

Looking at The Future of Canadian Copyright in The Rear View Mirror

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1. CANADIAN COPYRIGHT REFORM IN CONTEXT.....	3
2. COPYRIGHT TERM EXTENSION.....	4
3. ANTI-CIRCUMVENTION LEGISLATION.....	5
4. TOWARD A POSITIVE VISION OF CANADIAN COPYRIGHT REFORM.....	7
5. A NATIONAL DIGITAL LIBRARY.....	7
6. ELIMINATING CROWN COPYRIGHT.....	8
7. NEW RIGHTS TO USE CBC CONTENT	8
8. THE FUTURE OF CANADIAN COPYRIGHT LAW.....	10

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A cursory review of the state of Canadian culture might lead some observers to conclude that the industry has never been healthier. From Avril Lavigne to Yann Martel to Denys Arcand, Canadians have enjoyed unprecedented international critical and commercial success, winning Grammys, Bookers, and Oscars.

This critical success has been accompanied by both governmental support and increasing royalty payments to Canada's copyright collectives, who license works on behalf of their owners. The federal government, flush with a budget surplus, used its February 2005 budget to confirm that it was committed to a long-term plan for culture funding with hundreds of millions of dollars allocated toward programs that support Canadian arts and culture.¹ Canada's copyright collectives have enjoyed enviable financial success, with the leading Access Copyright reporting earnings of over \$27 million in 2004.²

Despite these positive developments, Canada is embroiled in a contentious battle over copyright reform. Politicians, lobbyists, and millions of Canadians have begun to debate the merits of Bill C-60, Canada's long awaited digital copyright reform bill.³ While parts of the bill strike an admirable balance, the biggest disappointment is its failure to embrace a positive vision of Canadian copyright reform that increases access to Canadian culture, opens new opportunities for Canadian artists and unveils new possibilities for the education community.

In many respects, the reform proposals are based on backward, unsuccessful policies that date back to the mid-1990s. At the heart of Bill C-60 (and any likely successors) are the World Intellectual Property Organization's Copyright Treaty (WCT)⁴ and Performances and Phonograms Treaty (WPPT),⁵ collectively referred to the WIPO Internet treaties.⁶ The twin treaties have had a transformative impact on the scope of copyright law, creating what some experts have referred to as "super-copyright"⁷ or "para-copyright".⁸ Both treaties feature a broad range of provisions targeting digital copyright issues, however, the most controversial provisions mandate the establishment within ratifying states' national law of anti-circumvention provisions that provide "adequate legal protection and effective legal measures" against the circumvention of effective technological protection measures (TPMs).⁹

¹ Canada, "The Budget Plan 2005", online: <<http://www.fin.gc.ca/budget05/bp/bpc3e.htm#culture>>.

² Access Copyright, "Annual Report 2004", online: <http://www.accesscopyright.ca/pdfs/PressReleases/Access_AR_2004.pdf>.

³ Bill C-60, *An Act to Amend the Copyright Act*, 1st Sess., 38th Parl., 2004.

⁴ *WIPO Copyright Treaty*, 20 December 1996, WIPO Publication No. 226 (entered into force 6 March 2002) [WCT].

⁵ *WIPO Performances and Phonograms Treaty*, 20 December 1996, WIPO Publication No. 227 (entered into force 20 May 2002) [WPPT].

⁶ The two WIPO Internet treaties were formally adopted on December 20, 1996, though they only took effect in 2002 after each one reached the thirty-country ratification mark. As of January 2005, the WCT had 51 country ratifications, while the WPPT had 49 country ratifications. The United States and Japan are the two most notable countries on the ratification list. The European Union has yet to ratify, though some member states have incorporated the necessary provisions into their national copyright law. The remainder of the list is comprised of countries such as Indonesia and the Ukraine, often cited as leading sources of pirated music and software, as well as smaller developing countries from Africa, Latin America, and Asia, including Burkina Faso, Gabon, Saint Lucia, and Togo.

