CANADIAN ASSOCIATION OF LAW LIBRARIES
ASSOCIATION CANADIENNE DES BIBLIOTHÈQUES DE DROIT

Developing and Supporting Legal Information Specialists
Perfectionnement et soutien des spécialistes de l'information juridique

Thank you for inviting the Canadian Association of Law Libraries; L'association canadienne des bibliotheques de droit to present its position to this Committee.

My name is Mary Hemmings. I am Chair of the Copyright Committee for CALL/ACBD. I am adjunct professor and Chief Law Librarian at Canada's newest Law Faculty: Thompson Rivers University.

I am in a unique position for a law librarian. Not only am I teaching legal research at a time of digital change, but I am also starting a new law library when the landscape of the printed word has tilted on its axis. I still buy books: in fact I buy a lot of books. But I also buy digital collections from many different sources, national and international.

CALL/ACBD represents approximately 500 academic, private, corporate, court, law society and government legal information professionals working across Canada. We buy legislative documents, case reports and materials that comment on the law. We provide access to these materials to users such as lawyers, judges, students, faculty, parliamentarians and the public. And of course, we help people find what they want whether we have it in print or locked in a database.

CALL members support these efforts to modernize copyright legislation. We view these changes as necessary to preserving the balance of rights: .... to copyright owners; to libraries and; to users of legal information in a digital environment.[1]

Today I would like to discuss three areas of concern to Law Libraries: Fair Dealing; Crown Copyright; and TPM's aka (Digital Locks).

Respect for Fair Dealing is central to CALL's submission to this Committee. Fair dealing and User Rights have been discussed by other individuals and associations appearing before this committee and CALL supports the positions taken by advocacy groups such as libraries, museums and archives. As law librarians, CALL members are particularly concerned about the fair dealing provisions proposed by Bill C-11.

On the issue of

Fair Dealing;

I would like to draw you attention to the 2004 Supreme Court decision: *CCH Canadian v The Law Society of Upper Canada*. The Library of the Law Society of Upper Canada, whose

[1] Refer to CALL's submission to C-32, January 2011
http://www.parl.gc.ca/Content/HOC/Committee/411/CC11/WebDoc/WD5401532/403_C32_Copyright_Briefs/CanadianAssociationofLawLibrariesE.pdf
is being considered by this Committee on C-11; And earlier submission September 2009
http://www.ic.gc/eic/008.nsf/eng/02174.html

professionals are members of CALL is only one of a network of courthouse and law society libraries across Canada.

It goes without saying that our membership supports that decision, particularly in its 6-step approach to determining fair dealing.

We regard fair dealing NOT as an exception to copyright, BUT rather, as a balanced means of recognizing that limited and fair reproduction is a tool in scholarly discourse. Just as I would lend a book or copy of an article to a friend working on a similar project; the process of sharing information in research and education is NOT a criminal activity.

It is the way that ideas are communicated.

We therefore commend the recognition of this principle in Bill C-11.

Having said that, there are other sections of C-11 that appear to contradict the spirit of fair dealing, and in particular, the role of the library as outlined in s. 29 of the Bill.

Libraries, lend materials to other libraries.

This is fundamental to our business of meeting the information needs of our users and does not require legislative restrictions on the practice of Inter-Library Lending.

Once material has been given to a patron, I am NOT sure how a lending institution can reasonably comply with the proposal that it must QUOTE "take measure to prevent" UNQUOTE the user from actually making a copy, lending it to a friend or even dropping it in the bathtub.

C-11 focusses on the use of digital copies. Technically speaking, a digital copy of a book; an article; legislation; or a reported case; can be made anytime, anywhere, any anyone.

Libraries, archives or museums should not be held accountable for behavior that is not similarly policed in bookstores or on the internet.

The *Copyright Act* should integrate the concept of **fair dealing** as a **user right** rather than as an exception to **copyright.**

It should be made explicit that **fair dealing** needs to be given a broad and liberal interpretation and that knowledge institutions such as Libraries, Archives and Museums serve a wide variety of institutions. The CCH decision did not distinguish between what is a "non-profit" or a "for-profit" library. In fact, the CCH decision ruled in favour of the Law Society library which directly serves the need of the Bar Association. Whether or not lawyers make a profit was explicitly considered immaterial in that decision.

On the issue of

Crown Copyright:

Over a long period of time there have been calls for revision of s. 12 of the *Copyright Act.* This section relates to Crown Copyright. It needs to be explicitly addressed in Bill C-11. The *Reproduction of Federal Law Order* allows citizens to reproduce federal legislation for personal, non-commercial use.

This is precisely the initiative law libraries want to see in the legislative language of Bill C-11.

The government has a duty to disseminate the information it produces. CALL recognizes that producing current government information is expensive, but not as expensive as it once was. At one time, producing and distributing print legislation and parliamentary documents needed editing, typesetting, copy checking and elaborate distribution methods to satisfy the public demand for access to legislation.

Now, digital production ensures accuracy in content, speed in delivery; and a pro-active approach to get government information out directly to Canadians.

Missing, in this equation, are the historical legislative documents that are so necessary for legislators and the legal profession to understand how current laws came to be. Retrospective digitization of Crown documents is expensive, yet Canadians should also enjoy unrestricted access to documents that inform the present day.

We agree that Canada needs an updated copyright regime which protects creators and rights holders.

However, we strongly urge the government not to restrict the public's rights to access what should be in the public domain.

Legal writers have urged that Crown Copyright reform is long overdue not only in light of the CCH decision but also in recognition of today's responsive federal government practice. However, Crown Copyright has been overlooked by all proposed amendments long before 2005.[2] The reasons for Crown Copyright no longer apply as government directly controls the means for production and dissemination of government materials.[3] Canadian have already paid for the printing and distribution of Canadian laws.

Our position is: that these materials be maintained as free resources and that the government considers funding a programme of retrospective digitization.

This leads me to discuss TPM's (to some); Digital Locks (to others):

TPM's have been characterized as a "digital threat to fair use" primarily because TPM's cannot distinguish between lawful and unlawful uses and users.[4]

I want to draw your attention again to the nature of the relationships we have with publishers and library users.

[2] Judge, Elizabeth F., "Crown Copyright and Copyright Reform in Canada", From 'radical Extremeism' to 'Balanced Copyright and the Digital Agenda (Irwin), p. 550.
[3] Ibid, p. 553-556.
[4] Carys J. Craig, "Copyright, Communication and Culture: Towards a Relational Theory of Copyright Law" (Cheltenham: Edward Elgar, 2011) p. 183.

At the forefront is not the issue of what our patrons chose to do with the material they borrow, but rather it is the ability by commercial or government providers to capriciously lock down legitimately purchased materials.

Libraries are now dependent on digital materials.

Database providers (or, digital publishers) often have exclusive rights to sell particular content, and libraries have a mandate to meet all of the research and educational needs of their users.

It's rarely possible for us to purchase the same content from a competing vendor.

Our users want to be able transfer content to portable devices for use in courtrooms, classrooms and at home.

AND, users of legal information who are not affiliated with a library, (such as self-represented litigants, members of the public and some students (including life-long learners)) are being deprived of access to the law because of licensing restrictions. Such information, previously provided in book form on open library shelves, now lies on the other side of the digital divide.

CONCLUSION:

Fair Dealing IS a User Right

Crown Copyright is LOST in the 19th Century

Digital locks are both Evil AND Good