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Proposed Updates to Canada's Copyright Laws: Bill C-61

After much anticipation, as well as much furious lobbying from content providers on one side and consumer groups on the other, the federal government introduced Bill C-61, containing revisions to Canada's copyright laws, on 12 June 2008.

The bill contains a number of provisions which, if the bill is passed, will work for the benefit of copyright owners as well as creators of copyright-protected materials.

Gardiner Roberts LLP

*Barrister & Solicitors
Scotia Plaza
40 King St. West
Suite 3100
Toronto, ON
M5H 3Y2*

*Tel: 416-865-6600
Fax: 416-865-6636*

www.gardiner-roberts.com



This article was prepared by Ash Baker. Mr. Baker is an associate in our corporate department and can be reached at 416-865-2968 or abaker@gardiner-roberts.com

- New protections for copyrighted material: the new bill provides a number of new protections for copyrighted material:
 - Photographers will be considered the authors of photographs taken by them, and therefore the first owners of their work. This includes commissioned photographs.
 - The copyright term for photographs will be extended to the life of the photographer plus 50 years.
 - The copyright term for performers of audio recordings will be extended to 50 years after publication of the performance.
 - It will be specifically unlawful to remove a copyright notice or other information identifying the owner of the
 - It will be specifically unlawful to post a copyrighted work online without the permission of the copyright owner.
 - It will be specifically unlawful to reproduce a copyrighted performance without the permission of the copyright owner.
- Statutory damages for infringement: the bill establishes a two-tier system of statutory damages for infringement. These damages will be available to copyright owners whose copyrights have been infringed. The base level of statutory damages is only \$500, no matter how many incidents of infringement have occurred. However, if the infringer has defeated any kind of digital lock in the course of the infringement, such as DVD or CD copy protection, or restrictions on the use of online or streaming material, the statutory damages rise to \$20,000.
- New requirements for internet service providers: under the new bill, when a copyright owner identifies an internet user who is infringing on its copyright, the owner will be able to give a notice of infringement to the internet service



provider, which will be required to forward the notice on to the individual user, as well as being required to retain all relevant records relating to the user. Internet service providers which fail to comply with these requirements will themselves be liable for the infringement.

- Digital locks: under the new bill, it will be specifically unlawful to defeat a digital lock of any kind on a copyrighted work without the permission of the copyright owner. It will also be unlawful to import, market or sell any device or service which enables the defeat of a digital lock.
- Performer's moral right: the bill makes it specifically unlawful to distort or mutilate a copyrighted work without the permission of the copyright owner. This provides some protection to performers; however, it also raises issues for producers of music which relies on samples, satirists, documentarians, and other persons who use portions of copyrighted performances in a way which might be characterized as distortion or mutilation. It is unclear at this point what the ultimate impact of this provision may be; in the short term, if the bill is passed, it seems likely that there may be something of a chill in the use of portions of copyrighted materials.
- Educational exemptions: the bill contains exemptions which allow the use of copyrighted material by teachers and students in an educational setting.

The bill also contains provisions which are relevant to consumers of copyrighted material:

- Limited format shifting: legal owners of books, newspapers, periodicals, photographs, and video tapes would be permitted to copy them onto other devices they own. It should be noted that DVDs and copy-protected CDs are excluded from this "format shifting" provision; DVD and copy-protected CD owners will not be permitted to copy them onto another device such as an iPod or other digital media player.
- Time shifting: the bill will specifically permit the recording of televisual and radio programs to view or listen to at a later date. However, the recordings cannot be kept indefinitely; it will not be permitted to build a library of recorded television programs, for example.

It remains to be seen whether Bill C-61 will ever become law. There are a number of provisions which are seen as contentious by consumer advocates and others, and the bill seems unlikely to have a swift passage through Parliament. If there is an election in 2008, or if the government prorogues Parliament, it seems likely that this bill may die on the order paper, meaning that Canada's copyright laws would remain in their current form.