



CANADIAN PUBLISHERS' COUNCIL

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Comments on Results of Consultation on Canadian Digital Information Strategy, Consultation Version, October 2007

General Comments

We will try and keep our comments limited to specific feedback but will need to reiterate some of our main concerns because of the issues raised. We have followed the outline of the strategy document for our comments rather than the question approach used in the consultation.

Although some of the feedback received on the draft strategy poses interesting challenges it was positive to see the number of groups who are sufficiently committed to the creation, preservation and availability of intellectual property in Canada to provide detailed and lengthy submissions.

However, there were comments in the feedback that raised concerns about some of the communities' commitment to a balancing of interests and an acceptance of underlying legislative and commercial realities. It has been our position throughout the process that the strategy needs to acknowledge and work within the current framework. Action items might include making clear recommendations to the government that issues such as Crown copyright and orphan works ought to be addressed. However, an action item cannot include proceeding as if the legislative framework, creator rights and commercial practices do not exist.

An enormous part of the digitization task exists independent of any need for copyright reform. Incorporating contentious proposed copyright reforms such as technological protection circumvention and educational exemptions into the strategy will result in, at a minimum, the commercial sectors' withdrawal of support for the strategy as a whole.

There should be no need to apologize that there are compromises present in the strategy that reflect the diverse interests and objectives of the players – creators, rights holders, researchers, educators, libraries, archivists and museums, ISPs, software and hardware developers, telecommunications and wireless providers among them.

Comments on Strategy Document

Part I: Introduction and Background

Scope of the Strategy

The feedback found the strategy both “limited” in its scope and “overwhelming”. There seemed to be support for national facilitation but concern that this not be construed as

centralization. It would be difficult to incorporate any adjustments in the strategy to reflect these comments – the very range of comments suggests that the strategy probably has the scope about right.

Scope re Copyright

We found it disturbing that views were expressed such as from one post-secondary institution library that the strategy should include copyright reform with the stated desire that the strategy include a

...clear explanation of the major obstacles that copyright, licensing and intellectual property rights pose to a digitization project...

We trust that the strategy will be true to its current approach which is to work within the current legislative framework that includes copyright.

Policy and lobbying activities in relation to that intellectual property regime should be independent of the strategy itself. Each of the participating individuals and organizations can and should address their issues and concerns re copyright in a separate forum.

Scope re Measurement of Success

Several of the comments spoke to the scope not including measures or metrics to determine success. Perhaps an action item should be added that the criteria by which the success of the strategy can be measured will be developed. We had expressed a concern earlier in the drafting that not even the metric that Canada's current success as a digital content producer and **a strong, competitive player in the global digital content world not be reduced** has been incorporated.

In its current form, the strategy has no actions incorporated:

- 1) To test its proposed outcomes and actions,**
- 2) To ensure that there are no negative impacts on the Canadian digital content industries, or,**
- 3) To test the assertion that the digital information and networked technologies proposed in the strategy will drive economic growth and social well-being.**

Scope Table

There were a number of interesting comments on the chart. It appears to us that there is still concern that the lines between the communities and the type of content are not precise. One commenter suggested that public domain seems not to really be a source: content from any of the other sources may be public domain. We think this is a very persuasive point.

As we noted in earlier feedback "professional" sources, e.g. law, investment, news, do not seem to have a "home" in this chart. Academic content in the chart is heavily weighted towards research data and outputs and the commercial sector content in education is absent.

This creates ambiguity as to where such content may fall in the overall scope.

Part II: The Proposed Strategy

Vision: Key Assumptions

There was another disturbing comment from the library community to the effect that creators who are concerned with protecting their rights are not supportive or engaged in a digital information strategy.

As we have reiterated in the consultation process, creators and rights holders should not be demeaned if they wish to protect economic rights including basic compensation for their work. We believe that the CDIS document has reached a reasonable balance in acknowledging this position as legitimate and that the exercise of these rights is not subversive to the overall goals of digitization, preservation or access.

Challenge 1 – Strengthening Content

The strong message in the feedback, whether positive, cautionary or negative, is that priorities will have to be set.

A number of comments emphasized that success should not be measured by quantity over quality and that **being digital doesn't and shouldn't equate to greater value.**

In the feedback, institutional and academic interests were identified as having strong priorities. There was also strong support for diversity in digital content development that would suggest that these projects need be given weighted priority. Had the general public been surveyed we expect that current, born-digital content might have been perceived as the most desirable.

Objectives and Actions

1.1 Digitize Canada's textual, image, audio and audio-visual heritage on a mass national scale.

Feedback on the actions for this section included many proposals for copyright reform. Some of these were not appropriate in the context of Canada's obligations under the Berne Convention. Some were drastic revisions of the current model for which there is certainly no consensus amongst the participants in the strategy.

Where there is consensus on a general level e.g. orphan works, there is inadequate clarity of definition. In light of this, we repeat that copyright reform belongs in a separate forum and on a separate track.

1.2 Provide a conducive environment for the growth of Canadian digital content production

We still object to the assumption that digital production and delivery requires new business models. Business models that require the user to pay for access (per use fee, subscription, licensing) are highly successful. Models that do not directly charge for the content but are supported by sponsorship, advertising and indirect funding are already in the market. However, business models are all about making money. Giving everything away is not a business model. In those instances where creators are testing the benefits of

providing their content “for free” it must be noted that if the benefits do not materialize (such as revenue from related activity) the model will not persist.

The development of business models should be driven by business and market dynamics. LAC is not the appropriate facilitator.