⁷ Industry Canada, *Memorandum Concerning the Implementation in Canada of Articles 11 and 18 of the WIPO Treaties Regarding the Unauthorized Circumvention of Technological Measures Used in Connection with the Exercise of a Copyright Right* by Mark S. Hayes (Ottawa: Ogilvy Renault, 2000), online: Industry Canada <[http://strategis.ic.gc.ca/epic/internet/inippd-dppi.nsf/vwapj/ogilvyrenault_e.pdf/\\$FILE/ogilvyrenault_e.pdf](http://strategis.ic.gc.ca/epic/internet/inippd-dppi.nsf/vwapj/ogilvyrenault_e.pdf/$FILE/ogilvyrenault_e.pdf)> [Hayes].

⁸ Dan L. Burk "Anticircumvention Misuse" (2002-2003) 50 UCLA L. Rev. 1095 at 1096.

⁹ *WCT*, *supra*, Arts. 11, 12; *WPPT*, *supra*, Arts. 18, 19.

Canada can do better. Led by Industry Ministers from Manley to Emerson, Canada has built a world class Internet infrastructure. Having spent billions constructing the infrastructure, the federal government would now do well to establish policies forward-looking policies that leverage these new technological capabilities to foster economic growth, education, innovation, new research opportunities, and the dissemination of Canadian culture.

1. Canadian Copyright Reform in Context

Before examining the potential forward-looking changes to Canadian copyright law, it is useful to place the current round of reform in proper context. Early Canadian copyright laws were relatively modest by today's standards, with the term of protection starting out at just 28 years¹⁰ and then rising in 1921 to the life of the author plus an additional fifty years after their death.¹¹ Over the next 66 years, most reforms were relatively minor. A number of important changes, however, included the establishment of moral rights¹² (which protects an artist's legal right to maintain the integrity of their works) and the creation of the Copyright Appeal Board, which reviewed tariffs for public performances.¹³

In 1987, the pace of copyright reform in Canada accelerated dramatically. That year, statutory reforms addressed the "grey market", making it unlawful to import works created outside the country that would infringe Canadian copyright.¹⁴ The next year, the government completed "Phase One" of a new copyright reform process, which (among other things) expanded the definitions of musical works, performances, and films while implementing a specific offence for secondary infringement.¹⁵ A few years later, rental rights for computer programs and sound recordings were added, thereby eliminating the rental market for those works.¹⁶ In 1997, the completion of "Phase Two" established measures like statutory damages for copyright infringement, protection for exclusive book distribution arrangements, and a levy on blank media to compensate for private copying.¹⁷

While the government has been busy reforming copyright law, Canada's Supreme Court has also entered the copyright debate. Its most important decision to date came in 2002's *Théberge v. Galerie d'Art du Petit Champlain inc.*, a case which involved a challenge by Claude Théberge, a Quebec painter with an international reputation, against an art gallery that purchased posters of Théberge's work and proceeded to transfer the images found on the posters from paper to canvas.¹⁸ The gallery's technology was state of the art – it used a process that literally lifted the ink off the poster and transferred it to the canvas. The gallery did not actually create any new images or reproductions of the work since the poster paper was left blank after the process was complete. Théberge was nevertheless outraged – he believed he had sold paper posters, not canvas-based reproductions – and he proceeded to sue in Quebec court, requesting an injunction to stop the transfers as well as the seizure of the existing canvas-backed images.

Although the Quebec Court of Appeal ruled in favour of the seizure, the majority of the Supreme Court overturned that decision, finding that the images were merely transferred from one medium to another and not reproduced contrary to the *Copyright Act*. Writing for the majority of the Court, Justice Ian Binnie stated that "the proper balance among these and other public policy objectives

¹⁰ *An Act Respecting Copyright*, R.S.C. 1886, c. 62.

¹¹ *An Act to Amend and consolidate the Law relating to Copyright*, R.S.C. 1921, c. 24.

¹² *An Act to Amend the Copyright Act*, R.S.C. 1931, c. 8.

¹³ *An Act to Amend the Copyright Act*, R.S.C. 1936, c. 28.

¹⁴ *Customs Tariff*, R.S.C. 1987, c. C-49, ss. 118-19.

¹⁵ *An Act to Amend the Copyright Act and other acts in consequence thereof*, R.S.C. 1988, c. C-15.

¹⁶ *Intellectual Law Improvement Act*, R.S.C. 1993, c. 15; *An Act to amend the Copyright Act*, R.S.C. 1993, c. 23; *NAFTA Implementation Act*, R.S.C. 1993, c. 44.

