



December 27, 2008

The Right Honourable Stephen Harper
Prime Minister of Canada
Office of the Prime Minister
80 Wellington Street
Ottawa, ON K1A 0A2

Dear Mr. Prime Minister,

Re: Library Concerns with Possible Reintroduction of Amendments to Copyright Legislation

I am writing on behalf of the BC Library Trustees' Association, which represents 70 public library boards and over 675 library trustees in the province of British Columbia. I wish to convey our concern with the Government of Canada's intention to re-introduce amendments to the federal *Copyright Act*.

Copyright is an issue of critical importance to libraries. We are in the business of ensuring that Canadians of all ages, backgrounds, abilities, and means have access to the information and recreational resources they need – something we cannot do effectively when subject to overly restrictive copyright legislation. Overall, Bill C61 was a great disappointment to the library community since it favoured the rights of copyright holders to the rights of the users of copyrighted materials. Although the Conservative re-election platform states that proposed amendments to the *Copyright Act* will "strike the appropriate balance among the rights of musicians, artists, programmers and other creators...but also protect consumers who want to access copyright works for their personal use," we are concerned that a reiteration of Bill C61 will not achieve this balance.

We would echo the concerns of the Canadian Library Association regarding five specific areas negatively affected by the amendments proposed in Bill C61.

1. Digital Rights Management (DRM) and Technological Prevention Measures (TPMs): Bill C61 went well beyond what is required for the protection of DRM and TPMs under the two WIPO copyright treaties. The previous Bill C60 to amend the *Copyright Act*, and current legislation in countries like Denmark and New Zealand, only make it illegal to circumvent TPMs for the purpose of copyright infringement. Bill C61 would have made it illegal to

- circumvent TPMs for any purpose (including many legitimate purposes or when copyright has expired) with only a limited number of exceptions. This "reverse-onus" serves to treat all Canadians as criminals; librarians believe most Canadians are in fact law-abiding citizens and should be treated as such.
2. **Contract Law:** Bill C61 would have legislatively enshrined the principle that contracts override fair dealing and other users' rights under the *Copyright Act*. This is unacceptable: failure to protect individual users and institutions from imposed contractual terms which override their legislative rights undermines the public interest and negates the purpose of copyright legislation. It diminishes the power of legislation and weakens Parliament.
 3. **Perceptual Disabilities:** Currently, less than five percent of the works protected by copyright are estimated to be accessible by people with perceptual disabilities. The proposed amendments in Bill C61 would have allowed persons with perceptual disabilities and those acting on their behalf to remove TPMs and DRMs for the purpose of producing materials in alternate formats for persons with perceptual disabilities. However, the Bill failed to recognize that by their very nature, TPMs and DRMS can create insurmountable barriers to the access of information for persons with perceptual disabilities. Further, the proposed exception in the Bill would not have applied to materials that are "borrowed or rented"; in essence, a person with a perceptual disability could go into a library and be refused service because providing the service would put the library or librarian at risk. This is clearly discriminatory against persons with perceptual disabilities who wish to utilize library services to the same degree as all Canadians.
 4. **Library Exceptions for research and private study:** Bill C61 ignored users' rights under fair dealing, as interpreted by the Supreme Court of Canada in the *CCH v. Law Society of Upper Canada* case. That case arguably gives library staff the right to provide print and electronic copies of materials to their users for private research and study well beyond those permitted by the proposed amendments to section 30.2 of the *Copyright Act*. The library, archive and museum exceptions for private research and study should be broadened to provide these institutions with the ability to do anything for their patrons, or the patrons of other such institutions, that those patrons may do for themselves under the Act, as fair dealing, in accordance with the principles set out in the CCH case.
 5. **Statutory Damages:** The proposed changes to the statutory damages provisions of the *Copyright Act* regarding infringement for private purposes would not have provided any real relief for Canadians. Any infringement that involved circumventing digital rights management would be exempted from the reduced statutory damages proposed in Bill C61, so the much-heralded limit of \$500 to statutory damages really wouldn't have had any impact. Those who act with a good faith belief that their actions with respect to a work are within fair dealing or are protected by some other user right should not be subject to statutory damages at all, similar to the provisions in section 504 of US copyright law. This protection should apply to individuals as well as libraries and educational institutions and their employees.

In closing, I would urge your government to consult with the Canadian library community prior to re-introducing any further *Copyright Act* amendments. Libraries are crucial to ensuring an informed, educated, and engaged electorate – and we take this responsibility to our patrons very seriously. Our rights of access to information are their rights; and, in a healthy democracy, rights such as these must be protected.

Sincerely,



Andy Ackerman,
President, BCLTA

- CC: The Honourable Tony Clement, Minister of Industry
- CC: The Honourable James Moore, Minister of Canadian Heritage
- CC: The Honourable Shirley Bond, Minister of Education and Deputy Premier
- CC: Jacqueline van Dyk, Director, Public Library Services Branch
- CC: Ken Roberts, President, Canadian Library Association
- CC: Lynne Jordan, President, British Columbia Library Association
- CC: Virginia Charron, President, Association of BC Public Library Directors