Plan to modernize copyright law could make everyday habits illegal

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OTTAWA -- The average Canadian might not think twice about taping his or her favourite show on television, using a personal cellphone overseas or listening to music on a newly-purchased CD.

But industry officials and observers say that each activity is being threatened by existing copyright regulations and the Conservative government's pledge to "modernize" Canada's laws with a new piece of legislation that could make these and other related everyday consumer habits illegal.

"There are a growing number of people who recognize that this legislation will directly touch what people can do with their own personal property," said Michael Mr. Geist, the Canada Research Chair of Internet and E-commerce law at the University of Ottawa.

"Even though you may have purchased your CD or a DVD or a cell phone or an electronic book, what you can do with those things... can be limited by the law, and you can actually become an infringer if you seek to make use of those in ways that the owner (of creative rights) doesn't want you to."

In December, Mr. Geist set up a group on the social networking website Facebook to stop Industry Minister Jim Prentice's from introducing legislation to reform Canada's copyright laws. Nearly 40,000 people have joined the group, many of them fearing the government is on the verge of copying the 1998 U.S. Digital Millennium Copyright Act.

The U.S. legislation makes it illegal to tamper with a digital lock that was designed to prevent someone either from: copying of music or other material from a CD; viewing a DVD on a player outside its designated region or country; or using a cell phone overseas with the phone company of your choice instead of your Canadian provider,
Mr. Geist explained.

The Americans have made an exception for people who want to unlock a cell phone that is restricted for use on the network of the company that sold it, but he said it is still illegal in the U.S. to distribute the software that is required to unlock the phone for use with another service provider.

Mr. Geist also noted that in schools or libraries, the U.S. laws would prevent students from making copies of material they use for research purposes.

But he and some industry stakeholders have acknowledged that Canada should adopt some elements of the U.S. legislation that offer flexibility for the "fair use" of intellectual property. They say that under the existing laws in Canada, a person could be sued for producing a parody of a politician based on real images, sound or video, or even for recording a television program.

The restrictions recently prompted the popular on demand Internet video site, YouTube.com, to remove a parody of the former president of the CBC appearing at parliamentary hearings because of a complaint from the speaker of the House of Commons.

Jay Thomson, the assistant vice president of broadband policy for Telus, said the existing laws in Canada are also preventing his company from launching a new digital television recording service that would allow subscribers to tape their favourite shows for later viewing on a network server without having to use a VCR or Personal Video Recorder device.

"I'm certain that the vast majority of Canadians don't know that when they tape a program for later viewing using a PVR or even VCR that that is a copyright infringement in Canada, and they're potentially subject to a lawsuit for undertaking that activity," Thomson said. "It's not against copyright law in the U.S., it's not in Australia, it's not in Japan or the U.K., and it's been going on for decades here and shouldn't be a copyright infringement (here) either."

Mr. Thomson said Telus cannot launch this service until the government updates Canada's copyright laws.

"Instead of taping Boston Legal on their PVR that they paid $400 for and are trying to figure out how to use, they would be able to have a much more economical approach," he said. "The business case hasn't been worked out yet because the legal issues still have to be resolved but for example, maybe they'd pay a small monthly fee to rent space on the provider's server."

But Mr. Thomson does not agree with adopting U.S. copyright laws which could force Internet Service Providers to take down websites or online material of their clients based on allegations of a copyright violation before it is heard in court.

"We don't think that that system should apply in Canada, because it gives too much power to rights holders," he said. "It turns them into judges and juries."
Mr. Prentice indicated that he would not give interviews about the legislation until it is introduced in the Commons, likely at the end of January or early February. But he has insisted that he wants to find a balance between protecting the rights of creators and consumers.

"As we look to the future and having Canada on the cutting edge of an economy where we intellectualize property and commercialize it, it’s important that we have a copyright regime which is cutting edge," Mr. Prentice said in an interview on CBC radio which was taped in December, but was broadcast last Thursday. "What I hear from a lot of the people who want to invest in Canada is their desire to make sure that we have modern copyright laws that protect intellectual property. At the same time, we have to balance the interests of consumers and therein lies the challenge.”

While the government has suggested that it wants to bring Canada in line with existing international treaties on copyright rules, Mr. Prentice indicated he is prepared to hold extensive discussions in Parliament to ensure his legislation strikes the right balance.

But Mr. Geist said that it would be possible to bring Canada in line with its international obligations without adopting the stringent rules of the U.S. He noted that many prominent Canadian artists, such as Avril Lavigne, Sarah McLachlan and the Barenaked Ladies are part of a coalition that has spoken out against stringent copyright rules and law suits against fans because of the potential damage to their careers and reputation.

Mr. Thomson said he’s eager to see the legislation move forward to open doors for the industry but doesn’t want to see it go as far as the U.S.

"Everyone is interested in finding a way to address rights holders' interests and consumers' interests in a balanced way and we're all hopeful that the legislation will do so," Mr. Thomson said. "If it doesn't then it's going to quite controversial."