¹⁷ *An Act to Amend the Copyright Act*, R.S.C. 1997, c. 24.

¹⁸ [2002] 2 S.C.R. 336, 210 D.L.R. (4th) 385 [*Théberge* cited to S.C.R.].

lies not only in recognizing the creator's rights but in giving due weight to their limited nature...Once an authorized copy of a work is sold to a member of the public, it is generally for the purchaser, not the author, to determine what happens to it.”¹⁹

Justice Binnie also emphasized the dangers of copyright that veers too far toward copyright creators at the expense of both the public and the innovation process. He noted that “excessive control by holders of copyrights and other forms of intellectual property may unduly limit the ability of the public domain to incorporate and embellish creative innovation in the long-term interests of society as a whole, or create practical obstacles to proper utilization.”²⁰

The parallel development of Canadian copyright law in the legislature and courts provides an interesting contrast in perspectives. While government has spent the past 18 years aggressively extending the scope of copyright protection, the court has identified the costs associated with unbalanced protection, including harm to the creative process. Notwithstanding the court’s cautionary words, the government has provided every indication that Bill C-60 is just part of an ongoing escalation of new rights for copyright holders.²¹ The most important of these potential legal reforms are a forthcoming consultation on the extension of copyright term and incorporation of anti-circumvention provisions into Bill C-60.

2. Copyright Term Extension

Canada is considering launching a consultation on whether to extend the term of copyright from the current international standard of the author’s life plus 50 years to the author’s life plus 70 years.²² This despite the fact that there is no evidence the change would generate any further cultural products; instead, it would limit access to Canadian works and cut off the lifeblood of many creators.

Some of Canada’s best-known writers have stressed the importance of the public domain and the ability to build upon prior work. Northrop Frye criticized many of copyright’s underlying assumptions in wryly commenting on “a literature which includes Chaucer, much of whose poetry is translated or paraphrased from others; Shakespeare, whose plays sometimes follow the sources almost verbatim; and Milton, who asked for nothing better than to steal as much as possible out of the Bible.”²³

Canadian authors have a long history of what Margaret Atwood once referred to as acts of literary “reclamation.”²⁴ In a recent example, Stéphane Jorisch won the 2004 Governor General Literary Award for Children’s Literature (Illustration) for his interpretation of Lewis Carroll’s *Jabberwocky*, which is now in the public domain. The review committee noted that Jorisch had extended “this familiar text to create a haunting, surreal vision.”²⁵

A robust public domain does more than just provide creators with source material for future work -- it also has the potential to support Canada’s commercial publishing interests. For example, consider that the 2005 winner of CBC’s Canada Reads contest was Frank Parker Day’s

¹⁹ *Ibid.* at para. 31.

²⁰ *Ibid.* at para. 32.

²¹ Canada, “Copyright Reform Process”, online: <<http://strategis.ic.gc.ca/epic/internet/incrp-prda.nsf/en/Home>>.

²² Information obtained under Access to Information Request, copy on file with the author.

²³ Northrop Frye, *Anatomy of Criticism: Four Essays* (Princeton, N.J.: Princeton University Press, 1957) at 96.

²⁴ See Margaret Atwood, *Negotiating with the Dead: A Writer on Writing* (New York: Cambridge University Press, 2002) at 178 – 179.

²⁵ Canada Council for the Arts, “The Canada Council for the Arts announces the winners of the Governor General’s Literary Awards (children’s literature)” (15 November 2004), online: Canada Council for the Arts <<http://www.canadacouncil.ca/news/releases/2004/zo127444239594508125.htm>>.

