c)). Pursuant to section 15(2), however, all of the above-noted rights would apply only if the performance in question met the following criteria respecting nationality or place of first publication:

- the performance took place in Canada or in a Rome Convention country; or
- in the case of a performance embodied in a sound recording, the maker of the sound recording was a citizen or permanent resident of Canada or of a Rome Convention country, or if a corporation, it was headquartered in Canada or a Rome Convention country; or the sound recording was first published in Canada or a Rome Convention country; or
- the performance was transmitted live by a communication signal broadcast from Canada or a Rome Convention country by a broadcaster headquartered in such a country.

It should be noted that the foregoing rights (and limitations), are only part of the rights granted in relation to performances. Further rights, discussed later, are prescribed under sections 19 and 26 and may be subject to different criteria regarding nationality or place of first publication.

New section 16 is an interpretive clause respecting the *contractual* rights, as compared to the *statutory* rights, of performers. It states that nothing in the previous section, which sets out the statutory rights of performers, would prevent a performer from entering into a contract governing the use of his or her performance for the purposes of broadcasting, fixation or retransmission. Where a performer had authorized the embodiment of his or her performance in a cinematographic work, new section 17(1) would preclude him or her from exercising the above-noted statutory rights under new section 15 in relation to that performance. However, a performer who had negotiated an agreement entitling him or her to payment with respect to the reproduction, public performance or communication to the public by telecommunication of the cinematographic work embodying the performance, would be entitled by new section 17(2) to enforce his or her contractual rights against the various parties identified under that section. The performer's right to enforce such agreements, however, would apply only if the cinematographic work was a prescribed production under the regulations. Further, at the request of a NAFTA country, the Minister could, subject to any terms and conditions he or she specified, extend the benefits conferred under this section to performers who were nationals of that country or of another NAFTA country or who were Canadian citizens or permanent residents, and whose

performance was embodied in a cinematographic work that was not a prescribed production (new sections 17(3) and (4)).

Sound Recordings - New section 18 sets out, in part, the rights that would attach to sound recordings. In this regard, the makers of sound recordings would be granted the sole right to do the following acts in relation to their sound recordings (or any substantial part thereof):

- to publish the sound recording for the first time;
- to reproduce it in any material form;
- to rent it out; and
- to authorize any of the foregoing acts.

Such rights would apply, however, only if the maker of the sound recording, at the time of its first fixation, was a citizen or resident of Canada, a Berne Convention country, a Rome Convention country or a WTO country, or, where the maker was a corporation, it was headquartered in one of these countries. Alternatively, the foregoing rights would apply if the sound recording was first published in one of these countries.

Performers and Sound Recordings - New section 19 sets out the “performing rights” that would apply to published sound recordings and to performers’ performances embodied in such recordings. In this regard, the relevant performers and makers of sound recordings would be granted a right “to be paid equitable remuneration” when their performances and sound recordings were either:

- performed in public;
- or communicated to the public by telecommunication, except for any retransmission.

New section 19(1), in short, would establish a compulsory licence as regards the foregoing acts, since it would limit performers and the makers of sound recordings to a right of remuneration only, without granting them the concomitant right to authorize such acts. Pursuant to new section 19(2), the royalties owing under new section 19(1) would be payable to the relevant collective society or societies in the case of sound recordings involving a “musical

work”; or to the maker of the recording or to the performer in the case of sound recordings involving a “literary work” or a “dramatic work.” Performers would be entitled to 50% of the royalties paid, and the makers of sound recordings to the other 50% (new section 19(3)).

The foregoing right of remuneration would apply only if the maker of the sound recording was a citizen or resident of Canada or of a Rome Convention country, or, if a corporation, it was headquartered in such a country. Alternatively, the right could also apply if all the fixations for the sound recording were done in Canada or in a Rome Convention country (new section 20)). If, however, the Minister was of the opinion that a Rome Convention country did not grant a similar right of remuneration to the makers of sound recordings who were eligible under the Canadian legislation, he or she could limit the scope and the duration of the protection offered to the makers of sound recordings from that country (new section 20(2)). Conversely, if so requested by a NAFTA country, the Minister could grant to the performers and makers of sound recordings of such a country the above-noted right of remuneration, *but only as regards sound recordings embodying dramatic or literary works* and not *musical works* (new section 20(3)).

Broadcasts - New section 21 sets out the rights that would apply to designated broadcasters with respect to their “communication signals” - a term defined under clause 1 of the bill to mean “radio waves transmitted through space without any artificial guide, for reception by the public.” The term “broadcaster” is in turn defined to exclude organisations that retransmit programming, such as cable operators. Broadcasters would have the sole rights to do the following acts with respect to their communication signals (or any substantial part thereof):

- to fix the telecommunication signal;
- to reproduce any unauthorized fixation of it;
- to authorize another broadcaster to make a simultaneous retransmission of it;
- in the case of a television communication signal, to perform it in a place open to the public on payment of an entrance fee; and
- to authorize the foregoing, as the case might be.

These rights would apply only if the broadcaster was headquartered in Canada, a

Rome Convention country or a WTO country, provided the communication signal was broadcast from that country (new section 21(2)). However, the Minister could deny to broadcasters from a Rome Convention country or a WTO country the above-noted right respecting the public performance of television communication signals, if he or she believed that this right was not granted in that jurisdiction (new section 21(3)).

Reciprocal Conferral of Part II Rights to Non-Rome Convention Countries - New section 22 would enable the Minister to extend the rights conferred under Part II on the basis of material reciprocity. In this regard, where the Minister was of the opinion that a country other than a Rome Convention country had granted or had undertaken to grant to broadcasters or to performers and the makers of sound recordings (citizens or residents of Canada or, if a corporation, headquartered in Canada) benefits substantially equivalent to those conferred under Part II, he or she could, in like manner, extend the Part II benefits to the broadcasters or to the performers and makers of sound recordings from that country (new section 22(1)). Where, in turn, the Minister was of the opinion that a country other than a non-Rome Convention country had not granted or had not undertaken to grant to Canadian broadcasters or to Canadian performers or makers of sound recordings benefits substantially equivalent to those found in Part II, he or she could grant to performers, makers of sound recordings or broadcasters from that country the benefits conferred by Part II. This, however, would be *only to the extent* that that country granted benefits to Canadian performers, makers of sound recordings or broadcasters (new section 22(2)). Where the Minister granted benefits in either of the foregoing situations and subject to any exceptions specified in the grant, the other provisions of the Act would apply as if the performers, makers of sound recordings or broadcasters in question were from Canada (new section 22(4)).

Term of Protection - New section 23 would prescribe a 50-year term of protection that would terminate 50 years after the end of the calendar year in which the sound recording was fixed, the performance was either given or fixed in a sound recording, or the communication signal was broadcast. In order to extend protection to the nationals of the countries that became members of the Berne Convention, the Rome Convention or the WTO only after the date of the relevant fixation, performance or broadcast, new section 23(3) would deem such countries to

have been a member as at that date. However, no protection would be extended in Canada if, prior to the deemed date of membership, the copyright granted in relation to performances, sound recordings or broadcasts in that jurisdiction had already expired (new section 23(4)).

Copyright Ownership - Under new section 24, performers, broadcasters and the makers of sound recordings would be the first copyright owner in relation to their performances, broadcasts and sound recordings; the provisions under the Act respecting assignments, licences and rights of action would apply to them just as if they were traditional "works."

Performer's Performances respecting WTO Countries - New section 26 would set out the rights of performers where WTO countries were involved. These rights would be revised versions of the rights set out in current section 14.01 of the Act, enacted under the WTO Agreement Implementation Act, and would be distinct from, and less extensive than, the measures that would be enacted under new sections 15 and 19 respecting performers' performances involving Rome Convention countries.

As regards performances given on or after 1 January 1996, in a WTO country, new section 26(1) would confer on performers the sole right to do the following acts in relation to their performances, or any substantial part thereof:

- to communicate an unfixed performance to the public by telecommunication;
- to fix the performance in a sound recording;
- if the performance was fixed in a sound recording without the performer's authorization, to reproduce the fixation; and
- to authorize the foregoing acts.

Different provisions, however, would apply under specified circumstances. Where a performance was given *on or after* 1 January 1996 and the country where it was given became a WTO country only after this date, performers would be granted all the foregoing rights, but only as of the date of WTO membership. Where, in turn, a performance was given *before 1 January 1996* in a country that was a WTO member at the time, the performer would be limited to a right to reproduce any fixation of his or her performance (or substantial part thereof), if it had been fixed without the performer's authorization. Similarly, where a performance was given *before 1 January 1996* in a country that had not yet become a WTO member on that date, the

performer would be limited to the above-noted right (i.e., the reproduction of unauthorized fixations) as of the date of WTO membership (new sections 26(2) to (4)).

The usual 50-year term of protection would apply for these performances. The provisions under the Act respecting assignments and licences would apply, as they would to the other subject-matter and works protected under the revised Act (new sections 26(5) and (6)). Furthermore, where there had been an assignment of rights in relation to these (WTO) performances, the performer, as well as the assignee, could prevent the reproduction of any fixation, or the importation of any fixation, of the performance (or any substantial part thereof) made without the consent of the performer or assignee (new section 26(7)).

PART III: INFRINGEMENT OF COPYRIGHT AND MORAL RIGHTS AND EXCEPTIONS TO INFRINGEMENT

(Clauses 15 to 19 of the Bill; Sections 27 to 33 of the Revised Act)

Clause 15 of the bill would replace current sections 27 and 28 of the Act (infringement and non-infringing uses) by new section 27, which would redefine what constitutes an infringement of copyright, and new section 27.1, which would set out the proposed restrictive regime governing the parallel importation of books.