1.3 Improve digital content production practices in order to serve national objectives in terms of management, long-term preservation and use, and rights protection

We agree with the feedback supporting the action to build sound production practices into funding requirements but we also agree that it is focusing mostly on publicly-funded research or projects. The commercial sectors (books, music, newspapers, and online information providers – legal and business, third-party providers, to name a few) that are already solidly active in the digital arena have much to offer in this area of standards and production practices.

1.4 Encourage diversity in digital content production

Maintaining cultural, ethnic and linguistic balance was a strongly endorsed objective. It would seem that a project that attains to this objective would require specific prioritization.

Challenge 2 – Ensuring Preservation

The proposals around redundancy, dark archives and legal deposit understate the complexity of technology and software licensing that wraps around digital content. This will not be an easy challenge to overcome. The issue becomes even more complex when it is suggested that access should be provided to all this content in spite of significant issues around privacy, confidentiality, licensing constraints and damage to commercial operations.

The feedback highlights the extent to which participants in certain sectors, particularly the library community, integrally connect legal deposit with distribution and access.

It is imperative that the strategy keep its purposes clear.

Challenge 3 – Maximizing Access and Use

The goal in this challenge, to provide optimal access to digital information assets, heavily emphasizes free access but does articulate support for the right of creators to exercise control over the use of, and to derive remuneration from, their works. Where access is “free” that does not mean that there is no cost to its creation. We were pleased to note the comment that “free-to-me” access is “puzzling” because it increases the confusion between true open access materials and commercially licensed documents. That writer seems to believe that readers should be fully aware of the subsidization when documents can be accessed “for free” thanks to licenses paid by the libraries which are supported, of course, **by taxpayer dollars.**

Objectives and Actions

3.1 Foster democratic, ubiquitous, and equitable digital information access within our society

Since by law, it is entirely up to the rights holder to deal with the work, the draft's intermingling of what is legal (permitted by the Copyright Act) and what is contractual is confusing. The user community needs to understand the existing framework – including the exceptions. Unless there is clear indication to the contrary, this regime is what governs copyrighted material, no matter the media. The strategy will be caught in a morass of issues if this isn't a base assumption in implementing the strategy.

The hostile comment about collectives in general and Access Copyright in particular should be given little credibility. Clearly there was an unjustified repudiation of the rights holder or creator entitlement to revenue for uses outside the ambit of fair dealing. In the same vein, it was proposed that the specific needs of schools and universities should be singled out and the strategy should be “conceived as to cut out the role of CanCopy (Access Copyright)...it inhibits much creative energy in these domains.” **This essentially places the burden on the rights holder and creator for satisfying educational purposes in an economic way imposed on no other provider to the educational system – all providers of property and services, tangible or intangible, should be compensated.**

Licensing, terms and conditions, web permission forms, micro-payment tools, pre-approved permissions reflect the rights holders' willingness to entertain uses of the work greater than those provided for in the legislation. The internet is full of these options and much of the content involved in these transactions is not “locked up” with technological protection measures. To suggest that even these can be ignored if the purpose is education is outrageous.

3.2 Enhance visibility of and seamless access to Canadian information within the global digital information environment

We agree with the comments that users, particularly researchers, seek knowledge by topic not by geographical boundaries. The strategy should ensure that it is not creating barriers to thematic collection, that it creates a model that works in the global context.

3.3 Provide timely and open online access to Canada's public information and publicly-funded research information and data

It is essential to keep in mind that this information infrastructure will need funding.

There was significant comment in the feedback that Crown Copyright needs to be evaluated. As we heard in our discussions on the draft, this issue is not as simple as many of the comments suggested as there are licensing issues that need to be addressed differently that they are currently in the creation of many government documents.

3.4 Effectively communicate, manage and protect a balanced digital copyright regime

As noted in our starting remarks this section was the focus of a lot of comment. There were several contributors who spoke to identical issues in identical language. Those contributors have been active lobbyists in the Copyright Act amendment process. It is not surprising that CDIS is being pushed by them to include recommendations re the treatment of orphan works, crown copyright and “the right in prescribed circumstances to

circumvent technological measures TM for non-infringing purposes". We repeat that incorporating into the strategy an agenda for contentious reforms such as broadening of fair dealing, technological protection circumvention and educational exemptions into the strategy will result in the commercial sector being unable to support the strategy as a whole.

Several contributors pushed licensing models like Creative Commons on the basis that Creative Commons' licenses "expand" user rights but still preserve creator rights. There is nothing in current copyright legislation to preclude any rights holder or creator from using licensing models that define additional uses that will be permitted. The comments don't reflect that there are several levels of license within Creative Commons nor do they note that Creative Commons licenses' metadata do not yet attach persistently to the content licensed. **This is a challenge for the strategy's position on metadata.**

That being said, it is not up to the user to determine that the rights holder has to adopt licensing models that deliver the content for expanded purposes. **We vigorously resist a strategy that portrays a rights holder as somehow more commendable if the product of his/her creativity is not distributed using the protections of the Copyright Act. That being said, creators have always been able to distribute with expanded uses and have often done so.**

We are also vigorously opposed to the position of one commenter that open access to information for the user's benefit should take priority over any funding models for rights holders. An author who wishes (or has to in order to support himself/herself) to sell his/her creation by charging for the actual product and has a market prepared to pay for it, including for uses provided for by collectives, should not feel coerced or demeaned by that choice.

There is significant confusion in the feedback around rights of creators and users as provided in the Copyright Act and alternate terms and conditions and licensing arrangements. To us this is confirmation that the strategy needs to foster an understanding of this infrastructure.

There was also a caution in the feedback not to confuse TPMs and DRM. The metadata objectives in the strategy are a form of DRM.

3.5 Increase the funding and dissemination of digital information user research

We agree with the suggested rewording "increase the funding and dissemination of research on the use of digital information".