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House of Commons - Standing Committee on Industry, Science and Technology
Chambre des Communes - Comité permanent de l'industrie, des sciences et de la technologie
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Submission of Brief in Relation to the Statutory Review of the Copyright Act

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Dear Chair and Committee Members,

This brief was prepared by the on campus offering of LIS 501 Foundations of Library and Information Studies students at the University of Alberta and represents a collective expression of our concerns in relation to the statutory review of the *Copyright Act*. As students and future librarians and information professionals, we feel that our brief offers insightful comments on several of the issues related to the review of the *Act*. Our insights are drawn from our experiences as students and workers in library and other information-intensive environments, as well as our understanding of the importance of professional values and ethics in library and information studies based on our education. The brief has been thematically organized with comments related to several parts of the statute.

I. Core Principles

Balancing the rights of users and creators is crucial. Librarians frequently serve as a place where such rights are balanced daily. We feel copyright is currently balanced in favour of creators and propose changes to the *Copyright Act,* discussed below, that reflect a more balanced position.

A core value of library professionals is open access to information, and as such, publicly funded information sources should be available without barriers to the public. Where possible, copyright law in Canada should encourage open access. A starting place for this would be to abolish Crown copyright or overhaul the current policies in this area to reduce barriers to government works. The *Act* should also work to minimize the negative effects of the copyright term extensions the United States-Mexico-Canada Agreement (USMCA) will have on the materials available (or that would have been available) in the public domain in Canada.

Furthermore, we feel that the Act should maintain technological neutrality as a guiding principle.

II. Creators Rights

II.A. Term of Protection

The general copyright term of the author's life plus 50 years after their death should be maintained and not increased. The extension of copyright term makes no quantitative difference to the rights of the creator but would be a significant detriment to users in the public domain. We agree with the Creative Commons brief, which asserts that any increase in copyright terms of protection would harm the creativity of Canadians by restricting their access to and ability to innovate new creative content based on previously published works.

CUSMA upsets the balance of creator and user rights. Extension of the copyright term from life plus 50 to life plus 70 will result in 20 years of no material entering the public domain, to the benefit of no living creator and will provide no incentive for these deceased creators to create new works.

II.B. Crown Copyright

The current system of Crown copyright is unfair. If a government document is made publicly available online, it should be in the public domain. In addition, works that are created by public servants should be public domain by default.

Crown Copyright is unnecessary in regards to government works and creates needless barriers for researchers and academics. Open access to government works is an obvious choice for Canada as a country that prides itself on government transparency. Extensive Crown control over works is antithetical to a democratic government, and the current form of Crown copyright is an impediment to larger public and academic discourse.

II.C Moral Rights

Moral rights protections should stay the same.

III. Users' Rights

III.A. Fair Dealing

The existing statutorily enumerated fair dealing categories are insufficient. As Chapdelaine et al. state in their review of the *Copyright Act*, "Parliament should clarify that the principle of fair dealing… remains a cornerstone of the *Act*… This could be done by adding 'such as' before the listed purposes to clarify that they are merely illustrative, while embedding a judicially developed flexible test," (2018, 4). The fair dealing categories should remain in the *Act* as illustrative examples. Defining 'fair dealing' in narrow categories may restrict the potential for the development of fair dealing practices that are not explicitly defined in the *Act*.

We suggest the list of fair dealing factors established in the CCH case not be codified into the *Act* as the factors will likely require continuous additions/modifications as technology and society evolve.

III.B. Personal Exceptions (29.21-29.24)

As stated in the brief from the Organization for Transformative Works, at the very least, personal exceptions in the categories laid out in the *Copyright Act* should be maintained, as remixing and critiquing content provides benefit both to the individual honing their skills and to collective communities. For example, one of the brief's co-authors achieved first-class standing in their Bachelor of Arts in English and, therefore, acquired funding that allowed them to pursue their Master's degrees in Library and Information Studies and Digital Humanities. They were able to do so in no small part because of the critical reading and writing skills they learned as a teenager writing and editing fanfiction. We consider user-generated content rights vital. Canadian law should fall more in line with principles that exist in the United States, in which fair use must meet certain criteria within the notion of transformative use, i.e. work that adds new meaning or purpose to a work and as such cannot substitute for the underlying work.

In addition, 29.21 should be clarified when it comes to user-generated content that is distributed on content platforms, such as YouTube that carry the potential for revenue that is non-commercial in nature. It is not the purpose of UGC creators to derive profit from their work, and it makes little sense to treat those works as commercial simply because of the reception they acquire (e.g. going viral) when the works would previously have been protected.

III.C. Exceptions for Libraries and Archives

The limitations under section 30.1 could be broadened in terms of public access. The scope is too narrow considering the new technologies in the digital world in relation to both published and unpublished works. The language in section 30.3(1) ought to be clarified to include technological forms, and using the technology for uses that are contributing to public education (blog posts, websites) with the exception of commercial use. The limitation of the type of machine represents a potential barrier to entry in the dissemination of information (for example, a small archive not having a photocopier).