Infringement - New section 27(1) and (2) would redefine what constituted an infringement of copyright and a secondary infringement. These provisions are largely similar to the measures under current sections 27(1),(4) and (5), except that the wording would be updated and the neighbouring rights works (i.e., performances, sound recordings and communication signals) would be expressly listed as subject-matter that might be infringed. In specified cases of infringement involving imported copies of protected works or other subject-matter, new section 27(3) would make the importer's knowledge of the infringing copies irrelevant. New section 27(4) would in turn make it an infringement for any person to make or possess a plate specifically designed or adapted for the purpose of making infringing copies.

Parallel Importation of Books - New section 27.1 would implement new import restrictions on books, but only those books for which there was an exclusive distributor in Canada.

As mentioned earlier, pursuant to the definitions section under clause 1 of the bill, the term "book" would apply exclusively to printed material and would exclude a number of works that might be considered to come within its ambit, such as magazines and periodicals,

instruction and repair manuals accompanying a product or supplied as an accessory to a service, and maps, charts, plans and sheet music if separately published. These works, as well as the other ones expressly excluded under the definition, would not be subject to the proposed importation restrictions. The term "exclusive distributor" would mean a person who had been appointed in writing by the owner or exclusive licensee of the copyright in a book in Canada, as the only distributor of the book in Canada (or any part of Canada) or as the only distributor of the book in Canada (or any part of Canada) in respect of a "particular sector of the market." Exclusive distributors, however, would have to satisfy the distribution criteria established by regulations; if no regulations had been developed in this regard, no one could qualify as an "exclusive distributor." This requirement in the definition would thus make the development of the related regulations a pre-condition to the application of the proposed book importation restrictions, since, as discussed below, the latter measures are premised on the existence of "exclusive distributors." Note, however, that under clauses 62 and 63 of the bill, transitional measures would apply that would allow the provisions respecting the parallel importation of books to become operative as of 30 June 1996 in the circumstances set out under those clauses.

New section 27.1(1) would make it an infringement of copyright for any person to import a book into Canada where: copies of the book made in another country with the copyright owner's consent were imported into Canada without the consent of the Canadian copyright owner; and where that person knew or ought to have known that, if made in Canada by the importer, the book would have infringed copyright. It would also be an infringement for anyone to deal with such infringing copies in order to sell or rent them out; by way of trade, to distribute, expose or offer them for sale or to exhibit them in public; or to possess them for the foregoing purposes (new section 27.1(2)). New section 27.1(3), however, would limit the application of these provisions to cases where there was an exclusive distributor for the book and the above-noted acts took place in the part of Canada or in respect of a particular sector of the market that was covered under the exclusive distribution agreement. The application of the provisions would also be subject to any regulations developed under new section 27.1(6) (outlined below).

For the purposes of obtaining relief under Part IV (civil remedies and criminal sanctions) in cases of infringement, the exclusive distributor would be deemed to derive an interest in the copyright in question by licence. No action, however, could be taken under Part IV by the exclusive distributor, copyright owner or exclusive licensee unless, before the infringement occurred, the prescribed notice was given to the prospective defendant, indicating that there was an exclusive distributor for the book (new sections 27.1(4) and (5)).

These foregoing book importation restrictions would, however, be subject to the general importation exemptions under new section 45 of the Act. This section would allow the importation of any *used* books, except text books of a scientific, technical or scholarly nature for use within an educational institution in a course of instruction. It would also allow: persons to import two copies of a book for their personal use; federal and provincial government departments to import an unrestricted number of copies for their use; and libraries, archives, museums or educational institutions to import a single copy of a book for their use.

Finally, pursuant to new section 27.1(6), regulations could be developed by the Governor in Council to establish the terms and conditions for the importation of certain categories of books, including remaindered books, books intended solely for re-export and books imported by special order.

Renumbering - Clause 16 of the bill would renumber current section 28.01 of the Act (retransmissions) as new section 31.

Repeal - Clause 17 of the bill would repeal current sections 28.02 and 28.03 of the Act, which deal with the infringement of performers' rights. These sections, in revised form, would be re-instated under other sections in the Act.

Copyright Exemptions - Clause 18 of the bill would replace current section 29 of the Act, which deals with compensation for restoration of copyright and moral rights. These provisions would be revised and moved to new section 33. Clause 18 would also enact new sections 29 to 32.3 which deal with the copyright exemptions.

Fair dealing - The new fair dealing exception, set out under new sections 29 to 29.2 of the bill, would remain much the same as the existing fair dealing exemption under current section 27(2)(a) and (a.1) of the Act, except that it would be expanded to apply to the three neighbouring rights works. The listed purposes would also be modified to encompass "news reporting," instead of "newspaper summary." What constitutes a "fair dealing," however,

would be left undefined.

Educational Institutions - The exceptions for educational institutions would be primarily, although not exclusively, set out under new sections 29.3 to 30. Other exceptions for this category of user would also be set out under new section 30.3 (reprography machine on premises), new section 32.2 (performing selected material in public for educational purposes) and new section 45 (importation).

The term “educational institution” is defined under clause 1 of the bill to mean a non-profit institution licensed or recognized by or under federal or provincial law to provide pre-school, elementary, secondary and post-secondary education; a non-profit institution directed or controlled by a board of education that is regulated provincially and that provides continuing, professional or vocational education or training; a department or agency of any **order** of government, or any non-profit body, that controls or supervises education or training carried out in the above-noted non-profit institutions; and any other non-profit institution prescribed by regulation.

By virtue of new section 30.4, the exemptions provided to educational institutions and to libraries, archives and museums in the following sections (up to new section 30.3 inclusive) and to section 45 would also apply to a library, archive or museum that formed part of an educational institution. **Further, new section 29.3 would make selected exemptions subject to an explicit restriction that they not be carried out with motive of gain by the institution in question, or person acting under its authority.**

New section 29.4(1) would allow an educational institution or persons acting under its authority to reproduce selected materials in specified circumstances for education or training purposes on the premises on an educational institution. In this regard, a “work” could be copied manually on to a dry-erase board, flip chart or other similar surface intended for displaying handwritten material. A copy of a “work” could also be made whose image might be projected by means of an overhead projector or similar device. Pursuant to new section 29.4(2), a “work” or “other subject-matter” could in turn be reproduced, translated or performed in public on the premises of the educational institution, or communicated by telecommunication to the public situated on the premises of the educational institution, for the purposes of a test or

examination. The foregoing exemptions, it should be noted, would apply only if the permitted activity was carried out on the *premises* of the educational institution, a term defined under clause 1 to mean, in relation to an educational institution, a place where education or training referred to in the definition of “educational institution” is provided, controlled or supervised by the educational institution. Further, except as regards manual reproductions, the foregoing exceptions would apply only if the work or other subject-matter was not “commercially available” in a medium that was appropriate for the required purpose (new section 29.4(3)). As redefined under clause 1, the term “commercially available” would mean “available on the Canadian market within a reasonable time and for a reasonable price and [that] may be located with reasonable effort; or for which a licence to reproduce, perform in public or communicate to the public by telecommunication is available from a collective society within a reasonable and for a reasonable price and may be located with reasonable effort.”

New section 29.5 would allow an educational institution or persons acting under its authority to publicly perform selected material for educational or training purposes on a not-for-profit basis, on the institution’s premises before an audience consisting primarily of students and staff. Subject to these conditions, this section would specifically authorize: the live performance in public of a “work,” primarily by students at the institution; the public performance of a “sound recording” and related “works” and “performances” embodied therein; and the performance in public of a “work” or “other subject-matter” at the time of its communication to the public by telecommunication.

Subject to several conditions, new section 29.6 would allow an educational institution or persons acting under its authority to make a single copy of a *news program* or *news commentary program*, excluding documentaries, at the time the program was transmitted in order to perform the copy of the program for the students at the institution for educational or training purposes. Similarly, this section would allow the copied program to be performed publicly at the institution’s premises before an audience consisting primarily of students for educational or training purposes. Within one year of the copy’s having being made, however, the institution would either have to destroy it or pay the prescribed royalties and comply with such other terms and conditions as had been prescribed regarding the making of the copy and its performance beyond the one-year grace period (new section 29.6(1) and (2)). The institution would be

obliged to keep a record of such information as was required by regulation with respect to the making of the copy, its destruction or any performance of it for which royalties were payable. It would also have to mark **the copy** in the prescribed manner (new section 29.9(1)). In this regard, the Copyright Board, with the approval of the Governor in Council, would be authorized to develop regulations respecting the information that would be required in relation to the copying, destruction and performance of the program; the form and manner of the related records that would have to be kept; and the type of information that would have to be sent to the relevant collective societies (new section 29.9(2)).

New section 29.7 would in turn allow a single copy to be made of *any other program* (i.e., excluding news and news commentary programs) at the time of its transmission. In this case, however, different conditions would apply. The educational institution or persons acting under its authority could retain the copy for a period of 30 days only in order to decide whether to keep it or not for educational or training purposes. By the expiry of the 30-day period, the institution would be infringing copyright unless it had destroyed the copy or paid the requisite royalties respecting its copying and complied with any related terms and conditions that applied. Provided the copying royalties had been paid, the educational institution or other persons acting under its authority could then perform the copied program on the institution's premises for educational or training purposes before an audience consisting primarily of students, subject to the payment of the prescribed performing royalties and compliance with any related terms and conditions that applied. As with the taping of news and news commentary programs, the institution would also have to comply with the various information, record-keeping and marking requirements prescribed by regulation pursuant to new section 29.9.

