



Comments of the Canadian Library Association on Potential Intellectual Property Aspects of the Trans-Pacific Partnership

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The Canadian Library Association (CLA) is Canada's largest national library association, representing the interests of public, academic, school and special libraries, library workers, and all those concerned with enhancing the quality of life of Canadians through access to knowledge, literacy and lifelong learning.

CLA represents the interests of approximately 57,000 library staff and thousands of libraries of all kinds across Canada on a range of public policy issues. The majority of CLA members work in publicly funded institutions serving the citizens of this country. The public interest is at the core of our work, and it is on behalf of the millions of Canadians who regularly access our collections, services (tangible and virtual) and buildings that CLA presents this response to the consultation on the scope of possible free trade negotiations between Canada and Trans-Pacific Partnership (TPP) members as these may relate to the protection of intellectual property rights.

Information policy involves every aspect of the role of libraries in Canadian society and copyright is critical to the effectiveness of the public interest mandate of these community institutions. It is for this reason that we are concerned about a number of the intellectual property provisions in the leaked version of the TPP text that is available on the Internet. While we are conscious of the many economic benefits to Canada that can and should flow from a trade agreement, we would ask the government not to trade Canadian sovereignty on copyright law in Canada for entry into the TPP. Once lost, such control cannot easily be recovered, and the consequences may be costly for Canadian education, research, and the creative industries.

CLA believes that changes in Canadian copyright law should be based on made-in-Canada legislation within the limits already agreed in the context of recognized international decision making bodies, such as WIPO. Made-in-Canada copyright law changes, such as the updating of the *Copyright Act* through Bill C-11, serve Canadians more effectively than accepting copyright law changes requested in trade agreements by other governments that may not have the best interests of Canadians in mind.

Intellectual property provisions in trade agreements limit the Canadian government's range of options for addressing Canada's future copyright needs. We urge the government to avoid signing a trade agreement with IP provisions that are more restrictive than those already in force in Canada, or to at least consult widely among not only industrial but civil society stakeholders before signing such agreements.

CLA is specifically concerned with potential provisions in the TPP that would:

- Extend the term of copyright protection from the current Canadian law of life of the author plus an additional 50 years to life plus 70 years for literary works (and extend terms on other kinds of works as well)
- Expand Technological Protection Measures rules to increase penalties for circumvention and restrict the ability to create new digital lock exceptions
- Impose new statutory damages provisions that do not distinguish between copyright infringement for commercial reasons and infringement that occurs as a result of non-commercial activities
- Bring about enforcement that requires the disclosure of personal information without explicit privacy safeguards
- Impose ISP liability provisions that require a notice-and-takedown approach
- Permit copyright owners the right to block "parallel trade" of copyrighted works, counter to the Supreme Court of Canada decision regarding attempts to use copyright to stop such activities
- Impose new copyright criminalization requirements

On the specific issue of the term of copyright, Canada's current term for literary works of 50 years beyond the life of the author is a considerable advantage for Canadian education, creative production, and research. This means that the countries that have chosen to extend their copyright terms for 20 (!) additional years beyond the Berne requirement of 50 years cannot enjoy free and easy access online to the works of their own deceased authors (or those of other countries) for 20 years later than Canadians and many other countries.

Copyright is a government-created monopoly to foster creative work and to promote the public interest through the dissemination of works. CLA fails to understand how creators will be motivated to create more works to benefit Canadian society, by extending copyright to 70 years after their death rather than the current 50 years after death. CLA is concerned that extending copyright will further damage the ability of Canadians to use copyrighted works after the death of a creator. While it may be possible to negotiate permission to use older copyrighted works for certain purposes, unless an author is famous, it is often very difficult to track down who controls the rights of a deceased creator's work. This prevents proper utilization of the work and undermines the public interest.

The vast majority of works that are approaching as many as 50 years beyond the death dates of their authors have almost no commercial value to the copyright holders and for that reason extremely few are available for purchase in any edition. This means that they remain little known and little used because they are available in paper format on the shelves of larger academic libraries. Experience has shown, however, that when large numbers of public domain books are digitized, their use is greatly increased because they are simply accessible to many more people through the Internet, they are noticeable as a set, and they can often be searched as a set for specific content. Such digitized sets (e.g., Project Gutenberg) would certainly be impoverished if the most recent twenty years of public domain materials were not included.

In Canada, it is an important cultural—and even economic—advantage that we enjoy a much richer source of freely used and transformed content than can be enjoyed in the U.S. and some other countries that have given away an important part of their public domain by extending copyright terms. CLA opposes extending the term of copyright from the life of the creator plus 50 years to the life of the creator plus 70 years. We urge the government of Canada to safeguard our public domain in any trade negotiations as an important cultural resource that grows richer year by year.

We thank the Government of Canada for inviting comments from citizens and community stakeholders on the Trans-Pacific Partnership.

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