The New Copyright Act Partially Enters into Force

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Following an Order of the Governor in Council dated Oct. 25, many provisions of the new Copyright Act (the Copyright Modernization Act) entered into force on Nov. 7.

However, the provisions related to the new “Notice-and-Notice” procedure and corresponding duties for internet service providers will come into force at a later date.

The provisions implementing Canada’s obligations under the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT) will also come into force at a later date, or at the time an Instrument of Ratification is deposited with WIPO by Canada.

Amongst the changes coming into force on Nov. 7, the following are of particular interest:

Additional protection

- Introduction of “making available” and “distribution” rights.
- Harmonization of the regime for the protection of photographs with the general copyright regime in terms of first ownership and duration.
- New moral rights for performers of live aural performance or performances fixed in sound recordings.
- Addition of a new form of secondary infringement (i.e., that of providing electronic services primarily for the purpose of enabling acts of infringement if the infringement occurs).
- New violations, offences, remedies and tools with regard to the circumvention of technological protection measures.
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New exceptions and limitations

- Broadening of the fair dealing exception by inclusion of education, parody and satire in allowable purposes.
- New exceptions in cases of (1) non-commercial user-generated content (“mash-up exception”); (2) reproduction for private purposes; (3) reproduction for later listening or viewing (“time-shifting”); and (4) backup copies.
- New exceptions and facilitated access to existing exceptions for educational institutions, as well as for libraries, archives and museums.
- Broadening of existing exception to allow the holder of a licence for use of a computer program to adapt, modify, convert, translate or create backup copies of a computer program.
- New exemption to allow for the temporary reproduction of a work if the reproduction is an essential part of a technological process and exists only for the duration of such process.
- Facilitated accessibility to existing exemption with regard to ephemeral recordings by a broadcasting undertaking.
- Creation of safe harbours for network service providers, such as when “hosting” and providing data memory.
- Allowing individuals to use commissioned photographs and portraits for private purposes.
- Reduction of range of statutory damages to $100 – $5,000 if infringement is for non-commercial purposes or if defendant was unaware of the infringement.

On Nov. 7, the government also published its regulation carving out MicroSD cards from the private copying regime of Part VIII. The regulation is not retroactive.

The content and date of entering into force of other regulations permitted under the new Act remain unknown.

Background

Since the Act was last amended in 1997, there have been four attempts at revising it: Bill C-60 in 2005, Bill C-61 in 2008, Bill C-32 in 2010 and Bill C-11 in 2011. The first three bills died on the order paper as federal elections were being called. Controversial Bill C-11 received its third reading and received royal assent on June 29. CB

The authors wish to thank Brian Gray, Ana Gray Richardson-Bachand and Rémi Weiss for their help in preparing this legal update.