



UNIVERSITY OF TORONTO
LIBRARIES

OFFICE OF THE CHIEF LIBRARIAN

March 30, 2021

To: Innovation, Science and Economic Development Canada
C.D. Howe Building
235 Queen Street
Ottawa, ON | K1A 0H5
Submitted via email: copyright-consultation-droitdauteur@canada.ca

The University of Toronto (U of T), acting here through its University of Toronto Libraries (UTL), is writing to convey its comments in response to the Government of Canada's Consultation paper on the implementation of an extended general term of copyright protection in Canada as a result of commitments made under the Canada-United States-Mexico Agreement (CUSMA).

Response to options outlined in Consultation paper

U of T endorses the comments made in the Canadian National Library Associations' Joint Response to Consultation on Term Extension.

After a review of the five options presented in the Consultation paper, we agree that a modified version of Option 3 would best serve the interests of U of T, its libraries, and its community of researchers, instructors, and students. Option 3 presents a reasonable and relatively clear way of limiting some of the excessive effects of term extension on the public interest mission of U of T while allowing copyright owners to continue to assert their rights.

Additionally, it is recommended that modifications are made to the following elements, which include legislative amendments, to help mitigate the effects of a copyright term extension:

- **Clear rates for remuneration:** Should a copyright holder be entitled to come forward to claim equitable remuneration from the user of a copyrighted work, a framework for clear and fair rates, which balances the interests of both parties, needs to be established.
- **Limiting retroactive liability:** Where a user has undertaken a reasonable search in good faith to determine if a work is being commercially exploited and has chosen to copy a work for non-commercial purposes, Option 3 should place limits on or eliminate users' retroactive liability for uses taking place prior to a copyright owner coming forward to claim copyright infringement. The fear of hypothetical future liability will create practical obstacles to otherwise lawful copying. Limiting retroactive liability would reduce the perceived risk that aggressive copyright owners may claim large royalties for past uses of works and would allow otherwise vulnerable users to

make full use of out-of-commerce works. Relatedly, the limits on statutory damages for non-commercial infringement should be kept in place.

- **Amend definition of commercial availability:** Consideration should be given to amending the definition of “commercially available” in the *Copyright Act* to remove Section 2(b). This definition is flawed, as it presents the availability of a license from a collective society as an option that is akin to the availability of a work in the commercial marketplace, when these two options are in fact very distinct. Without this amendment, Option 3 would have very limited use, as part b would continue to impede the use of out-of-commerce and orphan works and present further barriers for users. Removing part b would also benefit users in their application of other currently under-utilized exceptions to infringement available in the *Copyright Act*.

Impact of copyright term extension

As noted in its Statement of Institutional Purpose, U of T is “dedicated to fostering an academic community in which the learning and scholarship of every member may flourish, with vigilant protection for individual human rights, and a resolute commitment to the principles of equal opportunity, equity and justice.” U of T relies on a robust public domain so that members of its community may freely incorporate and enlarge it via their research and pedagogy, for the furtherance of this institutional mission, the preservation and renewal of Canada's cultural heritage, and for the long-term benefit of society as a whole.

Additional considerations

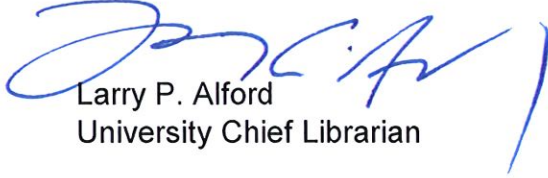
We are also concerned that a registration-focused approach to copyright term extension was not included in the Government of Canada’s Consultation paper as a possible option for implementation. As noted by the INDU Committee during the parliamentary review of the *Copyright Act*, a registration system would help mitigate some of the excesses of the limits imposed by a term extension. While it is understood that a registration-focused approach may have implications on Canada’s international treaty obligations, we believe this option warrants further examination.

Finally, the extension of the term of copyright protection in Canada represents a significant strengthening of the rights of copyright owners. Such an increase in control must be considered alongside other measures which might balance this with a proportionate strengthening of copyright exceptions for educational institutions, libraries, archives, and museums (LAMs), and user’s rights.

For these and other reasons, we support the introduction of term extension measures as a bill in itself, rather than as part of an Omnibus bill, so that a balanced approach to term extension may be debated and studied by Parliament.

Significant changes to the *Copyright Act* deserve the public scrutiny a single implementation bill would entail, and this approach would allow for a more appropriate degree of consultation with stakeholders given the significance of term extension to the overall framework and purpose of the *Copyright Act*.

Sincerely,



Larry P. Alford
University Chief Librarian

cc: Professor Cheryl Regehr, Vice President and Provost, University of Toronto