

Canadian Libraries' Response to Chapter 18 of the Trans-Pacific Partnership Agreement

The Canadian Library Association, the Canadian Association of Research Libraries, and the Canadian Urban Libraries Council have jointly prepared a statement in response to the text of the Trans-Pacific Partnership. Our associations speak on behalf of Canadian researchers, students, educators and millions of others who rely on libraries for the development, preservation, and dissemination of Canadian content.

We believe that Chapter 18 of the Trans-Pacific Partnership in its current form will have significant negative impacts on the way that knowledge is shared and culture is preserved in this country. By accepting the provisions in Chapter 18 Canada has agreed to changes in copyright that favour powerful foreign interests and ultimately constrain the preservation, access and use of Canada's historical knowledge and culture. The most troubling points are the mandatory extension of the term of copyright protection (Article 18.63), and the requirement for a fixed interpretation of digital locks (Article 18.68).

Article 18.63 of the TPP requires Canada (and five other Pacific nations) to extend the length of copyright from the current term of life of the author plus 50 years to the American term of life of the author plus 70 years. International harmonization of copyright terms brings neither clear trade benefit for Canada nor direct economic benefit to its creators; rather, the primary beneficiaries will be foreign film and music corporations.

Term extension to life plus 70 will result in a definite cost in access to Canada's historical cultural materials. No new works will enter the public domain for 20 years from the year such an extension passes into law. Contrary to provisions in Article 18.3 of Principles which states that a "Party may... adopt measures... to promote the public interest in sectors of vital importance to their socio-economic and technological development," and to Article 18.15 where the "Parties recognize the importance of a rich and accessible public domain", the TPP weakens the public interest by robbing the public domain of embellishment for 20 years. There is no latitude in the TPP to allow a Party to limit the term of copyright protection to the Berne Convention's life plus 50 years and thus provide for a rich and accessible public domain. The fact that life plus 70 would halt the entry of new works into the public domain for 20 years renders meaningless Articles 18.3 and 18.15.

Libraries and archives fund non-commercial digitization projects that depend on the ongoing release of new materials into the public domain. The digitization work and access to a rich array of materials will grind to a premature halt if copyright term is extended. Digitization projects and researchers seeking to make uses of works still under copyright are already challenged to

identify and locate rights holders that are obscured by the passage of time and lack of registration. The difficulty in finding the copyright owners of older works, a problem known as ‘orphan works’, will worsen with an extension to the term of copyright.

The net result is that new forms of knowledge and creativity will be constrained; scholars won’t be able to write new critical works that require copying beyond fair dealing; books won’t be republished; students and teachers won’t be able to get permission to scan or photocopy long out of print books; and the job of libraries, archives, and museums in preserving Canadian historical and cultural materials will be made more difficult. Term extension will put much of Canada’s cultural history out of reach, and have deleterious effects on Canada’s knowledge-based economy. We believe life plus 50 is adequate to reward the rightsholders and beneficiaries; the public interest in an accessible public domain must be protected by maintaining the term as set out in Berne. We note that Berne is reiterated in Article 18.65 and the matter of balance is articulated in Article 18.66. We believe that copyright’s balance will be maintained by life plus 50.

Article 18.68 addresses technical protection measures. If the treaty is ratified and made into Canadian law, it will bring into force a US interpretation of the digital lock requirements of the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT)—an interpretation that goes well beyond the minimum requirements of either of those treaties. Because the provisions do not provide adequate regulatory protection to allow the effective use of statutory limitations and exceptions, it will be difficult for Canadians to practice fair dealing—a users’ right that has been repeatedly upheld and supported by the Supreme Court of Canada. The digital locks will also create barriers to access works in copyright for people with perceptual disabilities, and for libraries, archives and museums to preserve in-copyright works for non-infringing uses.

Most importantly, however, we believe that Chapter 18 would be much improved if Canada renegotiated the term provisions, maintaining Berne’s life plus 50 or, at very least, negotiated a side letter that would allow Canada to manage term extensions (and meet the terms of the Agreement) through a supplemental system of application/registration. Such a system would benefit rights holders by giving them control over term extension and benefit the public interest by allowing many works to enter and enrich the public domain according to Berne.

Canada’s library associations would welcome an opportunity to further clarify and expand upon our concerns about the copyright provisions of the TPP.

Who we are

The **Canadian Library Association/Association canadienne des bibliothèques (CLA/ACB)** is a professional association with membership of library professionals and institutions that provides a national voice for libraries. Its positions on copyright are developed by a standing committee of experts.

The **Canadian Association of Research Libraries/Association des bibliothèques de recherche de Canada (CARL/ABRC)** is a national association for Canada's largest research libraries. Its membership includes the libraries from Canada's leading 29 research-intensive universities. Together, these library systems serve over 75% of the country's university students and faculty with campus-wide resources and services and over 200 physical locations.

The **Canadian Urban Libraries Council/ Conseil des bibliothèques urbaines du Canada (CULC/CBUC)** is a national association of Canada's largest public libraries. These library systems collectively serve more than 60% of Canada's population, representing almost 80% of public library service. In 2015 Canadians made more than 350 million uses of its near 600 locations and virtual services.

For more information:

Susan Haigh

Executive Director
Canadian Association of
Research Libraries (CARL)
Susan.haigh@carl-abrc.ca
613-482-9344 x 101

Rob Tiessen

Chair, Copyright Committee
Canadian Library Association
(CLA)
tiessen@ucalgary.ca
403-220-6043

Jefferson Gilbert

Executive Director
Canadian Urban Libraries Council
(CULC)
jgilbert@culc.ca
416-699-1938