



INTERNATIONAL FEDERATION OF LIBRARY ASSOCIATIONS AND INSTITUTIONS
FEDERATION INTERNATIONALE DES ASSOCIATIONS DE BIBLIOTHECAIRES ET DES BIBLIOTHEQUES
INTERNATIONALE VEREINIGUNG BIBLIOTHEKARISCHER VERBÄNDE UND EINRICHTUNGEN
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МЕЖДУНАРОДНАЯ ФЕДЕРАЦИЯ БИБЛИОТЕЧНЫХ АССОЦИАЦИЙ И УЧРЕЖДЕНИЙ
国际图书馆协会与机构联合会
الاتحاد الدولي لجمعيات ومؤسسات المكتبات

Mr Dan Ruimy MP,
Chair, Standing Committee on Industry, Science and Technology
House of Commons,
OTTAWA, Ontario
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Canada

Date: 1 October 2018

Our Ref: S1/gl/am

Subject: **Submission by the International Federation of Library Associations and Institutions (IFLA) on the Statutory Review of the Canadian Copyright Act**

Introduction

The International Federation of Library Associations and Institutions (IFLA) is the leading international body representing the interests of library and information services and their users. With more than 1300 members in over 140 countries around the world, IFLA is the global voice of the library and information profession.

IFLA leads international library advocacy on copyright exceptions and limitations at the Standing Committee on Copyright & Related Rights (SCCR) of the World Intellectual Property Organisation (WIPO), and advocates for copyright policies suited to libraries and their users at the regional and national levels around the world. As part of IFLA's work of monitoring copyright changes that will have an impact on libraries, IFLA regularly looks to share international library perspectives in the process of national copyright reform processes.

We welcome the statutory review of the Canadian Copyright Act and are grateful for the opportunity provided by the Standing Committee on Industry, Science and Technology to provide comments. The influence that Canadian legal provisions may have elsewhere in the world makes this an important opportunity.

We support the briefs submitted by the [Canadian Federation of Library Associations \(CFLA\)](#), [Canadian Association of Research Libraries \(CARL\)](#), The Canadian Association of Law Libraries (CALL), Canadian Urban Libraries Council (CULC), [Universities Canada \(UC\)](#) and the Association pour l'avancement des sciences et des techniques de la documentation (ASTED).

IFLA, and the abovementioned organisations support a balanced approach to copyright that ensures fair remuneration to creators and rightsholders, while respecting democratic access to knowledge and information. Libraries play a unique role, connecting readers to creators, and making it possible to deliver the human right of all to take part in the cultural life of society.



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Recommendations

The submissions by CFLA, CALL, CARL, CULC and ASTED underline key aspects that should, in our opinion, be considered in the review. Their arguments are supported by evidence gathered from libraries, publishers and government sources.

IFLA specifically expresses support for the following points:

A) Maintain the fair dealing exception for education

Libraries, notably university libraries, are directly concerned about this provision given that they acquire and provide access to numerous learning and research materials. The 2012 amendment to the fair dealing exception which included the purpose of education has had a positive impact in the library sector and the end users.

Fair dealing in education means reduced complexity in using and providing access to materials. This flexibility is nonetheless subject to a test of fairness to ensure that no unjustified harm is done to rightsholders. This flexibility permits libraries to carry out specific and limited activities which make a positive contribution to education and which do no unjustified harm to rightholders.

Fair dealing for education therefore means more legal security (guidelines have been put in place in many libraries), and so ensures that materials acquired by libraries are more useful to them, and so more valuable. Indeed, as pointed out by Universities Canada, “Canadian universities are spending more than ever purchasing content”.

From the publishing sector, we have heard many complaints that attribute a decrease in sales and licensing revenues to the fair dealing provision. However, statistics produced by the publishing sector itself show that it is doing well. What has changed is the format. For example [Campus Stores Canada](#) reports that it is mainly the switch from physical to digital what has disrupted the market, rather than any legal change.

IFLA therefore recommends maintaining the fair dealing provision in Canadian copyright law.

B) Retain the current copyright term of 50 years

As indicated in the statement submitted by CFLA, CARL, CALL, CULC and ASTED extending the copyright term to 70 years does not create additional incentives for creativity but will carry economic costs for Canada. Evidence submitted to the review of copyright in Australia underlined that for all but very rare cases, the economic life of copyright does not extend



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beyond a few years. Longer protection merely harms possibilities for use and creativity, restricts rediscovery, and causes net harm. Instead, the public domain is beneficial not only to new creation but also to the economy. It certainly facilitates the services that libraries provide.

IFLA therefore supports the retention of current copyright terms.

