



# **Joint Response to Consultation on Copyright Term Extension**

Submitted by  
Canadian Federation of Library Associations  
And  
Canadian Association of Research Libraries

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## Introduction

This submission is prepared by the Canadian Federation of Library Associations (CFLA) and the Canadian Association of Research Libraries (CARL), with endorsement from the Canadian Urban Libraries Council (CULC), and the Canadian Association of Law Libraries (CALL). It is a response to the Government of Canada's Consultation Paper.

This submission provides the library community's perspective on the five options presented, as well as a registration system. We then recommend additional policy opportunities that the government should consider when implementing the CUSMA requirements in Canada's domestic legislation. The library community notes the complexity of these issues and the short timeline provided for response to the Consultation Paper, which has limited our ability to fully explore the implications of various options.

## Summary of Recommendations

### **General Recommendations: Registration and Exceptions for Orphan / Out-of-Commerce Works**

CFLA and CARL recommend that Canada expressly explore options for extending the scope of the current copyright registration system in order to add necessary counterbalances to the negative effects which will result from the term extension mandated under CUSMA. In particular, Canada should explore the feasibility of a registration requirement for the final twenty years of copyright protection – and it should do so separately, independent of the current consultation which raises related but distinct issues relating to orphan and out-of-commerce works.

With respect to the Options raised in the current consultation, CFLA and CARL concur that option 3 of the options presented in the "Consultation paper on how to implement an extended general term of copyright protection in Canada" (Consultation Paper), combined with additional proposed policy measures, presents a preferable approach for the library community. Option 3 would permit the use of orphan works and/or out-of-commerce works.

In addition, CARL and CFLA generally support the portions of Option 5 that would create exceptions for the use of materials 100 years after their creation, and in particular those portions which apply to Crown copyright. However, the numerous, complex problems relating to Crown copyright would benefit from separate study, consultation, and resolution. The inclusion of Crown works in this option is incidental and does not directly align with CUSMA.

### **Additional Recommendations for Implementation**

- Amend Section 29 of the Copyright Act to make the list of purposes allowable under the fair dealing exception an illustrative list rather than an exhaustive one
- Repeal subsection 14(1) of the Copyright Act, or at minimum amend the subsection to include a clause that the creator may waive reversion rights at the time of copyright assignment to LAMs.
- Amend section 2 of the Copyright Act to change the definition of commercially available.
- Establish a scheme of limited liability for libraries, archives and museums for use of orphan and out-of-commerce works.

- Amend the *Copyright Act* to make it clear that no exception to copyright can be waived or overridden by contract
- Amend the Copyright Act to make it clear that no exception to copyright can be waived or overridden by contract and that Technological Protection Measures (TPMs) can be circumvented for non-Infringing purposes.
- Address the need to respect Indigenous Knowledges.
- Find a solution to allow for digitization of unpublished works.
- Assign a Creative Commons licence to all publicly available federal government publications.
- Extend Options 3 and 5 to apply to educational institutions and other non-profit organizations.
- Explore INDU's Recommendation 8, to add a non-assignable right to terminate any transfer or exclusive right 25 years after assignment.
- The legislative instrument should be a stand-alone bill to amend the Copyright Act.

## Background

Libraries in Canada stood united in opposition to the CUSMA copyright term extension, as outlined in statements released by both CFLA<sup>1</sup> and CARL<sup>2</sup> in 2018. In short, the CUSMA term extension will delay access to a large body of copyright-protected works that have no commercial value<sup>3</sup> and are therefore unlikely to be made available to the Canadian public by rightsholders.

The two biggest issues for libraries concerning the 20-year copyright term extension are:

- the diminishment of the public domain resulting from a two-decade freeze on many works entering it, and;
- the related problems regarding use of (or access to) orphan and out-of-commerce works, which create additional burdens on libraries, archives, and museums (LAMs).

A broad and deep public domain enriches Canadians' social, political, intellectual, cultural, and artistic lives. Additionally, works entering the public domain can provide economic benefits, as most of these works have not been commercially available for decades and yet they are able to find new life upon entering the public domain.<sup>4 5</sup>

In 2021, a multitude of works and other subject matter, formerly under copyright, entered the public domain in Canada, including novels, photographs, musical scores, recordings, and poems. These materials are then remixed, repurposed, translated, adapted, performed, and used in a wide variety of new projects. With a

<sup>1</sup> CFLA, "Position Statement: Effects of The Canada, Us, Mexico Agreement Term Extensions", January 2019, [http://cfla-fcab.ca/wp-content/uploads/2019/03/CFLA-FCAB\\_position\\_statement\\_CUSMA.pdf](http://cfla-fcab.ca/wp-content/uploads/2019/03/CFLA-FCAB_position_statement_CUSMA.pdf).

<sup>2</sup> CARL, "Statement on the United States-Mexico-Canada Agreement (USMCA)", October 2018, <https://www.carl-abrc.ca/news/carl-response-to-the-united-states-mexico-canada-agreement-usmca/>.

<sup>3</sup> Heald, P. J., "Copyright Reversion to Authors (and the Rosetta Effect): An Empirical Study of Reappearing Books", December 2017, SSRN: <https://ssrn.com/abstract=3084920> or <http://dx.doi.org/10.2139/ssrn.3084920>.

<sup>4</sup> Lapan, D. "A Brief Submitted to the Standing Committee on Industry, Science and Technology: Copyright and the Fifty Year Rule", 2018, p. 3, <https://www.ourcommons.ca/Content/Committee/421/INDU/Brief/BR10008280/br-external/LePanDon-e.pdf>.

<sup>5</sup> Flynn, J., R. Giblin & F. Petitjean, "What Happens When Books Enter the Public Domain? Testing Copyright's Underuse Hypothesis across Australia, New Zealand, The United States and Canada", UNSW LJ, 2019, 42(4), <http://www.unswlawjournal.unsw.edu.au/wp-content/uploads/2019/11/3-Flynn-Giblin-and-Petitjean.pdf>.

blanket extension to copyright term beginning in 2022, no new works or other subject matter would enter the public domain in Canada for 20 years.

Related to this are the issues that libraries, archives and museums face with orphan and out-of-commerce works. Canadian copyright protection is automatic, and lasts for 50 years after the death of the author, yet very few works maintain long-term commercial viability.<sup>6</sup> The majority of works are out-of-commerce for most of the period that they qualify for copyright protection, yet they are still valued by libraries and the public who have difficulty accessing and gaining permission to use the works.

