



Submission on Canada's copyright extension under CUSMA

About us

The Center for New Liberalism is a 21st-century organization dedicated to forging a path for a liberalism that is willing to use any tool—markets, the state, or civil society—to promote the ideals of freedom, well-being, and equality.

This submission was written by Canadians in the Canadian chapter of the Center for New Liberalism. It is a response to the public consultation on copyright extension held by Innovation, Science and Economic Development Canada.

Our position

We are writing to **support a registration requirement** for works to receive the extra 20 years of copyright protection called for by CUSMA. We believe that it best mitigates the harms of copyright extension to require copyright-holders to pay a nominal fee and actively signal that they want a given work to remain under copyright.

As for accompanying measures for the copyright extension, we believe that the use of orphan works and out-of-commerce works by institutions should be permitted subject to equitable remuneration. When the use is by individuals, we entreat the Government of Canada to explore whether even broader forms of use are legally permissible under our international copyright obligations.

Discussion

Copyright is a valuable legal tool for promoting the production of creative works. However, we believe that the public also has an interest in copying and sharing works without paying licence fees or jumping through administrative hurdles, and copyright terms are already far longer than respects the public's interest in free access to creative works. Whereas economic analyses such as that by Rufus Pollock (2009) estimate that the optimal copyright length is very likely less than 38 years, Canada's current regime, in which copyright usually lasts the lifetime of the last surviving author + 50 years, already keeps many works under copyright for more than a century.

We therefore aim to protect the interests of not just institutions such as the libraries, archives, and museums (LAMs) addressed in ISED Canada's [consultation paper](#), but also of ordinary Canadians, by mitigating the harms of the copyright extension. We believe the best way to do

this is by imposing a registration requirement. As noted in the consultation paper, our opinion accords with that of the Standing Committee on Industry, Science and Technology.

The consultation paper discusses some arguments against a registration requirement. Our responses to these arguments are the following:

- That registration imposes a small financial and administrative expense on the copyright-holder is in our view desirable, as it will help keep the longest copyright terms limited to the tiny minority of works that will continue to hold economic value after life + 50 years.
- To the claim that “limitations on enforcement of copyright linked to registration” are not “the norm internationally,” we reply that Canada should be bold and set an example to the world. Canada should not be afraid to take seriously the interests of readers, consumers, listeners, and other users of creative works.
- We agree that “consideration would need to be given to the resulting duplication of efforts between the governmental registration system and the records maintained by Canada's numerous collective societies.” We hope that records of copyright registration can be centralized and easily searched online, for the benefit of the public and of copyright-holders alike.

Finally, we wish to note that the discussion paper's treatment of orphan works and out-of-commerce works focuses, in our opinion unduly, on institutions such as LAMs. We urge ISED Canada to work to find convenient and inexpensive ways not just for institutions, but for all members of the public to access and perhaps even share these works non-commercially (e.g., an individual posting the text of an orphan book onto her website for free, or sending sheet music for an out-of-print musical work to a friend by e-mail). Of the three options presented in Section 4 of the consultation paper, Option 3 seems in our view most friendly to users and therefore best. Even Option 3, however, does not make obvious how a non-institutional actor could make use of an orphan work, as the system it lays out for doing so puts up imposing administrative barriers.