

Brief from the Canadian Council of Archives (CCA) On the Trans-Pacific Partnership Agreement (TPP) To The Standing Committee on International Trade

Chapter 18 of the Trans-Pacific Partnership Agreement (TPP) includes important elements that have wide implications for access to Canada's documentary heritage. Archives are the enduring source of this documentary heritage and we believe it is essential that we present our views and respond to any questions from the Standing Committee on International Trade since these matters have great significance for the services the Canadian archival network provides to the public.

Our major concern with Chapter 18 of the TPP is the mandatory extension of the term of copyright protection from life of the author plus 50 years to life of the author plus 70 years. We also have concerns about orphan works, with the proposed restrictive changes in the anti-circumvention rules for technological protection measures (TPMs), and with overall balance between creator/owner and user rights.

Term Extension

Extension of the term of copyright protection will lead to immediate diminished access of Canadian documentary heritage for a period of 20 years. In the past, archival holdings were mainly accessible for research within the walls of our institutions. But in the digital environment the vast majority of Canadians search for information about themselves, their families, their institutions and their society on the Internet, in multi-media works and in specialized electronic and print publications. To meet the needs of the current communications environment archives carry out large digitization projects that allow us to make our holdings available on our websites, providing access not only to those who can visit our reading rooms, but rather to all Canadians and to researchers worldwide. These digitization projects are often linked to materials that are in the public domain because there are major problems associated with identifying, locating, and getting permission from copyright owners for much of the material in our holdings. The new term of protection would mean there would be a period of 20 years during which no new works will enter the public domain. This would have a dramatic effect on new digitization projects, thereby diminishing access of our documentary heritage to the general public.

Orphan Works

The copyright owners in many archival holdings are unknown and/or cannot be located – they are "orphan works". Determining ownership and the term of copyright protection are essential steps for archives to make our holdings available on our web sites. The ongoing problems of orphan works will only

become more exacerbated by the extension of the term of protection. These orphan works fall by the wayside on the Information Highway of the 21st Century. Important chunks of the Canadian experience fall into a black hole where access is severely limited. Researchers have to travel to an archival institution, often far away in another city or province, to use the material on-site. Without information about the identity of the creator and his/her date of death, the term of copyright protection is unknown, and the black hole extends into the future with no definite expiry date. Term extension will only make this longstanding problem even worse.

Term extension will clearly have a deleterious effect on public access to archival holdings in Canada. The present term of life of the author plus 50 years is in keeping with the Berne Convention. We do not see evidence that there are positive effects to trade or for the direct economic benefit of creators by extending the present term of protection.

TPMs

Archivists also have concerns about the digital locks provisions in TPP Article 18.68. These provisions are even more restrictive than current Canadian law, which already presents difficulties for circumvention for non-infringing purposes such as making preservation copies for digitally locked materials that are in obsolete formats.

Conclusion

We believe it is important to do more than pay lip service to the well-established principles of balance of rights and obligations of producers/copyright holders and users in copyright matters. Throughout Chapter 18 the TPP expresses strong support of the rights of copyright owners while undermining user rights. And Although Article 18.66 states that “Each party shall endeavour to achieve an appropriate balance in its copyright and related rights system, among other things by means of limitations and exceptions”, this is scant support for the important principle of fair balance. Article 18.15 of the TPP states: “The Parties recognize the importance of a rich and accessible public domain.” Unfortunately, the reality is that the public domain and the balanced interests of the public in Canada would be diminished by the TPP.

Chapter 18 of the TPP is not good public policy for Canada nor is it in the interests of the public good.

We believe Chapter 18 will have a very significant negative impact on making the documentary heritage of Canada available to Canadians and to researchers worldwide. The archival community welcomes the opportunity to present these

concerns and discuss positive approaches to finding solutions that will ensure we are able to carry out our mandate as the enduring source of Canada's documentary heritage.

The Canadian Council of Archives was established in 1985, as a result of federal-provincial efforts to encourage and facilitate the evolution of an archival system in Canada. It is a national non-profit organization dedicated to nurturing and sustaining the nationwide efforts of over 800 archives across Canada. CCA's membership includes provincial and territorial councils from across Canada, the Association des archivistes du Québec, the Association of Canadian Archivists, and the Council of Provincial and Territorial Archivists.

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