

**Comments on the *Consultation paper on how to implement
an extended general term of copyright protection in Canada***

**SUBMISSION OF THE COUNCIL OF MINISTERS OF EDUCATION, CANADA,
COPYRIGHT CONSORTIUM**

March 12, 2021

This submission provides the comments of the Copyright Consortium of the Council of Ministers of Education, Canada on *Consultation paper on how to implement an extended general term of copyright protection in Canada*, published by the Government of Canada on February 11, 2021.

Introduction

The Copyright Consortium of the Council of Ministers of Education, Canada (“CMEC Consortium”) consists of the following government departments: Alberta Education; British Columbia Ministry of Education; New Brunswick Department of Education and Early Childhood Development; Newfoundland and Labrador Department of Education;¹ Northwest Territories Department of Education, Culture and Employment; Nova Scotia Department of Education and Early Childhood Development; Nunavut Department of Education; Manitoba Department of Education; Ontario Ministry of Education; Prince Edward Island Department of Education Early Learning and Culture; Saskatchewan Ministry of Education; and Yukon Department of Education.

Since 1998, the ministers of education have worked to advance the views of elementary-secondary education on copyright issues. The CMEC Consortium is the national, collective voice for elementary and secondary education on copyright matters in Canada.

Comments on the consultation paper

The CMEC Consortium recommends a hybrid of the various options that are presented in the consultation paper. A solution in the CMEC Consortium’s view must consider and balance the rights of both users and owners of copyright in orphan and out-of-commerce works. The CMEC Consortium’s recommendations are described below.

1. Measures to mitigate the implications of extending the term of copyright protection should accompany the term extension legislation.

2. Educational institutions should be included as beneficiaries of any measures that are legislated. Educational users share the negative implications of term extension with users of libraries, archives, and museums (LAMs).

3. The measures that are selected should keep the administrative burden to a minimum and provide a means whereby the copyright owner in an orphan or out-of-commerce work who wishes to claim compensation or control how the work is used can do so. Option 3 comes closest to meeting these two objectives.

4. The CMEC Consortium’s recommended approach requires a two-pronged legislative measure. The first prong would provide access to LAMs and educational users to orphan and

¹ Due to the ongoing elections in Newfoundland and Labrador at the time of writing, the Newfoundland and Labrador Department of Education has abstained from participating in this submission.

out-of-commerce works. The measure should require users to make a reasonable search for the copyright owner, keep records of that search, and record how the work is used.

5. The second prong of the measure recommended by the CMEC Consortium would protect the rights of copyright owners in orphan and out-of-commerce works who come forward during the extension period. However, the CMEC Consortium's recommended process differs from the equitable remuneration process described in Option 3. The CMEC Consortium recommends that any measure prescribe the use of one of the widely available mediation processes for the settlement of disputes. Mediation would only be mandated when an agreement cannot be reached between the copyright owner and the user. This approach would permit the copyright owner to control and be paid for the use of the orphan or out-of-commerce work upon proof of ownership either through negotiation with the user or, if necessary, through the initiation of a mediation process. This approach also preserves the right of owners who want to continue to administer the copyright in their works, while at the same time it removes barriers to use in cases where owners have abandoned their works.

Conclusion

The measures recommended by the CMEC Consortium would be practical. The two-pronged approach is simple, has a low administrative burden, would be inexpensive to administer, and preserves the right of a copyright owner to control and be paid for the use of orphan and out-of-commerce works in cases where the work may be lost by its owner, but has not been abandoned.