

December 10, 2018

The Library Association of Alberta (LAA) is guided by the philosophy that libraries are fundamental to the cultural, educational, recreational and economic well-being of the people of Alberta. Established in 1930, the LAA is a non-profit, independent, and voluntary association for those interested and involved in library work in Alberta. Our organization's more than 800 members include librarians, library personnel, library trustees, institutions, and other interested individuals and companies including academic, public, school, and special libraries in Alberta.

The LAA strongly supports recommendations provided to the Committee in September by the Canadian Federation of Library Associations¹ including a commitment to recognize Indigenous peoples' ownership of their traditional and living respective Indigenous knowledge. In addition, given the signing of the CUSMA in late November, we are recommending that Parliament:

- 1) Establish illustrative purposes for fair dealing.
- 2) Create a balancing mechanism to offset the effects of CUSMA term extensions.
- 3) Abolish Crown copyright.

Illustrative purposes for fair dealing

Fair dealing is an important provision for the intellectual health of our society. It helps ensure public access to original, published, copyright-protected content and it inspires the creation of new works.

We support the testimony² provided to the INDU Committee suggesting that s. 29 of the *Copyright Act* be amended with a "such as" clause:

*Fair dealing for ~~the~~ purposes **such as** of research, private study, education, parody or satire does not infringe copyright.*

Quoting from House of Commons Revision of Copyright Subcommittee in 1985:

"To be effective any fair dealing provision must be flexible. It must be left to the discretion of the courts to mould and shape according to technological developments and existing practices."

¹ Brief to the INDU Committee from the Canadian Federation of Libraries Associations, August 17, 2018. http://cfla-fcab.ca/wp-content/uploads/2018/08/CFLA-FCAB_INDU_Brief_final.pdf

² Testimony provided to INDU Committee by Howard Knopf, November 28, 2018. [Webcast timecode 16:23:14](http://excesscopyright.blogspot.com/2018/11/my-speaking-notes-for-my-presentation.html), text available at <http://excesscopyright.blogspot.com/2018/11/my-speaking-notes-for-my-presentation.html>

In 1985 the House of Commons Revision of Copyright Subcommittee noted that it was impractical to rely on Parliament to anticipate all potential applications of fair dealing, including those enabled by rapid technological innovation. Instead, it made more sense for Parliament to set up a broad copyright framework that would allow the courts to more adeptly respond to individual cases. This is consistent with copyright frameworks in both the United States and Israel.

Balancing mechanism to offset effects of term extensions

Ratification of CUSMA will require Canada to extend its copyright protection for an additional twenty years, to life of the author plus 70 years³ for most works. These term extensions will benefit the rights-holders of a very small number of works that remain commercially viable for more than half a century after the death of the creator. The number of works whose availability for use will be hampered by this extension, however, is expansive. Specifically, works that are no longer commercially viable are less likely to remain accessible and, given that most will have been published for more than a century before their copyright term expires, libraries will be delayed -- and in many cases prevented -- from reproducing and distributing these works for the benefit of the public.

In short, the extension of the copyright term is effectively an overreach to protect a few descendants and a handful of large corporate rights-holders. In order to compensate those who stand to lose the most from this shift in the balance of copyright law in Canada, exceptions in the *Act* related to the work of libraries should be broadened to allow for the technologically neutral, unmodified reproduction and open distribution of all works that are no longer commercially viable, so long as it does not harm the rights-holder.

Alternatively, since there is no international agreement (e.g., like the Berne Convention) that provides standards on how to extend copyright protection past life plus 50 years, the LAA agrees with other proposals¹ that the last 20 years of protection should only be extended to those who register their copyright with the Canadian government.

The advantages that longer term lengths might afford a very small number of works cannot be justified without allowing libraries to make the remaining works available to the public at large.

Abolish Crown copyright

Crown copyright should be abolished. Section 12 of the *Act* has created barriers to the re-use of publicly accessible government publications for decades. Other briefs have documented how

³ Canada is currently fully compliant with the terms of the Berne Convention which requires all signatories to provide copyright protection (no registration necessary) to works fifty years past the life of the author.

these unnecessary protections prevent stewardship,⁴ hurt students,⁵ and increase the democratic deficit.⁶ Not only does the *Access to Information Act* provide governments with necessary protections related to the distribution of sensitive government information, but signing the CUSMA exacerbates the problems associated with restricting the re-use of non-sensitive government information. The United States federal government does not provide copyright protection to government works, and neither should the Government of Canada.

If needed, in those rare cases where copyright protection is required for co-authored or Crown Corporation publications, a free culture Creative Commons licence could be assigned. These open licences are similar to the open government licence assigned to data and **publications** of the Government of Alberta (GOA) since January 2014. This GOA licence is assigned to “all information and data that is publicly available”⁷ with a compliance expectation for all provincial ministries, including their agencies, boards, and commissions. In essence, the intention is that this licence is assigned “by default” to all publications and data products made publicly available by the GOA. Thus, it is much broader than the existing federal government terms of use associated with most publicly available and web-based federal government information in that it allows for the creation of translations and adaptations, supports commercial re-use, and promotes broad redistribution and re-publishing of government works.⁸

Summary

CUSMA will bring many changes to the balance that had been achieved in Canadian copyright law. If we are going to make changes that strengthen protections for copyright owners, it is only fair to offset the impact of those provisions through support for consumers of copyright-protected content. Establishing illustrative purposes for fair dealing; creating mechanisms to cope with term extensions; and abolishing crown Copyright will all help to balance the more restrictive copyright provisions that will come into Canadian law from CUSMA.

⁴ Brief to the INDU Committee from Meera Nair, May 22, 2018.

<http://www.ourcommons.ca/Content/Committee/421/INDU/Brief/BR9921772/br-external/NairMeera-e.pdf>

⁵ Brief to the INDU Committee from the Southern Alberta Institute of Technology, September 11, 2018.

<http://www.ourcommons.ca/Content/Committee/421/INDU/Brief/BR10020446/br-external/SouthernAlbertaInstituteOfTechnology-e.pdf>

⁶ Brief to the INDU Committee from Amanda Wakaruk, June 22, 2018.

<http://www.ourcommons.ca/Content/Committee/421/INDU/Brief/BR9998912/br-external/WakarukAmanda-e.pdf>

⁷ See the Government of Alberta Open Information and Open Data Policy. <https://open.alberta.ca/policy>

⁸ The Government of Canada’s standard terms of use statement (see <https://www.canada.ca/en/transparency/terms.html>) restricts re-use to non-commercial and unmodified uses and fails to address redistribution. This has the effect of hindering instead of encouraging the re-use of government publications. Furthermore, the federal open government licence has only been assigned to a very small number of publications, rendering it ineffective for libraries’ stewardship activities. See https://open.canada.ca/data/en/dataset?portal_type=info&q=