Where any of the foregoing educational exemptions involved a communication to the public by telecommunication (e.g., copying a radio or television program), new section 29.8 would provide that such exceptions would apply only to the extent that the transmissions in question were received by lawful means. The exceptions, in other words, would not apply to pirated broadcasts.

New section 30 is a slightly reworded version of current section 27(2)(d) of the Act, which allows collections of selected material to be published for the use of educational

institutions under specified circumstances. According to clause 18(2), the revised criteria for the publication of literary collections for school purposes under this section would apply only to collections published after the coming into force of new section 30. Collections published prior to that date would continue to be governed by the criteria set out under current section 27(2)(d) of the Act.

Libraries, Archives and Museums - As with educational institutions, the exceptions for libraries, archives and museums would be set out primarily, although not exclusively, under new sections 30.1 and 30.21. Other exceptions for this category of users would also be set out under new section 30.3 (reprography machine on premises) and new section 45 (importation).

As defined under clause 1, the term "library, archive or museum" would essentially mean a not-for-profit institution (or an institution that did not form part of, or was administered or directly or indirectly controlled by, a body that was established or conducted for profit) that held and maintained a collection of documents or other materials, that was open to the public or to researchers or that was prescribed by regulation.

New section 30.1 would allow a library, archive or museum (or persons acting under its authority) to make a copy of a published or unpublished "work" or "other subject-matter" included in its permanent collection for the purpose of maintaining or managing its own collection or the permanent collection of another library, archive or museum. The permissible copying would have to be made in accordance with any regulations made in this regard and would be allowed only in the following circumstances: when a rare or unpublished original was deteriorating, damaged or lost, or was at risk of becoming so; to provide for on-site consultations, if the original could not be viewed, handled or listened to because of its condition or the atmospheric conditions in which it had to be kept; to provide for an alternative format if the original was currently in an obsolete format or the technology required to use the original was unavailable. For these three listed purposes, however, the copying would be allowed only if a copy was not "commercially available" (as redefined under clause 1) in a medium and of a quality appropriate for the intended purpose. Copying would also be allowed under this section for the purposes of internal record-keeping and cataloguing; for insurance purposes or police investigations; or where necessary for restoration. In such cases, however, the exception would not be conditional on the commercial availability of the work or other subject-matter.

New section 30.2 would allow a library, archive or museum (or persons acting

under its authority) to do anything on behalf of a person that the person would be allowed to do for the purposes of research, private study, criticism or review under the fair dealing exception at new sections 29 and 29.1. It would also specifically allow libraries, archives or museums to make by reprographic reproduction a copy of an article published in a scholarly, scientific or technical periodical, or in a newspaper or periodical (other than a scholarly, scientific or technical periodical), **if the newspaper or periodical had been published more than one year before the copy was made and the copy was to be used** for purposes of research or private study. This exception, however, would not apply if the requested article involved a work of fiction, poetry or a dramatic or musical work. Insofar as *printed matter* was involved, the copying allowed under this section could be carried out not only on behalf of the institution's patrons, but on behalf of the patrons of other libraries, archives and museums, **but the copy supplied must not be in digital form.** Finally, the Governor in Council would be empowered under this section to make regulations defining the words "newspaper," "periodical" and "scholarly, scientific or technical periodicals," **and prescribing the information that libraries, archives or museums would have to record as regards action taken under this section and the manner and form for keeping such information.**

New section 30.21, added by the House of Commons committee, would allow the reproduction of unpublished archival material under specified conditions. With respect to unpublished works deposited in an archive *after the coming into force* of this section, new section 30.21(2) would require the archive, at the time of the deposit, to give notice to the depositor that a copy might be made in accordance with section 30.21. New section 30.21(1) would in turn allow the archive to make a copy of such works under specified conditions. The conditions would be: the person depositing the material, if a copyright owner, had not prohibited the copying; the copying had not been prohibited by any of the work's other copyright owners (where applicable); the archive was satisfied that the copy was being made for a person who would use it only for purposes of research and private study; and only a single copy was made for that person (new section 30.21(3)). The Governor in Council could make regulations prescribing the manner and form in which these conditions could be met (new section 30.21(4)). Different rules would apply to material that had been archived *prior to the coming into force* of this section; a copy of these works could be made in accordance with the four above-noted conditions where the author of the work had died more than 50 years before the coming into force of new section 7(4). Where, however, the author had died within 50 years of that date, the work could be copied only if the copyright owner's consent was first obtained (new section

30.21(5) and (7)). If, however, the copyright owner could not be located, a copy of the work could be made in accordance with the four above-noted conditions, **provided the archive made a record of the copy and kept the record available for public inspection** (new section 30.21(6)).

Educational institutions, libraries, archives and museums - Under new section 30.3, educational institutions, libraries, archives and museums would be exempted from liability for any reprographic reproduction of printed matter carried out on their premises by means of a machine that had been installed on the premises for the use of students, instructors or staff at the educational institution or by patrons of the library, archive or museum, provided the requisite notice warning of copyright infringement was duly posted, and provided further that one of the following conditions was met: the institution in question had entered into an agreement with the relevant collective society or societies for a reprographic licence; the Board had fixed the royalties and related terms and conditions of licence pursuant to section 70.2; the Board had approved a tariff pursuant to section 70.15; or a collective had filed a proposed tariff pursuant to section 70.13 (new section 30.3(1) and (2)). Where an institution had not obtained a reprographic licence, but a collective had offered to negotiate or had begun to negotiate the issuance of such a licence with the institution, the Board could, at the request of either party, exempt that institution from liability for such term as the Board specified under the order (new section 30.3(3)). Where, in turn, an educational institution, library, archive or museum had entered into an agreement with a *copyright owner*, as opposed to a *collective*, for the reprographic reproduction of materials, new section 30.3(4) would shield that institution from liability, but only as regards those works of the copyright owner that were covered under the agreement. Finally, the Governor in Council would be authorized under new section 30.3(5) to prescribe by regulation the manner of affixing and location of the notices, as well as their dimensions, form and content.

As mentioned earlier, new section 30.4 would provide that the foregoing exceptions respecting educational institutions, libraries, archives and museums, as well as the exception under new section 45 respecting importations, would also apply to a library, archive or museum that formed part of an educational institution.

National Archives of Canada - New section 30.5 would re-enact the current exception under section 27 (2)(k) of the Act that allows the National Archives of Canada to make a copy of a recording for the purposes of the *National Archives Act*. It would also provide the National Archives with the new authority to make, for archival purposes, a simultaneous copy of programming that is transmitted by a broadcasting undertaking, within the meaning of the *Broadcasting Act*.

Computer programs - New section 30.6 would re-enact, in slightly modified form, the current exceptions respecting computer programs under section 27(2)(l) and (m) of the Act.

Incidental Inclusions - New section 30.7 would exempt from liability persons who incidentally and not deliberately included a “work” or “other subject-matter” in another work or other subject-matter, or who did anything with the “work” or other “subject-matter” that was incidentally and not deliberately included in another work or other subject-matter. This exception might apply, for example, where copyright music played by a band at a parade was “incidentally” recorded by a tourist who was making a home video of the parade (contrary to the “reproduction” right”) and who subsequently showed the home video to friends and family at the local community centre (contrary to the “public performance” right).

Ephemeral recordings - A new exemption, added by amendment in committee, would allow broadcasters to make an “ephemeral recording” of live programming in order to broadcast it at a different time (known as time-shifting); the exception would apply only if a licence to make the recording could not be obtained from the relevant collective or collectives. Specifically, new section 30.8 would allow a “programming undertaking” to make a temporary recording of a work performed live (including any related performers’ performances and sound recordings, but excluding a cinematographic work) under specified conditions. **Pursuant to new section 30.8(11), the term “programming undertaking” would mean one of the following types of undertakings: a duly licensed programming undertaking as defined under the *Broadcasting Act*; a duly licensed programming undertaking, as defined under the *Broadcasting Act*, that originated programs within a network (as defined under the *Broadcasting Act*); or a duly licensed distribution undertaking, as defined under the**

Broadcasting Act, in respect of the programs that it originated.⁽²⁾

An ephemeral recording could be made under this section provided the following conditions were met: the programming undertaking was authorized to broadcast the work, performance or sound recording to the public by telecommunication; it made the recording for its own broadcasts; **it did not synchronize the recording with all or part of another recording, performer's performance or work; and it would not cause the recording to be used in an advertisement intended to sell or promote a product, service, cause or institution** (new section 30.8(1)). Where such a recording was made, it would have to be destroyed within 30 days, unless the copyright owner authorized its retention beyond this period and the applicable royalties were paid, or unless the recording was deposited with an official archive on the grounds that it was considered by the programming undertaking to have exceptional documentary character. The official archive, however, would have to consent to the deposit, and give notice of it to the copyright owner within 30 days (new sections 30.8(4) to (6)). In addition, the programming undertaking would have to keep records in relation to the recordings made and destroyed and make such records available to the relevant copyright owners or their representatives within 24 hours of a request (new section 30.8(3)). A "broadcasting undertaking"⁽³⁾ could also make a single copy of a recording made by a programming undertaking, and communicate it to the public by telecommunication within the 30-day period, provided the above-noted conditions were met, and provided the broadcasting undertaking was part of **a prescribed network that included the programming undertaking** (new section 30.8(9)). As mentioned above, however, the ephemeral recording exception would not apply if a licence to make the recording was available from a collective society (new section 30.8(8)).

