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COPYRIGHT ACT

Bill to Amend—Third Reading of Bill C-11—
Motion in Amendment Negatived—
Vote Deferred

Speech by:

The Honourable Claudette Tardif

Friday, June 29, 2012

THE SENATE

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BILL TO AMEND—THIRD READING—
MOTION IN AMENDMENT NEGATIVED—
VOTE DEFERRED

Hon. Claudette Tardif (Deputy Leader of the Opposition):
Honourable senators, I rise today to speak to Bill C-11, an Act to amend the Copyright Act.

I would like to begin by stating that the Banking Committee report was tabled just 48 hours ago. It is an extensive report and senators wishing to examine it in detail have scarcely had the opportunity to do so.

I would remind honourable senators that, as I said yesterday, and as Senator Cowan so eloquently stated this morning, this bill was first tabled in the House of Commons on September 29 of last year. In those nine months in the other place, a total of 25 sitting days were devoted to careful consideration of all 68 pages of this bill, and that was after the same bill was studied in two previous incarnations in previous Parliaments. It was not adopted until last Monday, June 18.

The other chamber has signalled to us that the bill requires careful consideration, and yet today we in the Senate are being asked to dispose of this matter by the end of the day today.

[Translation]

I would still like to make some comments about this bill. There is no doubt that Canada's Copyright Act needs to be modernized. This is necessary to protect the works of Canadian artists and creators and to achieve a balance between their needs and the rights of consumers.

However, the digital lock provisions in this bill, which are the most restrictive in the world, would cause an imbalance and detract from the fair use of the other provisions of this bill. That is why I cannot support this bill.

There is no doubt that Canada's move to a digital economy is having a major impact on our cultural industries. We therefore proposed amendments to be able to support the bill. One aspect of these amendments to clause 47 has to do with the need to ensure that the digital lock provisions give Canadians who legitimately purchased a CD, DVD or other similar product the ability to transfer the content onto their iPod or to save a personal copy, provided they are not selling it or transferring it to other people.

A number of artists, writers, student groups and creators also expressed serious concerns about certain aspects, such as the new provisions regarding education, statutory damages and resale right payments. I would have liked to see the bill define the term "education" and include a strict, clear criterion for fair dealing for the purpose of education.

As you know, honourable senators, my previous experience is with university education. I am therefore particularly interested in this area, as well as the areas of research and publication. A

number of stakeholders from the education world, for example, the Canadian Association of University Teachers, the Association of Universities and Colleges of Canada, and the Canadian Alliance of Student Associations, are in favour of the new changes regarding teaching, and I agree. However, these groups are concerned about the provisions regarding digital locks, as am I.

[English]

Less than a week ago, I met with the president and vice-president of the University of Alberta Students' Union. They shared with me some very serious concerns they had with some aspects of this bill.

To begin with, they expressed concern over book importation regulations, which raise costs for students without providing any corresponding benefit to the actual holders of the copyright for these works. In fact, the Canadian Alliance of Student Associations has recommended that Bill C-11 be amended to remove the exclusive distribution provisions outlined in section 27.1 of Canada's Copyright Act. This particular bill does not address the relevant section, namely, section 27 of the Copyright Act, but I nonetheless took great interest in the case that they made for this issue.

The students also commented on the aggressive new digital locks about which I and others have already spoken today. They pose a real challenge for academic research.

The students at the University of Alberta are not alone in their concern. No less than the Council of Ministers of Education of Canada are reported to have said, like other education groups, that the digital lock provisions are too restrictive.

The problem lies in the compromising of the fair dealing right with the new provisions in the Copyright Act set out in this bill. An educational fair dealing right is not enshrined as a true right, but more as a secondary right, because it can be overridden at any time by a copyright holder's digital lock.

The lock poses an even greater challenge for students with disabilities. If a visually impaired student needs to shift the format of a text so that he or she can read it but finds protection measures on that text, he or she would not be able to do so without breaking the law.

The legislation also creates an impossible situation for distance learning. For example, Ontario's Collège Boréal provides post-secondary distance education to minority francophone communities in northern Ontario. With these new provisions, students will be forced to destroy their own course notes and material within 30 days of the completion of the course. In addition to the difficulty that this bill will create in administering long-term distance education, it will make it more difficult for small remote libraries, like that of the Collège Boréal, to share its materials and the materials of interlibrary loans with all students in a realistic way.

Changes such as those we are seeing in this piece of legislation, without fully exploring and debating the consequences, would have

a deep, dramatic impact on some of the very demographics — the students — whom we should be focused on and be supporting.

Honourable senators, I received many letters and emails regarding Bill C-11 from artists, publishers, students and other intellectual property stakeholders. There is one letter, and this is just a sample, from which I would like to share some excerpts, as I think it epitomizes the effects of this legislation on everyday Canadians.

• (1230)

This particular woman is a small Alberta book publisher. She wrote to me and said:

. . . I wanted to let you know that Bill C-11 will put the publishing of all books in jeopardy regardless of the format, printed or ebook. . . . Writers will find themselves left out in the cold to their own devices. . . . Every dollar that a publisher makes is ploughed back into new projects, i.e. new

books. Authors are already not paid what their material is worth because of the dwindling sales of Canadian books due to U.S. publishers and distributors dumping their overstocked books across the border at a fraction of the price that Canadian publishers must charge just to get by. . . . Publishers and creators work hard every single day for very little, and many of these people have to find at least one other job to fund what they really love because their work is not valued as should be.

Honourable senators, this is a complex bill that should have had far more in-depth study at committee stage and certainly should be given more than two days' consideration at third reading in this chamber. I strongly urge honourable senators to adopt the amendments proposed by my honourable colleague Senator Moore. These amendments seek to correct some of the deficiencies that have been identified in this bill. Should these amendments not be supported, I find myself in the position of not being able to support Bill C-11.