Orphan and out-of-commerce works impose a costly burden on Canadian libraries and archives that are engaged in efforts to make Canada's heritage available online. Libraries and archives should be able to provide digital access to orphan and out-of-commerce works and make them available for preservation and research when the works are not being exploited by copyright owners. With modern digital tools, libraries and archives are in a position to overcome physical and financial barriers to accessing Canadian heritage and culture through initiatives such as digitization. The current system obligates these organizations to obtain a licence which hinders access to rare and historically significant works and limits dissemination of the full diversity of works that represent Canadian thought and culture. Often these works are not digitized due to concerns related to the inability to obtain copyright clearance directly from the copyright owner and the difficulty in establishing the term of copyright for these works. See Appendix 1 for evidence of the negative impacts of term extension.

## Registration

The Consultation Paper notes that the INDU Committee's suggestion for an expanded scheme of registration "raises serious questions in the context of Canada's international obligations." We agree that serious questions are raised in assessing the feasibility and compliance of such a system. However, the library community believes that questions of this nature require serious inquiry and responses – and that the time for investigating such questions is now.

The INDU Committee recommended one particular approach to registration, in which copyright could not be enforced beyond the current term of life plus 50 years, unless the alleged infringement occurred after the registration of the work. The benefit of such an approach is clear: it would incentivize rightsholders to identify those works that are still in commerce at the end of the "life + 50" term, allowing the rightsholder to maintain the commercial benefit in those works, while minimizing liability and risk related to the use of works that have long been out-of-commerce. Maria Pallante, former U.S. Register of Copyright, has argued in support of a registration system, as it would "shift the burden of the last twenty years from the user to the rightsholder, so that at least in some instances, rightsholders would have to assert their continued interest in exploiting the work by registering with the Copyright Office in a timely manner. And if they did not, the works would enter the public domain".<sup>7</sup>

The INDU Committee's suggestion articulates only one approach to registration, yet there are many different options for registration to consider. Canada should therefore conduct further studies and consultations on

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<sup>6</sup> Ibid.

<sup>7</sup> Pallante, M., "The Next Great Copyright Act", *The Columbia Journal of Law & the Arts*, 2013, Volume 36, No. 3.

different approaches to registration, including the various effects of registration which could be provided under these systems. This further inquiry should take place through a more in-depth and specific consultation that seriously engages with these possibilities.

For instance, the U.S. – the prime mover for CUSMA negotiations, and a contracting party for the same relevant international copyright agreements as Canada – itself currently provides for a more robust system of copyright registration than has ever existed in Canada. The type of works to which the U.S. registration requirements apply, and the type of relief available for unregistered works, is tailored under the U.S. system to accommodate relevant international obligations.

Therefore, registration is not an “all or nothing” proposition: Canada could place limitations on the types of remedies available to holders of unregistered copyrights as a means of incentivizing such registrations. As such, a registration system is not an insurmountable problem under international law; approaches could be developed which would not violate Canada’s international obligations.

We must also emphasize that the time for such an approach is now. Canada has the opportunity to take a leadership role on this issue, at a time when the international community is primed to reassess the historical prohibitions on formalities. Commentators have noted that, in the 21st century, proposals have been made in both North America and Europe to reintroduce formalities as a condition for exercising or enjoying copyright – with the “strongest” calls coming from commentators within the U.S.<sup>8</sup>

Moreover, technological developments over the past century could be leveraged to minimize, if not eliminate completely, the historical conditions that led to the prohibition of copyright formalities in the first place. For instance, the legal and economic environment which existed in the early 20th century required an author to inform him or herself about the formalities applicable in each foreign country in which protection was sought, and then to comply with these formalities in various legal systems (and often in different languages). The resulting complexity and expense posed significant barriers to international protection.<sup>9</sup> Technological advancements since the 1970s, however, could make compliance with formalities around the globe “quick and easy”.<sup>10</sup> The problem addressed by the prohibition of formalities simply does not exist to the same extent today, and consequently, calls to change this aspect of international agreements increase in number with every passing year.

Canada should not disregard its international obligations, but should rather signal its openness to expanding registration, and take a forward-thinking view with respect to its current obligations – with the understanding that the nature of these obligations could change in the near future. In this capacity, Canada should meet the challenges of the current moment head-on by:

- creating a Berne- and TRIPS-compliant approach to registration which both promotes the further dissemination of works and other subject matter, while ensuring just compensation for interested rightsholders; and

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<sup>8</sup> van Gompel, S., “Copyright Formalities in the Internet Age: Filters of Protection or Facilitators of Licensing”, Berkeley Tech LJ 1425, 2013, 28:3.

<sup>9</sup> Sprigman, C., “Reform(aliz)ing Copyright”, Stan L Rev 485 at 546, 2004, 57:2.

<sup>10</sup> Ibid.

- developing potential solutions to the concerns posed by formalities – such as developing a sophisticated and interoperative database of rights – rather than simply concluding that current Berne obligations foreclose any attempts to improve the copyright system.

Given the current international climate, Canada has an opportunity to distinguish itself as a world leader on these issues, while still maintaining its existing obligations under international agreements. It would be unfortunate to allow such an opportunity to go to waste.

## Responding to the Options in the Consultation Paper

The library community has analyzed the five options outlined in the Consultation Paper. In the following section, we present an analysis of each option sequentially.

Our preferred option is Option 3, which would allow non-profit libraries, archives and museums (LAMs) to use out-of-commerce and orphan works subject to claims for equitable remuneration. Further, the library community recommends including legislative amendments to the definition of commercial availability in the *Copyright Act* (the *Act*) and limiting liability for libraries that are making these works available to the public. We also believe that the government should combine Option 3 with Option 5 (creating exceptions for the use of works 100 years after their creation by LAMs) to ensure the broadest public benefit without causing harm to copyright owners.

### Option 1

**The library community does not support Option 1 due to its limitations, administrative burdens, costs and delays.**

Option 1 proposes modifying and extending the Copyright Board of Canada’s Unlocatable Owners regime to include unpublished and out-of-commerce works. The library community does not support Option 1 as it would hinder our work through unnecessary administrative burdens, costs and delays. It would not license perpetually, and would not apply internationally, further limiting its usefulness for digitization projects that are openly available to the world.