Rockbound, a book published in 1928 by an author who died in 1950.²⁶ *Rockbound* is now in the public domain, yet the University of Toronto Press stands to generate substantial new income with it that will be used to support other authors from a book freely available to all.²⁷

The public domain also plays a crucial role in historical research. Leading Canadian historians such as J.L. Granatstein have been vocal in cautioning against proposals that harm access to our collective culture.²⁸ For example, a 2003 copyright reform proposal that was dubbed the Lucy Maud Montgomery Copyright Term Extension Act owing to the extension of copyright for a series of unpublished works by the much-celebrated author, would have also locked up the works of dozens of prominent Canadians including former Prime Ministers R.B. Bennett and Sir Robert Borden.²⁹

Although the U.S. and European Union have extended their copyright terms by an additional 20 years, the vast majority of the world's population lives in countries that have not.³⁰ Those countries have recognized that an extension is unsupportable from a policy perspective. It will not foster further creative activity, it is not required under international intellectual property law, and it effectively constitutes a massive transfer of wealth from the public to the heirs of a select group of copyright holders such as Disney, which actively lobbied for the U.S. term extension to keep Mickey Mouse out of the public domain.³¹ Given the economic and societal dangers associated with a copyright term extension, even moving forward with a consultation constitutes an embarrassing case of putting the interests of a select few ahead of the public interest.

3. Anti-Circumvention Legislation

Owners of online databases and other digital content deploy technical protection measures (TPMs) to establish a layer of technical protection that is designed to provide greater control over their content. For example, DVDs contain a content scramble system that limits the ability to copy even a small portion of a lawfully purchased DVD.³² Similarly, purchasers of electronic books often find that their e-books contain limitations restricting its copying, playback, or use on multiple systems.³³ In fact, e-books are frequently saddled with far more restrictions than are found in their paper-based equivalents. While TPMs do not offer absolute protection – research suggests all TPMs can eventually be broken – companies continue to actively search for inventive new uses for their digital locks.³⁴

These applications sometimes extend far beyond protecting content, however, to subtly manipulating markets – to the detriment of consumers. For example, DVDs typically contain codes that limit

²⁶ <<http://www.cbc.ca/canadareads/winner.html>>.

²⁷ University of Toronto Press, “*Rockbound*” online: <<http://www.utppublishing.com/pubstore/merchant.ihtml?pid=7653&step=4>> (“UTP had been selling around 200 copies of the book per year, until Donna Morrissey selected it for the Canada Reads debates. Since then, UTP has sold over 25,000 copies and it has been reprinted three times!”).

²⁸ K. O'Malley, “Archives Bill Could Have Profound Impact on 20th Century” *The Hill Times* (9 June 2003), cited in Sue Lott, “The Consumer's View of Copyright” online: Public Interest Advocacy Centre <<http://www.piac.ca/PIACcopyrightreport.pdf>>.

²⁹ C-36, *An Act to establish the Library and Archives of Canada, to amend the Copyright Act and to amend certain Acts in consequence*, 2nd Sess., 37th Parl., 2003.

³⁰ John Mark Ockerbloom, “FAQ: How Can I Tell Whether a Book Can Go Online?”, online: The Online Books Page <http://onlinebooks.library.upenn.edu/okbooks.html>.

³¹ Judy Stoffman, “Copyright gets sweeter for big business” *Toronto Star* (25 January 2003) H15.

³² Rob Pegoraro, “DVD-Piracy Paranoia Proves Counterproductive” *The Washington Post* (22 June 2003) F7.

³³ Mary Roach, “This Article Cannot Be Read Aloud”, *Inc Magazine* (June 2001), online: <http://www.inc.com/magazine/20010615/22778.html>.

³⁴ Cory Doctorow, “Digital Rights Management” (21 September 2004), online: ChangeThis <<http://www.changethis.com/4.DRM>>.

their use to a specific region.³⁵ Consumers are often unaware of this regional coding until they purchase a DVD while on vacation abroad, only to find that they cannot watch the disc on their home player. TPMs can also compromise a user's privacy, reporting consumer activity and personal information back to parent companies³⁶ – not to mention recent media reports of hackers exploiting them to invade computer systems.³⁷

Given the flawed protection that TPMs provide, content owners, represented by the powerful U.S. music and movie associations have nonetheless lobbied for legal protections to support them.³⁸ Although characterized as defending copyright, this type of legislation does not directly address the copying or use of copyrighted work. Instead, it focuses on the protection of the TPM itself, which in turn provides protection for the underlying copyrighted content.