(2) **The *Broadcasting Act* defines the following terms to mean:**

"programming undertaking": an undertaking for the transmission of programs, either directly by radio waves or other means of telecommunication or indirectly through a distribution undertaking, for reception by the public by means of broadcasting receiving apparatus;

"distribution undertaking": an undertaking for the reception of broadcasting and the retransmission thereof by radio waves or other means of telecommunication to more than one permanent or temporary residence or dwelling unit or to another such undertaking;

"broadcasting receiving apparatus": a device, or combination of devices, intended for or capable of being used for the reception of broadcasting; and

"network": includes any operation where control over all or any part of the programs or program schedules of one or more broadcasting undertakings is delegated to another undertaking or person.

(3) The *Broadcasting Act* defines "broadcasting undertaking" as including " a distribution undertaking, a programming undertaking and a network."

Transfer of Format Recordings - A further exemption, added to the bill at report stage, would allow broadcasters to make a copy of a sound recording for transfer of format purposes. Specifically, new section 30.9 would allow a duly licensed “broadcasting undertaking” (see definition in footnote 3) to reproduce a sound recording (including any performer’s performance and work embodied therein) solely for the purpose of transferring it to a format appropriate for broadcasting, if the following conditions were met: the broadcasting undertaking owned a lawful copy of the sound recording (and any related performances and works); it was authorized to communicate the sound recording (and any related performances and works) to the public by telecommunication; it made the reproduction for its own broadcasts; it did not synchronize the reproduction with all or part of another recording, performer’s performance or work; and it would not cause the reproduction to be used in an advertisement intended to sell or promote a product, service, cause or institution.

Where a recording was made under the foregoing exemption, the broadcasting undertaking would have to destroy the copy as soon as it no longer possessed the sound recording (or related performer’s performance or work) or within 30 days of its making at the latest, unless the copyright owner authorized the further retention of the recording and the applicable royalties were paid. The broadcasting undertaking would also have to keep records in relation to the recordings made and destroyed under this section and would have to make such records available to the relevant copyright owners or their representatives within 24 hours of a request. Finally, like the ephemeral recording exemption, this exemption would not apply if a licence to reproduce the sound recording, performer’s performance or work in question was available from a collective.

Persons with Perceptual Disabilities - Clause 19 of the bill would enact new sections 32 to 33 of the Act, which, among other things, would create a new exemption for persons suffering from a “perceptual disability.” Pursuant to the amended definition under clause 1 of the bill, this term would apply to any disability that prevented or inhibited a person from reading or hearing a “literary, musical, dramatic or artistic work” in its original format, and would include a disability resulting from a severe or total impairment of sight or hearing or the inability to focus or move one’s eyes; the inability to hold or manipulate a book; or an

impairment relating to comprehension.

New section 32 would allow any person or any non-profit organization acting for the benefit of a person with a perceptual disability and so requested by that person, to do the following acts without infringing copyright: to make a copy or sound recording of a literary, musical, artistic or dramatic work, other than a cinematographic work, in a format specially designed for persons with a perceptual disability; to translate, adapt or reproduce in sign language a literary or dramatic work, other than a cinematographic work, in a format specially designed for persons with a perceptual disability; or to perform in public a literary or dramatic work, other than a cinematographic work, in sign language, either live or in a format specially designed for persons with a perceptual disability (new section 32(1)). This exemption, however, would not authorize the making of a large print book (new section 32(2)). Nor would it apply where the work or sound recording was “commercially available” in a format specially designed to meet the needs of the perceptually disabled (new section 32(3)). Unlike the case for the other exemptions to which this limitation applied, however, the meaning of “commercially available” under this section would not include commercial availability by means of a licence issued by a collective society. For the purposes of this particular exemption, a work or sound recording would be “commercially available” only if it was available on the Canadian market within a reasonable time and for a reasonable price and could be located with reasonable effort.

Statutory Obligations - New section 32.1 would re-enact the exemptions currently found under sub-sections 27(2)(h) to (j) of the Act, which allow specified acts to be done, as required under the following statutes: the *Access to Information Act* (federal and provincial), the *Privacy Act* (federal and provincial) and the *Cultural Property Export and Import Act*. It would also create a new exception that would allow a “work” or “other subject-matter” to be fixed or copied in order to comply with the *Broadcasting Act*, its rules, regulations and related instruments. Where such a fixation or copy was made, however, its maker would be required to destroy it immediately on the expiration of the period for which it was required under the law.

Artistic Works - New section 32.2(1)(a) would re-enact, in slightly modified form, the current exemption under section 27(2)(b) of the Act, which allows the author of an artistic work who is not its copyright owner to use any mold, cast, etc. that was used in creating the work, provided he or she does not repeat or imitate the main design of the work.

Reproduction of Selected Works - New section 32.2(1)(b) would revise current section 27(2)(c) of the Act to permit the reproduction, in a painting, drawing, engraving, photograph or cinematographic work, of an architectural work, provided the copy was not in the nature of an architectural drawing or plan, or of a sculpture or work of artistic craftsmanship (or the casts or models used to create these works) that was permanently situated in a public place or building.

Lectures in Public - New section 32.2(1)(c) would revise current section 27(2)(e) of the Act, which allows a report of a lecture given in public to be published in a newspaper, subject to specified conditions. This exemption would be essentially unchanged under new Act, except that its scope would be broadened to allow such reports to be made or published for purposes of news reporting and news summary in general, and not just for publication in a newspaper.

Public Readings - New section 32.2(1)(d) would re-enact current section 27(2)(f) of the Act, which allows a reasonable extract of a published work to be read or recited in public.

Political Speeches - New section 32.2(1)(e) would revise current section 28 of the Act, which allows a report of an address of a political nature delivered at a public meeting to be published in a newspaper. The scope of this exception would be broadened by allowing such reports to be made or published for purposes of news reporting and news summary in general, and not just for publication in a newspaper.

Agricultural/Industrial Fairs and Exhibitions - New section 32.2(2) would revise current section 27(2)(g) of the Act, which allows “musical works” to be performed without motive of gain at any agricultural, agricultural-industrial exhibition or fair that received a grant from or was held under federal, provincial or municipal authority. Although this exception would remain essentially the same, its scope would be broadened to allow the public performance of the neighbouring rights works, as well as musical works.

Performance of Selected Subject-Matter for Specified Purposes - New section 32.2(3) would revise current section 27(3) of the Act, which allows churches, colleges, schools and religious, charitable and fraternal organizations to perform “musical works” in public without having to pay royalties, if the public performance is in furtherance of a religious, educational or charitable object. Although this exemption would remain essentially the same, the categories of exempt users would be reworded as “religious organizations or institutions, educational institutions and charitable or fraternal organizations.” The exemption’s scope would

also be broadened to allow the neighbouring rights works to be performed in public for the stated purposes without the payment of royalties.

Interpretation - New section 32.3 would provide that where a given use of a performer's performance or a sound recording was exempted under the foregoing new sections 29 to 32.2, such use would not give rise to the payment of a royalty under the new right to equitable remuneration established for performers and the makers of sound recordings under new section 19.

Protected Interests and Right to Compensation in Specified Cases - New section 32.4 would provide protection to persons who had incurred an expenditure or liability in relation to an act specified under new section 26 with respect to a "performance," when this act had not constituted an infringement of copyright, but which now did so by reason of a country's having become a WTO country. In such a case, the person's interest would be protected under the Act until such time as he or she was paid compensation by the copyright owner for the interest in question, either as agreed upon by the parties or, failing such agreement, as determined by the Copyright Board. This new section would essentially re-enact current section 28.03 of the Act, except that some of the wording would be changed to update the dates in question and to reflect the changes that would be introduced under the bill. Under new section 32.5, a similar remedy would be enacted with respect to previous acts done in relation to the expanded rights granted to performers under new section 15 and the rights granted to communication signals under new section 21. New section 33 would also provide such a remedy, presumably as regards "works" or "other subject-matter" not covered by the previous sections whose copyright or moral rights had been infringed by reason of a country's becoming a "treaty" country - i.e., a Berne Convention country, a UCC country or a WTO country. This new section essentially would re-enact current section 29 of the Act, subject to the same types of changes made to new section 32.4.

PART IV: REMEDIES

(Clauses 20 to 29 of the Bill; Sections 34 to 45 of the Revised Act)

Clause 20 would replace current sections 34 to 39 of the Act with provisions that would be revised, though in some cases very slightly. Only those changes deemed material will be described below.

Remedies - New section 34(1) would delete the reference to "works" under

current section 34(1) of the Act, thus making the section also applicable to the neighbouring rights works. It would also enlarge the civil remedies available for infringement by adding the remedy of “delivery up.”

Moral Rights Infringement - New section 34(2) would revise current section 34(1.1) of the Act respecting the infringement of the moral rights of authors by allowing the court to grant relief to the author’s successor in title and not just to the author; this would rectify an oversight in the current legislation.

Summary Proceedings - New sections 34(4) to (7) would allow summary proceedings to be taken for infringement of copyright or moral rights; in cases of specified unlawful importation; where a tariff had been certified by the Board under Part VII (collective administration of copyright) or Part VIII (private copying); or where an agreement with users had been reached. At present, only full court action may be taken in specified instances.

Presumption - New section 34.1(1) and (2) would revise current sub-sections 34(3) and (4) of the Act, which create a presumption respecting the existence and ownership of copyright under specified circumstances in cases of infringement. This provision would essentially be expanded to apply to the neighbouring rights works.