A 2014 European Commission study found that 13% of in-copyright books, 90% of photos in museums, and 129,000 films in film archives were orphan works.<sup>11</sup> Term extension will only exacerbate the problem of attempting to obtain rights to use orphan works<sup>12</sup>. The Copyright Board of Canada’s Unlocatable Owners license scheme can be used to obtain a licence to copy orphan works, but the process is lengthy, and the licence is restricted to published works, and limited to in-Canada distribution. Furthermore, the process for determining royalties is unclear, and the payment of the royalties to collective societies - who likely do not represent the rightsholder - is contentious, costly, and without clear legal foundation. The Board’s services do not meet the needs of heritage digitization projects and thus Canadian works remain trapped in storage facilities and unavailable to Canadians and the global community.

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<sup>11</sup> Gangjee, D.S., “Copyright Formalities: A Return to Registration. What if we could reimagine copyright?”, edited by R. Giblin, K. Weatherall, Australian National University Press, 2017, p. 227. <http://dx.doi.org/10.22459/WIWCRRC.01.2017>.

<sup>12</sup> Bard, R.L., and L. Kurlantzick, “Copyright duration at the Millennium”, *Journal of the Copyright Society of the USA*, vol. 47, 2000, pp. 13-47.

Option 1 includes the issuance of a limited term licence. In the 21st century, most reproductions of orphan works and out-of-commerce works by LAMs and other non-profits are likely to be part of digitization projects. Granting only a limited term licence threatens the long term viability of digitization projects.

## Option 2

**The library community does not support Option 2 as it would enable collectives to collect royalties where no payout to the creator is likely, and due to its limitations, administrative burdens, costs and delays.**

Option 2 foresees the creation or designation of one or more collective societies to administer a Copyright Board approved tariff for the reproduction of orphan works and out-of-commerce works. Possibly the only positive attribute of this proposal is its application to all of society and not only to LAMs. However, the library community does not support this option as, like Option 1, it would lead to unnecessary administrative burdens, costs and delays. Most troubling, it would empower collectives to collect royalties where, in fact, it is likely the creator has no continuing commercial interest in a work (in the case of out-of-commerce works) or payout to the creator is impossible (in the case of orphan works).

Option 2 is similar to extended collective licensing systems in place in the Nordic countries. There, it allows for the massive and expedited use of copyrighted works since the user is negotiating with only the collective organization, and not with every rightsholder<sup>13</sup>. Such a system removes legal concerns for users, including users of orphan works, and increases remuneration for those rightsholders who cannot administer their copyright and who would be unaware of the reuse of their work. However, it comes with a host of problems for the transparent, fair, and equitable distribution of royalties. Additionally, the national nature of the licence<sup>14</sup> is problematic as a licence granted by a Canadian collective society is only valid for Canada.

Option 2 would require a royalty payment to copy a work in circumstances where the rightsholder decided long ago that the work is of no commercial value and ceased to make the work available. For this reason, Option 2 poses significant issues of policy and equity. It is not the goal of Canada's copyright regime to protect the economic interests of a rightsholder who has no commercial interest in the work or has determined the work is of no further commercial value, and is no longer incentivized to further disseminate the work. For example, post-secondary libraries and campus bookstores have often tried to get permission from publishers to reproduce out-of-commerce works, only to have repeated requests go unanswered. Practice demonstrates that collective licensing for out-of-commerce works would block all but the wealthiest of organizations from making available valuable elements of Canada's heritage and would do nothing to mitigate the negative effects of term extension.

Orphan works, by their nature, do not have a rightsholder who can be remunerated. Therefore, as noted above, a royalty should not be collected for their use. Prof. David Vaver's view of this practice in discussing the Copyright Board's Unlocatable Owners licence scheme is apt:

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<sup>13</sup> Zhang, Z., "Transplantation of Extended Collective Licensing System in China", *China Legal Science*. 3 (6), 2015, pp. 71-100.

<sup>14</sup> Trumpe, F., "Effects and Potential of Extended Collective License Systems" in Kung-Chung Liu and Reto M. Hilty (Eds.) *Remuneration of Copyright Owners*, Springer, 2017, pp. 85-100.



“This practice seems questionable. The Board cannot require applicants to make charitable donations as a condition of obtaining licences. A power to authorize copyright collectives to confiscate money is even less plausible”.<sup>15</sup>

Royalties should only be collected when they can be paid to a rightsholder. A collective society should not retain monies when they cannot disburse them to the correct rightsholder. A system similar to Hungary’s would be preferable, where the licensing agency holds the royalties for a period of time and then returns them to the licensee if the rightsholder cannot be located<sup>16</sup>. Such a system would require a significant level of transparency on the part of collective societies and audits of payments by an independent third party.

Therefore Option 2 proposes a solution which could create more problems than it solves. First, current collective societies can issue licences for the use of out-of-commerce works; this renders superfluous a need for new collective societies tasked with exploiting out-of-commerce works. Second, the idea of extending collective licensing to orphan works is anathema to the just and principled requirement that royalties only be paid to bona fide rightsholders. Thus Option 2 should be discarded.

### Option 3

**Option 3 is the library community’s strongly preferred option of those outlined in the Consultation Paper.**

Option 3 is a reasonable and effective way to mitigate some of the harm caused by the term extension, permitting libraries and archives to fulfill their essential public interest mission without any harm caused to rightsholders and publishers. One model that could be examined that is similar to Option 3 is the Israeli orphan works provision, Amendment No 5, 5779—2019 in their copyright law. However, unlike Option 3, this provision only applies to orphan works and covers both commercial and non-commercial uses.

For Option 3 to be effective, libraries and archives would require the following policy measures:

1. *Automated searches.*<sup>17</sup> It is well documented that item-by-item reasonable searches are costly<sup>18</sup> and complex, and a barrier to digitization<sup>19</sup>. For LAMs and educational institutions to benefit from this proposed approach, the standard processes and sources for “reasonable searches” and record keeping must be defined by LAM sector best practices.<sup>20</sup>
2. *Definition of “commercially available”.* Another important element that relates to the reasonable search requirements for out-of-commerce works is that the current definition of “commercially available” is inherently flawed. A change to the definition has been recommended in copyright

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<sup>15</sup> Vaver, D., “Intellectual Property Law, 2nd ed”, Irwin Law, 2011, p. 263.

