Kluwer Copyright Blog

Canada modernizes its Copyright Act (beyond the Canadian Copyright Modernization Act)

Thomas Margoni (Centre for IT and IP Law (CiTiP), Faculty of Law, KU Leuven) · Tuesday, August 21st, 2012

In less than a month Canadian Copyright law has been subjected to an unprecedented series of modifications that, without exaggerating, could be defined as revolutionary.

First of all, on June 29th the long awaited bill C-11 (formerly C-32, C-61, and C-60) received royal assent becoming the Copyright Modernization Act. Canadian Copyright Act looks now much different with entirely new sections introduced and pre-existing ones heavily refurbished. The Copyright Modernization Act is the result of a stratification of many years of attempts to update the Act. Attempts that for one reasons or another have failed until now.

The main innovations introduced by the law reform can be summarized, in the words of the Canadian Parliament, as follows:

"(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."

The amount of small and large modifications that the Act introduces is considerable. Particular

attention should be paid to two aspects that do not emerge clearly from the above reported excerpt. The first is the introduction in Canadian copyright law of the legal protection of Technological Protection Measures in a way that is more consistent with the Digital Millennium Copyright Act than with the international requirements stemming from the WCT. The second is the expansion of the scope of fair dealing by the introduction of the purposes of education, parody, and satire (it must be recalled that fair dealing provisions are significantly narrower than those of fair use, and that in Canada, where the list of purposes is exhaustive and not illustrative as in the case of fair use, parody and satire were not statutorily listed).

Another addition that deserves some attention is the "clarify Internet service providers' liability …" in fact, as anticipated [see the last paragraphs of this blog post] Canada implements a very interesting system of Notice-and-Notice, where, in order to comply with the legislation, the obligation bearing upon the ISP is just that of forwarding the notice or explaining why this was not possible (and in any case its liability will be in the range of 5,000 to 10,000 CAD).

Just that would be enough for much more than a blog entry. However, only a few weeks later, the Supreme Court of Canada (SCC) delivered its decisions on 5 (!) copyright cases heard earlier in December 2011. These 5 decisions, each one deserving a deep analysis, have an extreme importance in redefining Canadian Copyright law, and, hopefully, in offering a set of persuasive arguments to other courts around the world that have demonstrated a sensitivity that is at odds with the one of the SCC. Many analyses of the cases and of their aggregate meaning have been done (some can be found here, here, here, and here). For the purpose of this blog post, it suffices to point out the following:

1) The photocopies made by teachers of parts of textbooks for the use during the course by students represent fair dealing (which conclusion heavily influences the fierce debate about Access Copyright (e.g. here).

2) 'Previews' of songs on on-line music stores is considered fair dealing for the purpose of research (as said, differently from the US open ended fair use, Canadian fair dealing must conform with one of the 5, now 8, mandatory categories).

3) Technological neutrality: the "Copyright Act must be interpreted in a way that avoids imposing an additional layer of protections and fees based solely on the method of delivery of the work to the end user", therefore the act of downloading a song from the Internet does not amount to an act of communication via telecommunication, but just of reproduction. However, streaming of music, including in cases of on-demand services, amounts to communication to the public.

Many other aspects regarding the interpretation of the Act and of specific concepts within the Act deserve a lot of attention, and I have pointed out where to find some good analyses. Suffice here to state that the SCC has once more confirmed that the Copyright Act is a complex ecosystem where two opposing, complementary, and equally important rights cohabit: the rights of authors and the rights of users. This is what the SCC has been trying to tell us since a few years now,and hopefully it will be heard outside Canada as well.

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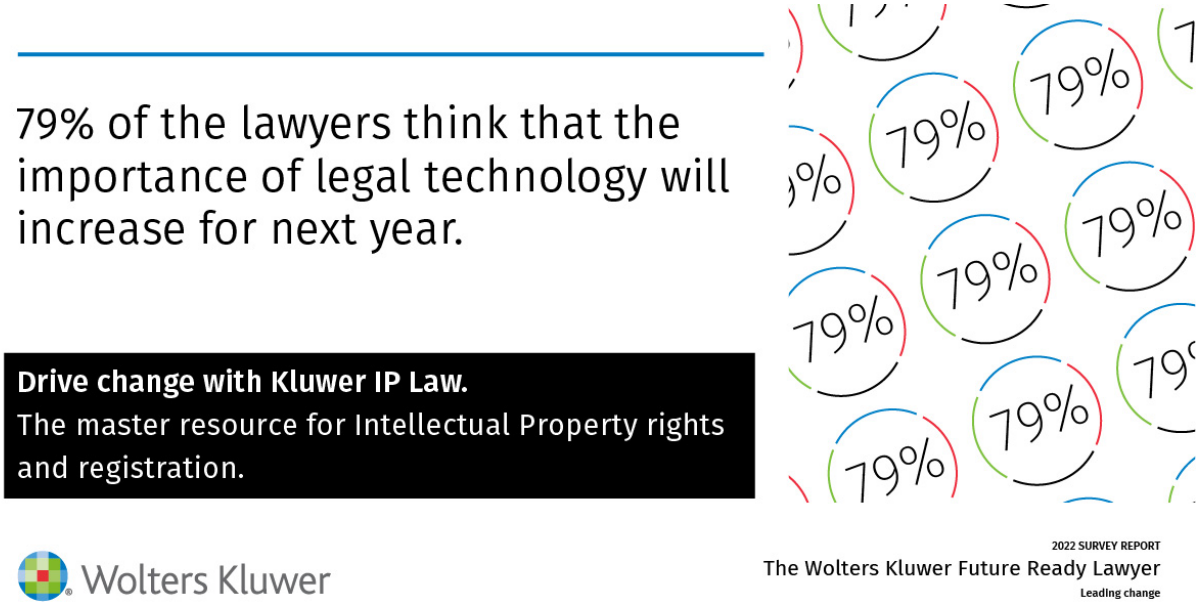

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