On Copyright in Canada

an examination and critique of the material, social, and moral consequences of state-imposed monopolies on creative works and information, for the authors, consumers, and publishers of such works

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The following is an essay expressing my concern, as a private citizen, with the proposed extension of Canada's copyright term under USMCA, specifically written for submission and consideration in the process of public consultation on this matter. After the end of the public consultation, it will be published separately as an open letter to Her Majesty the Queen's representative, the Governor General of Canada, and to [her] advisors, the Ministers of the Government of Canada.

1. Introduction and Context

Copyright law has consequences for anyone who creates, consumes, distributes, or funds the creation & distribution of works that fall under this law. As such, individuals who experience copyright law primarily from one of these specific contexts may have interpretations and viewpoints that are very different. In order to provide context for the following essay, the author will introduce and provide a description of themselves and their own interests with regard to copyright. This, in turn, will help the reader situate themselves and understand what conditions and experiences may have led the author to reach the conclusions they have. This introduction has been structured to not be necessary for the readability of the essay.

The author is a software developer and data scientist, who is interested in issues of copyright primarily to:

a) Protect their own work against exploitation and ensure accreditation, remuneration, and control over the use of their work;
b) Strengthen the public domain, which they consider to be a public good;
c) Weaken the protected status of "intellectual property", a concept which, in the view of the author, justifies privileges that are more far-reaching than is necessary to accomplish the purposes of copyright;
d) Protect the rights, privacy, and interests of citizens with regard to their use, exploitation, and control over copyrighted material that they possess;
e) To contest the desires and opinions of wealthy copyright-holders & distributors, who exert an unduly strong and ultimately undemocratic influence over copyright law;
f) To protect the interests of Authors, who are often left undeserved by copyright law as it stands.

In order to accomplish these objectives, the author opposes current copyright legislation, which has been tailored to protect the profits and interests of rights-holding groups[1] ahead of the interests of both Authors, and the general public. The author explicitly seeks changes to copyright law, including but not limited to:

a) To clarify and cement in law the fundamental purpose of copyright as *quid pro quo*: which is to say, to obtain revisions to the *Copyright Act* which clearly defines its purpose as serving the interests of the public first, by granting special privileges to authors ***on the understanding*** that they will continue to produce works which benefit the general public[2];
b) To separate *Moral* and *Economic* copyright privileges, and ensure that *Moral* copyright privileges can never be removed or transferred away from the original author to any other party, excepting the special case of a dedication of a work to the public domain;
c) To ensure that an Author always receives some economic remuneration for any and all uses of their work, to prevent employers in "creative industries" from effectively terminating all the copyrights of the individual through their wages; This allows the publisher to fire the author upon the completion of the work, who can be left destitute and without recourse, even

1 Primarily large corporations. *Walt Disney Co.* Is a good example of a rights-holding group. These groups will be referred to repeatedly through the rest of this essay, as they play an important part in the development of creative works protected by copyright law, and the evolution of the law itself. *Publishers*, *Rights-holders*, *Media Conglomerates*, and *Labels* all refer to this kind of organization.

2 See *The Statute of Anne*, an influential early copyright law that sought to balance the need for authors to obtain economic benefit from their works, with the public interest of being able to obtain printed knowledge at an acceptable price.

if a work they created is immensely profitable;

d) To limit the extent to which copyright grants monopoly over *Derivative Works*; Works published today will not enter the public domain for another 50-180 years, or even indefinitely if governments continue to extend copyrights at the behest of corporations who wish to keep them in perpetuity. This means than no author today is ***legally*** able to create a derivative work based on any artistic work that has been published within their lifetime, or even substantially before their birth. Therefore, the author seeks specific limitations on *Copy Rights*, which at present grant rights-holders sweeping and unreasonable powers of censorship;
e) To impose severe penalties for rights-holders who wield their special privileges as a legal cudgel, including through intimidation and threats of litigation, towards individual consumers and authors who lack the financial and legal faculties to defend themselves from even frivolous threats.

To further illustrate the passion and frustration of the author with respect to the current state of copyright law, consider an example with which the author is directly familiar-- the video games industry. In this industry, large numbers of persons contribute to create a final work. In almost every case, they receive no rights to any form of royalties or entitlements with regard to the publication of the work; in effect, they are divorced from the copyright. The rights are, in almost all cases, held by a *publishing corporation*[1], which provides finances required to develop the final product in exchange for control over the copyrights. In this situation, the publisher is legally protected as the "author" of the work, while the actual authors, the creators of the work, are left without any recourse should, for example, the publisher cease to employ them after the finalization of the product.