<sup>16</sup> Hungary, “Orphan Works Decree (Government Decree No. 138/2014)”. LAM <https://www.hipo.gov.hu/en/copyrights-and-related-rights/orphan-works>

<sup>17</sup> *Examples that Canada could follow include tools such as [Durationator](#), [Stanford’s Copyright Renewal Database](#) or [ReLire](#), the [Bibliothèque Nationale de France’s database of unavailable books](#).*

<sup>18</sup> Borghi, M., K. Erickson & M. Favale, “With Enough Eyeballs All Searches Are Diligent: Mobilizing the Crowd in Copyright Clearance for Mass Digitization”, Vol. 16, No. 1, Chicago-Kent Journal of Intellectual Property, 135, 2016, p. 149, <http://scholarship.kentlaw.iit.edu/ckjip/vol16/iss1/6>.

<sup>19</sup> Dryden, J., “The Role of Copyright in Selection for Digitization”, The American Archivist, SPRING/SUMMER 2014, Vol. 77, No. 1, 2014, p. 72.

<sup>20</sup> Processes and sources will vary depending on whether the work is published or unpublished, and by the nature of the work, e.g. sound recording, print material, audio-visual, etc.

reform bills dating back to 1998.<sup>21</sup> This definition, found in Section 2 of the *Act*, includes a licence “available from a collective society”. A licence from a collective society cannot be considered to be akin to commercial availability, unless it would be possible for anyone to contact that society for a use of the work in a “medium and of a quality that is appropriate”<sup>22</sup> for the use as would be possible through a commercial bookstore. We thus recommend that part b of the definition - availability of a licence from a collective society - be removed. This is discussed further in the section “Definition of Commercial Availability” below.

3. *Dual application.* If Option 3 is enacted with measures such as requiring public notices, or if it allows rightsholders to come forward and claim remuneration for future use or require the termination of the use, both orphan and out-of-commerce works should be included in the enacted provision. As these measures would mitigate harm caused to rightsholders, including both classes of works would allow for the mass digitization of a wide variety of works that would be otherwise inaccessible to the public. This would have the immense public benefit of providing access to works long inaccessible, and provide appropriate measures for rightsholders who plan to make further use of their works. In addition, any remuneration for rightsholders should reflect the fair value of these works.
4. *No liability prior to notice.* To function properly, a provision for the use of orphan works and out-of-commerce works requires zero-liability for the reproduction of the work by LAMs prior to the appearance of a rightsholder claiming infringement. This is discussed further in the section “Limiting Liability” below.
5. *Limits on statutory damages.* The limits on statutory damages for non-commercial infringement discourage the copyright equivalent of patent trolls from engaging in threats of prosecution in attempts to leverage payment and to put a chill on the legitimate use of the proposed provisions.

By adopting these policy measures, helpful protections would be put in place for the library community. However, Option 3 does not address the problems of unpublished orphan works where the creator is unknown. Please see the section below on unpublished works.

## Option 4

**Option 4 is a workable option for the library community, but it does not have as wide application or benefit as Option 3 (with modifications as described above).**

Option 4 is similar to the U.S. approach to mitigating the impact of term extension<sup>23</sup> on orphan works and out-of-commerce works as set out in section 108 of title 17, and referred to as § 108(h). The U.S. provides an exception for the use of orphan works and out-of-commerce works during the final 20 years of copyright protection. It is an exception specific to libraries, archives and nonprofit educational institutions for the purposes of preservation, scholarship or research. In 2018, § 108(h) was expanded beyond the original provision for published works to include pre-1972 sound recordings.<sup>24</sup>

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<sup>21</sup> Bill C-358, 1998 s.1 <https://parl.ca/DocumentViewer/en/36-1/bill/C-358/first-reading/page-16> and Bill C-280, 1999 s.1. <https://parl.ca/DocumentViewer/en/36-2/bill/C-280/first-reading/page-16>.

<sup>22</sup> *Copyright Act*, PART III, Infringement of Copyright and Moral Rights and Exceptions to Infringement, Libraries, Archives and Museums <https://laws-lois.justice.gc.ca/eng/acts/C-42/page-11.html#h-103529>.

<sup>23</sup> Copyright Term Extension Act of 1998 <https://www.copyright.gov/legislation/s505.pdf>.

<sup>24</sup> The Music Modernization Act of 2018 <https://www.copyright.gov/music-modernization/>.

There are elements of the U.S. approach that Canada should emulate, should it choose to adopt this approach. For example, to achieve aims related to the public interest missions of LAMs and educational institutions, the exception should apply to published and unpublished works for preservation, scholarship and research purposes.

Further, there are no record keeping requirements in § 108(h) for the use of works. Any record-keeping requirements beyond the inclusion of the copy/use information in the bibliographic or article description would add an unnecessary barrier to the public interest use of the exception. Such metadata records (MARC21, RDA, BIBFRAME, etc.) provide sufficient information to identify a work copied under the exception. This approach to record keeping should also be adopted in Canada, should it elect to proceed under Option 4.

A self-administered procedure involving a good faith, reasonable search should be instituted to establish that new copies of the work are not commercially available by the rightsholder, and copies of the work are not readily available in a “medium and of a quality that is appropriate”<sup>25</sup> for the use. Our commentary on the weaknesses of reasonable searches and the definition of commercial availability, as described in Option 3, would also apply here.

If the work subsequently becomes commercially available within the life + 70 term, the author or rightsholder should be entitled to claim remuneration for future use or require the termination of the use. Likewise, a bar on uses with a motive of gain is an acceptable condition. As in option 3, this exception must include a limitation on liability for LAMs and educational institutions, and their staff, with respect to the use of works in the last 20 years of their copyright term. Also, if a work returns to commercial availability after it has been digitized under the exception, LAMs or educational institutions would be exempt from liability for use of that work<sup>26</sup>.

It should be noted that Option 4 is not a workable option for unpublished orphan works where the author or the author’s date of death is unknown.

## Option 5

**In tandem with other options, Option 5 could be a workable approach for the library community.**

The benefit of Option 5 - a LAM exception for the use of works 100 years after creation - is that all works are treated in the same way. Such an exception may reduce the complexity of the reasonable search for commercial exploitation, as it eliminates any need to confirm the date of death of the author, relying solely on the date of creation. In some cases, the work would be available sooner under Option 4, and thus the blending of several options may offer the best outcome for the public interest. Unpublished works, for example, were never intended for commercial exploitation and the public interest would be best served by their earliest availability.

