

Addendum to the CAUT Submission to the Standing Committee on Industry, Science and Technology

Statutory Review of the *Copyright Act*

December 2018

Introduction

The Canadian Association of University Teachers (CAUT) represents 72,000 professors, librarians, and professional staff at 123 colleges and universities across Canada. As the United States-Mexico-Canada Agreement (USMCA) imposed changes on the *Copyright Act*, we respectfully submit this addendum to our brief tabled with this Committee in July 2018. The key recommendations of our July submission were:

1. Maintain fair dealing in its present form
2. Keep the present copyright term
3. Loosen the rules associated with digital locks
4. Reform Crown copyright
5. Address the copyright concerns of Indigenous communities

As copyright term extension has been agreed to in the USMCA, CAUT has amended our July recommendations in an effort to ensure that the *Copyright Act* effectively balance the needs of all groups and communities within Canada.

United States-Mexico-Canada agreement (USMCA)

Article 20.H.7 of the USMCA extends the term of copyright protection in Canada by 20 years, from 50 years after the death of the author of a work to 70 years. The extension drastically tips the balance in the *Copyright Act* towards corporate content owners. It means that works that would have been freely available to all to be copied, shared, altered and republished will be locked down for another twenty years, inhibiting students, teachers, researchers, and ordinary Canadians in their pursuit of creativity, free expression and learning opportunities.

Term extension constitutes classic “ladder pulling” behaviour, wherein large corporations that freely benefited from the public domain to enhance their own position have now diminished the same opportunity for a new generation of creators. In a social and cultural environment saturated with commercial content, term extension restricts the ability of authors and artists to incorporate and reflect the world around them into new creative works.

To compensate for this, the *Copyright Act* must expand users’ rights within the legislation, including the granting of new rights to students, teachers, researchers and the general public.

Key revised recommendations

1. Enhance fair dealing

Fair dealing provides a limited right to copy literary and artistic works in a way that is fair for both owners and users of the material. With copyright term extension diminishing the availability of content and shrinking the public domain, it is important that fair dealing be protected and enhanced. With the USMCA imposing on Canadians some of the worst aspects of US copyright law, the logical corollary is that Canadian legislation be changed to similarly match the better parts of American copyright. Specifically this means expanding fair dealing in the direction of the American equivalent, fair use, and a broader and more expansive right. This would create a more flexible right, facilitating knowledge sharing and innovation. This could be accomplished by amending Section 29 of the *Canadian Act* to include “such as”, two little words, so that the list of allowable purposes for fair dealing is transformed into an illustrative list of purposes. This is in line with the American approach to users’ rights and would put Canadian users—including students, educators, creators and more—on a more equal playing field with their American counterparts when accessing, using and innovating upon content.

2. Liberalize public rights, including the circumvention of digital locks

The *Copyright Act* currently prohibits the circumvention of “digital locks” that prevent the copying of digital works — even if the copying is for a legal purpose (such as fair dealing, accessing works in the public domain, archival preservation, and library lending). To ensure Canadians can fully enjoy the legitimate exercise of their statutory rights, the *Copyright Act* should be amended to allow digital locks to be circumvented for legal, non-infringing purposes – such as displaying a small clip from a DVD to a class.

3. Reform crown copyright

Canada's *Copyright Act* currently delays Canadian government works from entering the public domain for 50 years. Though likely not the intention of USMCA negotiators, it appears that the trade agreement's text will require the government to extend Crown copyright's term to "not less than 75 years." In principle, CAUT is against extending copyright term and any legislation that diminishes the size of the public domain, however, this instance is particularly an affront given that the American equivalent to Crown copyright will not be extended. This asymmetrical anomaly is due to the fact that American government documents are not bound by copyright law but go immediately into the public domain – there is no "term" to extend for US docs while Canada's will be locked down for 25 more years. Like Americans, Canadian citizens ought to be allowed to immediately reproduce all documents created by their government, however, CAUT understands that this may not always be feasible and, accordingly, recommends that Canada's *Copyright Act* be amended to make most government material free from copyright upon its release. Reforming Crown copyright will:

- allow individuals, corporations, and other organizations to make better use of important public resources,
- allow librarians to better serve their role as stewards of government records, and
- facilitate Canada's Open Government initiative.

4. Address Indigenous rights

The concerns of CAUT and our Indigenous academic staff members remain unchanged on this issue. Copyright law, based on Western notions of property ownership, is often in conflict with Indigenous understandings on the use, sharing and control of culture and knowledge. Tragically, this has resulted in many Indigenous creators and communities losing control over their heritage. The federal government must ensure First Nations, Inuit and Métis peoples can develop and impose their own rules on how the results of their creativity are shared, ensuring that custodianship, dissemination and compensation occur according to their own traditions.