

## **United States, European Union fingered in new copyright push**

Former diplomats, experts say foreign governments have long desired the bill that is now likely to pass with Tory majority. Will Canada's interests be served?

SNEH DUGGAL (feat. COLIN ROBERTSON)

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Whenever the Harper government has sought to change the rules surrounding copyright in Canada, it has been accused of bending to the will of foreign governments. And as it seeks to change them again, some are pointing fingers at the United States and the European Union as the source of pressure.

The Conservatives reintroduced its Copyright Modernization Act, now Bill C-11, on Sept. 29. This is the third time the Conservatives have brought such a bill to Parliament in the past few years—but this time, the party has the numbers to pass the bill, and says it hopes to wrap up the whole affair by Christmas.

Those who have followed this copyright saga for years, such as University of Ottawa law professor Michael Geist, are convinced that "relentless US pressure" is to blame. But while he and others argue that parts of the bill may have resulted from foreign pressure, others have applauded the legislation, saying that it serves to bolster Canadian interests abroad.

### **Down south and across the pond**

Pushing Canada on intellectual property has long been a prominent foreign policy principle of the United States, said former Canadian diplomat Colin Robertson, now vice-president of the Canadian Defence and Foreign Affairs Institute.

"The Americans have expected this for two-and-a-half years. The western world is moving to give greater protection to those who create," Mr. Robertson said.

There is a lot of Canadian talent that want the same protection the Americans and Europeans get, he argued. He said he saw this during his time as Canadian consul general in Los Angeles from 2000-2004 and as minister of advocacy and head of the advocacy secretariat from 2004-2006 at Canada's mission in Washington.

He also said the bill would likely pave the way for the introduction of other intellectual property legislation, especially relating to pharmaceuticals.

"To bring a drug to market costs a billion dollars these days, sometimes more, [other countries] want to ensure that they have got adequate protection to ensure that the creator of the drug will make their money back," he said.

Peter Wells, an intellectual property lawyer with McMillan LLP, agreed that the government's move should make the US particularly happy. He said there has been a perception in Washington that Canada has not lived up to its international obligations in terms of intellectual property rights.

"I think countries that have significant cultural industries and are exporting various forms of output in the form of movies or music to Canada, I can't imagine that they would be any less than thrilled to see these changes," he said.

But Mr. Geist said the bill's provision on digital locks is a direct result of pressure from the United States, and that other countries could possibly point at other perceived shortcomings with Canadian intellectual property and continue putting pressure on Canada knowing that it is a successful formula for change.

"I think what the government has sent is a signal that they will ultimately cave if pressured—what that does is actually encourage the EU to be more aggressive in its demands on Canadian intellectual property reforms," he said.

The Americans themselves have not been shy about their interests. Shortly after his appointment as the US ambassador to Canada in 2009, David Jacobson said at a conference in Montreal that Canada should not be exempt from respecting copyright laws that offer protection to creators. He suggested such legislation would be beneficial for both countries and would encourage innovation.

A US Embassy spokesman said officials did not want to provide any comment on the legislation at this time, since it is still before Parliament.

Bill C-11 also comes at a time when Canada and the US are working towards a shared vision for perimeter security and economic competitiveness. Mr. Robertson said the copyright reform legislation would reduce a trade irritant, seeing that intellectual property rights is an important issue for the Americans along with the Europeans.

Negotiators for the Canada-EU trade deal said earlier this year that intellectual property discussions were among the biggest challenges at the table. Among the intellectual property reforms that the Europeans are asking for is for an extension of patent life for brand-name pharmaceutical companies.

"We are following with interest the latest developments regarding the Copyright Modernization Act and we are satisfied that the bill has been reintroduced. We hope the bill will be enshrined into law in a timely manner," said Maurizio Cellini, head of the economic and commercial section at the European Union Delegation to Canada, in a email to Embassy.

Bill C-11's last reincarnation, Bill C-32, was introduced in June 2010 and reached the committee stage before being discarded as a result of this year's federal election.

Heritage Minister James Moore said the legislation ensures that piracy is illegal and that creators have the right to protect their property with digital locks and digital protection measures.

The bill would also allow Canadians to transfer a novel or album, for example, to their phone without being penalized. But the digital lock provision would make it illegal to copy or back up media protected by a digital protection measure.

Liberal critic for industry and consumer affairs Geoff Regan said he is happy to see that consumers will be allowed to create back-up copies of media for personal use, but added that the digital lock provisions are contradictory.

"I find it a bit backward that they've taken one approach on how people deal with music, for example, creating fair dealing so people can transfer some kinds of things, back them up," he said, but "not to allow people to be able bypass a digital lock in order simply to format shift and use it for their own personal use, that seems like a contradictory approach."

### **ACTA in favour**

Four days after the copyright reform bill was tabled in the House of Commons, Trade Minister Ed Fast also signed an international agreement to combat trade in counterfeit and pirated goods.

The Anti-Counterfeiting Trade Agreement has been signed by the United States, Australia, Japan, Morocco, New Zealand, Korea and Singapore.

Mr. Fast said signing ACTA will contribute to combating counterfeit and pirated goods, and protecting innovation, both of which "are key to Canada's future economic success."

The government also said Bill C-11 informed and guided Canada's approach to the ACTA negotiations.

But some are skeptical the agreement will lead to economic prosperity. Mr. Geist said that since ACTA relates to intellectual property, there is no reason to believe it would increase trade among partner countries.