



International Federation of
Library Associations and Institutions

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Prins Willem-Alexanderhof 5
2595 BE The Hague
Netherlands

31st of March 2021

Ref: Consultation on CUSMA Commitment to Extend Canada's General Copyright Term of Protection - 31st of March

Dear Madam, Sir,

The International Federation of Library Associations and Institutions (IFLA) welcomes the opportunity to put forward its recommendations in the consultation on the implications of the CUSMA agreement and in particular on the extension of the term of copyright protection in Canada.

IFLA wishes to underline its full support for the proposals made by the Canadian Federation of Library Associations (CLFA), the Canadian Library Research Association (CARL) and the Canadian Urban Libraries Council (CULC) and Canadian Association of Law Libraries (CALL).

In essence, IFLA considers that the extension of copyright protection will, among other things, delay access to copyrighted works that have no commercial value.

We agree with CFLA and CARL that this situation will lead to a number of problems such as the reduction of the public domain due to the obligation to wait an additional 20 years before works lose copyright protection. In doing so, it will accentuate the problems of orphan or out-of-commerce works.

This issue is a major challenge for cultural heritage institutions (CHIs), of which many contain significant collections of works which are no longer commercially available, and indeed which may have unknown or contactable rightholders. Despite the lack of other means of accessing such works, CHIs are unable to allow easy digital access to and uses of such works, for education, research or any other purpose, given that they are still under copyright.

Extending the length of copyright terms simply means this problem becomes more persistent, reducing the ability of CHIs to achieve their missions, and so the impact of their work. It can lead to the halting of digitisation efforts, and of research based on this.

In contrast, allowing works to enter the public domain as soon as possible offers all citizens the opportunity to benefit from a common good that can contribute social, political, intellectual, cultural or artistic progress. Entry into the public domain provides important economic benefits by allowing works to be disseminated, rediscovered and reused to support further creativity.

As a result, IFLA believes that any decisions taken should seek to limit harm by providing meaningful and effective tools for heritage institutions to work with their collections, and using options available under international law to limit the works covered by term extension to those where there is express call by rightholders.

As a result, IFLA supports the adoption of Options 3 and 5. We believe that these options will reduce the harm done by extending the term of copyright protection and allow libraries, archives and museums to continue to fulfil their public service missions without harming rightholders.

IFLA strongly recommends the implementation of the following suggestions:

- Amend Section 2 of the Copyright Act to change the definition of 'commercially available'. We suggest the removal of (b) - 'for which a licence to reproduce, perform in public or communicate to the public by telecommunication is available from a collective society within a reasonable time and for a reasonable price and may be located with reasonable effort'. The mere availability of a licence should not dictate whether a use can take place under an unremunerated exception or not.
- We strongly encourage the establishment of a registration system for the additional twenty years of protection. We recommend the development of a publicly available database to gather works that fall within the extended period of copyright protection. If the work is not registered, meaning, rightholders did not actively look to protect his or her works, the latter could be used without issue.
- Amend Section 29 of the *Copyright Act* to expand fair dealing to make the list of purposes allowable under the fair dealing exception an illustrative list rather than an exhaustive one. IFLA recommends alignment with the US regarding the addition of further flexibility in this way, in order to restore a balance between users and rights holders that is currently unbalanced by the extension of the copyright term. It is about being consistent with existing practices.
- Repeal subsection 14(1) of the Copyright Act, or at minimum amend the subsection to include a clause that the creator may waive reversion rights at the time of copyright assignment to libraries, archives or museums.
- Establish a scheme of limited liability for libraries, archives and museums for use of orphan and out-of-commerce works. The zero-liability for the reproduction of the work by libraries, archives or museums prior to an infringement claim is a necessity for cultural heritage institutions in order not to create a chilling effect on use of works.

- Amend the Act to make it clear that no exception to copyright can be waived or overridden by contract and that Technological Protection Measures (TPMs) can be circumvented for non-Infringing purposes. It should be clear that users do not need to rely on solutions for this offered by rightholders if these are not forthcoming within a reasonable period of time.
- Address the need to respect Indigenous Knowledge. It would be of great value to commission a study on rights in Indigenous Knowledge, with a view to respect and preserve those rights more fully and effectively.
- Find a solution to allow for the digitisation of unpublished works for online consultation. Unpublished works are generally works that have no commercial value. Such works are often not otherwise available, and are not suited to licensing, but are often of major historical interest or a testimony to an era. It is necessary to offer alternatives for libraries, archives and museums that have to manage their collections.
- Assign a Creative Commons licence to all publicly available government publications. IFLA would like to recommend a retroactive default CC-BY licence to support the openness of digital and print government publications.
- Extend Options 3 and 5 to apply to educational institutions and other non-profit organisations, which would also gain from being able to make public interest uses of works more simply.
- The legislative instrument should be a stand-alone bill to amend the *Copyright Act*, rather than part of a wider bill. This will allow for fuller and more transparent debate of its contents.