CARL ABRC

Canadian Association
of Research Libraries

Association des bibliothèques
de recherche du Canada

The Honourable James Moore
Minister of Canadian Heritage and Official Languages
House of Commons
Ottawa, Ontario K1A 0A6

October 29, 2010

Dear Minister Moore:

Re: Bill C-32

The Canadian Association of Research Libraries (CARL) commends the government's efforts to achieve fair and balanced copyright reform as embodied in its Copyright Modernization bill (Bill C-32). CARL appreciates the good-faith effort of the government to respond to the copyright reform concerns expressed by the library and education community. The government has clearly listened to what the library and education community said during the summer 2009 copyright consultation and this bill responds admirably to many of the concerns that we expressed around the 2008 copyright bill. We believe that Bill C-32 represents, overall, a very helpful updating of the *Copyright Act* and we would like to see it pass into law.

In this letter we shall comment on the bill in further detail than we did in our initial response in June. In January 2008, CARL issued a statement listing four key copyright reform issues that the Association continues to consider to be of great importance. We would like to use these four points as a framework for our comments on Bill C-32 in this letter.

(1) Fair dealing – *Fair dealing is critical to a balanced and fair copyright regime. Copyright law reform must not limit or narrow fair dealing.*

On fair dealing, CARL considers the inclusion of education in the list of explicit fair dealing uses to be bold and appropriate inclusion of great importance for the work of educational institutions and their libraries. We recognize that while education would be a clear fair dealing use of copyrighted materials, the use made of those materials, in this context and as with other fair dealing uses, would have to be fair indeed to copyright holders according to the tests enumerated by the Supreme Court of Canada. In addition, the Copyright Board has established a restrictive interpretation of fair dealing in the context of education, ruling that multiple copies made by a teacher for each student in a class are not fair dealing. For these reasons, we assert that this amendment would not damage the Canadian market in scholarly and educational materials.

(2) Damages and fair dealing – *A change in the law should ensure that a user of a copyrighted work is not subject to damages where he or she had reasonable grounds to believe that an activity is fair dealing.*

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While we continue to support our statement on damages and fair dealing, we believe that the limits placed on statutory damages for non-commercial infringement in Bill C-32 represent significant movement toward an equitable damages regime. We are also pleased that the bill provides for the imposing of just an injunction on a library where a technological protection measure is circumvented through not-unreasonable ignorance of the law by a staff member.

(3) Educational use of the Internet – *The* Copyright Act *should be amended to provide that students, teachers and educational institutions do not infringe copyright when they use publicly available material on the Internet for educational purposes.*

On the educational use of materials publicly available on the Internet, we are satisfied with the language in Bill C-32. It provides the clarity sought by teachers and librarians on this matter.

We applaud as well in Bill C-32 a number of other exceptions (new or improved) affecting how libraries and educational institutions, subject to certain conditions, could provide their services:

- Libraries could move content to a new format when one format is becoming obsolete.
- Libraries could, under the inter-library loan exception, deliver interlibrary loan content directly to the desktop of a requester and that this could be done whether the original were in print or digital form.
- Materials could be displayed in a classroom using any technology and that cinematic works could be shown.
- Materials could be transmitted to students in digital formats in technologically enhanced learning classes and that students could use lessons offline.
- Materials converted to special formats for those with perceptual disabilities could be sent outside of Canada.
- There is a notice-and-notice approach to Internet service provider (ISP) liability for infringing content on their networks (many universities act as ISP's).

(4) Technological protection measures – *Circumventing technical measures that prevent access or copying should be permitted if the purpose of the circumvention is not an infringement of copyright.*

On technological protection measures (TPM's—digital locks), CARL is concerned that the anti-circumvention language will potentially prevent otherwise legal uses, such as fair dealing, of copyrighted materials when a TPM is applied to digital item. We would have preferred to see language in the bill limiting the penalization of the circumvention of TPM's to infringing purposes. If this cannot be achieved, we would recommend an additional exception to the anti-circumvention provisions (for library preservation), which we describe below.

While there is much in the bill that we would like to see brought into the *Copyright Act*, there are some particular amendments that we hope that the government will consider as the bill is discussed in the House or in committee:

- **Digital Interlibrary loan** - While we are very pleased to see explicit provision in the bill for interlibrary loan delivery of materials to the desktop of the requester, inasmuch as today's researchers increasingly prefer to retain materials in digital format for their research and private study, we believe that they should not have to print out a received document at all in order to have permanent access to it. They should be able to use the digital copy for an unlimited period, rather than just for five days from first use, so we would request removal of what would be Section 30.2 (5.02) (c) of the *Act* were the bill to pass.

- **Persons with print disabilities** - In order to assist a person with print disabilities to benefit from a work, it should be permissible for a library or educational institution to convert the work into any

format that is usable for the disabled person. We would ask that there be provision in the bill for the removal from the current *Act* of clause 32 (2), which forbids the making of a large-print book, insofar as 32 (3) seems sufficient to protect commercial interests even in the case of large print books.

- **Library preservation and TPM's** - We would like to see in the bill a particular exception to the general prohibition of the circumvention of TPM's such that for preservation purposes, as described in Section 30.1 of the *Act*, a TPM could be legally circumvented by a library. Inasmuch as libraries are responsible for the long term preservation of and access to scholarly and cultural materials, such a provision would be especially important when the copyright holder applying the TPM (generally a company) ceased to exist or when the copyrighted material entered the public domain.

- **Fair dealing and particular exceptions** - We believe that it would be helpful that there be a clarifying statement in the *Act*, perhaps early in Section 29, that would note that all particular exceptions are not intended to circumscribe a user's fair dealing rights, but rather to clarify and/or complement them.

We favour an expeditious passage of Bill C-32 into law, considering it of great importance that education remain as an explicit fair dealing use and the key education and library exceptions also remain in the bill at time of passage.

We thank you for your consideration of our comments and we would be pleased to speak with you or members of your staff or your departments about them. As well, we would be interested in addressing the special House of Commons committee that will be considering Bill C-32 if invited to do so.

Yours truly,

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Vice-Provost, University of Alberta, and President, CARL

Cc: The Honourable Tony Clement
Minister of Industry

Karen Adams,
Director of Libraries, University of Manitoba, and Chair, Public Policy Committee, CARL

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