As with Options 3 and 4, this exception must include a limitation on liability for LAMs and educational institutions, and their staff, while operating in the fulfillment of their duties, with respect to the use of works

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<sup>25</sup> *Copyright Act*, PART III, Infringement of Copyright and Moral Rights and Exceptions to Infringement, Libraries, Archives and Museums <https://laws-lois.justice.gc.ca/eng/acts/C-42/page-11.html#h-103529>.

<sup>26</sup> Townsend Gard, E., “Creating a Last Twenty (L20) Collection: Implementing Section 108(h) in Libraries, Archives and Museums”, 2017, p. 82, <https://ssrn.com/abstract=3049158>.

under this exception.

Option 5 addresses some of the problems that relate to Crown works. Crown copyright problems are complex, numerous and would benefit from a separate study, consultation, and resolution. Option 5 would provide welcome clarity for unpublished Crown works after 100 years, thus eliminating the last vestige of perpetual copyright in Canada. However, it would be more useful if the term of protection for unpublished Crown works was harmonized with the term for published Crown works. This would apply a somewhat consistent term of protection for both published and unpublished Crown works.

We have included recommendations that relate to Crown Copyright below under “additional considerations”.

## Enhancements to the Options

To counter the disruption of CUSMA’s term extension and restore the balance in copyright, certain additional aspects of *the Act* should be considered. In concert with one or more of the above options, some or all of these additional measures will further mitigate the negative aspects of any copyright term extension.

### Expanding Fair Dealing

**Amend Section 29 of the *Copyright Act* to make the list of purposes allowable under the fair dealing exception an illustrative list rather than an exhaustive one.**

Fair dealing is the only general purpose exception in *the Act*. As Canada brings its copyright term in line with the U.S., it should likewise align fair dealing with the more flexible fair use exception. The term extension upends the balance in Canadian copyright. A fair use type of exception will help restore the balance between the rights of rightsholders and users. This can be accomplished by amending Section 29 of *the Act* to make the list of fair dealing purposes illustrative rather than exhaustive, as advocated by CFLA and CARL and recommended by the INDU Report.<sup>27</sup> This would enable uses of works for purposes other than those currently enumerated in Section 29, and such uses would remain subject to assessment for fairness.

If Canada were to adopt an illustrative list of purposes, aligning with U.S. fair use, libraries and cultural institutions could more easily reproduce out-of-commerce and orphan works using this exception.

### Estate Reversion of Rights

**Repeal subsection 14(1) of the *Copyright Act*, or at minimum amend the subsection to include a clause that the creator may waive reversion rights at the time of copyright assignment to LAMs.**

Donors often assign their copyright to the library or archive where they deposit their materials so they do not have to deal with requests for permission for reproduction and use. However, Section 14(1) of *the Act* currently provides that where an author has assigned the copyright in his or her papers to another party such as an archival repository or a library (other than by will), the ownership of the copyright will revert back to the author’s estate 25 years after his or her death, and the estate will own the copyright for the remaining 25 years of the copyright term. This provision cannot be overridden by additional contract terms. In addition to

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<sup>27</sup> See Recommendation 18 from the INDU Review of the Copyright Act <https://www.ourcommons.ca/DocumentViewer/en/42-1/INDU/report-16/page-150#36>.

being undue interference in the freedom of an author to enter into a contract, this little-known provision is an administrative nightmare for archival and library institutions and donors' estates to manage.

As a result of changes to the terms of general protection, at the very least, the terms in this provision must be amended, however, we recommend that section 14(1) of *the Act* be repealed. If it is retained, it should be amended to permit the author to assign to LAMs the reversionary interests along with the copyright.

## Definition of Commercial Availability

**Amend section 2 of the *Copyright Act* to change the definition of commercially available.<sup>28</sup>**

We recommend that in Section 2 of *the Act*, the definition of commercially available be amended to remove (b)<sup>29</sup> - 'for which a licence to reproduce, perform in public or communicate to the public by telecommunication is available from a collective society within a reasonable time and for a reasonable price and may be located with reasonable effort'. This would help make Option 3 workable for the library community.<sup>30</sup>

The removal of that language would benefit libraries and copyright users in their use of other exceptions to infringement that are only available when a work is not commercially available, including those that enable reproduction for instruction<sup>31</sup> and the management and maintenance of LAM collections.<sup>32</sup> There is a clear disconnect between (b) in the definition of commercially available in Section 2, and the limitation in these exceptions. For example, the management and maintenance exception states that the exception does not apply if "an appropriate copy is commercially available in a medium and of a quality that is appropriate" for use.<sup>33</sup>

Moreover, the current definition clearly does not align with the purpose of copyright law and the realities of usage, as the mere availability of a licence through a collective does not equate to true commercial availability of the work, thus distorting this definition. The confusion is a significant barrier to the use of these exceptions.

For instance, the Supreme Court of Canada has rejected the availability of a licence as a relevant consideration in other contexts (such as fair dealing) which require the preservation of the balance between owners and users of copyright:

If a copyright owner were allowed to license people to use its work and then point to a person's decision not to obtain a licence as proof that his or her dealings were not fair, this would extend the

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<sup>28</sup> *Copyright Act*, Section 2, Commercially available (b), <https://laws-lois.justice.gc.ca/eng/acts/C-42/page-1.html>.

<sup>29</sup> *Ibid.*

<sup>30</sup> *Canada's accession to the Marrakesh Treaty in effect removed this condition for making works available for people with perceptual disabilities under s.32 of the Copyright Act.*

<sup>31</sup> *Copyright Act*, Educational Institutions, 29.4 (3) <https://laws-lois.justice.gc.ca/eng/acts/C-42/page-9.html?txthl=commercially+available#s-29.4>

<sup>32</sup> *Copyright Act*, PART III, Infringement of Copyright and Moral Rights and Exceptions to Infringement, Libraries, Archives and Museums <https://laws-lois.justice.gc.ca/eng/acts/C-42/page-11.html#h-103529>

<sup>33</sup> *Ibid.*

scope of the owner's monopoly over the user of his or her work in a manner that would not be consistent with the *Copyright Act's* balance between owner's rights and user's interests.<sup>34</sup>

Similarly, the availability of a licence from a collective society should not be used to characterize otherwise out-of-commerce works as "commercially available," as to do so would be inconsistent with the fundamental balance which underlies copyright law.

