

October 21, 2008

The Honourable Josée Verner  
Minister of Canadian Heritage,  
Status of Women and Official Languages  
and Minister for La Francophonie  
House of Commons  
Parliament Buildings  
Ottawa, ON K1A 0A6

The Honourable Jim Prentice  
Minister of Industry  
House of Commons  
Parliament Buildings  
Ottawa, ON K1A 0A6

Dear Honourable Ministers:

As the Chair of the Toronto Public Library Board, I want to take this opportunity to share with you the concerns of the Library Board regarding any new copyright legislation. The Board, at its meeting on October 20, 2008, endorsed the contents of this letter.

The Toronto Public Library is the largest and busiest library system in North America. Libraries and librarians speak on behalf of their users: millions of students, educators, scholars, researchers, lifelong learners, recreational readers, from children to seniors. Library users **are** the Canadian public; they are not members of a "special interest group" when it comes to copyright.

The Canadian Library Association has released its analysis of Bill C-61, *An Act to Amend the Copyright Act* in the attached briefing note "*Unlocking the Public Interest*". The Toronto Public Library is supportive of the views of the Canadian Library Association concerning Bill C-61. At this time, no public policy issue is more critical to public libraries than copyright given that access to knowledge for the benefit of Canadian society as a whole is central to public library service delivery.

While Bill C-61 died on the order paper when the election was called, copyright issues are still very much alive and of significance to the public. Overall, Bill C-61 is a great disappointment to librarians and library users, failing to strike a balance between the rights of copyright holders and the users of copyrighted materials. In particular, there are four specific points that are of critical importance to the library community that I wish to bring to your attention:

1. **Fair Dealing:** The Bill should reflect the Supreme Court's recognition of fair dealing as a user right, and should not be interpreted restrictively. This includes recognition that fair dealing applies equally irrespective of the medium of the content whether a work is "published" or "made available" on the Internet.

In addition, fair dealing as a fundamental user right, should not be superseded by a copyright holder's use of technological prevention measures or imposed contracts, as would be the case should Bill C-61 become law.

## Library Board

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2. **Contract Law:** Bill C-61 legislatively enshrines 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.

We recommend that the Bill should expressly state that the terms and conditions of a standard form or any other contract restricting the making of a copy, as permitted under the exceptions for libraries, archives and museums or to permit a user to invoke other rights have no force. Contract law should not be able to trump legislative rights unless the user knowingly and willingly agrees to waive their rights for other considerations. The rights of consumers must be upheld.

3. **Digital Rights Management (DRM) and Technological Prevention Measures (TPMs):** Bill C-61 goes well beyond what is required for the protection of DRM and TPMs under the two WIPO copyright treaties. The previous Bill C-60 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 C-61 makes 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.

Technological prevention measures that prohibit legitimate acts of circumvention or otherwise restrict users' rights therefore cannot be supported. Bypassing technological measures and the possession of devices for this purpose should not be illegal when there is no intention to infringe copyright.

We recommend that the proposed legislation be amended to permit the circumvention of digital locks for non-infringing purposes. Canadians must be able to exercise their full rights as information users without working through complex processes, significant expense or hardship.

4. **Digital Interlibrary Loan:** The interlibrary loan restrictions on electronic delivery are unacceptable as they do not take into account what is required by public libraries to provide effective reference and interlibrary loan services in the digital age. The library, archive and museum exceptions for private research and study need to be format neutral and allow the public library to do anything on behalf of its users that the user can do for themselves.

I urge you not to let these serious concerns go unheard. Access to information is integral to ensuring that Canadians are regular contributors to the economic, social and cultural success of our communities.

We look forward to your support.

Sincerely,

Kathy Gallagher Ross  
Chair, Toronto Public Library Board

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c: Toronto Area Members of Parliament