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New Copyright Bill a Jekyll and Hyde:

Reflects Realities of Canadians' Content Creation and Experience, Imports Worst of US Digital Copyright Law

Ottawa, ON – June 7, 2010 – The Sameulson-Glushko Canadian Internet Policy and Public Interest Clinic (CIPPIC) is concerned that Bill C-32, the government's latest attempt at reforming Canadian copyright laws, puts Canadians' interests second.

"This is a Jekyll and Hyde Bill," states David Fewer, CIPPIC's Director. "The Bill is very, very good in many respects. It modernizes Canadian copyright law to reflect the reality of how Canadians access, experience and create content. But then it throws those rights away whenever a distributor slaps a digital lock on that content."

The Bill offers many important and welcome exceptions and creation rights, including:

- Clarifying the legality of fair parodies and satires
- Clarifying that educational dealings with content will not infringe copyright if fair
- Legalizing time-shifting (the practice of recording content for later viewing – this amendment at long last legalizes the use of VCRs and PVRs)
- Legalizing format-shifting (the practice of moving content from one medium – a music CD, for example – to another – such as one's computer, or an iPod)
- Clarifying the legality of non-commercial user-generated content (legalizing mash-ups and amateur karaoke shared online through platforms like Facebook and YouTube)

"It's clear that the Bill's drafters were listening to Canadians during last summer's Copyright Consultations", notes Fewer. "These reforms are balanced, reflect Canadians' interests and were all badly needed. It's nice to see use of the VCR finally legalized after over thirty years!"

The problem is that these and other creative dealings with content will not apply where access to that content can only be gained by breaking a digital lock.

"On the issue of digital locks, it's equally clear that the Bill's drafter was listening to other stakeholders. The digital lock provisions match very nicely with American demands, not the views of Canadians", states Tamir Israel, CIPPIC's Staff Lawyer. "As with the last Conservative government attempt to amend the *Copyright Act* (Bill C-61), this new Bill adopts the worst elements of the failed US DMCA law. It allows distributors to expand copyright protection effectively without limit through technology to lock consumers out of legally using the content they've bought and paid for. This is really disappointing given the clear message ordinary Canadians offered the government

on this issue at last summer's consultations: Canadians wanted digital locks governed by rational laws that put Canadians' interests first. That's not what's been delivered."

"Under this Bill, locks trump user rights," observes Fewer. "Digital locks allow distributors to restrict access to content well beyond the balance struck in the *Copyright Act*. What this means for consumers is that you can put unprotected music files on your iPhone, but you can't take a movie off your DVD and put it onto the same device. The DVD has a digital lock on it. Breaking that lock to enjoy content you've paid for on your device of choice will break the law under this Bill."

Israel notes that it is not just consumers who lose rights under this approach to digital locks. "You can't access your fair dealing rights if you can't access the content, and you can't access the content without breaking the law. This means that reporters won't be able to access locked content for use in news shows and newspapers. Documentary filmmakers won't be able to access protected content for use in documentaries. Whistleblowers won't be able to break encrypted content to bring malfeasors to justice. Educators won't be able to present protected content to their students. And this problem is only going to get worse as more and more content goes online onto protected platforms. It completely undermines the careful balance struck by Canadian Copyright law. "

Fewer notes that "This is all the more frustrating since there is an alternative, common sense approach to digital locks available: outlaw the breaking of a digital lock to infringe copyright, and maintain the current legality of breaking a lock for legal dealings. If I'm not infringing copyright, why does the government want to stop me from accessing content?"

CIPPIC is calling on Canadians to contact their MPs to express their support for Bill C-32's user and creator rights, but to fix its approach to anti-circumvention rights. "This Bill is going to come under heavy fire from copyright lobbyists," notes Fewer.

CIPPIC will be undertaking a number of initiatives in the coming weeks to allow ordinary Canadians to tell their MPs how Bill C-32 can reflect Canadian interests:

- CIPPIC is launching a Twitter petition asking Heritage Minister James Moore to amend Bill C-32 so that it better reflects Canadian interests
- CIPPIC's advocacy site DigitalAgenda.ca is launching an online letter writing campaign to allow Canadians to ask MPs to support C-32's commitment to balanced copyright while fixing its digital lock flaws
- CIPPIC is launching an ambitious education program through DigitalAgenda.ca to better inform Canadians of C-32's features and flaws.

Above all, CIPPIC will promote Canadians' participation in the coming process of reviewing Bill C-32. "There is no better way of making your views known than writing or even meeting with your MP," notes Fewer.

About CIPPIC: CIPPIC is the Samuelson-Glushko Canadian Internet Policy and Public Interest Clinic, Canada's only technology law clinic, and a part of the Centre for Law, Technology and Society and the University of Ottawa. CIPPIC was established in 2003 at the University of Ottawa, Faculty of Law, Common Law Section. CIPPIC's mandate is to advocate for balance in policy and law-making on issues arising out of new technologies.

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