Restrictions in 30.2(3) that limit the copying of works based on type ought to include creative works (fiction, poetry, dramatic, or musical use).
Section 30.2(4b) restrictions on research or private study ought to be clarified/expanded to include education in general and personal interest. Section 33.1, which limits copies available to patrons to a single copy, is limiting and people should be allowed access to the work within reasonable use. The term "research" is too general.
Copyright on unpublished materials should mirror the limitations for published copyright term.

The language in 30.2(5.02) is counter to the mission of a library in taking measures to restrict what people can do with knowledge, rather than promoting the dissemination of information between libraries. The language is a barrier which focuses on restriction of use of information. The restriction of "five business days" after it is used means monitoring use, which limits freedoms.

IV. Technological Protection Measures

The current Technological Protection Measures (TPM) approach (effectively blanket protection against circumvention of technological protection measures) is inappropriate and unfairly favours rights holders to the detriment of users. In this regard, the balance that copyright policy in Canada attempts to strike is not equal. Changes to the *Act* should be made so that circumvention of technological protection measures should be allowed when the underlying act would be legitimate (i.e. for fair dealing exception).

Our contributors include millennial library students that have grown up frequently, and often unthinkingly, circumventing TPMs, evincing that TPMs, as a content management ethos, may not accord with how the millennial generation interfaces with digital culture. TPMs therefore need to be rethought.

TPMs, especially within the context of ebook publishing, enact what Lawrence Lessig has stated: “code is law.” They further diminish users’ ownership of a resource (reducing ownership essentially to ownership of the *licence* and not the resource), where ebook licensing has already severely restricted traditional ownership rights, such as the principle of exhaustion. TPMs also work to further reify ebooks’ status as (artificially) rivalrous commodities. Given the freedoms that the so-called “remix culture” ostensibly afford us in the digital age, it is insidious how these freedoms have been restricted by publisher measures, such as TPMs. The *Act*, as it stands, effectively enshrines these publishers’ rights in law, and severely reduces the promised possibilities of digital media.

More concretely, in some of our professional experiences at work in libraries, we have had many patrons who have downloaded digital resources but have experienced barriers to reading and accessing the content due to hardware and software problems. Once experiencing these problems, they are unable to redownload the resources again due to licensing limitations. At this point, patrons have to borrow the resource again - this adds up to a great cost to a library because service providers currently have the right to limit lending institutions to a limited number of loans. This is often a low number, and, once reached, the library has to pay the vendor for the opportunities for more loans.

Furthermore, TPMs, within a library context, work *against* information literacy policy by mystifying content lending systems. They disempower users with lower levels of digital fluency, imposing arbitrary and inconsistent limitations that users cannot possibly keep straight. They are an unfair cognitive burden on users and amount to a barrier to access, especially to disadvantaged users that do not have the time or capital to understand the myriad intricacies of complex digital devices.

Section 92 - 5 Year Statutory Review

For the time being, the five-year statutory review of the *Act* seems appropriate, as it is conducted with the same frequency as the Canadian *Census.* This five-year period should not be viewed as a permanent timeline, and as the Canadian copyright environment shifts over

time, especially with the advent of new technologies, the frequency of the reviews should be flexible to re-assessment.

V. Other Considerations

V.A. Protection of Indigenous Knowledge

As it stands, the *Copyright Ac*t does not contain any distinct protections for Indigenous Knowledge. This is grossly out of touch with the current environment of reconciliation and the new nation to nation relationship with Indigenous Peoples. Many pieces of Indigenous Knowledge were acquired by their current copyright holders through appropriation or extractive research methods. If the Government of Canada wishes to make tangible steps towards reconciliation, the *Copyright Act* must better protect Indigenous Peoples' rights to their own cultural works and expressions. Where appropriate, such works, including nontraditional materials such as songs or dance, should be made available to Indigenous Peoples, providing them the copyright to their own materials. Additionally, the *Copyright Act* must respect that some works of Indigenous Knowledge, including sacred information, must be made available to their respective communities to decide whether they belong in the public domain or whether their copyright be returned to the community. This recommendation aligns with the United Nations Declaration on the Rights of Indigenous Peoples, which states that Indigenous Peoples have the right to maintain, control, and direct their cultural heritage and traditional knowledge. In the pursuance of this reform, active and continuous consultation must be maintained to ensure that copyright reforms align with the respective communities.

V.B. Other

Finally, in agreement with the review of the *Copyright Act* written by Chapdelaine et al., we believe that an author of a "scientific publication that is the result of research activities partly financed by public funds, has the right to make that work available to the public," (2018, 5). Documents created using public funds should be part of the public domain, as making them more widely available can contribute to societal and scientific advancement.