

November 7, 2013

The Honourable Shelly Glover P.C. M.P.  
Minister of Canadian Heritage and Official Languages

The Honourable James Moore P.C. M.P.  
Minister of Industry

Dear Minister Glover and Minister Moore,

Thank you for providing the Canadian Library Association with the opportunity to comment on bringing the Notice & Notice provisions of the Copyright Modernization Act into force.

CLA makes the following comments:

1. Given that Search Engines have 30 days to respond to a notice by removing its cached copies of material “that has already been removed from the specified electronic location”, CLA recommends that ISPs and hosts are required to forward any notice received from a copyright holder to its subscriber within 30 days.
2. CLA strongly recommends that the government prescribe a form for each type of notice to ensure that all the required elements in a notice are actually included (as is permitted in s.41.25(2)).

One significant reason why the Canadian Library Association so strongly supports the Notice and Notice Regime is because of the volume of frivolous takedown notices in the American system of Notice and Takedown. American record companies have used software which has often resulted in automated, but factually inaccurate, notices. Activist organizations allied with the Church of Scientology have issued false notices claiming copyright in websites that criticize Scientology. While CLA believes that the Notice and Notice System reduces frivolous claims, CLA would still like to see penalties for any person or organization that might try to abuse this system. In this regard,

3. CLA recommends that a fee for the transaction of notices should be set and be required to accompany the notice, and that the fee should be set at \$50.00.

Finally, one of the required elements of the notice requires the claimant to state its interest or right to the copyright in the work (s.41.25(2) (c)).

CLA understands that copyright owners and their licensees (who have purchased Canadian rights to a work) each have the right to file a notice. CLA believes that collective societies do not stand in the same position as other licensees – and, indeed, some are not licensees but rather agents of their rights holder members. Where collective societies do not hold exclusive licenses, CLA believes allowing collectives to file notices will create confusion, since others would also be entitled to file notices in respect of the same subject matter and users' behavior. Therefore,

4. CLA recommends that the Notice and Notice System should be open only to rightsholders and their exclusive licensees and assignees.

Yours sincerely,

A handwritten signature in blue ink that reads "Pilar Martinez". The signature is written in a cursive style with a large, sweeping flourish at the end.

Pilar Martinez  
President, Canadian Library Association