Award of Profits - New section 35 would delete the reference to “works” under current section 35 of the Act, thus making the section applicable to the neighbouring rights works. It would also modify the section to stipulate that, where the court decided to award to the plaintiff part of the profits made by the defendant as a result of the infringement, it would have to base the award only on that part of the profits not taken into account in calculating the plaintiff’s damages.

Joinder - New section 36 would modify current section 36 of the Act to require the copyright owner to be made a party to any proceedings brought by a person deriving any right, title or interest by assignment or grant in writing from the copyright owner, except as regards proceedings dealing with specified importation matters; interlocutory proceedings, unless the court decided that the interests of justice required that the copyright owner be made a party; and any other cases where the court decided that the interests of justice required that the copyright owner be made a party. Where the copyright owner was made a party, he or she would not be liable for any costs unless he or she took part in the proceedings. However, he or she would be entitled to such apportionment of the award that the court considered appropriate,

subject to any agreement reached between the copyright owner and the party who commenced the proceedings.

Federal Court - New section 37 would revise current section 37 of the Act to stipulate that the Federal Court of Canada would have jurisdiction to hear civil cases only and not the prosecution of offences.

Recovery of Copies or Plates - New section 38 would entitle the copyright owner of a “work” or “other subject-matter” to recover possession of all infringing copies and plates used or intended for use in the production of infringing copies. Even before judgment had been handed down, proceedings for the seizure of these materials could be taken by the copyright owner as if the copies or plates were his or her property, provided proceedings of this kind were allowed under the applicable federal or provincial law (new sections 38(1) and (2)).

On application of an interested party, the court could order the destruction of the copies and plates or make such other order that it considered appropriate; however, notice would first have to be given to any person who had an interest in the plates or copies. In determining what order should be made, the court would be required to have regard to all the circumstances, including the proportion, importance and value of the infringing copies or plates, as compared with the substrate or carrier that embodied them; and the extent to which the infringing copies or plates were severable or distinct from the substrate or carrier. Finally, the copyright owner would not be entitled to damages under the Act with respect to the possession or recovery of the infringing plates or copies (new sections 38(3) to (5)).

Statutory Damages - At any time before final judgment had been handed down, new section 38.1 would entitle copyright owners to opt for statutory damages between \$500 and \$20,000, in such an amount as the court considered just. Where, however, the court had been satisfied by the defendant that he or she had not been aware and had had no reasonable grounds to believe that he or she was committing an infringement, the court could reduce the amount of the award to less than \$500, but not below \$200. A reduced sum could also be awarded where there was more than one “work” or “other subject-matter” in a single-medium (e.g., a sound recording), and where awarding even the minimum above-noted amounts would result in a total award that, in the court’s opinion, would be grossly out of proportion to the infringement. In such cases, the court could award such lower amount than the prescribed minima of \$500 and

\$200, as it considered just. Where a defendant had not paid the prescribed royalties or complied with the related terms and conditions, a collective society referred to under new section 67 (i.e., which administered the public performance right and part of the telecommunication right in relation to music, performers' performances and sound recordings) could opt to recover an award of statutory damages in a sum of not less than three and not more than ten times the amount of the applicable royalties, as the court considered just. Under new section 38.1(5), the court would be required to consider all relevant factors in making a statutory damages award, including the good or bad faith of the defendant; the conduct of the parties; and the need to deter other like infringements. Pursuant to new section 38.1(6), however, statutory damages could not be awarded against:

- an educational institution or a person acting under its authority, which, pursuant to new sections 29.6 and 29.7, had not paid royalties or complied with the related terms and conditions with respect to the copying and public performance of broadcast programming;
- an educational institution, library, archive or museum that was being sued by a copyright owner for having photocopied material, where the institution had an agreement with a collective with respect to photocopying and where the copyright owner in question had not authorized the collective to allow the photocopying of that material; and
- a person who unlawfully imported a copy of a "work" or "other subject-matter" for purposes of trade, contrary to new section 27(2)(e), or who unlawfully imported a "book," contrary to new section 27.1.

Finally, where a copyright owner had opted for statutory damages, he or she would not be precluded from claiming or being awarded exemplary or punitive damages (new section 38.1(7)).

Maximum award for unauthorized reprographic reproductions. New section 38.2 would limit the amount of damages that a copyright owner could recover from a "licensed" educational institution, library, archive or museum for the reprographic copying of works not administered by a collective. Specifically, where an educational institution, library, archive or museum reproduced a work by reprographic means on the authorization of a collective that had not in fact received permission from the copyright owner to allow **the reprographic copying of a particular work**, the institution would be liable to pay no more than the maximum royalties

payable under **any** applicable agreement or certified tariff had the work **in question** been administered by a collective (new section 38.2(1)). Where, in turn, more than one agreement or tariff applied, or where both agreements or tariffs applied, the institution in question would be liable to pay the highest applicable amount prescribed thereunder (new section 38.2(2)). This limit on liability, however, would apply only if the agreement with the collective or the certified tariff provided for the payment of royalties for the reprographic reproduction of that category of work, and only if copying of that general nature and extent was covered under the agreement or tariff (new section 38.2(3)).

Injunction only - New section 39 would revise current section 39, which limits the plaintiff to an injunction only in cases where the defendant proves that he or she had not been aware and had had no reasonable grounds to suspect that he or she was infringing copyright, unless at the time of the infringement the work had been duly registered under the Act. The scope of this provision would be broadened to apply to the neighbouring rights works.

Wide Injunction - New section 39.1 would enable the court, when granting an injunction in an infringement action, to enjoin the defendant from infringing the copyright in any other "work" or "other subject-matter" if the plaintiff was the copyright owner or had an interest in the copyright by licence and if the plaintiff satisfied the court that the defendant was likely to infringe the copyright in those other works or subject-matter. A "wide injunction" of this kind could also be extended to works and other subject-matter in relation to which the plaintiff did not own the copyright or have an interest in it by licence at the time the proceedings were commenced, or to works or other subject-matter that did not exist at that time.

Buildings - Clause 21 of the bill would modify current section 40(2) of the Act to state that new sections 38 to 42 of the Act (injunction, wide injunction, limitation period and criminal remedies) would not apply to cases covered by current section 40(1). This section precludes the copyright owner from obtaining an injunction or an order of demolition with respect to a building under construction that, if completed, would infringe copyright.

Limitation Period - Clause 22 of the bill would replace current section 41 of the Act, which sets a three-year limitation period for infringement actions from the date of the infraction. As revised, this section would provide: a three-year limitation period from the date of the infringement in cases where the plaintiff knew or could reasonably have been expected to

know of the infringement when it occurred; or a three-year limitation period from the date the plaintiff first knew of the infringement or could reasonably have been expected to know of it, in cases where the plaintiff had not known or could not reasonably have been expected to know of the infringement when it occurred. Furthermore, the court could apply the foregoing limitation periods only with respect to parties that pleaded it.

Criminal Remedies/Limitation Period - Clause 24 of the bill would revise the list of offences under current section 42 of the Act to expressly proscribe rentals and to extend the application of the section to the neighbouring rights works. It would also reword the “possession” offence under current section 42(2) of the Act by limiting the offence to the making or possession of any plate that was *specifically designed or adapted* for the purpose of making infringing copies. It would set a two-year limitation period for summary conviction proceedings, from the date the offence was committed. At present, the usual six-month limitation period applies. Further, this clause would narrow the court’s current authority under section 42(3) of the Act to make an order for the delivery up or destruction of infringing copies and plates, by specifying that such orders could be made only where the accused was convicted of the offence, rather than, as at present, regardless of whether or not he or she was convicted. Also, such an order could be made only as regards plates that were *predominantly used* for making infringing copies, as compared with the current unqualified wording of *all plates*. Finally, it would add new section 42(5), which would preclude criminal proceedings from being brought against persons who contravened the new parallel importation restrictions respecting books, to be introduced under new section 27.1.

Repeal - Clause 25 of the bill would repeal current section 43.1 of the Act, which sets out the offences enacted under Bill C-57 (the WTO Agreement implementation legislation) with respect to the performances of performers. These measures would be incorporated under new section 42.

Importation of Copies of Works - Clause 27 of the bill would modify current section 44.1 of the Act, which allows the court, on application, to order the detention (and possible eventual destruction or delivery up, etc.) of works about to be imported in Canada, or imported but not yet released, in contravention of the Act. The changes made under this section would be primarily linguistic, except that the importer’s knowledge regarding the infringing importation would no longer have to be actual knowledge (i.e., “the work, *to the knowledge of*

the importer, would have infringed copyright...”); it could be imputed knowledge (i.e., “the importer knows *or should have known*...”).

Repeal - Clause 28 of the bill would repeal sections 44.2 to 45 of the Act, which would be replaced by new or by revised measures, as follows.

Importation of Books - New section 44.2 would extend the provisions regarding the detention (and possible eventual destruction or delivery up, etc.) of imported infringing copies of “works” under revised section 44.1 to “books” in specified circumstances. Specifically, the court would be empowered, on application, to order the detention of copies of a book where it was satisfied that copies of the book were about to be imported in Canada or had been imported but had not yet been released; the copies had been made with the consent of the copyright owner in the country where they were made, but were being imported without the consent of the copyright owner of the book in Canada; and the copies would have infringed copyright if made in Canada by the importer and the importer knew or should have known this. Applications for such an order could be made by: the owner of the copyright in the book in Canada; the exclusive licensee of the copyright in the book in Canada; or the exclusive distributor of the book. The foregoing measures, however, would apply only where there was an exclusive distributor of the book and the acts in question had taken place in the part of Canada or in respect of a particular sector of the market covered by the exclusive distribution agreement. New section 44.3 would preclude an exclusive licensee or an exclusive distributor from obtaining a detention order under new section 44.2 against another exclusive licensee or exclusive distributor.