Experience with legal protection of TPMs in the United States, which enacted anti-circumvention legislation as part of the *Digital Millennium Copyright Act* in 1998, demonstrates the detrimental impact of this policy approach. Consistent with fears expressed by the Act's critics, Americans have since suffered numerous abuses that compromise not only security and fair competition but also free speech and user rights under copyright.³⁹

From a free speech perspective, the threat of potential lawsuits has chilled research. For example, several years ago Princeton computer scientist Edward Felten sought to release an important study on encryption that included TPM circumvention information. When his plans became known, he was served with a warning from the Recording Industry Association of America that he faced potential legal liability if he publicly disclosed his findings, since the mere release of circumvention information might violate U.S. law.⁴⁰

Anti-circumvention legislation have also combined with TPMs to steadily eviscerate fair use rights such as the ability to copy portions of a work for research or study purposes, since the blunt instrument of technology can be used to prevent all copying - even that which copyright law currently permits. They likewise have the potential to limit the size of the public domain, since in the future work may enter public domain as its copyright expires, yet remain practically inaccessible as it sits locked behind a TPM.

In light of experience elsewhere, where TPMs have had negative consequences but done little to address emerging issues such as peer-to-peer file sharing, it is evident that Canada does not need protection for TPMs, but rather protection from them. While the ideal approach would be to simply drop incorporating anti-circumvention measures into Canadian law, the government has proposed the next best alternative by refusing to criminalize devices that could be used to circumvent TPMs and by requiring a direct connection to traditional notions of copyright infringement. This approach

³⁵ Patrick Marshall, "Wrong DVD code for region can derail your movie plans" *The Seattle Times* (3 July 2004) E6.

³⁶ Ian Kerr, "If Left to Their Own Devices...How DRM and Anti-Circumvention Laws Can Be Used to Hack Privacy" in *In the Public Interest: The Future of Canadian Copyright Law*, Michael Geist, ed. (Irwin Law, Toronto) (2005).

³⁷ Matt Loney, "Antivirus firms consider protection against Sony DRM rootkit" *ZD Net UK* (4 November 2005), online: <<http://news.zdnet.co.uk/0,39020330,39235702,00.htm>>.

³⁸ MPAA "DVD Frequently Asked Questions" online: <http://www.mpa.org/Press/DVD_FAQ.htm> ("CSS allows consumers to enjoy the benefits of digital entertainment because the motion picture industry is able to issue their films on DVD while at the same time preventing massive piracy of their copyrighted works. De-encryption destroys this protection, which is why distribution of de-encryption devices were formally prohibited in the Digital Millennium Copyright Act.").

³⁹ See e.g. Electronic Frontier Foundation, "Unintended Consequences: Five Years under the DMCA" ver. 3, online: <http://www.eff.org/IP/DMCA/?f=unintended_consequences.html>.

⁴⁰ Lisa M. Bowman, "Researchers face legal threats over SDMI hack" (23 April 2001), online : CNET News.com <http://news.com.com/Researchers+face+legal+threats+over+SDMI+hack/2100-1023_3-256277.html>.

deserves broad support since it avoids some of the more disturbing consequences experienced in the United States.

4. Toward a Positive Vision of Canadian Copyright Reform

Canada need not choose copyright reforms that benefit a select few rights holders, while providing little for Canadian creators and users. As Charlie Angus, an NDP Member of Parliament and musician on the Canadian Heritage Standing Committee, recently noted, “placing handcuffs on students will not resolve the inability of Canadian artists to earn a decent living.”⁴¹

The federal government should eschew reforms that stifle creativity such as term extension and U.S.-style anti-circumvention legislation and instead embrace a positive vision of Canadian copyright reform that increases access to Canadian culture and opens new opportunities for Canadian artists. Three possibilities in that regard include the creation of a national digital library, the elimination of crown copyright, and a plan to give Canadians new rights to use CBC content. The Internet and new technologies provide millions of Canadians with the ability to both create and consume new culture, political speech, and entertainment. New copyright legislation should therefore help provide those Canadians with the raw materials needed to express themselves.

5. A National Digital Library

Canada could provide global leadership by becoming the first country in the world to create a comprehensive public national digital library. Fully accessible online, the library would contain a digitally scanned copy of every book, government report, and legal decision ever published in Canada.

