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Provisions Within The New Copyright Bill Hinder Documentary Filmmaking

The Documentary Organization of Canada/ l'Association des documentaristes du Canada (DOC) is dismayed by the proposed amendments to Canada's Copyright Act introduced today by the Honourable Tony Clement, Minister of Industry and the Honourable James Moore, Minister of Canadian Heritage and Official Languages.

When the government proposed copyright reform, its stated aim was to present a fair and balanced bill that would be flexible, promote innovation and creativity, and serve the future needs of Canadian artists and consumers. Instead, the bill tabled today is rigid, undermines innovation and creativity, and hinders creators and consumers from accessing content.

In an age when culture is increasingly digitized, fair and lawful access to content on digital devices for non-infringing purposes is essential. Documentary filmmakers sought two changes to the law to facilitate their creativity: first, to make fair dealing less rigid and more flexible so that it could be applied with greater certainty to filmmakers' fair practices. Second, DOC sought anti-circumvention laws - legal protection for digital locks on content - that would not hinder filmmakers who require access to content behind such a lock to make a film. Bill C-32, introduced today, offers documentary filmmakers neither of those options.

Instead of rational anti-circumvention laws, Bill-C32 offers extreme, US-style laws. As a result, documentary filmmakers will not be able to use as source material any content behind a digital lock.

Content creators have the right to prevent the piracy of their materials through the implementation of technological protection mechanisms and digital locks. However, the circumvention of these mechanisms should not be equated with the intent to pirate. It is DOC's view that exceptions should be allowed for non-infringing purposes, such as fair dealing. Under the proposed bill, documentary filmmakers wishing to access content from digitally locked material will be contravening the law if they break the lock, regardless of the fact that their use of the material is legal. DOC finds it deplorable that the government has not considered exclusions for accessing content for non-infringing purposes. Bill C-32 put documentarists in an untenable situation.

Instead of flexible fair dealing, Bill C-32 offers expanded categories of dealings. Although DOC applauds the government's addition of new fair dealing exceptions such as parody and satire, the government's continued categorical approach to fair dealing is also regrettable. Under fair dealing, documentary filmmakers should have legal access to use copyrighted material. Flexible fair dealing provisions would allow for fulsome creative expression, and permit topical social commentary without forcing filmmakers to negotiate unnecessary obstacles. DOC believes that with industry-based guidelines and industry-defined best practices, fair is fair.

"Fair Dealing is key to doc filmmakers' ability to tell stories about the people, places and events that affect Canadians. By outlawing the breaking of digital locks, the government is creating an impenetrable fence around legal access to copyrighted material. Stifling the ability of documentary filmmakers to criticize or comment using copyrighted images and sound is just plain wrong. DOC is

committed to fighting for an exception to this law for documentary filmmakers" says John Christou, Chair of DOC.

DOC will be defending these positions when participating in the upcoming Parliamentary committee hearings on the bill. We are confident that the potential negative impact to documentary filmmaking can be mitigated through the application of a flexible fair-dealing exception, and non-infringing exception to the anti-circumvention laws.

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The Documentary Organization of Canada / l'Association des documentaristes du Canada is the collective voice of independent documentary filmmakers across Canada. DOC is a national nonprofit association representing over 800 directors, producers and craftspeople in the Canadian documentary community. DOC advocates on behalf of its members to foster an environment conducive to documentary production and strives to strengthen the sector within the broader film production industry.

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