Importation of “Other Subject-Matter” - Subject to such modifications as the circumstances required, new section 44.4 would extend the provisions of revised section 44.1 regarding the detention (and possible eventual destruction or delivery up, etc.) of imported infringing copies of “works” to “the neighbouring rights works” in accordance with the criteria set out under the section.

Importation Exceptions - New section 45 would replace current section 45 of the Act, which sets out the importation exceptions. As revised, this section would allow the following material to be imported into Canada and would empower customs officers to require persons claiming under the exemption to produce satisfactory evidence of their right to import:

- two copies of a “work” or “other subject-matter” for personal use, provided they were

lawfully made (i.e., made with the consent of the copyright owner in the country in which they were made);

- any number of lawfully made copies of a “work” or “other subject-matter” for use by federal or provincial departments;
- at any time before such copies were made in Canada, any number of lawfully made copies of a “work” (except a book) or “other subject-matter” for the use of a library, archive, museum or educational institution;
- a single copy of a lawfully made book for the use of a library, archive, museum or educational institution; and
- any number of lawfully made used books, except text books of a scientific, technical or scholarly nature for use within an educational institution in a course of instruction.

PART V: ADMINISTRATION

(Clauses 29 to 34 of the Bill; Sections 46 to 59 of the Revised Act)

Clauses 29 to 34 of the bill would revise the provisions of the current Act respecting the registration of works in the Copyright Office. Many of the proposed changes would be made to provide for the registration of the “neighbouring rights works” and not just “works,” as is the case at present. The remaining changes are mostly reworded versions of existing provisions. As these provisions are largely technical in nature, they will not be discussed further.

PART VI: MISCELLANEOUS PROVISIONS

(Clauses 35 to 40 of the Bill; Sections 60 to 64.2 of the Revised Act)

Clauses 35 to 37(1) and 38 would add new or revised headings under Part VI. Clause 37(2) would restrict the role of the Governor in Council to the making of “regulations” only; at present, the Governor in Council may make both “rules” and “regulations” under current section 62(1) of the Act. The remaining clauses would effect wording changes and will not be considered further here.

PART VII: COPYRIGHT BOARD AND THE COLLECTIVE ADMINISTRATION OF COPYRIGHT

(Clauses 41 to 50 of the Bill; Sections 66 to 78 of the Revised Act)

As mentioned earlier, there are currently three separate regimes for collectives under the Act: the regime that applies to the so-called “performing rights societies,” which administer the performing right and part of the telecommunications right (excluding retransmissions) with respect to “musical works”; the regime that applies to “collecting bodies,” which administer the retransmission right; and the regime that applies to “licensing bodies,” which administer any of the other copyright rights not governed by the above-noted regimes. Whereas the first two types of collectives must currently submit their proposed tariff of user fees for the prior approval of the Copyright Board, the last type are not obliged to do so. The Board has jurisdiction in their case only when the parties are unable to agree on the amount of royalties that should be paid for a particular use or uses, and one of the parties applies to the Board to set the rate or rates.

In general terms, the bill would maintain three regimes for the collective administration of copyright. However, the three types of collective would now be called “collective society,” a change effected in part to make way for the “collective body” that would be established to collect the levy imposed on “blank audio recording media” under new sections 79 to 88 of the Act. The three regimes governing the collective societies would be subject to important modifications. Only those changes considered material will be discussed here.

Regulations - Clause 44 would add new section 66.91, which would empower the Governor in Council to develop regulations respecting the issuance of policy directions to the Board, and establishing general criteria to be applied or considered by the Board in relation to the establishment of fair and equitable royalties to be paid under the Act, and the rendering of decisions in relation to any matter coming within the Board’s jurisdiction.

Performing Rights Collectives - Clause 45 of the bill would replace current sections 67 to 68 of the Act, which set out the provisions applicable to the collectives that administer the performing right and part of the telecommunications right (excluding retransmissions) with respect to “musical works or dramatico-musical works.” These provisions would be broadened under new section 67 to apply also to the performances of performers and to sound recordings that involved musical works. The collective or collectives set up in this area

would be required to answer within a reasonable time all reasonable requests from the public for information about the repertoire of musical works, performances and sound recordings that they administered and that were in current use.

New section 67.1 would alter the date for filing a proposed tariff of royalties from 1 September to 31 March immediately preceding the expiry of the previous tariff approved by the Board in cases where a previous tariff had been approved, or on or before 31 March in the case of a first application. The section would also increase the public notice period respecting proposed tariffs from 28 days to 60 days.

New section 68 would set out statutory criteria with respect to the approval of proposed tariffs by the Board, but only for musical performances and sound recordings. The following criteria would not have to be applied or considered with respect to the tariff for "musical works." Thus, as regards musical performances and sound recordings, the Board would be required to ensure that: the tariff applied only in relation to eligible performances and sound recordings, as defined under new section 20 of the Act respecting nationality and place of fixation; the tariff would not, because of linguistic and content requirements established pursuant to the *Broadcasting Act*, place some users subject to that Act at a greater financial disadvantage than others; and the payment of royalties by users to performers and the makers of sound recordings, as required under new section 19, would be made in a single payment. In addition, the Board would have to take into account any other factor considered appropriate.

In addition to the foregoing criteria, the following special and transitional measures, prescribed under new section 68.1, would apply in relation to the tariff for musical performances and sound recordings but not "musical works:"

- Wireless transmission systems. "Wireless transmission systems," other than "community systems" and "public transmission systems" (terms that would be defined by regulation), would have to pay annually a basic \$100 royalty fee on the first \$1.25 million of annual advertising revenues; whereas the following incremental rate, spread out over three years, would apply in relation to annual advertising revenues in excess of the \$1.25 million threshold: thirty-three and one third per cent of the royalties set out in the approved tariff for the first year of its application; sixty-six and two thirds per cent of the royalties set out in the approved tariff for the second year; and one hundred per cent for the third and subsequent years (new section 68.1(1)(a));
- Community systems. "Community systems" would have to pay a flat annual royalty fee of \$100 (new section 68.1(1)(b)); and

- Public transmission systems. “Public transmission systems” would also be subject to an incremental rate, spread out over three years, in the following manner: thirty-three and one third per cent of the royalties set out in the approved tariff for the first year of its application; sixty-six and two thirds per cent of the royalties set out in the approved tariff for the second year; and 100% for the third and subsequent years (new section 68.1(1)(c)).

In addition, new section 68.1(4) would preserve the preferential royalty rate that the Board would have to apply with respect to “small cable transmission systems” under current section 67.2(1.1) of the Act. New section 68.2 in turn would largely reiterate some of the measures found under current sections 67.2 and 67.3 of the Act, except that they would be modified to reflect the new right to equitable remuneration in relation to musical performances and sound recordings.

Collective Societies for other than the Performing Rights and Specified Compulsory Licences - Clause 46 of the bill would replace current sections 70.1 and 70.2 of the Act respecting “licensing bodies” with new sections 70.1 to 70.2. These new sections would apply to the collectives that administered the rights listed under current section 3 of the Act with respect to “works;” the rights listed under new section 15 with respect to performers’ performances; the rights listed under new section 18 with respect to sound recordings; and the rights listed under new section 21 with respect to communication signals.

The regime applicable to this type of collective would be similar, although not identical, to the regime for the performing rights collectives described above. Unlike the performing rights collectives, however, which would be required to file a proposed tariff with the Board on or before 31 March of the applicable year, a collective administering the above-noted rights would have the option of either filing a proposed tariff with the Board or of entering into an agreement with users (new section 70.12). If it opted to file a proposed tariff with the Board, the relevant procedural provisions (e.g., notice, objections, timelines, etc.) prescribed for the performing rights collectives would apply in relation to these collectives (new sections 70.13 to 70.15). Like the performing rights collectives, this type of collective would also have to answer within a reasonable time all reasonable requests from the public for information about its repertoire (new section 70.11).

Where the Board had approved a tariff in relation to this type of collective, no proceedings for infringement under sections 3, 15, 18 and 21 could be taken against a person

who had paid or offered to pay the royalties specified in an approved tariff (new section 70.17). Further, where the approved tariff had expired, the relevant users could continue to do the acts authorized under the expired tariff, and the collective could continue to collect the related royalties, until a new tariff was approved (new section 70.18). In contrast to the performing right societies, this type of collective would not be able to apply interim tariffs. Where an agreement had been reached between the collective and users, the foregoing provisions precluding infringement proceedings and respecting the continuation of expired tariffs would not apply to any matter covered under the agreement (new section 70.19). On the other hand, an approved tariff would not apply where an agreement was in effect during the period covered by the approved tariff (new section 70.191).

New section 70.2 would reinstate current section 70.2 of the Act, which, in cases where a collective and users cannot agree on the amount of royalties to be paid or the related terms and conditions, allows one of the parties to apply to the Board to fix the royalties or related terms and conditions. This provision would be retained, except that its wording would be modified to apply to the three new types of subject-matter and related rights that would be subject to this particular regime.

Collectives for Specified Compulsory Licences - Clause 50 of the bill would replace sections 70.61 to 71 of the Act, which set out the regime applicable to the collectives administering the compulsory licence for the retransmission of distant signals, established under current section 28.01 of the Act (which would be renumbered as section 31 of the revised Act pursuant to clause 16). These sections would be replaced by new sections 71 to 76.

