

CANADIAN COPYRIGHT INSTITUTE

Established to promote a better understanding of copyright and to encourage its use in the public interest

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Standing Senate Committee on Foreign Affairs and International Trade
Attention: Gaetane Lemay, Clerk of the Committee

Honourable Senators,

I am writing to you on behalf of the Canadian Copyright Institute, a non-profit organization established in 1965 by authors, publishers, producers and distributors of copyright works, to summarize our concerns about Bill C-4, an act to partially implement the *Canada-United States-Mexico Agreement*.

1. Implementation of *CUSMA*'s requirement to extend the term of copyright for an author's work to life of the author plus 70 years has been omitted from Bill C-4 in order to allow further discussion with stakeholders about a possible registration requirement for the additional 20 years of protection following the 50 years of protection (following the end of the calendar year of the author's death) provided by Canada's current *Copyright Act*.

This is not a legitimate reason for postponing the necessary amendment to section 6 of the *Copyright Act* for up to 2.5 years even though *CUSMA* permits this delay. The Bill includes almost all of the other copyright term extensions required by *CUSMA*, and the inclusion of this 20-year extension for the works of authors would not preclude any discussion or implementation of a registration requirement in the *Copyright Act*.

This is an unnecessary delay that will unfairly hurt those Canadian copyright owners whose copyrights will expire prior to the coming into force of the required amendment providing the additional 20 years of protection in Canada. This extension, whenever it happens, will not be retroactive or revive their copyrights. They and many other Canadian copyright owners of works in which copyright has already expired will lose out on up to 20 years of potential royalties and commercialization of their works in other countries that currently protect copyright works for 70 years following the author's death but only on a reciprocal basis; the *Berne Convention for the Protection of Literary and Artistic Works (1971)* does not require member countries to provide the same length of term of protection for works by foreign authors as they provide for works by their own nationals if copyright works are protected for a shorter period in the author's country of origin.

Additionally, if Parliament eventually does decide to require registration by a copyright owner in order to obtain protection for a work during the last 20 years of the 70 years following the author's death or at least "to ensure that copyright in a work cannot be enforced beyond the

current term unless the alleged infringement occurred after registration of the work" (as recommended for consideration in the *Statutory Review of the Copyright Act* by the Standing Committee on Industry, Science and Technology), there would in effect be no copyright protection for a work beyond the current 50 years' protection after the year of the author's death unless or until the copyright is registered by the copyright owner. For this reason, other countries may penalize Canada, even after Canada implements 70-year protection, by only providing protection for Canadian authors' works for 50 years. Copyright with no enforcement rights is a meaningless nullity and will breach Canada's obligations under the *Berne Convention*, which prohibits any formality as a condition of copyright protection. The Government should not open up public consultations without first obtaining a legal opinion on this issue of registration, and any such legal or public consultations need not delay implementation of the CUSMA-required extension of the term of copyright in a work.

Our Requested Amendment:

Considering that the Bill implements almost all other copyright term extensions required by *CUSMA*, we submit to you that the omission of the extension of copyright for authors' works in section 6 of the *Copyright Act*, despite the delay permitted by *CUSMA*, is arbitrary and inequitable - and unfair to authors and publishers of authors' works. We urge you to amend the Bill to include the required 20-year extension for authors' works now.

Substitute "seventy years" for "fifty years" in section 6 of *Copyright Act*.

2. Bill C-4 adds important new criminal offences to the *Copyright Act* concerning removal or alteration of the copyright owner's rights management information in electronic form without the consent of the copyright owner, but these offences will be ineffective because proving them will be too difficult. New subsection 42(3.2) requires the Crown prosecutor to prove that the alleged infringer *knows* that the removal or alteration of the rights management information of a work "will facilitate or conceal any infringement of the owner's copyright". This knowledge requirement will be extremely difficult if not impossible to prove even for blatant infringement, and even if these quoted words are omitted, the Crown prosecutor would still need to prove that a person charged with an offence acted *knowingly*. We note that omission of the superfluous words in quotes would give the court greater leeway to convict or not to convict in appropriate circumstances.

Additionally, it is our conclusion that the delineation of these new criminal offences does not meet the requirements of paragraph 1 of article 20.67 of *CUSMA*, albeit an article that contains some confusing and contradictory language.

The Crown also must prove that a person charged with removal or alteration of rights management information without the copyright owner's consent acted "for commercial purposes" (in addition to committing the offence "knowingly"). However, because the new offences specify that a person who is acting on behalf of a non-profit library, archive, museum or educational institution is exempt from criminal liability, there is an unfortunate implication that all of these non-profit institutions are entitled to remove or alter a copyright owner's rights management information for a work in electronic form and to make subsequent use of the work

with this information removed or altered. Such use exempted from any criminal liability could include distribution of an author's work without rights management information to the public by telecommunication (if not authorized by the rightsholder or a collective society representing the rightsholder's work).

Also, removal or alteration of rights management information by a person on behalf of such an institution could infringe the moral rights of an author not identified other than in the rights management information and result in further infringements by other persons who telecommunicate to the public or reproduce a work for which the author should have been credited or change a work in a way that prejudices the author's honour or reputation. Moral rights infringements are not be criminal offences but the author could sue the infringer for damages.

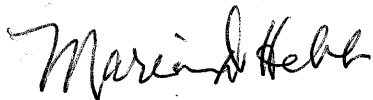
Our Requested Amendments:

Although strongly supportive of the new offences on removal or alteration of rights management information, we have several recommendations for amending new subsection 42(3.1) of the *Copyright Act*:

- (1) **Delete the words "the person knows that" from the condition "if the person knows that removal or alteration will facilitate or conceal any infringement" in new paragraph 42(3.1)(a).**
- (2) **At the end of new paragraph 42(3.1)(b) and immediately before sub-paragraph (i), substitute the word "if" for the words "and knows that", so that this paragraph (b) will then read in part "...without the consent of the owner of copyright if (i) the rights management information in electronic form has been removed or altered without the consent of the owner of copyright...."**
- (3) **Delete the words "except a person who is acting on behalf of a library, archive museum or educational institution" from the introduction to new subsection 42(3.1) or clearly specify the purpose and scope of the exemption or implied permitted use.**

CCI thanks you for considering our recommended amendments to sections 6 and 42 of the *Copyright Act* and requests an opportunity to make an oral submission to your Committee.

Respectfully submitted,



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