

Bill C-11: Technical Amendments Suggested by Bell Canada

Jan 10/12

Bill Item	Bill Provision and Proposed Changes	Rationale
1(a) Notice – Notice (section 41.25) – Government Regulations	41.25 (2) A notice of claimed infringement shall be in writing in the form, if any, prescribed by regulation and shall [...] (g) contain any other information that may be prescribed by regulation; and (h) be sent in compliance with any other terms and conditions that may be prescribed by regulation.	This technical amendment gives the Government the flexibility to modify the notice and notice regime without having to amend the Act.
1(b) Notice – Notice (section 41.26) – Compensating ISPs	41.26 (2) The Minister may, by regulation, fix the maximum fee that a person may charge for performing his or her obligations under subsection (1). if no maximum is fixed by regulation, the person may not charge any amount under that subsection.	41.26(2) ensures that ISPs are not required to issue a notice and notice without being paid for it. This amendment does not change the ability of the Government to set that fee in order to make sure it is reasonable.
1(c) Notice – Notice (section 41.26) – Fine Flexibility	3) A claimant's only remedy against a person who fails to perform his or her obligations under subsection (1) is statutory damages in an amount that the court considers just, but not less than \$5,000 and not more than \$10,000. (4) The Governor in Council may, by regulation, increase or decrease the minimum or maximum amount of statutory damages set out in subsection (3).	41.26(3) leaves discretion with the court as to what the minimum damages could be depending on the circumstances of the failure. There may be cases, like a power failure or a systems crash, where there should be discretion not to penalize ISPs, or reduce the quantum of that penalty. 41.26 (4) reflects change made in ss.(3).
1(d) Notice – Notice (section 41.27) – Implementation	47 (2) Subsections 41.26(1) and (3) of the Copyright Act, as enacted by subsection (1) shall come into force 12 months after the date this Act comes into force.	47(2) ensures that ISPs have sufficient time to adapt our systems to meet requirements in the Act and Regulations. To do so we must: <ul style="list-style-type: none"> • Re-configure our system to reply to copyright owners; • Add to our system the ability to keep track of notifications we have sent; • Inform copyright owners that we have forwarded the notice; • Extend this regime to also cover Bell Mobility subscribers; and, • Design and implement this service for the smaller ISPs that use our network.
2. Definition of "communication to the public by telecommunication" (section 2.4(1.1))	(1.1) For the purposes of this Act, communication of a work or other subject-matter to the public by telecommunication includes making it available to the public by telecommunication in a way that allows a member members of the public to have access to it from a place and at a time individually chosen by <u>those members</u> of the public.	This technical amendment changes "a member" to "members" to still bar file-sharing, but permit personal transmissions, and ensures the language of Bill C-11 matches the language of Canada's treaty obligations (i.e. Article 8 WCT and Berne 11 bis(2)). <i>Side note:</i> EU also recognizes 'members' in its copyright directive (Art. 3)



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<p>3. Network Services (section 31.1 (6)) – Notice of Court Decisions</p>	<p>(6) Subsection (5) does not apply in respect of a work or other subject-matter if the person providing the digital memory knows <u>is notified</u> of a decision of a court of competent jurisdiction to the effect that the person who has stored the work or other subject-matter in the digital memory infringes copyright by making the copy of the work or other subject-matter that is stored or by the way in which he or she uses the work or other subject-matter, and <u>(ii) the electronic location of the work or other subject matter,</u></p> <p><u>and the person providing digital memory does not act expeditiously to disable access to the infringing copy of the work or subject matter.</u></p>	<p>31.1(6) as drafted assumes the ISP is required to know of Court orders regarding court cases that the ISP was not involved with. This technical amendment makes it clear that the ISP is only responsible once it has been notified of the Court's order. This change ensures consistency with the notification requirement of the notice and notice provisions.</p> <p>(ii) acknowledges that we have a chance to act once we are notified before liability begins to run.</p>
<p>4. Ephemeral recordings — broadcasting undertaking (section 30.9) – destruction</p>	<p>30.9 (1) It is not an infringement of copyright for a broadcasting undertaking to reproduce [...]for the purpose of their broadcasting, if the undertaking</p> <p>(a) <u>owns the possesses a</u> copy of the sound recording, <u>performer's performance or work</u> and that copy is authorized by the owner of the copyright <u>in the sound recording</u>, or has a licence to use the copy;</p> <p>[...] (4) The broadcasting undertaking must destroy the reproduction when it no longer possesses the sound recording, or performer's performance or work embodied in the sound recording, or its licence to use the sound recording, performer's performance or work expires, or <u>at the latest</u> within 30 days after making the reproduction, unless the copyright owner authorizes the reproduction to be retained.</p>	<p>(a) is a drafting change to ensure that the provision is aligned with the other provisions in 30.9.</p> <p>The deletion of "at the latest" is that for a true exception, 30 days is not technically workable for radio stations and as drafted the 30 day time limit trumps the other criteria.</p> <p>This is unworkable, the limited exception is not in the spirit of the other provisions that allow technical reproductions to be made and seems to stand in the way of the Bill being technologically neutral is spirit.</p>