

Ottawa
 West Block, Room 416
 Ottawa, Ontario K1A 0A6
 Tel: (613) 995-2251
 Fax: (613) 996-1481
 jennim@parl.gc.ca



HOUSE OF COMMONS
 CHAMBRE DES COMMUNES
 CANADA

Ottawa
 Édifice de l'Ouest, Pièce 416
 Ottawa, Ontario K1A 0A6
FEB 24 2009
 Tél.: (613) 995-2251
 Téléc.: (613) 996-1481
 jennim@parl.gc.ca

Constituency
 6332 Sherbrooke Street West
 Suite 204
 Montreal, Quebec H4B 1M7
 Tel: (514) 489-8703
 Fax: (514) 489-2806

Hon. Marlene Jennings
 Member of Parliament for Notre-Dame-de-Grâce – Lachine
 Députée de Notre-Dame-de-Grâce – Lachine

Circonscription
 6332, rue Sherbrooke Ouest
 Bureau 204
 Montréal (Québec) H4B 1M7
 Tél.: (514) 489-8703
 Téléc.: (514) 489-2806

November 17th, 2008

Perrin Beatty
 President and CEO of the CCC
 360 Albert Street,
 Ottawa, Ontario K1R 7X7

Dear Perrin,

Thank you for your letter concerning Bill C-61, An Act to amend the Copyright Act. Over the last year I have made a concerted effort to better inform myself of all of the issues associated with copyright reform in Canada. In this vein, I joined the Intellectual Property (IP), Anti-Counterfeiting and Anti-Piracy Parliamentary Caucus. Through the meetings and consultations held by this group I came to the conclusion that reform of our copyright legislation will, I hope, have the following principles at its core:

- 1) Anti-circumvention measures and penalties must be linked to the efforts of those who violate copyright for commercial purposes, and not just the technology itself;
- 2) Provisions for flexible fair dealing. Fair dealing creates a limited number of exceptions, including private study, research, criticism, review and news reporting to charges of infringement.
- 3) It would also incorporate a fair and well defined 'notice and notice' system, which involves a notification from a copyright holder - often involving movies, software or music - claiming that a subscriber has made available or downloaded content without authorization on file sharing systems. The Internet Service Provider forwards the notification to the subscriber but takes no other action - it does not pass along the subscriber's personal information, remove the content from its system, or cancel the subscriber's service. It falls to the subscriber to remove the infringing content (if indeed it is infringing) voluntarily.

In assessing the degree to which Bill C-61 incorporated these basic principles, I compared it with the previous Liberal government's proposed copyright Bill - Bill C-60 - which was introduced in June of 2005. Bill C-61 incorporates the same 'notice and notice' requirements as Bill C-60.



Though C-61 appears to offer more flexibility on fair dealing, in banning circumvention technology the means to legitimately copy or change formats is torn from the hands of legitimate users. Thus, the section of the bill banning legitimate anti-circumvention technology needs to be eliminated and replaced with something that experts in the field would feel is more appropriate in allowing a greater deal of flexibility in fair dealing. I hope that these changes will be developed during the committee's study of the bill.

In Bill C-60 (clause 27, new subsection 34.02(1)) anti-circumvention penalties required that circumvention be for the commercial purpose of infringing copyright, for example reproduction or communication of the work, whereas Bill C-61 (clause 31-new subsection 41.1(1)) prohibits circumvention in general and does not require infringement of an economic right in the work (thus circumvention alone is deemed an infringement). The bill prohibits picking the digital locks (often referred to as circumventing technological protection measures) that frequently accompany consumer products such as CDs, DVDs, and electronic books. Under the new bill, transferring music from a copy-protected CD to an iPod could violate the law. So too could efforts to play a region-coded DVD from a non-Canadian region.

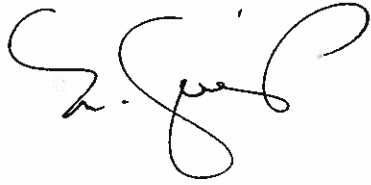
Even the few exceptions to anti-circumvention measures in the bill are deceptive since the software programs needed to pick the digital lock in order to protect privacy or engage in research are prohibited. This is a part of the bill I hope will be amended when the bill gets to committee so that only deliberate infringement of commercial copyright is punished, not the possession of the technology to do so.

As you can see, this is a highly technical piece of legislation, and I will have to study it more closely. While it is my hope that the Conservatives will send this bill to committee for further study and changes before second reading, thus allowing for a more wide-ranging study of the bill, should the government decide not to do so, I believe that significant amendments will still be possible in committee after second reading. It will not, in my view, hinder a wide consultation by the Committee.

When in government, the Liberal Party put forward bill C-60 to form the basis of discussions between all parties about how to update Canada's Copyright Act. That is why we offered to send it to committee before second reading (so it could have wider changes made to it if need be). We need wide consultations with everyone affected – including consumers, artists and the business community – to ensure that we properly understand all of the impacts this bill will have. The Conservatives have failed to properly consult Canadians thus far.

Rest assured that the Liberal Opposition will work to ensure that this bill receives the close study it deserves, and will be amended as needed. Personally, I will work to ensure that the bill meets the minimum requirement I have outlined above.

Thanks again for writing and please do not hesitate to contact me again on this or any other issue.

A handwritten signature in black ink, appearing to read 'M. Jennings', written in a cursive style.

The Honourable Marlene Jennings, P.C., M.P.
Notre-Dame-de-Grâce - Lachine