New section 71 would apply to the collectives administering one of the compulsory licences that would be established or maintained under the revised Act to authorize the following acts, subject to payment of the prescribed royalty and compliance with such other terms and conditions as applied:

- the reproduction and public performance of a news program or news commentary program, excluding documentaries, by an educational institution for educational purposes pursuant to new section 29.6(2);
- the reproduction and public performance of other programs by an educational institution for educational purposes pursuant to new section 29.7(2) and (3); and

- the retransmission of distant signals pursuant to new section 31(2)(d).

Like the performing rights collectives, the collectives formed to administer the foregoing acts would be required to file a proposed tariff with the Board, and would be subject to similar procedural requirements respecting notice, objections, timelines, etc. as would the performing rights societies (new sections 71 and 72). These collectives, however, would not be able to reach an agreement with users; they would not have to provide information about their repertoires request; they would not have access to interim tariffs; nor, it would seem, would they be able to continue to collect previously applicable royalties in cases where the approved tariff had expired.

New section 73 would re-enact a modified version of current section 70.63 of the Act. Under this new section, the Board would be required to establish a manner of determining the royalties to be paid by educational institutions and retransmitters as regards the above-noted uses, and any related terms and conditions deemed appropriate. The Board would then be required to determine the portion of the royalties to be paid to each collective, vary the tariffs accordingly, and certify the tariffs as approved. In establishing the manner of determining the royalties payable and the apportionment among the collectives, however, the Board would be expressly precluded from discriminating between copyright owners on grounds of nationality or residence.

New section 74 would re-enact current section 70.64 of the Act, which calls for a preferential tariff to be established in relation to “small retransmission systems,” and which allows regulations to be developed to define that term. New section 75 would re-enact current section 70.65, which entitles a collective to collect the royalties specified under the approved tariff for the period specified under the tariff or, in default of payment, to recover them in court. New section 76 would modify current section 70.66 of the Act, which entitles a copyright owner who is not a member of a collective that administers the retransmission of distant signals to be paid such royalties as are prescribed under the approved tariff in effect at the time - a remedy that, in such cases, is the only one available to a non-member copyright owner. New section 76 would also extend the foregoing remedy and limitation to non-member copyright owners whose

materials were used under the other compulsory licences governed under this regime.

Unlocatable Copyright Owners - New section 77 would extend to the neighbouring rights works the provisions under current section 77 of the Act, which allow a user to obtain a licence from the Board authorizing him or her to use particular material in cases where the copyright owner of that material cannot be found. Under a new provision added by the House of Commons committee, the Board would also be authorized under this section to develop regulations governing the issuance of such licences.

Compensation for Acts Done prior to Copyright Protection - New section 70.8 would re-enact current section 70.8, which, in cases where the parties cannot agree, authorizes the Board to fix the amount of compensation payable by a copyright owner to a person who has incurred an expenditure or liability in relation to an act which, when carried out, did not infringe copyright, but which would now do so by reason of a country's having since become a WTO country or a treaty country, as provided under new sections 32.4, 32.5 and 33.

PART VIII: PRIVATE COPYING

(Clause 50 of the Bill; Sections 79 to 88 of the Revised Act)

New Part VIII would call for the imposition of a levy on blank audio tapes, which would legitimize the copying of sound recordings, if done for private purposes only. Specifically, new section 80(1) would allow a person to reproduce or substantially reproduce a "sound recording," including the "musical work" and "performance" embodied in the sound recording, on to an "audio recording medium" for his or her private use. Expressly excluded from the ambit of this exception would be copying done for the following purposes: selling or renting out the copy or, by way of trade, exposing or offering it for sale or rental; distributing it, whether or not for the purpose of trade; communicating it to the public by telecommunication; and performing or causing it to be performed in public (new section 80(2)).

In exchange for this exemption, a levy set by the Board would be imposed on the manufacturers and importers of "blank" audio recording media, who would be required to pay the prescribed levy upon the sale or other disposal of the blank audio recording media, except where these were destined for export and were in fact exported, or that were sold or otherwise disposed of to a society, association or corporation for people with perceptual disabilities (new sections 82 and 86). The levy would be payable to the "collecting body" designated for this

purpose, which would distribute the funds to *eligible* authors and performers of musical works and the makers of sound recordings (new section 84). The right of these persons to receive remuneration under this Part, however, could be transferred to another party by assignment or licence (new section 8(1.2)).

Music authors would be eligible to partake in the levy if their music was copyright in Canada, regardless of when it was created and incorporated into a sound recording. Performers would be eligible regardless of when their performance was incorporated in a sound recording, but provided that, at the date of first fixation of the recording, the performer was either: a citizen or resident of Canada and copyright subsisted in the performance in Canada; or the performer was a resident or citizen of a country designated by the Minister as a reciprocating country pursuant to new section 85. The eligibility criteria for the makers of sound recordings would be identical to those applying to performers; that is, at that date of first fixation of the recording, the maker of the sound recording would have to be either: a citizen or resident of Canada or, if a corporation, headquartered in Canada, with copyright subsisting in the recording in Canada; or the maker would have to be a citizen or resident, or if a corporation, headquartered in, a reciprocating country designated by the Minister under new section 85 (new sections 79 and 81).

Pursuant to new section 83, the prescribed levy would be set by the Board in much the same way that it approves tariffs for other areas of copyright activity, that is, the relevant collectives *could* (and not *would be required to*) submit a proposed tariff to the Board by 31 March and, after notice had been given and objections considered, the Board would be required to establish the manner of determining the levies, as well as any related terms and conditions. The Board could then vary the tariff accordingly and certify it as approved. In establishing the manner of determining the levies, the Board would be required to satisfy itself that the levies were fair and equitable having regard to any criteria prescribed by regulations made under new section 87.

Where an eligible author, performer or maker of a sound recording had not authorized a collective to file a proposed tariff respecting the levy, that person (or corporation) would be entitled to be paid only the amount that he or she would otherwise have been entitled to receive under the approved tariff in effect at the time (new section 83(11) and (12)).

New section 85 would provide the Minister with the authority to designate countries as reciprocating countries for the purpose of entitling their nationals to a share of the levy imposed under this Part. This section, it should be noted, would apply only to performers and the makers of sound recordings and not to music authors. By virtue of the national treatment rule under the Berne Convention, music authors would be automatically entitled to benefit under this Part, provided their music was copyright in Canada (which would be the case for any authors protected under the Berne Convention). Thus, as regards foreign performances and sound recordings, if the Minister was of the opinion that a country, by treaty, convention, agreement or law, had granted or had undertaken to grant to performers and the makers of sound recordings who were citizens or residents of Canada (or, if a corporation, was headquartered in Canada), benefits substantially equivalent to those conferred under Part VIII, the Minister could by declaration grant to the performers and makers of sound recordings affiliated with that country the same benefits conferred on their Canadian counterparts under this Part. Where, on the other hand, the Minister was of the opinion that a country had not granted or had not undertaken to grant to Canadian performers and makers of sound recordings benefits substantially equivalent to those conferred under Part VIII, he or she could by declaration grant benefits to the performers and the makers of sound recordings affiliated with that country, but only to the extent of the benefits granted in that jurisdiction to Canadian performers and makers of sound recordings.

New section 86 would exempt a society, association or corporation representing persons with perceptual disabilities from having to pay the prescribed levy to the importers or manufacturers of the blank audio recording media. It would also entitle them to a refund where they had purchased the relevant material from persons other than the manufacturer or importer. In order to get a refund, however, the exempted group would have to provide the collecting body with proof of purchase on or before 30 June in the calendar year following the calendar year in which the purchase was made.

New section 87 would authorize the Governor in Council to develop regulations in relation to the exemptions and refunds under this Part, including the procedures that would govern the exemptions and refunds, and the registration of the societies, associations or corporations that represented those with perceptual disabilities. Regulations could also be

developed prescribing anything that was to be prescribed under Part VIII, and generally for carrying out the purposes of this Part.

Finally, new section 88 would entitle the collecting body, without prejudice to any other remedy available to it, to collect the levies due to it under the approved tariff for the period specified thereunder or, in default of payment, to recover the amount owing in court. Where proceedings were taken, the court could order the defaulting party to pay up to five times the amount of the applicable levy. Before doing so, however, the court would have to take the following factors into account: whether the defaulting party had acted in good faith or bad faith; the conduct of the parties before and during the proceedings; and the need to deter persons from neglecting to pay the levy. The collecting body would also have the right to make an application in court compelling compliance with the obligation to pay.

PART 1X: GENERAL PROVISIONS

(Clause 50 of the Bill; New Sections 89 to 92 of the Revised Act)

New section 89 would stipulate that copyright would subsist in Canada only under or in accordance with this Act or other federal statute, although nothing in this section should be construed as abrogating any right or jurisdiction in respect of breach of trust or confidence.

New section 90 would preclude any provision under the Act respecting performers' performances, sound recordings and communication signals, or the right to remuneration of performers or makers of sound recordings, from being construed in such a way as to prejudice the rights conferred on the traditional "works" under Part I, or the amount of royalties that the Board might fix in respect of those rights.

New section 91 would require the Governor in Council to take such measures as were necessary to secure compliance with the 1971 Paris Text of the Berne Convention, and with the 1961 Rome Convention.

New section 92 would require the Minister to prepare a report on the provisions and operation of the Act, as amended, within five years of the bill's proclamation, and the report to be referred to such committee of the House of Commons or of both Houses of Parliament, as might be designated. The designated committee would in turn be required to undertake a

comprehensive study of the provisions and operation of the Act and report back to the House of Commons or to both Houses of Parliament within one year after the Minister had tabled the report in Parliament, or such further time as had been authorized.

