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SUBMISSION OF ARTISTS AND LAWYERS FOR THE ADVANCEMENT OF CREATIVITY TO THE CONSULTATION ON HOW TO IMPLEMENT CANADA'S CUSMA COMMITMENT TO EXTEND THE GENERAL TERM OF COPYRIGHT PROTECTION

Artists and Lawyers for the Advancement of Creativity is a not-for-profit corporation that helps authors, including writers and artists, as well as performers and other creators, to understand their rights and to obtain summary legal guidance on specific legal problems. Our mandate includes advocacy for the rights of authors. Our clinic, Artists' Legal Advice Services (ALAS), was established more than 35 years ago by a group of volunteer arts, entertainment and intellectual property lawyers to provide legal information and summary advice to artists working in all artistic disciplines. ALAS also provides educational programs for creators, and mentors law students who administer the ALAS clinic.

We ask the Government to enact the copyright term extension required by CUSMA as soon as possible – no later than the end of 2021 but hopefully much sooner. This extension should not be delayed to consider accompanying measures or for any other reason. We acknowledge that Canada is permitted to delay implementation of copyright term extension until December 31, 2022, but nevertheless urge the Government to enact term extension as soon as possible to avoid the economic and cultural consequences of further delay.

Continuing delay to implement this extension will hurt an unknown number of rightsholders in Canada as well as the Canadian economy. If extension is not implemented until sometime in 2022, the works of an unknown number of authors who died at any time during 1971 – both Canadian and foreign authors – will pass into the public domain in Canada at the end of 2021. Canadian authors are additionally disadvantaged with respect to any of their works that were first published or are considered by another country to have originated in Canada, because at that same time these works will also fall into the public domain in any country that has a longer term of protection than Canada's current "life plus 50" years and applies the "rule of the shorter term" (e.g., the United Kingdom and countries in the European Union). In other words, heirs and publishers of authors who died in 1971 will not benefit from the longer protection provided by those countries on the basis of reciprocity unless Canada's term extension were to be implemented before the end of December of 2021. This rule of the shorter term in the *Berne Convention for the Protection of Literary and Artistic Works* (tracked into other international treaties signed by Canada that have IP provisions) may possibly have additional effects (e.g., where a country's law may provide that contracts, which specify royalty payments or may require renewal, do not survive copyright expiry). Further delay of copyright term extension in Canada will adversely affect more Canadian heirs and publishers until Canada

actually extends its 20-year extension of protection to “life plus 70”. Delay lessens the economic value of Canadian cultural exports and deprives authors’ heirs and publishers of any benefit from their works in an extended term of protection that they could otherwise have in countries that apply the rule of the shorter term. Term extension should be implemented as swiftly as possible.

The Government has not suggested that it intends to restore the copyrights of authors whose works have already passed into the public domain in Canada, even for authors whose works were still protected by copyright when CUSMA came into effect on July 1, 2020. (We do not anticipate any revival of copyright but do note that the United Kingdom revived the copyrights of deceased authors who had died within the past 70 years when it implemented its 20-year term extension in 1997.)

To allay concern expressed by some users about obtaining copyright permissions during the lengthened copyright term, the Consultation paper puts forward measures that could accompany the extension - each adding another exception or limitation to the *Copyright Act* that would reduce the rights of authors and their publishers. Many of these possible measures, if limiting the author’s exclusivity or creating what might amount to a compulsory licence or to a limitation or exception conflicting with “a normal exploitation of the work” and “unreasonably prejudicing the legitimate interests of the author”, may contravene the *Berne Convention*. Nevertheless, measures along the lines of some suggestions in the Consultation paper could be enacted after enacting the longer term, subject to compliance with Canada’s existing treaty obligations.

We welcomed Canada’s commitment in CUSMA to extend the general term of copyright to 70 years measured from the end of the year of the author’s death, as we had long urged. However, we point out that delay in implementing this change to consult on accompanying measures that were not addressed when Canada committed to CUSMA would be harmful to creators and Canada both economically and culturally. None of the measures mentioned in the Consultation paper will be precluded if the Government proceeds expeditiously to make the required change to the number of years specified in Section 6 and 6.2(2) of the *Copyright Act* from 50 to 70. **We call on the Government to implement these two simple amendments expeditiously.**

Respectfully submitted for

Artists and Lawyers for the Advancement of Creativity

A handwritten signature in black ink, appearing to read 'Max Rothschild', written in a cursive style.

Max Rothschild, Chair