



.. ontario library association

The Honourable Tony Clement
Minister Of Industry, Science &
Technology
C.D. Howe Building
235 Queen Street
Ottawa, Ontario K1A 0H5

The Honourable James Moore
Minister of Canadian Heritage and Official
Languages
House of Commons
Ottawa, Ontario K1A 0A6

October 25, 2010

Dear Ministers,

The Ontario Library Association is Canada's largest and oldest library association with more than 5,000 members from academic, school, public, government, and special library sectors.

The Ontario Library Association (OLA) welcomes the **Copyright Modernization Bill (Bill C-32)** and is encouraged by the government's efforts to achieve balanced copyright legislation to serve the interests of all Canadians. OLA fully endorses the views and analysis offered by the Canadian Library Association (CLA) in its July 2010 response to the proposed legislation titled *Protecting the Public Interest in a Digital World*. However, OLA wishes the government to go further to address several fundamental principles which are omitted in the proposed legislation, and which it feels represent important considerations for its members and, hence, the public.

First, OLA is concerned because an increasing number of our member institutions, including many involved in education, are finding themselves the targets of tariff applications being put to the Copyright Board. Nothing in Bill C-32 materially addresses the provisions of Part VII of the Copyright Act which governs the "Copyright Board and Collective Administration of Copyright." Thus the proposed legislation does not deal directly with the mounting costs for an increasing number of our member libraries, across education and other sectors, who are finding themselves brought before the Copyright Board and thereby subject to imposed tariffs. For most libraries in the K-12 schools sector, in most post-secondary educational institutions and in government libraries across the country (other than those at the municipal level), the opportunity to negotiate the terms of blanket licenses for the use of important categories of copyrighted materials has effectively been removed by these applications for tariffs brought by the major Canadian English language print collective, AccessCopyright (recognizing that, in Ontario, AccessCopyright represents COPIBEC). This has created situations where expensive efforts must be mounted by our members to ensure rights are not lost through the tariff process.



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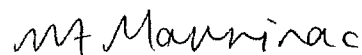
a member of ^{the} PARTNERSHIP

Second, though the Copyright Board has been taking into account the Fair Dealing exception in its tariff assessment process, the Board does so from the perspective of using the value of fair dealing uses in institutions as a factor reducing at which it will set a given tariff – and thus the effect of Parliament’s enlarging of Fair Dealing in Bill C-32 will be only indirect where a tariff is being sought. Thus, although OLA is pleased to see an expansion of the Fair Dealing environment to include education, OLA members are not likely to feel the direct effect of this expansion in all cases, should it be adopted into law, because of these tariff proceedings where its effect is only felt indirectly.

Third, the proposed legislation does not explicitly prohibit the bargaining away of user rights enjoyed under the Copyright Act. OLA sees this as a troublesome omission, as many of its members find themselves in an increasingly license-driven environment: up to eighty percent of library acquisition budgets are spent on digital content purchased directly from vendors under license. Frequently, as part of gaining access to such digital materials, libraries find themselves relinquishing all Fair Dealing rights through the license negotiation process. Without a statutory provision that ensures user rights available in the Canadian Copyright Act cannot be licensed away, libraries and users are unduly vulnerable the demands of vendors and collectives. Clearly, without such a provision, any expansion of Fair Dealing rights that may be gained through Bill C-32 will be subject to bargaining. User rights enjoyed under the Act should not have to be negotiated.

Finally, the Ontario Library Association feels language should be introduced into Part VII of the Copyright Act that would have collectives represent everyone in a class of rightsholders, thereby offering indemnification against infringement claims that may be made by rightsholders not represented by a Canadian collective. In previously negotiated licenses with Access Copyright, educational institutions were indemnified by AccessCopyright against the claims of rightsholders not covered by those licenses, a provision that has been lost in the current tariff-driven environment. This leaves libraries working under a given tariff vulnerable should a claim of infringement be brought by a rightsholder not represented by the Canadian collective. It would therefore be advantageous for Parliament to enshrine an “extended licensing” system (also known as an “extended repertoire” system) to avoid this problem under the tariff regime.

Sincerely,

A handwritten signature in cursive script that reads "Mary Ann Mavrinnac".

Mary Ann Mavrinnac, president.