April 27, 2022

To:
The Hon. Chrystia Freeland, P.C., M.P.
Deputy Prime Minister and Minister of Finance
By email: chrystia.freeland@parl.gc.ca ; chrystia.freeland@fin.gc.ca

The Hon. François-Philippe Champagne, P.C., M.P.
Minister of Innovation, Science, and Industry
By email: francois-philippe.champagne@parl.gc.ca ; ministerofisi-ministredeisi@ISED-ISDE.gc.ca

The Hon. Pablo Rodrigues, P.C., M.P.
Minister of Canadian Heritage
By email: pablo.rodriguez@parl.gc.ca ; hon.pablo.rodriguez@pch.gc.ca

Re: Response to Budget 2022 from CFLA

Dear Ministers:

The Canadian Federation of Library Associations (CFLA-FCAB) represents the united voice of Canada's libraries. Libraries maintain a key role as stewards of the public's interest that is codified within the language of the Canadian Copyright Act. In this capacity we are deeply concerned by the proposed changes to the Copyright Act as announced in the Government of Canada's Budget 2022. We are dismayed that any proposed revisions to the Copyright Act will not be given a formal legislative process that fully represents the importance of this legislation to the public interest, and the benefit of full Parliamentary scrutiny. We have directly participated in the statutory review of the Copyright Act as well as the Consultation on Copyright Term Extension and recognize the necessity of these processes.

Term Extension

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. Now fully accessible, these works have the potential to find renewed value in the form of adaptation, repurpose, translation, re-mix, performance, and use in a wide variety of new projects.

projects. Simply imposing an additional 20 year moratorium on any works that will enter the public domain will cause undue harm to intellectual and cultural growth in Canada.

Through thoughtful framing and public participation the Federal Government’s 2021 term extension consultation inspired a number of nuanced and well-researched approaches to any changes to Canada’s public domain. If it is accepted that Canada’s obligations under CUSMA require a term extension, CFLA-FCAB believes that Canada needs to properly introduce legislation to address the information provided through the consultation process to mitigate the negative impacts of term extension on the public domain.

The library community supports the proposals which resulted from the 2021 consultation process, which would allow non-profit libraries, archives and museums (LAMs) to use out-of-commerce and orphan works subject to claims for equitable remuneration, and reasonable searches for both the rights holder and commercial availability. Along with this recommendation, the library community recommends including legislative amendments to the definition of commercial availability in the Copyright Act and limiting liability for LAMs that are making these works available to the public. This proposal is a reasonable and effective way to mitigate some of the harm caused by the term extension, permitting libraries, archives and museums to fulfill their essential public interest mission without any harm caused to rights holders and publishers.

Further, CFLA-FCAB supports the Federal Government investigating a Berne and TRIPS compliant copyright registration system for works to benefit from the extra 20 years of protection. Such an approach would promote further dissemination of works while ensuring just compensation for interested rights holders.

‘Sustainable educational publishing industry’

The second area of concern is the laudable but unclear assertion that this government is committed to “ensuring that the Copyright Act protects all creators and copyright holders... ensure a sustainable educational publishing industry, including fair remuneration for creators and copyright holders...” Such a statement presumes that failure in this area is a result of the current Copyright Act. The implication that the Copyright Act is a barrier to a sustainable educational publishing industry is not backed up by representative or recent evidence. Instead, this broad language statement only bolsters the ‘copyright chill’ that negatively impacts education and research; a chill that has been consistently addressed for more than a decade at the Supreme Court of Canada and through the 2012 Copyright Amendments and subsequent 2019 Statutory Review of the Act. Moreover, this vague language in the Budget Bill contributes to confusion and obscures the intentions of Parliament.

The library community finds the claims that educational fair dealing is the primary cause of the decline in the educational publishing industry in Canada to be largely rhetorical and
unsubstantiated by reliable data. We note that the US, with which Canada is aligning by extending our copyright term, has had "teaching" as a purpose in its Act since 1976 and does not and, we can expect, will never have a mandatory tariff regime. We strongly encourage the government to engage all stakeholders in a comprehensive review of our national educational publishing market failure. We have identified no reliable data or research that shows that Canadian educational publishing is in decline as a result of educational fair dealing. Before any major changes intended to repeal copyright exceptions for users in the Copyright Act are proposed, the library community urgently requests that this government to take proper steps to obtain and assess an unbiased and authoritative understanding of the changes to the educational landscape in today’s learning environment. The library community joins the Supreme Court of Canada, the INDU Committee on the 2019 Review of the Copyright Act, and others who have upheld the value of fair dealing for education.

CFLA-FCAB urges the Federal Government to refrain from making changes to the Copyright Act in the form of a sweeping omnibus bill. Committed, well-informed groups and individuals have invested valuable time and research to help shape a strategy that would represent our national public interest. Unclear and unsubstantiated inclusion of changes to the Copyright Act in this manner devalues this work and jeopardizes the credibility of this government's approach to shaping public policy that accurately reflects the public’s interest. Furthermore, the long term impact of the pandemic on teaching and learning has yet to be assessed, and is likely to cast further doubt on the correlation between the Copyright Act and declines experienced in the educational publishing industry.

As always, one of CFLA-FCAB’s main priorities is championing library values such as access to information for Canadians and the promotion of culture and art through libraries, our leadership remains committed to advocating for a strong and evidence-based copyright regime. That said, we would always welcome the opportunity to discuss these matters further and how we can work together to mitigate the harms that we foresee from these changes.

Thank you for your consideration of these important considerations for the public good.

Sincerely,

Lorisia MacLeod, President

Cc: Victoria Owen, Chair, Copyright Committee