A national digital library would provide unparalleled access to Canadian content in English and French along with aboriginal and heritage languages. The library would serve as a focal point for the Internet in Canada, providing an invaluable resource to the education system and ensuring that access to knowledge is available to everyone, regardless of economic status or geographic location.

The general public would enjoy complete, full-text access to thousands of books that are now part of the public domain because the term of copyright associated with those books has expired. For books that remain subject to copyright, Canada could still scan copies, but only grant the general public more modest access to the content, providing users with smaller excerpts of the work – a policy that is consistent with principles of fair dealing under copyright law.

From a cultural perspective, the library would establish an exceptional vehicle for promoting Canadian creativity to the world, leading to greater awareness of Canadian literature, science, and history. By extending the library to government documents and court decisions, the library would help meet the broader societal goal of providing all Canadians with open access to their laws and government policies. Moreover, since the government holds the copyright associated with its own reports and legal decisions, it is able to grant complete, unrestricted access to all such materials immediately alongside the approximately 100,000 Canadian books that are already part of the public domain.

While digitally scanning more than 10 million Canadian books and documents is a daunting task, Google is undertaking an even larger project at a cost of \$10 per book. Assuming similar costs for a Canadian project and a five-year timeline, the \$20 million annual price tag represents only a fraction of the total governmental commitment toward Canadian culture and Internet development. In fact, if Canada fails to move quickly on this initiative it may find itself seeking to catch up to countries such as France, which is currently studying similar proposals.⁴²

⁴¹ See, http://www.corante.com/copyright/archives/2005/03/10/canadian_mp_handcuffing_students_wont_help_artists.php

⁴² <<http://gallica.bnf.fr/>>.

6. Eliminating Crown Copyright

The government should also move quickly to eliminate crown copyright, which currently provides that the government retains the copyright associated with any work that is prepared or published by or under its direction.⁴³ The Canadian approach stands in sharp contrast to the situation in the U.S. where the federal government does not hold copyright over work created by an officer or employee as part of that person's official duties.⁴⁴ Accordingly, government reports, court cases, and Congressional transcripts can be freely used and published.

The existence of crown copyright (or lack thereof) affects both the print and audio-visual worlds. For example, the 9-11 Commission's 2004 report was widely available for free download,⁴⁵ yet it also became a commercial success story in the United States as the book quickly hit the best seller list once offered for purchase by W.W. Norton, a well-regarded book publisher.⁴⁶

By comparison, a Canadian publisher seeking to release the Gomery report as a commercial title would need permission from the government to do so. To obtain such permission, the publisher would be required to provide details on the intended use and format of the work, the precise website address if the work is to appear online, as well as the estimated number of hard copies if the work is to be reprinted. If the work is to be sold commercially, the publisher would be required to disclose the estimated selling price.

The difference between the Canadian and the U.S. approach is just as pronounced in the documentary film arena. Consider, for example, a Canadian creating a film about a controversial political issue such as same sex marriage or gun control. The filmmaker might want to include clips from politicians speaking to the issue in the House of Commons.

After obtaining the desired video from the House of Commons, the filmmaker would be presented with a series of legal terms and conditions limiting its use to school-based private study, research, criticism, or review as well as news reporting on television and radio outlets that are licensed by the CRTC. Everything else, including any commercial use of the video, would require the prior written approval from the Speaker of the House.

Contrast this situation with one found in the U.S. Michael Moore's controversial documentary *Fahrenheit 9/11* featured a riveting scene in which a steady procession of members of the U.S. Congress rose to challenge the outcome of the 2000 U.S. Presidential election -- only to have then Vice-President Al Gore reject each in turn. While Moore faced challenges obtaining the necessary rights for some of the works that he included in his film, given the state of U.S. law, this segment was not one of them.

The Internet and new technologies provide millions of Canadians with the ability to create and distribute new culture, political speech, and entertainment. Canadians admittedly have access to government documents and audio-visual materials through government publishing and access to information requests, however, they still lack the unfettered right to use those materials.

7. New Rights to Use CBC Content

Acclaimed by its supporters and vilified by its opponents, few Canadian institutions have been as polarizing as the CBC. Nevertheless, the public broadcaster has an opportunity to make itself uniquely relevant in the Internet age by granting Canadians the right to use its content in creative

⁴³ *Copyright Act*, c. C-42, s. 12.

