

CANADIAN COPYRIGHT INSTITUTE

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

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February 17, 2020

Standing Committee on International Trade
Attention: Christine Lafrance, Clerk of the Committee

Honourable Members,

The Canadian Copyright Institute is a non-profit cultural organization with purposes that include advocacy of changes to copyright law to facilitate public access to copyright material and fair remuneration to creators and publishers. We are pleased that the Government has preserved the cultural exemption in the Agreement between Canada, the United States of America and the United Mexican States (CUSMA). This is critically important to Canadian writers and publishers and to all Canadians.

There are two matters of serious concern to us with respect to Bill C-4, partially implementing CUSMA.

First, we note that the new criminal offences in Section 30 of Bill C-4 regarding infringement for removal or alteration of a rightsholder's rights management information (attached to or embodied in a work in electronic form) are subject to a condition that will be difficult or impossible to prove in almost every instance of infringement and are also subject to an exception that implies that libraries, archives, museums and education institutions are entitled to remove rights management information. We explain below several issues that we have with the drafting of these important new offences:

Proposed new subsection 42(3.2) of the *Copyright Act* will create offences that only apply "if **the person knows that** the removal or alteration will facilitate or conceal any infringement of the owner's copyright." This differs from the language of existing subsection 41.22(1) that prohibits removal or alteration of rights management information "if the person knows or *should have known* that the removal or alteration will facilitate or conceal any infringement of the owner's copyright". Subsection 41.22(2) entitles the owner to various civil remedies for a breach of subsection 41.22(1), but for a prosecutor to prove under subsection 42(3.2) that a person actually "knows" that the removal or alteration will facilitate or conceal an infringement will always be extremely difficult or impossible. A criminal prosecution is consequently highly unlikely to succeed, even in a case of blatant infringement. The words above, with our bolding added, are superfluous because, even if omitted, the prosecutor still must prove that a person charged with the offence acted "knowingly". Also, omitting the bolded words gives the court greater leeway to convict or not to convict in appropriate circumstances.

Because the proposed new offences specify that persons who copy on behalf of a library, archive, museum or educational institution are exempted from criminal liability, there is an unfortunate implication that libraries, archives, museums and educational institutions have the right to remove and alter a copyright owner's rights information in connection with a work in electronic form and to make certain subsequent uses of the work in material form with its rights management information removed or altered. Such a use could include sale or other distribution of paper copies. Additionally, removal or alteration of rights management information by a library, museum or educational institution could infringe the moral rights of an author not identified other than in rights management information and result in infringements by persons who are unaware that they are copying material for which an author

should have been credited or in which the author's words may have been distorted in a prejudicial manner.

Although we strongly support the creation of the new offences on removal or alteration of rights management information, we have two recommendations for amendment to subsection 42(3.1):

- (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 paragraph 42(3.1)(a) and, immediately preceding sub-paragraph (i) of paragraph 42(3.1)(b), substitute "if" for the words "**and knows that**".
- (2) Delete the exemption "**except a person who is acting on behalf of a library, archive museum or educational institution**" from subsection 42(3.1) or clearly specify the purpose and scope of the exemption or implied permitted use.

Secondly, we are very concerned that Section 24 of Bill C-4 omits the extension of the term of protection for a copyright work from 50 to 70 years after the author's death, notwithstanding that CUSMA gives Canada 2.5 years to implement this particular extension. Bill C-4 will implement almost all other copyright term extensions required by CUSMA. Copyright owners of sound recordings and cinematographic works and performers in sound recordings will soon benefit from longer copyright terms, but the required extension to benefit copyright owners of literary and artistic works will not happen for several years. We explain our concerns below:

Postponement of implementation of the extension of copyright protection for "consultation with stakeholders" affects the current value of all authors' estates and their publishers' anticipated earnings and is particularly unfair to heirs and publishers of the works of deceased authors whose copyrights will expire at the end of 2020, 2021 and 2023 or even later, depending on when the term extension comes into force. They will be deprived of 20 years of potential commercialization and earnings from their publications, since the required copyright extension will not be retroactive or revive any copyright.

Both the Heritage Committee and the INDU Committee recommended extension of copyright term in a work from the 50 years, as currently specified in Section 6 of the *Copyright Act*, to 70 years after the end of the calendar year of the author's death. There is no good reason to delay the 20-year extension now required by CUSMA. Implementing this extension in Section 6 [and in subsection 6.2(2)] does not necessitate special arrangements such as regulations. Nor is needing time to consult with stakeholders an adequate reason – presumably to discuss a possible registration requirement that would remove all remedies for an infringement occurring *after* the current 50 years of posthumous protection but *prior* to registration of copyright by the work's owner (as was apparently considered by the INDU Committee). Copyright without enforcement rights is a meaningless nullity and an obvious breach of Canada's obligations under the *Berne Convention for the Protection of Literary and Artistic Works (1971)*, which prohibits subjecting the "enjoyment and exercise" of copyright "to any formality", including registration.

We submit to you that Bill C-4's omission of the extension of copyright protection for an author's work in Section 6 of the *Copyright Act*, despite the delay permitted by CUSMA, is arbitrary and inequitable as well as unfair to authors and publishers. **We urge you to demand that the Government include this copyright extension for authors' works in Bill C-4, along with the term extensions that benefit other rightsholders.**

We thank you in anticipation of your attention to these important issues and request an opportunity to make an oral submission to your Committee.

Yours sincerely,



Marian Hebb
Chair, Canadian Copyright Institute