

Dear Minister Champagne and Minister Guilbeault,

We appreciate this opportunity to share our views on how the effects of the upcoming changes in copyright terms will have on educational institutions and citizens alike, through our perspective as working information professionals. We submit this brief as individuals, and the contents of it reflect our personal positions, and do not necessarily reflect the position of our employer, the University of Waterloo.

Considerations for equitable copyright term extension provisions are necessary components for members of our community to achieve their goals in teaching, learning, and research. In light of the ratification of CUSMA, we understand the necessity for term extension review and we are respectful of the timeline in which this must be enacted. As we navigate the ongoing pandemic, we are dismayed with the announced consultation period timeline. It is critical to provide adequate time for the diverse community of stakeholders to respond.

We recognize that the spirit of copyright term provisions in the Berne Convention are in place to provide a balance between creators' rights and users' rights, incentivizing creation and empowering reuse by creators and users alike. We request that you to honour this balance by recognizing that adequate access to materials in the public domain generates commercial and industrial innovation¹ and bolsters the creativity of non-commercial actors such as teachers, researchers, and non-profits². One example is the use of public domain texts for machine learning, such as in the Facebook bAbI project, where public domain children's books were used to testing machine understanding and reasoning³. Another example, close to the heart of our work to support teaching and learning, is the [Waterloo Digital Library](#), that provides online access to digitized primary resources. Various items related to the history and development of both the region and university used as part of online instruction and research support that are currently available for viewing as part of the Public Domain would require review and possible removal.

We urge you to use this opportunity to reinforce the foundation of the Copyright Act to facilitate the increase of access to information, the advancement of knowledge, and the continued technological growth of Canadian society.

Recommendations

We wholeheartedly recommend that the committee proceed with the recommendation suggested by the INDU Report, namely Recommendation 6 on page 38, "That, in the event that the term of copyright is extended, the Government of Canada consider amending the Copyright

¹ United Kingdom Intellectual Property Office. (2015, January 26). *Copyright and the value of the public domain: An empirical assessment*. <https://www.gov.uk/government/publications/copyright-and-the-value-of-the-public-domain>

² Duke University's Center for the Study of the Public Domain. (2012). *Why the public domain matters*. <https://web.law.duke.edu/cspd/publicdomainday/2012/why/>

³ Facebook Research. (2021). The bAbI project. <https://research.fb.com/downloads/babi/>

Act to ensure that copyright in a work cannot be enforced beyond the current term unless the alleged infringement occurred after the registration of the work.”⁴ This requirement for registration beyond the life + 50 years current in the *Act* provides balance between creators and users and is in line with the 50-year non-registered protection requirement in the Berne convention⁵, as described in article 7(1).

In addition to the recommendations from INDU we believe that changes to copyright term should be done with the following principles in mind:

- **Content already in the public domain as of the date before the term is extended should remain in the public domain.**
 - Removing content from the public domain represents a significant cost in terms of staff time to remove items from public display and does direct damage to our users relying on our archival collections for their research. This impact is heightened further by our current circumstances that require online teaching and learning.
- **Individuals, educational institutions, and libraries, archives and museums should be provided with exceptions to use content in the last twenty years of copyright protection for non-commercial purposes.**
 - This principle is in line with Option 4 but includes individuals to allow others’ with public interest missions without institutional backing to have equitable access to these materials for non-commercial purposes. The *Act* should specifically allow the use of these works in freely-available online collections, as this distribution mechanism represents the majority of space where these works will be used. Given the requirement to do a search to assess commercial availability, we also recommend that the definition of commercial availability be revised to remove part b) that requires users to obtain a license from a collective if available. Users should be able to rely on their search for the content to see if it is “available on the Canadian market within a reasonable time and for a reasonable price and may be located with reasonable effort” as required in part a) of the definition of commercial availability.
 - We are generally opposed to Option 5 as 100 years would be longer than the term of copyright, even at life plus 70 for many works. For example, assuming an author creates most of their works during their working career, creation plus 100 years would only be a benefit over life plus 70 for those documents created in the earlier stages of a creator’s career.
- **Limiting liability and possible confusion for users.**

⁴ Standing Committee on Industry, Science and Technology. (2019, June). Statutory review of the Copyright Act. <https://www.ourcommons.ca/Content/Committee/421/INDU/Reports/RP10537003/indurp16/indurp16-e.pdf>

⁵ World Intellectual Property Organization. (1979). Berne Convention for the protection of literary and artistic works. <https://wipolex.wipo.int/en/text/283693>

- The *Act* should include limits to liability for those who have conducted good faith searches as required.
- Using a publicly searchable registration system for the last twenty years of copyright on an item and improving Canada's registration system so that more descriptive metadata was collected as matter of course, would be helpful.
- The consultation document frequently refers to "a reasonable search in good faith" and that is an area that already causes great frustration as proving something does not exist is near impossible. In our experience, this means that institutions wanting to use materials with unknown status must make risk-based decisions, which could expose them later on. More risk-averse individuals or institutions, and/or those without as many resources, may avoid copying altogether, regardless of their public interest focus, resulting in copyright chill. Creating a place for Governor-in-Council rules around "reasonable searches" may be another alternative the Government could explore.
- **Mechanisms should exist to resolve known issues such as orphan and not-in-commerce works.**
 - We recommend adopting Option 3, using the text as recommended by the Australian government,⁶ as long as educational institutions are added to the list of organizations to which it is applicable. The Australian model does not contain a legislative requirement for recordkeeping of searches and documentation of uses, but rather clearly defined sector-based guidelines on searching and is therefore more practical for implementation in our day to day.

Conclusion

We encourage the Government to develop an approach to copyright term extension that reflects the delicate nature of the balance of creator's and user's rights in Canada. Getting that balance right is vital to ensuring incentivization of creation and empowering innovation. Implementing this required extension can be done in a way that minimizes harm to those who would copy works in the public interest, including libraries, archives, museums, and educational institutions. As demonstrated above, and as the INDU committee report summarizes, a pragmatic perspective⁷ should be taken, and we believe the above principles will guide the Government to craft legislation that achieves that effect.

⁶ "Copyright access reforms", online: Australian Government, Department of Infrastructure, Transport, Regional Development and Communications <https://www.communications.gov.au/departmental-news/copyright-access-reforms>.

⁷ Standing Committee on Industry, Science & Technology. Term Extension, reversion right and termination right, in *Statutory review of the Copyright Act*, pp. 32-41, <https://www.ourcommons.ca/Content/Committee/421/INDU/Reports/RP10537003/indurp16/indurp16-e.pdf>

Yours sincerely,

A handwritten signature in black ink that reads "Lauren Byl". The signature is written in a cursive style with a large, looped 'L' and a stylized 'B'.

Lauren Byl, MLIS
Copyright & Licensing Librarian, University of Waterloo

A handwritten signature in black ink that reads "Sarah Kittmer". The signature is written in a cursive style with a large, looped 'S' and a stylized 'K'.

Sarah Kittmer, RN
Copyright & Licensing Assistant, University of Waterloo