TRANSITIONAL AND MISCELLANEOUS MEASURES

(Clauses 51 to 63 of the Bill)

Clauses 51 to 63 of the bill would, among other things, repeal obsolete copyright measures; set out transitional provisions respecting specified rights; and prescribe the dates upon which the Act or selected provisions would come into force. In this regard, clause 61 of the bill provides that the Act, as amended by the bill, would come into force on a day or days to be fixed by order of the Governor in Council. Clause 62(1), however, stipulates that the measures regarding the parallel importation of books would come into force or be deemed to have come into force on 30 June 1996. These measures concern: the definition of "exclusive distributor" under revised section 2 of the Act; the authority of the Governor in Council to establish criteria by regulation with respect to exclusive distributors under new section 2.6; and the prohibition respecting the parallel importation of books under new section 27.1 of the Act. Clauses 62(2) and 63 prescribe transitional measures respecting the parallel importation of books that would apply from the period between 30 June 1996 and 60 days after the Act had been proclaimed in force. Essentially, clause 62(2) provides a transitional definition of "exclusive distributor" that would do away with the pre-condition under revised section 2 of the Act for criteria to be developed by regulation with respect to "exclusive distributors," thus the relevant provisions would become operative in the absence of such regulations. **Clause 62(3), added at report stage, would in turn defer the application of the exclusionary rule regarding the importation of used text books of a scientific, technical or scholarly nature for use within an educational institution; this measure would otherwise, pursuant to clause 62(1), have been deemed to come into force on 30 June 1996. Under clause 62(3), however, the exclusionary rule would come into force only 60 days after the Act had been proclaimed. Thus, until that date, any lawfully made used book could be imported into Canada, including used text books for use in educational institutions.** Finally, clause 63 defines the circumstances in which copyright owners, exclusive licensees and exclusive distributors would

be entitled to a remedy under the Act for the unlawful importation of books; however, it would preclude action from being taken against an educational institution, library, archive or museum.

COMMENTARY

Although Bill C-32 was a long-awaited piece of legislation, it came under considerable criticism, particularly from the creative community, at the hearings of the House of Commons Standing Committee on Canadian Heritage. In general, creator groups considered that the bill did not go far enough in strengthening their rights and protecting their interests. They viewed the exemptions, notably those for the educational sector and for libraries, archives and museums, as being far too broad. Some of these groups felt that there should be no exemptions at all, or, at the very least, that any exemptions should not be made to apply if it were possible to obtain authorization from a collective.

The proposed neighbouring rights for performers' performances, sound recordings and communication signals - while considered to be a step in the right direction - were also found wanting. Performers and record producers were disappointed that they would not be granted exclusive public performance and telecommunication rights in relation to their performances and sound recordings, but would instead be limited to a mere "right to equitable remuneration" for such uses. Performers were doubly disappointed because the proposed right to equitable remuneration would extend only to performances embodied in *sound recordings*, and not to performances embodied in *audiovisual* media.

Broadcasters, in turn, were disappointed that the proposed telecommunication right in relation to their communication signals would apply only to retransmissions by conventional broadcasts and not to the other modes of retransmission, such as cable and direct-to-home services. The proposed levy for private copying of sound recordings also came under criticism by the creative community, a major concern being that the levy would apply to *audio* recording media only and not to *audiovisual* recording media and recording equipment.

The book publishing industry, for its part, welcomed the proposed restrictions on the parallel importation of books, save for the proposed exclusion respecting used textbooks. Other creator groups, however, notably the makers of computer programs, sound recordings and

film, questioned why the proposed restrictive regime for parallel imports would apply to books only and not to these other works also.

While the creative community generally expressed strong support for the proposed new civil remedies of wide injunction and statutory damages, some groups felt that the proposed maximum statutory damages award of \$20,000 was too low and should be raised to \$100,000 or \$150,000 in cases of willful infringement. On the other hand, there was widespread concern about the proposed statutory criteria that the Copyright Board would have to apply or take into consideration in setting various royalty rates under the Act. Performers and record producers were particularly critical of the proposed exemption that would allow broadcasters to pay only \$100, and not the full tariff, on their first \$1,250,000 of advertising revenues for the broadcasting of sound recordings and the performances of performers. They were also concerned that the tariff that would apply to advertising revenues over this threshold would be phased-in over a five-year period on an incremental basis.

Users, in turn, gave the bill mixed reviews. The educational sector, libraries, archives and museums were generally satisfied with the bill, in particular the exemptions that would be enacted for their benefit. They had, however, several concerns. One was the absence in the bill of an archival exemption, which would enable archived material to be reproduced for the purposes of research or private study. Another concern related to the proposed exclusion of educational institutions from the statutory damages provisions. Some groups questioned excluding only educational institutions from the application of these provisions and argued that libraries, archives and museums should also be excluded. Other groups felt that "for-profit" institutions should be included in the definition of "library, archive and museum" so that these institutions could also benefit from some of the exemptions.

The proposed exemptions for persons with perceptual disabilities were also of concern. One widely shared criticism was that the exemptions would not apply to persons with a hearing disability. There was also concern that the royalties to be paid for making multiple copies of works for the perceptually disabled would be fixed in a tariff approved by the Board; thus non-profit institutions, such as the Canadian National Institute for the Blind, would be obliged to make costly and time-consuming representations to the Board with respect to the tariff that should be approved.

Criticism was also leveled against the proposed levy on blank audiotape to compensate rights holders for the private copying of sound recordings. Some groups argued that the imposition of a levy at the manufacturing/importation level would lead to a “grey” market in audiotapes, such as had occurred in the European Union. Others felt that in order to keep costs down, the levy should be applied at the retail level, while still others contended that the levy was too sweeping and should be made subject to more exemptions to exempt from paying, or provide a refund to, the many who use blank tape for a variety of legitimate purposes totally unrelated to the illicit copying of sound recordings.

The proposed neighbouring rights measures, especially the proposed right of performers and record producers to be paid “equitable remuneration” for the public performance and broadcast of their performances/sound recordings, also came under fire. Radio broadcasters in particular roundly condemned this measure. Emphasizing the financial plight of their industry and the inability of many radio broadcasters to pay additional royalties for the broadcast of music, they asked that the same full exemption be granted to them, as had been granted to radio broadcasters in the U.S.

Broadcasters were also concerned about the lack in the bill of an “ephemeral recording” exemption, which would allow them to tape live programs in order to air them at a more suitable time, and a “transfer of format” exemption, which would allow them to make a recording of a program in order to transfer it to a different technical format. They feared that without such exemptions broadcasters would be extremely vulnerable to infringement proceedings, especially as statutory damages, introduced under the bill, could henceforth be claimed against them.

As initially introduced, Bill C-32 seemed to please no one and, in answer to the many concerns that had been raised, a total of 123 amendments were made to it in committee **and 15 more were made at report stage**. In overall terms, creators appear to have come out the winners.

Of the changes made, the exemptions for educational institutions, libraries, archives and museums were perhaps hit the hardest. For example, due to wording changes, selected uses of protected material by educational institutions for the purposes of “distance education” would no longer be exempted. The several educational exemptions that had been

made conditional on the commercial non-availability of the work were also made subject to the further condition that authorization to use the work must not be obtainable from a collective society. The provision that would have shielded educational institutions, libraries, archives and museums from liability for the photocopying that patrons carried out on such premises was also modified; these institutions would now be required to obtain a reprographic licence from a collective in order to acquire legal immunity. Selected exemptions for the educational sector, and for libraries, archives and museums, were also made subject to the overriding condition that the exempted activities not be conducted for profit; practices such as “document delivery services,” where institutions such as libraries make a profit on their photocopying service, would thus be excluded from the application of the exemptions.

The broadcasters also lost ground under the amended bill. They had requested that they be fully exempted from the payment of royalties under the proposed new “right” of equitable remuneration” for performers and record producers. Instead, under the amended bill, broadcasters would not only be required to pay the applicable royalties, but would have to do so sooner than envisaged, since the five-year incremental phase-in initially proposed in the bill would be reduced to a three-year period. Also, the statutory criteria that were viewed as being favourable to broadcasters and that the Board would have had to take into account in fixing royalty rates, were eliminated from the bill. On the other hand, broadcasters would be granted a **“transfer of format” exemption and** an “ephemeral recording” exemption, but it is questionable whether these exemptions, as proposed, will satisfy them. They are likely to view as totally unacceptable the proposal that the exemptions would apply only if a licence to make the recording in question could not be obtained from a collective.

Many of the amendments that were made, however, were not made “at the expense” of users. One such amendment would enable archives to supply copies of archived material under specified circumstances. The exemptions for those with perceptual disabilities were extended to include persons with a hearing impairment. The initial proposed period of copyright protection for unpublished works whose author had died within 100 years of the coming into force of the relevant section was materially shortened. As well, the current straight 50-year term of copyright protection for photographs was extended to cover the life of the author plus 50 years after death, provided the photograph had been made by an individual or a corporation the majority of whose voting shares were owned by a natural person. At the behest

of music composers, lyricists and other creators of “works,” the non-derogation clause at new section 90 would make it clear that the advent of neighbouring rights for sound recordings and performers’ performances should in no way be interpreted as prejudicing the amount of royalties paid to the copyright owners of the traditional “works” protected under the Act.

Given the many amendments adopted, Bill C-32 is materially different from the original version. The “losers” under the revised bill will doubtless want to make representations to parliamentarians in an effort to recover lost ground, while the “winners” will doubtless want to do the same in order to maintain their gains. Thus, the controversy surrounding the bill is not likely to go away.