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Copyright Modernization Act / Bill C-11: Information Policy Implications on Canadian Academic Libraries

General Context

Historically, we've been told that copyright laws are just a mere bargain between the protection for the creators and rights for the consumer. However, many argue that balance never existed in the first place. The basic premise of copyright is ownership of knowledge. Under this premise knowledge emerges as the central factor of wealth production. As the ultimate commodity, knowledge is carefully packaged and protected by a series of laws (copyright) that prevent its free distribution, access, and use.

Ultimately, copyright laws are a political construction that respond to tensions, or antagonisms within a society due to competing socioeconomic interests (class struggle). The same scheme is reproduced on the international arena, when copyright law implementations are vertically imposed from Western-developed to Third-World developing countries. By doing this, a few organizations and people in wealthy countries possess part of the general knowledge of developing nations (Drahos, 2002, p.768).

By inference then, information policies, such as copyright laws, pervade our world and activities. According to Pasek, "information policies are social, political, legal, economic and technological decisions about the role of information in society. These decisions operate both at a societal level when applied to national and international policy, and at an instrumental level, as they impact the creation, dissemination, use and preservation of information" (2015, p. 289).

Thereby information policies are expressed through Government regulations such as the *Copyright Modernization Act*, also known as *Bill - C11*, whose Digital Lock protections have been called "the most restrictive in the world" (OpenParliament.ca, 2013). According to Colebatch, Dickison, Swatz, Argaez, Jacques, & Shearer, Digital locks are an integral part of Digital Rights Management (DRM) which are "a system of information technology components and services, along with the corresponding law, policies and business models, which strive to

distribute and control intellectual property and its rights” (2013, p. 12). According to Colebatch et. al., Digital locks are just one part of DRM, which can also include various automation and surveillance techniques for identifying copyright holders and enforcing license terms.

More concretely DRM is a set of digital encryption techniques, and other technical protection measures designed to control access and use of digital content (2013, p.13). DRM is a term that is used interchangeable with Technological Protection Measures (TPMs), and is used in Canadian Copyright Legislation. Having said that, *Bill C-11* key components can be summarized as follows (OpenParliament.ca, 2013):

- a) update the rights and protections of copyright owners to better address the challenges and opportunities of the Internet, so as to be in line with international standards;
- (b) clarify Internet service providers’ liability and make the enabling of online copyright infringement itself an infringement of copyright;
- (c) permit businesses, educators and libraries to make greater use of copyright material in digital form;
- (d) allow educators and students to make greater use of copyright material;
- (e) permit certain uses of copyright material by consumers;
- (f) give photographers the same rights as other creators;
- (g) ensure that it remains technologically neutral; and
- (h) mandate its review by Parliament every five years.

Evidently, the Bill seems innocuous only by reading at the summary provided by the official governmental website, OpenParliament.ca. However, the Bill effectively prohibits the bypass of access controls, such as: decrypting, descrambling, avoiding deactivation, or impairment of the digital lock (Colebatch et. al, 2013, p.12). In addition to that, the copyright exceptions in the Act (such as fair dealing) will not apply to digitally lock material.

How *Bill C-11* Shapes Academic libraries

As stated before information policies are the product of tensions and antagonisms from different stakeholders. The production digital works means these stakeholders have to rethink the policies that govern its dissemination and use. These include: authors, researchers, librarians, and audience members. Librarians are at the intersection of the conflicts that may arise between the various rights and desires that are attached to works of intellectual labor. (Collins, West, Chan, Movafaghi, & Pournaghshband, 2011, p. 15)

Digital works have enabled the separation of intellectual property from the physical object where it is embodied. With digital works, copyright laws cannot be enforced in the same manner as before. As a result, *Bill C -11 / Copyright Modernization Act* was passed on November 7, 2012. This Bill establishes how authors and publishers use Digital Rights Management (DRM) techniques to restrict the use of digital works. Common limits found include (Colebatch et. al., 2013, p. 13)

- No copying
- No saving
- A restricted number of pages that can be printed
- No migrating of content to different formats,
- platforms, or devices
- Inability to play DVDs with foreign region coding
- Password protection

Colebatch et. al. article explains a series of surveys with library staff at several university campuses in Canada, the article concludes that in almost all cases, bypassing of digital locks, such as DRM, is avoided. Staff members most commonly take steps such as locating an alternative source or requesting an unlocked version from the copyright holder, a colleague at another institution, or the author (2013, p.13).

Clearly, the technological and policy tools maintained between publishers and libraries to enforce access rules (such as DRM) can be seen as what Zhu & Eschenfelder refers to as regimes of alignment, or social arrangements developed between institutions to support technological access controls to intellectual property. The coordination of technology, policies, and management processes between libraries and providers create a regime of alignment between

them (2010, p.549). In other words, the actions of librarians are constrained by legal considerations, affecting their ability to share information, and transforming them as mere distribution intermediaries.

Librarians, in an attempt to find solutions to these challenges, have had to resort to open access initiatives (OAIs). Hoskins (2011) argues that libraries now operate in an environment where the traditional model of publication and OA coexist. By adopting OAIs librarians can bypass the impositions of *Bill C-11*, this would have some advantages for librarians, such as: lend and copy digital articles on their terms to any users. Librarians could offer the same services to users affiliated with their institution, walk-in patrons, users at home, visiting academic staff, and ILL users, and most importantly, librarians would not have to negotiate, either as individual institutions or consortia, for prices or licensing terms (pp. 574 - 575).

