



CANADIAN
PUBLISHERS'
COUNCIL

**The Canadian Publishers' Council Submission
to the Consultation on how to Implement
an Extended General Term of Copyright Protection in Canada**

March 2021

The Canadian Publishers' Council (CPC) welcomes the opportunity to share its views in response to the Government's Consultation paper on extending the general term of copyright protection to 70 years following the end of the calendar year of the author's death.

The publishers represented by the CPC support implementation of the 20-year extension required by CUSMA, without qualifications. The Copyright Modernization Act of 2012 introduced exceptions – in particular the Fair Dealing for Education exception – that has greatly diminished copyright protection for authors and publishers and has seriously eroded investment in the creation of educational resources. Term Extension, implemented with no accompanying measures, is an opportunity to move towards better balance between users and rights holders, and to restore incentive to the publishing sector to invest in Canadian resources.

Introduction – About the Canadian Publishers' Council

Founded in 1910, the Canadian Publishers' Council represents the interests of publishing companies that publish books and other media for elementary and secondary schools, colleges and universities, professional and reference markets, the retail and library sectors. Members employ more than 3,000 Canadians and collectively account for nearly three-quarters of all domestic sales of English-language books, with a significant presence in French-language publishing in Quebec. As importantly, member firms pay over \$36 million in royalties to Canada's writers and creators.

The Council represents the Canadian publishing community on the international level in the International Publishers Association (IPA) and is a member of the International Federation of Reprographic Rights Organizations (IFFRO). The CPC also maintains liaison with other Canadian professional publishers' associations, with the Association of American Publishers and the U.K. Publishers Association, as well as with Canadian colleagues in all areas of the literary arts, educational, library and retail communities.

Challenges facing rights holders and publishers since 2012

The health of the publishing sector, encompassing all authors and creators who are responsible for the creation of the rich array of printed and digital content published in Canada, has been seriously eroded by changes to the Copyright Act introduced in the Copyright Modernization Act (CMA) of 2012.

In particular, the very broad, ill-defined Fair Dealing Exception for Education has led K-12 and Post-Secondary institutions to abandon the collective licensing regime and the important compensation it afforded publishers, authors and all other contributors in Canada. Since 2012, these actions have deprived authors and publishers of some \$150 million in licensing fees.

Meanwhile, copying of copyright-protected resources on a large commercial scale has continued unabated in schools and campuses across the country. Thus the creative sector has effectively been mandated by an interpretation of the CMA to subsidize the Education sector, clearly not an outcome that was intended. To give context to this significant fiscal imbalance, consider the example of Ontario funding for K-12: while some \$14,000 is spent per student every year, the cost of the collective licence abandoned by the province is \$2.41 per student. Creators are deprived of their rightful compensation by several million dollars per year, while the CMA provides cover for the provincial government to save .0172% of their taxpayer funded budget. This scenario is playing out across every province outside Quebec today.

As a result, many hundreds of high-value jobs have been lost in publishing, and Canada's high standing for its expertise in creating high quality educational resources has been severely compromised. Several important publishers – among them Oxford University Press, McGraw-Hill Education, Emond Montgomery and Nelson Education have stopped creating resources for either K-12 or Post-Secondary as a result or divested of entire divisions devoted to those efforts. Significant progress in the creation of digital, technologically advanced classroom solutions has been compromised, to the detriment of teachers and students. On-going development of Canada's leading technology and expertise in this area has stalled. In the meantime, while jobs have eroded and global competitive advantage for our graduates has suffered, governments have continued to fund Post-Secondary and K-12 institutions in the billions of dollars annually

As artists' incomes have suffered a precipitous drop, many millions of dollars have been spent on legal fees as the issue of Fair Dealing and compensation has been litigated extensively, including the pending Supreme Court of Canada hearing in the Access Copyright vs York case. It is deeply regrettable that the Federal government has abdicated its responsibility to clarify copyright law properly through legislation, despite repeated and increasingly urgent calls for it, and has instead left it to the courts to interpret the government's own intentions.

It is clear from the significant loss of investment in Educational resources that the current copyright framework is acting as a disincentive to creators and publishers in that sector. Term Extension, implemented expeditiously and with no additional measures, can improve incentives for the creation of new works by authors and publishers alike, across the broadest spectrum of creative endeavour in publishing.

With that as background, it is important for the Federal government to recognize the importance of a need for rights holders' rights to be bolstered through Term Extension. This can best be achieved by an expedited implementation of Term Extension, per Canada's CUSMA commitments and international norms, without accompanying measures.

Orphan and Out-of-Commerce Works (OW and OOCW)

While CPC has made significant contributions to government consultations on Copyright and related matters in the past, including recommendations in response to the Copyright Board Review of 2017, our organization is not expert in the legal and technical aspects of the current regime supporting these two areas of OW and OOCW. Based on consultation with affiliated rights-holder groups, however, we agree that the importance of these areas, and the complexities associated with their administration, suggest to us they should be considered in a separate review process, rather than being included with the issue of Term Extension. This appears to be particularly advisable given the shortened time frame for input on Term Extension, and the agreed upon mandate to conform with the requirements of CUSMA that have motivated the consultation.

As stated in the Consultation paper, Term Extension without accompanying measures certainly “would not close the door to the possibility of future reforms,” including further consideration of reforms to OW and OOCW regimes.

Conclusion - CMA Review recommendations

Although Term Extension is important, the issues in the marketplace today, as outlined above, are seriously undermining the ability of rightsholders to enforce and receive fair compensation for their works under the current term and need immediate action. The mandated review of the 2012 CMA was supported by extensive consultations with stakeholders from a broad array of sectors, and included CPC. The resulting Heritage Committee recommendations, as outlined its report *Shifting Paradigms*, offers a well-researched and focused set of reforms that would dramatically improve the current climate, especially the confusion and acrimony that surrounds the practices of the Education sector under their interpretation of the Fair Dealing exception.

In particular, recommendations 18, 20 and 21 have our full support, and in our view are critical underpinnings of the urgent need for clarification on the issues of Fair Dealing, Tariffs, and Statutory Damages. As per *Shifting Paradigms*, these recommendations are:

- 1) Fair dealing for education must only apply to educational institutions where a work is not commercially available under licence by the owner or a collective
- 2) Tariffs must be enforceable
- 3) Statutory damages must be available to all collectives

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