## Limiting Liability

### **Establish a scheme of limited liability for libraries, archives and museums for use of orphan and out-of-commerce works.**

A limited liability scheme needs to be incorporated into any LAM exception that allows LAMs, after undertaking a reasonable and good-faith search, to copy and make available orphan works or out-of-commerce works.

Canada's international obligations generally allow for "minor exceptions" to the protections which are otherwise granted to rightsholders. Such exceptions are permissible if they satisfy the three part test which is commonly incorporated within international copyright treaties.<sup>35</sup> Limiting the liability of LAMs for the use of orphan or out-of-commerce works would seem to qualify as such a "minor exception" under this three part test. First, a limitation of liability for such uses would be limited to certain special cases, both because such a limitation applies only to certain user groups (LAMS) and because it applies only to certain categories of works. More, use of orphan or out-of-commerce works would seem, by definition, to not conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the rightsholder.

A limited liability scheme could provide that LAMs are not liable for infringement if, after a reasonable search, a LAM copies and makes available an orphan or out-of-commerce work and then, subsequently, the rightsholder comes forward to exercise their rights. In such a scenario, the LAM would not be liable for their past use of the work, and would be permitted to continue to use the work upon reasonable terms negotiated with the rightsholder. If the rightsholder and the LAM cannot agree on a fair remuneration rate for the use of a work, the LAM would have the option to cease the use of the work. This would eliminate the need for any rate setting tribunal. This could be modeled on recommendation 6.2 of the Australian Government Response to the Productivity Commission Inquiry into Intellectual Property Arrangements<sup>36</sup> and included in Australia's proposed copyright reform.<sup>37</sup>

Without a limited liability scheme, LAMs are vulnerable to costly litigation for infringement regardless of their best efforts to track down rightsholders. An orphan works / out-of-commerce works provision without limitations on liability is nothing more than a risk management exercise, rather than true protection against

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<sup>34</sup> CCH Canadian Ltd. v. Law Society of Upper Canada, 2004 SCC 13, para. 70, <https://www.canlii.org/en/ca/scc/doc/2004/2004scc13/2004scc13.html>.

<sup>35</sup> Berne Convention Art. 9(2) <https://wipolex.wipo.int/en/text/283698>, TRIPS Art. 13 [https://www.wto.org/english/docs\\_e/legal\\_e/trips\\_e.htm#art13](https://www.wto.org/english/docs_e/legal_e/trips_e.htm#art13), CUSMA Art. 20.64, <https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/cusma-aceum/text-texte/20.aspx?lang=eng>.

<sup>36</sup> Australian Government, "Government response: Productivity Commission Inquiry into Intellectual Property Arrangements", 2017, <https://www.industry.gov.au/data-and-publications/government-response-productivity-commission-inquiry-into-intellectual-property-arrangements>

<sup>37</sup> Australian Government, "Copyright Access Reforms", 2020, <https://www.communications.gov.au/departmental-news/copyright-access-reforms>

liability. A provision with a limited liability scheme provides the benefits of orphan and out-of-commerce works being used in the creation of new and transformative works while also allowing for richer access to collections in Canada's LAMs for research, education and culture.<sup>38</sup>

## Contract Override and Circumvention of Technological Protection Measures for Non-Infringing Purposes

**Amend the *Copyright Act* to make it clear that no exception to copyright can be waived or overridden by contract and that Technological Protection Measures (TPMs) can be circumvented for non-infringing purposes**

Hundreds of millions of dollars are spent each year by Canadian libraries on licensed digital works such as electronic journals, e-books, audiobooks, and streaming video. For these formats, libraries are no longer able to purchase materials outright, but are instead renting digital collections for their users. Analysis in the U.K. and Australia shows that the vast majority of licences have restrictions that impinge on the rights of users in their copyright legislation.<sup>39</sup> In Canada, these limitations often restrict users from exercising their rights under fair dealing and other copyright exceptions, and can include explicit limitations on interlibrary loan, scholarly sharing, and educational uses.<sup>40</sup> Frequently, these limitations are enforced using Technological Protection Measures (TPMs) such as digital rights management (DRM), which further limit research uses such as text mining or digitization of public domain materials.

Licensing regimes lack transparency about when items will enter the public domain and tend to make it very difficult for libraries and their users to benefit when the term of copyright protection ends. The rental model, combined with restrictive license terms, can trap libraries into situations where they are paying a yearly subscription for the limited use of public domain materials. The public funds spent on resources should enable the same equitable access for library users as is currently enjoyed with print materials.

There is increasing recognition from governments that limiting user rights by contract fundamentally undermines the efforts to ensure copyright legislation has provisions and exceptions for the public good. As IFLA states, "Limitations and exceptions, by their nature, are not supposed to conflict with normal market exploitation of works or cause unreasonable harm, and so there is no sound economic reason for restricting them".<sup>41</sup> License terms with these restrictions also make the landscape for library use far more complicated, as libraries are dealing with thousands of different licences, all with specific ways that fair dealing and other exceptions are limited. For this reason, governments have been examining broad provisions to prevent contract override for teaching, education, research, and non-commercial uses.

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<sup>38</sup> Australian Law Reform Commission. "Copyright And The Digital Economy (ALRC Report 122)", 2013, 13.6. <https://www.alrc.gov.au/publication/copyright-and-the-digital-economy-alrc-report-122/13-orphan-works/the-orphan-works-problem/>

<sup>39</sup> IFLA, "Protecting Exceptions Against Contract Override", [https://www.ifla.org/files/assets/hq/topics/exceptions-limitations/documents/contract\\_override\\_article.pdf](https://www.ifla.org/files/assets/hq/topics/exceptions-limitations/documents/contract_override_article.pdf).

<sup>40</sup> One egregious example is the base license for the Harvard Business Review for academic libraries. This license restricts educational use and also limits the ability for instructors to link directly to articles so that they can easily provide them to students. Joshua Gans, a faculty member at the Rotman School of Management at the University of Toronto, outlines this issue in a 2013 blog post: <https://digitopoly.org/2013/10/06/harvard-business-school-publishing-crosses-the-evil-academic-line/>.

<sup>41</sup> IFLA, "Protecting Exceptions Against Contract Override", [https://www.ifla.org/files/assets/hq/topics/exceptions-limitations/documents/contract\\_override\\_article.pdf](https://www.ifla.org/files/assets/hq/topics/exceptions-limitations/documents/contract_override_article.pdf).