C) Protect copyright exceptions from contract override and allow the circumvention of technological protection measures for non-infringing purposes

Library resources are increasingly digital and therefore accessed through licenses rather than acquisitions of physical material. Licenses include terms which in many cases [limit the uses](#) of works allowed by law. It is sadly often a fiction that libraries freely negotiate such terms, which tend to be dictated by rightholders. To fulfill their mission, libraries need to be sure that licensing conditions that override statutory provisions are unenforceable. For this to be possible in the digital world, protection from contract override is needed.

Following the same argument, technological protection measures (digital rights management) on digital materials can prevent library uses that are legitimate. Libraries need clear permission to be able to circumvent these protection measures for uses that are non-infringing.

IFLA is therefore supportive of provisions that clarify, first, that libraries are not obliged to respect conditions in private agreements that override statutory provisions. Secondly, the circumvention of technological protection measures should not be considered illegal if done for a purpose that is not copyright infringing.

Many countries around the world are moving towards such a solution. According to [Kenneth Crews' study](#) commissioned by WIPO, in 2017 a total of 53 countries had in place an exemption for libraries on the circumvention of technological protection measures.

D) Provide clarity on the legal status of text and data mining (TDM)

The ability to analyse information, and to reuse facts and data freely is fundamental to knowledge sharing and everyday life. It should not make a difference whether this happens through simple reading, or with the help of computer programmes that can read (or 'mine') texts and databases to discover ideas and trends.

IFLA has [already stated](#) its belief that TDM is “an essential tool to the advancement of learning, and new forms of creation (...). Digital information opens new opportunities for research and innovation”.

Although large publishers may facilitate text and data-mining on their datasets through licensing agreements or the provision of platforms or apps, many others (smaller) publishers



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do not necessarily follow the same line. Researchers are, in any case, unlikely to want to constrain themselves to the work of just one publisher, and so different platforms and apps are not helpful. Moreover, in order to protect their intellectual freedom and privacy, they are unlikely to want to have to work through applications provided by publishers, which can monitor their activities and research. Meanwhile, as concerns text and data mining on materials available on the open internet, an obligation to contact and seek permission from (or pay) rightholders for all materials used is not realistic.

Internationally, many countries such as Israel, the Republic of Korea, Singapore, Taiwan, Japan and the U.S benefit from legal clarity under the fair use regime or an exception. IFLA's experience has also shown that internationally, countries are looking at such an exception where it is not already in place. It is the case in the European Union, South Africa or Australia.

A provision that clarifies that text and data mining of legally accessed materials is possible without infringing copyright is needed to ensure that copyright and database contracts do not impede the use of materials by library users in ways that would benefit communities – for scholarship, research, improvements in health and science, creativity and social inclusion. A specific exception underlining that the right to read should include the right to mine, without discriminating between different actors or purposes, would do this most effectively.

E) Ensure e-book availability

As a response to library users' needs, libraries lend books in digital format. It has developed to an extent where digital formats currently represent 20-30% of Canadian's public libraries' materials budgets, as underlined in the Canadian Urban Libraries Council's submission.

However, libraries' access to eBooks for lending is completely at the mercy of the market. A number of issues have emerged which call for action at the policy level. There have been cases where licenses offered to libraries contained unfair conditions, such as extremely high prices, lack of offer of certain books, limitation in time or in number of loans. More examples are available in CULC's submission.

A recent study by Rebecca Giblin, study "[Legal and social dynamics of eBook lending in Australia's public libraries](#)",¹ includes data from Canada and highlights specific challenges. A first major concern is around the availability of books, with 30% of books available in other major English-speaking countries not available to Canadian readers. Moreover, publishers are not offering libraries licences suited to their needs (97% of the 100 000 titles studied offered no choice), and both usage terms and prices for older titles do not reflect their use. Libraries are left with the option of either accepting all the conditions or giving up entirely on providing users access to the books in question.

¹ Her presentation of this relevant data during the World Information Library Congress is available online: <https://www.youtube.com/watch?v=fRMiyPQypNY>.



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IFLA therefore recommends the development of policies that ensure effective accessibility to eBooks in libraries, notably through backstop exceptions that ensure that libraries are guaranteed the possibility to acquire and lend eBooks. This should act as an incentive to publishers to enter into discussions with libraries about better balanced offers.

F) Indigenous Knowledge

IFLA has yet to formulate a policy on the subject of copyright and indigenous knowledge, but in general terms encourages lawmakers to ensure that there are always adequate limitations to allow libraries to do their jobs. Librarians themselves carefully follow codes of ethics, which include consideration of the moral rights of the creators. The full range of tools available should be considered when seeking to achieve the goals of the reform as concerns indigenous knowledge.

Yours faithfully,

Gerald Leitner,
Secretary-General,
International Federation of Library Associations and Institutions