⁴⁴ 17 U.S.C. §105 (1992).

⁴⁵ National Commission on Terrorist Attacks Against the United States, "The 9/11 Commission Report" online <<http://www.9-11commission.gov/report/index.htm>>.

⁴⁶ W. W. Norton, "The 9/11 Commission Report" online: <<http://www.wwnorton.com/catalog/fall04/032671.htm>>.

new ways. Following the lead of other public broadcasters, it should leverage the Internet to provide unparalleled access to content, grant Canadians the right to use its content in creative new ways, and become an active public interest participant in the Canadian Internet policy process.

The Norwegian Broadcasting Corporation⁴⁷ provides a good illustration of how the Internet can be used to provide exceptional online access to content. It recently launched a new online portal that features more than 20,000 video clips and access to 12 radio channels. The portal includes three weeks of archives from its television broadcasts, creating the Internet equivalent of personal video recorder for the entire country. The CBC's online archives⁴⁸ are respectable, but they are not nearly as comprehensive as those now found in Norway.

The British Broadcasting Corporation has emerged as the undisputed global leader in providing its users with rights to use and interact with its content. The BBC Creative Archive⁴⁹ allows users to download clips of BBC factual programming for non-commercial use, where they can be stored, manipulated and shared. The initiative currently offers roughly 100 programming extracts, but the public broadcaster is also running a pilot study that offers hundreds of hours of television and radio content to a trial user group.

The BBC also maintains the BBC Backstage program,⁵⁰ which provides data, resources, and support for users that want to build on BBC material. Sporting the motto "use our stuff to build your stuff", the program encourages people both inside and outside the BBC to share knowledge, ideas and prototypes with each other.

On the horizon lies the BBC's Digital Curriculum program,⁵¹ which is scheduled to launch in 2006. The program will be a free, curriculum-based, online service for 5 to 16 year olds, designed to stimulate learning both at home and through school.

Although Canadian funding of the CBC is not identical to the television license fee approach used for the BBC, there are clear similarities between the two public broadcasters. The BBC has recognized the need to interact with the public in ways that transcend the broadcast model. The CBC can do the same by returning its programming to the Canadian public who provide the majority of its funding through tax dollars.

The CBC can also follow the Australian Broadcasting Corporation's lead by becoming involved in the Canadian policy process. Earlier this month the Australian public broadcaster spoke out against proposed legislation that would grant new legal protections to TPMs.⁵²

Reflecting its public interest mandate, ABC warned that TPMs "have the ability to stifle creativity and culture" and "to encourage anti-competitive behaviour". Moreover, it expressed concern that "the application of TPMs to copyright material...has the effect of preventing the ABC from being able to use copyright material to achieve its mandate."⁵³

Unlike its Australian counterpart, the CBC has remained silent on the current round of Canadian copyright reform.

⁴⁷ <<http://www.nrk.no>>.

⁴⁸ <<http://www.cbc.ca/archives/>>.

⁴⁹ <<http://creativearchive.bbc.co.uk>>.

⁵⁰ <<http://backstage.bbc.co.uk>>.

⁵¹ BBC. "Digital Curriculum Plans" online: <http://www.bbc.co.uk/info/policies/digital_curriculum.shtml>.

⁵² Australian Broadcasting Corporation, *Fair Use and Other Copyright Exceptions: An examination of fair use, fair dealing and other exceptions in the Digital Age*, online: <http://www.abc.net.au/corp/pubs/Submissions_to_fair_use_inquiry.pdf>.

⁵³ Id. at p.5.

8. The Future of Canadian Copyright Law

While copyright was once dominated by a select group of specialists, it is now very personal, focusing on the work, creativity, and activities of millions of individuals who are affected by copyright law as never before. Following decades of copyright reform benefiting the few at the expense of the many, it is time for a new era that facilitates access rather than hinders it, supports creators rather than companies, and prioritizes Canadian culture and heritage ahead of foreign interests. Extending the term of copyright and adopting U.S. style anti-circumvention legislation will do little to advance Canadian cultural interests. As we enter the second decade of the World Wide Web, Canada should pursue forward-looking policies that are as uniquely Canadian as our culture.