The U.K.'s *The Copyright and Rights in Performances (Research, Education, Libraries and Archives) Regulations 2014* section 3.2.5 states "To the extent that a term of a contract purports to prevent or restrict the making of a copy which, by virtue of this section, would not infringe copyright, that term is unenforceable".<sup>42</sup> Adopting language such as this in Canada's *Copyright Act* would enable LAMs to properly enforce the rule of law that allows for exceptions while maintaining the protection of copyrighted works. In addition, since many of these licenses are enforced using TPMs, libraries and library users should be able to circumvent TPMs as long as their use is fair dealing or another non-infringing purpose.

## Other Considerations

### Indigenous Knowledges

#### **Address the need to respect Indigenous Knowledges.**

As Canadian institutions work towards Reconciliation and decolonization of their practices, the right of Indigenous Peoples to own, govern, and access both their traditional and living Knowledges does not align with Canadian copyright legislation, including the application of the term of protection. In many cases under the Canadian intellectual property regime, Indigenous Peoples from whom the Knowledges originated, and who are the traditional intellectual property rightsholders, have lost their ownership rights.

Through consultation with Indigenous groups, wherein these groups assume a crucial leadership role, the Government of Canada must consider approaches to protect and strengthen the values and capacity of Indigenous Knowledges that incorporate Indigenous worldviews and Knowledge protocols. This work must be consistent with the UN Declaration on the Rights of Indigenous Peoples, and done in such a way that Indigenous groups remain sovereign, as acknowledged by the Government of Canada.

While consideration of Indigenous Knowledges is outside of the scope of this consultation, we urge the government to conduct a comprehensive study of the rights in Indigenous Knowledges and ensure the respect and protection of those rights. The Government of Canada should consider approaches to protect and strengthen Indigenous Knowledges while also preserving and expanding the public domain in other spheres of knowledge.<sup>43</sup>

### Unpublished Works

#### **Find a solution to allow for digitization of unpublished works.**

Unpublished works are included in the collections of many LAMs across Canada and they present a special set of problems. They were not created for commercial purposes. They have enduring historical or evidentiary value rather than commercial value. There are vast numbers of these works in LAMs across the country, and a great majority of them are orphan works; many creators are unknown or unlocatable; for some the date of creation is only a good guess. These works exist in all media including paper, digital files, audiovisual, and photographs. Many, if not most, of the creators of these works are unaware that they are rightsholders.

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<sup>42</sup> *The Copyright and Rights in Performances (Research, Education, Libraries and Archives) Regulations 2014* section 3.2.5 <https://www.legislation.gov.uk/ukdsi/2014/9780111112755>.

<sup>43</sup> Okediji, R. L. "Traditional Knowledge and the Public Domain", Waterloo Center for International Governance Innovation. 2018, <https://www.cigionline.org/sites/default/files/documents/Paper%20no.176web.pdf>.



Digitization of these archival materials is greatly complicated by the nature of the materials - a single digitization project to make historically significant materials available for online consultation can include the rights clearances of thousands or tens of thousands of works that have no commercial value. Hesitation by LAMs to make this important documentary heritage available online is the result of uncertainty as to liability for potential infringement. This hesitancy results in an unfortunate loss to scholarly research, to research by young people about many aspects of Canadian reality and experience (for example grade school and high school projects researched online only), and to the general public who want to know more about Canada, who we are and what we have done, but who would only seek this information online. It is important to find solutions that will make it possible to make these materials available in a more viable manner.

## Crown Copyright

**Assign a Creative Commons licence to all publicly available federal government publications.**

The copyright issues relating to Crown works are complex and numerous and beyond the scope of this consultation. The issues relating to Crown works need separate study, consultation, and resolution. In collaboration with the archives community, the library community has undertaken several concrete efforts since 2019 to move this undertaking forward.

In the short term, a retroactive default CC BY licence would immediately open up hundreds of thousands of digital and print government publications, including tens of thousands that have already been digitized by libraries for preservation purposes as part of the Hathi Trust.<sup>44</sup> We have provided further comments related to unpublished Crown works under Option 5 above.

## Beyond LAMs

**Extend Options 3 and 5 to apply to educational institutions and other non-profit organizations.**

All of the options articulated in the discussion paper are limited to non-profit libraries, archives and museums. When enacting these measures, the government should consider expanding the application of any chosen measure more broadly, for example, to retain similarity with the U.S. Title 17 § 108(h), these measures should apply to educational institutions and other non-profit organizations.

## Contractual Rights Reversion

**Explore INDU's Recommendation 8, to add a non-assignable right to terminate any transfer or exclusive right 25 years after assignment.**

A contractual rights reversion provision would further align Canada with the U.S., which reverts rights for certain classes of creators after 25 years.<sup>45</sup> This would allow a direct economic benefit to the creator when rights revert, rather than remaining with a rightsholding organization that may see no further value in the work; or, as sometimes happens, the creator may opt for their work to enter the public domain early for the

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<sup>44</sup> CFLA, "Canadians Need Unfettered Access To Government Publications In Face Of COVID-19", 2020, <http://cfla-fcab.ca/wp-content/uploads/2020/10/200921-Crown-Copyright-Letter-1.pdf>.

<sup>45</sup> See Recommendation 14 from the Heritage Canada's Shifting Paradigms report. Implement rights reversions after 25 years, as advocated by Bryan Adams (<https://www.ourcommons.ca/Content/Committee/421/CHPC/Brief/BR10277180/br-external/AdamsBryan-e.pdf>), the Cultural Capital Project (<http://hdl.handle.net/10680/1599>), CFLA (<https://www.ourcommons.ca/Content/Committee/421/CHPC/Brief/BR10277123/br-external/CanadianFederationOfLibraryAssociations-e.pdf>) and others in the Heritage Canada's Shifting Paradigms report.

broader benefit of society. It will also give creators the flexibility to decide about other forms of public licensing at this point that may benefit the public. Finally, it will help clarify the out-of-commerce issue, as it will force renegotiating or relicensing with commercial rightsholders.

