

August 2, 2019

To the attention of:

The Honourable Navdeep Bains, P.C., M.P.
Minister of Innovation, Science and Economic Development
House of Commons
Ottawa, ON K1A 0A6

The Honourable Pablo Rodriguez, P.C., M.P.
Minister of Canadian Heritage and Multiculturalism
House of Commons
Ottawa, ON K1A 0A6

The Honourable Joyce Murray, P.C., M.P.
President of the Treasury Board of Canada
House of Commons
Ottawa, ON K1A 0A6

Re: Next Steps in Advancing Changes to Crown Copyright

Dear Ministers,

The signatories below, representing a broad spectrum of the library and archives community, were pleased to see that the Standing Committee on Industry, Science, and Technology (INDU) chose to include an examination of Crown copyright as part of its [Statutory Review of the Copyright Act report](#). In order to serve the public interest and advance memory institutions' central goals of preserving and making accessible government works for use by future generations, we believe that the timing is right for the Government of Canada to consider alternatives to the recommendation regarding Crown copyright that is proposed in the INDU report.

During the recent review of the *Copyright Act*, a range of stakeholders, including voices from the library and archives community, emphasized the need to revisit Canada's approach to Crown copyright. The Committee heard that Crown material was inconsistently licensed by departments, and that limiting access to such material through copyright was contrary to an open government philosophy. The current copyright term of 50 years for published works is not appropriate or necessary for Crown material, and this term might extend to 70 years should CUSMA be ratified. In addition, the copyright in unpublished works created by the Crown is perpetual, further complicating access to such works for research and study. Questions were also raised about the very scope of Crown copyright, such as confirmation that case law and legislation are not subject to any copyright.

The INDU report acknowledged as "a rare point of consensus" (p.43) that no witness before the Committee supported a continuation of the status quo regarding Crown copyright. Witnesses



who spoke to Crown copyright expressed the opinion that the outputs of government – by their very nature created with public funding – should not be subject to undue controls that prevent their re-use, distribution, and stewardship by the institutions and people of Canada. As the report itself notes:

The rationale under which Canadian governments would exercise copyright over publicly funded works they prepare and publish in the public interest is questionable at best. The current web of licensing agreements, orders, policies, and standing practices certainly does not promote the dissemination of these essential works. Exercising copyright over governmental publications created in the public interest should be the exception rather than the rule. (Report of the Standing Committee on Industry, Science, and Technology (Statutory Review of the *Copyright Act*, June 2019¹), p. 45)

The Committee recommended that the government “improve Crown copyright management policies and practices by adopting open licences in line with the open government and data governance agenda” (p.46). The library and archives community believe resolution of Crown copyright problems requires a more holistic approach.

We are encouraged by the intent of the proposed assignment of open licences but disappointed that it is a recommendation for a policy change (which can readily be reversed, altered or ignored by future governments) rather than as a legislative amendment. Even if a more suitable licence were used instead of the current Open Government Licence (our community would prefer a Creative Commons licence²), inconsistent application of open licensing across federal departments and non-federal jurisdictions would likely persist. A legislative amendment would create more predictability and more efficiencies within the copyright environment.

We note that both the Dissenting (CPC) and Supplemental (NDP) Reports appended to the main Committee report supported the abolishment of the current Crown copyright regime. The Supplemental Report specifically recommended confirmation that copyright is not available for legislation and court and tribunal decisions. We believe that abolishment should continue to be considered, as suggested in many stakeholders’ submissions.

Therefore we, the undersigned, recommend that the federal government immediately undertake further study that will: (i) document the ways that Crown copyright is currently addressed by the federal, provincial and territorial governments; (ii) identify the many problematic issues including term and scope; (iii) review the meaning of the phrase “the rights and privileges of the Crown” for modern times; (iv) explore the solutions adopted by other countries; (v) include all stakeholders in the process; and (vi) implement appropriate amendments that will transform this outdated provision in a way that serves the public interest in the digital age.

¹ <https://www.ourcommons.ca/DocumentViewer/en/42-1/INDU/report-16/>

² The Creative Commons attribution licence (CC BY) is becoming the global standard for works that must retain copyright controls but can be widely distributed and re-used. The CC BY licence is currently used at the municipal level in multiple Canadian cities, by governments in Australia, Austria, Chile, Greece, India, Indonesia, Italy, Netherlands, New Zealand, Russia, and Spain, the European Commission, and various intergovernmental organizations.

Our community is eager to be involved in this suggested next step.

Sincerely,

Victoria Owen
Chair, Copyright Committee
Canadian Federation of Library Associations

Ms. Joanna Aiton-Kerr
Chairperson
Canadian Council of Archives

Jonathan Bengtson
President
Canadian Association of Research Libraries

Frédéric Giuliano
Président
Association des archivistes du Québec

Loryl MacDonald
President
Association of Canadian Archivists

Pilar Martinez
Chair
Canadian Urban Libraries Council

Shaunna Mireau
President
Canadian Association of Law Libraries

Réjean Savard
Président
Fédération des milieux documentaires

Alix-Rae Stefanko
Chair
Canadian Federation of Library Associations

cc : The Honourable Dan Ruimy, M.P., Chair, Standing Committee on Industry, Science and Technology
Mr. Brian Masse, M.P., Vice-Chair, Standing Committee on Industry, Science and Technology
Mr. Dan Albas, M.P., Vice-Chair, Standing Committee on Industry, Science and Technology

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