How *Bill C-11* Affects the Information Lifecycle in Academic Libraries

One way to define the impact of *Bill C-11* is to relate it to the processes involved in the information cycle, from creation to use. According to Pasek (2015), the information cycle encompasses the creation, production, distribution, access, and use of information (p.289). Certainly, each of these five steps could be further subdivided. Nevertheless, for clarity, I will use only these five, on which I will cover an array of issues common to the study of Information Policy and directly affect academic libraries.

Creation

As stated before, librarians have become enforcers of policies, distribution intermediaries, rather than active creators of policies. The institutional alignment of academic libraries to *Bill C-11*, besides OAIs, has been uncontested. Most universities have their own Copyright departments, whose only purpose is to reproduce the prevalent hegemony of publisher's licenses, and public policies (even if those hinder the well-being of their own libraries and patrons?).

Pasek (2015) argues the creation step of the information cycle involves translating ideas into tangible forms, such as research notes, manuscripts, presentations, inventions or social media posts (p. 290). This is exemplified not only on *Bill C-11* itself, but also on University of

Alberta's Copyright and Licensing Office, which serves as a guideline to achieve copyright compliance for the everyday activities of faculty members, libraries, and students. Their website (<http://www.copyright.ualberta.ca>) redundantly references the *Copyright Act, (R.S.C., 1985, c. C-42)*, and also presents guidelines, such as "UofA Fair Dealing Guidelines", "Understand the terms of use for licensed resources", among others. Again, serving as a local regime of alignment to the status-quo.

Production

The production step of the information cycle deals with the added value provided by an employer or publisher to edit, format, index, and package information content (Pasek, 2015, p. 291). To put it simply, this step involves the transfer of ownership and copyright from the creators of content to publishing houses. Consequently, publishers decide the licensing terms that are presented to academic libraries.

Collins et. al. (2011) argues that these licenses extend authors' and publishers' rights far beyond what copyright laws are intended to do. As the number of digital works in libraries increases, it is becoming librarians' responsibility to not only enforce copyright laws, but also to enforce authors' and publishers' unique DRM policies (p. 22). By doing this, Librarians' traditional role of enabling knowledge sharing is countered by the goal of authors and publishers to control access in order to control all aspects of use. According to Collins et. al. this issue cannot be solved by a single library for many reasons (Collins et. al., 2011, p. 23):

- Digital works are ubiquitous. Libraries do not have the choice of not using digital materials as a way to avoid this dilemma.
- Publishers' DRM policies are not really negotiable, because they are simply part of the licensing agreements that libraries enter into. If the licensing agreement is not signed, then the work is not available to the library.
- Publishers have influence with government bodies, and use it to protect their economic interests. Regulations are written to protect publishers' rights (*Bill C-11*). Individual libraries do not have the same kind of lobbying power.

Distribution

Information policies associated with the distribution step of the information cycle deal with issues of how, when, and where information resources are made available and the associated costs (Pasek, 2015, p. 293). Evidently, this step is intertwined with the previous one. However, following the ruling of licensing terms of use, libraries limit distribution to a particular user group, prevent migrating content to another device, etc. Overall, libraries just assure license compliance by end users. Even the first sale doctrine, originally created to allow lending and resale of physical books and recordings, has not held up well in the digital era. “Digital content is often licensed under a lending model rather than sold outright with a transfer of ownership” (Pasek, 2015, p. 294).

Access and Use

The access and Use step of the information cycle is now dominated by a variety of mechanisms of delivering content electronically, such as Internet protocols and search filtering (Pasek, 2015, p. 295). These exert control over who can access information and when. All of this suggests that while legislative provisions such as *Bill C-11* are important, the real battleground in the future may be licensing. Licensing terms can and do affect a patron’s experience with digital works, and if digital locks / DRM are not adequately considered, licensing requirements may frustrate educational and research activities (Colebatch, 2013, p.16). Although libraries may feel they have little bargaining power when it comes to digital locks, it is important that they advocate to ensure that licenses preserve user rights and do not shackle content with excessive DRM.

Role of Academic libraries in contributing to the development process of *Bill C-11*

Unfortunately, academic libraries, and libraries in general were not involved with the development of *Bill C-11*. This law, like many other under the Harper Government, had a Top-bottom approach, in which decisions are taken from people in power with little input from those they say to represent. Ever since the United States passed their Digital millennium Act (DMCA), Canadian Governments have been struggling to pass a Canadian DMCA, mainly to its negative consequences. *Bill C-11* is so similar to DMCA that it appeared to be made in the USA (Geits, 2011, para. 8), and unfortunately, that is not just theory. WikiLeaks released in late 2011 a batch of cables revealing the truth behind the conditions of so-called Canadian Copyright

Modernization Act, in which a cable originating in the office of the U.S. Secretary of State served as a blueprint for the copyright legislation the Canadian Government was expected to pass (Russwurm, 2011, para.6).

I think librarians have been absent from involvement in the policy development process, because they lack lobbying power, and also because of greater power distance created in Harper's government. Nowadays, with few exceptions, academic libraries have taken a passive role on public policy creation, their copyright offices act as merely self-regulators, but not as forums for open debate and political activism.

Most of the literature on the *Canadian Copyright Modernization Act* focuses mainly on the technical / legislative relation between “creators” “publishers” and “users”. Yet these categories overlook the real problem of copyright law, which is social inequality. The relative silence of copyright literature on questions of social inequality should strike us as odd. Copyright protection is making cultural works substantially more expensive, and inaccessible. To conclude I want to close with the words of Noam Chomsky in an interview given to “The Imagineer” (2009), in which he said: “ If that copyright regime had existed in the 18th and 19th centuries and even through the early 20th century, the United States and England would not be rich, developed countries. They developed substantially by what we now call piracy.”

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