Unlike the U.S., Canada does not have a reversion right that comes into play during the life of the creator. As standard contracts with publishers do not always have reversion rights for authors if a work goes out of print, providing for rights reversions or terminations in national legislation can greatly benefit both creators (who can renegotiate contracts if works become more popular, or find new ones if they are unhappy with the previous publisher) and the public, who benefit from better access when works aren't allowed to languish<sup>46</sup>. Longer copyright terms have been repeatedly shown to result in “disappearing books”, or works that are allowed to go out of print despite still having value to the public<sup>47</sup>. In weighing the costs and benefits of a 25 year reversion right for Canada, Paul Heald found the reversion right to be in the public interest<sup>48</sup>. Heald notes that the reversion rights in the U.S. mean that many more “older” works are available post-reversion period, once released by independent publishers. In Canada, where the reversion right comes into effect 25 years after the death of the author, a small sample shows that there is interest from both the estates and publishers in making these works available again. An E.U. Directive in 2019 recommended rights reversion legislation as well, both as a standard for contracts, and when works have been out-of-commerce for a time.<sup>49</sup>

## Legislative Instrument

### **The legislative instrument should be a stand-alone bill to amend the *Copyright Act***

The library community supports a stand-alone copyright bill to amend *the Act* with its scope limited to the necessary amendments required to implement CUSMA. The library community, on principle, does not support the amendment of *the Act* under an Omnibus Bill, as it limits debate and further refinement of the legislation.

We note that, in addition to the amendments directly serving CUSMA implementation, including a revised definition of commercial availability, as outlined above, would better support the library community as it pursues implementation of the *Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print-Disabled*.

## Conclusion

CFLA and CARL recommend further inquiries be conducted about the feasibility and compliance of an expanded copyright registration in Canada.

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<sup>46</sup> Yuvaraj, J., and R. Giblin, “Are Contracts Enough? An Empirical Study of Author Rights in Australian Publishing Agreements”, Melbourne University Law Review, Vol. 44, No. 1, 2020, University of Melbourne Legal Studies Research Paper No. 871, Monash University Faculty of Law Legal Studies Research Paper No. 3541350, <https://ssrn.com/abstract=3541350>

<sup>47</sup> Heald, P. J., “How Copyright Keeps Works Disappeared”, 11 J. Empirical Legal Studies 829, 2014, <https://doi.org/10.1111/jels.12057>

<sup>48</sup> Heald, P. J., “The Impact of Implementing a 25-year Reversion/ Termination Right In Canada”, Report Commissioned by Heritage Canada, <https://files.webservices.illinois.edu/9076/ssrversionofstudyontheimpactofimplementinga25-yearreversionrightincanada.pdf>

<sup>49</sup> Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC (Text with EEA relevance.) Section 78-80, <https://eur-lex.europa.eu/eli/dir/2019/790/oj>

In addition, we recommend the adoption of Option 3 and Option 5, both refined as we outline above, to mitigate the impact of term extension on the public domain. Option 3 allows for timely and fair access to orphan and out-of-commerce works without burdensome expense or administration, and permits rightsholders the opportunity to come forward to claim remuneration for future use or require the termination of the use. In combination with illustrative purposes for fair dealing, revising the definition of commercial availability in Section 2 by removing (b), and limiting liability for LAMs, these Options 3 and 5 would provide libraries, archives, and museums with the necessary legislative exceptions to fulfill their public interest goals of improved access to works.

A registration system for the additional twenty years of protection offers benefits to LAMs, rightsholders, and the government through an improved system of rights administration, therefore we believe a registration system warrants further study, which must include consideration of whether a registration system would create an imbalance based on the country of origin of the creative work.

# Appendix 1

## Examples from Libraries

Library projects and services will be impacted if Canada proceeds with a blanket term extension without any mitigating measures. The K-12 and post-secondary education communities provide daily examples of instructors choosing public domain works to support their course offerings, particularly during the COVID-19 pandemic, when so much education is being offered online by necessity. Far from being the domain of old and out of date “stuff”, the public domain serves a vital public need and allows older works to be given new life and to be used in transformative ways by all of society. The following are examples from Canadian libraries about how term extension will impact their activities and mission.

- A library with a donated collection of books and papers about the Holocaust intended to begin digitization as most items are set to enter the public domain; they now worry that this project will need to be paused for 20 years due to term extension, limiting access to a rich history of the time and the creation of new research materials.
- A university library’s holdings include a unique speculative fiction collection curated by a Canadian science fiction fan-artist and collector. The collection is essential for researchers investigating the early development of the science fiction genre. The collection includes anthologies, created by the collector, of more than 13,000 published short fiction works, gathered from 570 different popular magazines. The university intended to build on the existing digitized collection by adding stories from the anthologies as they enter the public domain. Copyright term extension will bring this project to a halt, to the detriment of speculative fiction scholars, fans, and students around the world.
- A university library has a popular digital collection of airphotos consisting of photographs of mainly urban areas, flown at various scales and years. Students and researchers rely on this collection for information on changes in landscape and geographic features over time. Airphotos are regularly added to the collection as they enter the public domain. Copyright term extension will limit the library’s ability to add to this heavily utilized collection and will pause ongoing research based on it.
- A library has a growing digitized collection of historical maps that includes local area maps and exploration and survey maps of western Canada. The collection is utilized by local and regional historical societies, students and individual researchers. Maps are regularly added to the collection as they enter the public domain. As one of the top five most accessed digital collections at the institution, this popular high-demand collection will suffer from the 20 year copyright term extension, as will the research that stems from it.
- Libraries reported that term extension will cause them to halt digitization of community newspapers for 20 years. Smaller organizations depend on grants to fund their digitization projects, and minimal funding is available for preservation-only digitization. Consequently in the 20 year period, the items, whether original newsprint or microfilm, will degrade. Due to the term extension, researchers will be prevented from searching local newspapers to uncover how local communities developed and reacted to issues of social and historical importance.
- A smaller university’s library has a rich photographic history of their university and associated student life. Tracking and obtaining copyright permission to digitize the photos is very challenging and so the university planned on digitizing the photos as they entered the public domain. Term

extension effectively shuts this project and leaves a dynamic pictorial history accessible only to those who schedule an appointment to visit the university's archives.

- Public domain works are valued and used by school libraries. A rural public school division makes use of public domain materials due to a minimal budget for purchasing novels or readings. One of the teacher librarians stated "with declining attendance and increasing operation costs, there is very little budget for purchasing newer titles as novel sets, or for classroom reading, or even for our learning commons. Teachers and learning commons facilitators are often able to use Canadian public domain titles to expand their collection and provide differentiated titles for their students".