

September 25, 2007

Copyright Letter to Ministers Verner, Prentice

Hon. Jim Prentice
Minister of Industry
House of Commons
Ottawa, ON
K1A 0A6

Hon. Josée Verner
Minister of Canadian Heritage
House of Commons
Ottawa, ON
K1A 0A6

Dear Ministers:

Congratulations on your new responsibilities in Cabinet! I am writing to you today to highlight the Canadian Library Association's ongoing interest in the Copyright Act. The Canadian Library Association (CLA) is Canada's largest national and broad-based library association, representing the interests of public, academic, school and special libraries, professional librarians and library workers, and all those concerned about enhancing the quality of life of Canadians through information and literacy.

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. None is more critical than copyright. But more importantly, libraries and librarians speak on behalf of our users: millions of students, educators, scholars, researchers, lifelong learners, special library users, recreational readers, from children to seniors. Library users are the Canadian public: they are not members of a "special interest group" when it comes to copyright.

The most important change in copyright in recent years both for libraries and for all Canadians has been the 2004 Supreme Court of Canada judgment in *CCH Canada Ltd. v. The Law Society of Upper Canada*. Should the government introduce amendments to the Copyright Act, change must reflect the broad interpretation of fair dealing outlined in this judgment and ensure that users' rights are well-protected.

CLA has four specific points to raise:

First, should there be new copyright legislation, it needs to be carefully crafted so that it punishes copyright-infringing behaviour but does not ban devices that might be used to circumvent technological prevention measures. These devices have legitimate uses, such as enabling the print disabled to access copyrighted material; allowing libraries to preserve and maintain digital collections; allowing ordinary Canadians to exercise fair dealing; and allowing anyone to access protected material after its copyright expires. To ban the manufacture or distribution of "circumvention" devices risks punishing all Canadians for the actions of a few who abuse copyright.

Rather than ban devices, better solutions to the issue of technological prevention measures would be to use a provision similar to the Bill C-60 of the previous Parliament, or to consider Danish law. The portions of Bill C-60 dealing with circumvention and Danish Copyright Law are both worth emulating. In addition, anti circumvention legislation could be improved over Bill C-60 by including positive rights for users to bypass technical protections for fair dealing; and by ensuring that Canadians' rights to privacy are not abused by technical protection measures.

Second, the government needs to recognize that government documents and government data belong to all Canadians and that all Canadians should have liberal access to these materials. Canadians often pay for government information several times over. For example, provincial and municipal governments must purchase Statistics Canada census material that Canadian taxpayers have already paid for once. Crown copyright needs to ensure that nonprofit use by Canadians of all government information doesn't require permission or payment from the government. Instead acknowledgment that information has been taken from a government source should be sufficient.

Third, persons with perceptual disabilities must have the same right to access copyrighted materials as all Canadians have. This right should apply regardless of format in order to accommodate their particular needs. Legislation is required to give persons with perceptual disabilities access equity with others. The desire to punish counterfeiters and pirates should not also punish persons with perceptual disabilities by banning devices that can be used to legitimately access material that is blocked to them by technical protection measures.

Finally, the Canadian Library Association will oppose legislation that makes the same mistakes as the American Digital Millennium Copyright Act. As American legal scholar Lawrence Lessig points out, it is now less punitive for an American teenager to shoplift a CD than to circumvent a copy-protected CD. American law makes no differentiation in penalty between a counterfeiter circumventing technical protection measures for illegal

profit and an individual circumventing technical protection measures to make a single copy.

Our Association requests a meeting with you to discuss our concerns and the role the library community plays in providing Canadians access to all forms of material. This access to information is integral to ensuring that Canadians are regular contributors to the economic, social and cultural success of their communities. Please contact our Executive Director, Don Butcher at 613-232-9625 ext. 306 or ordbutcher@cla.ca to coordinate a meeting.

Yours sincerely,

Canadian Library Association

A handwritten signature in black ink, appearing to read "D. Butcher", written in a cursive style.