This is a common situation worldwide, including in Canada. Canadian creative workers are coercively separated from their rights as authors; publishers become the sole beneficiaries of the profits of their work; and then, in a most disgusting and evil manner, they lobby to manipulate copyright law to their own benefit, ***under the guise of protecting the authors of those same artistic works***. Nothing could be further from the truth, and yet, this is a problem that has plagued copyright since its earliest implementations in the 15th century. At that time, profiteering publishing houses where the main advocates of laws protecting their monopolies over particular works. Authors where not even considered to be the owners of the rights to their own works until passing of the *Statute of Anne*[2], almost passed 50 years after the implementation of the first legislation on licensing of printing in Britain, and close to *200 years* after the granting of the first printing monopoly (1518).
The problems outlined in this introduction, which result in copyright ultimately failing to benefit both authors and consumers, are not exclusive to one industry. Similar problems, and similar horrific injustices against authors in the name of profits for publishers, exist across every medium for which copyright exists. Musicians, writers, actors, reporters, and more-- any person who creates, for a living, a work that can be copyrighted-- these people are exploited by a system that was designed to protect not them, nor the public who consumes their products[3], but the

1 Publishing companies, printing houses, music labels and other, similar entities are indispensable in the creation artwork in a rentier market system. Without the financing they provide, a majority of large creative projects would never be able to collect enough capital in order to create the project. In exchange for the capital they provide, they, in a majority of cases, require the copyrights for the resulting work rest solely with them. If you have ever seen the phrase "For the purposes of copyright, [publishing company] is the author of this work", then you have seen this principal in action.

2 *An Act for the Encouragement of Learning, by Vesting the Copies of Printed Books in the Authors or Purchasers of such Copies, during the Times therein mentioned*, 1710

3 When a member of the public purchases a work, it can be safely assumed that, barring special circumstances, they intend to support, financially, the creator of the work. Copyright law provides no guarantee that purchasing a legally licensed work will result in *any*

publishing houses, record labels, media conglomerates, distribution platforms, and rights-holding companies who contribute nothing to the creative process, only supplying the barest material needs to those who do not have the resources to create their art by any other means[1]; who do not care for artistic integrity, only the profitability of a product; who do not care for the interests of the public, and create artificial scarcities[2] or de-commercialize[3] works in the pursuit of profits.

It is therefore natural that I, the author, seek alterations to copyright law to protect the interests of the groups of which I am a part (creative workers, Authors, the public). It follows that the legal and political changes I seek will come at some expense to the groups which currently benefit the most from copyright law (Publishers, Distributors, Rights-Holders).

The keen reader may have already identified the core dichotomy present in the problem of copyright; which is to say, that there exists a state of conflict between two groups with opposing interests, which predates even the existence of copyright, and will doubtless continue to exist for into the future. This is the conflict between the *Creative*, or *Working*, class, which encompasses all those, who, through their efforts, create a thing of value; and the *Owning*, or *Rentier* class, which, through their ownership, extract some toll form the "working" class in the form of "rent[4]". This antagonistic relationship has been variously referred to in critical literature as "class conflict", "class struggle", and "class warfare". It is not my intention, nor do I have the luxury of endless time wherewith to explain in detail the particular parallels of the conflict between the *Publisher* and the *Creator* to those of the *Owner* and *Worker*. However, it should become self-evident over the course of this work that such a situation *does* exist, and that many of the solutions to this conflict *cannot serve both groups*.

To the reader familiar with critical theory, it may help to interpret my essay in this light; to the reader who is not familiar with, or is ideologically opposed to these theories, I will, to the best of my ability, write in such a way that any person can clearly understand the position that I am defending; illustrate through examples why I choose to defend a given position; and provide unambiguous policy solutions to the problems I discuss. These policy suggestions will appear at the end of this work, in their own section, and specific consideration will be given to how each policy might harm the *Owners* or *Publishers* or *Distributors*. It is not my intention to preform an ideological tirade, and demand immediate, sweeping systemic changes to address my

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financial compensation to the original author. This is vexatious for members of the public who have no method of boycotting or bypassing publishers who they know mistreat or fail to fairly compensate the original authors of the work. However, if they do not purchase the work at all, they cannot experience it; and, if they pirate the work, decreased revenues for the publisher may result in even worse material conditions for the creators.

1 Some artists, by virtue of their situation, are able to create their works without working directly for a publishing house or similar. However, even in these cases, once an artist has a finished work, they are left to negotiate the terms of the distribution of that work with the very same entities who would have employed them otherwise. Additionally, many artistic works require contributions from experts in many different fields (a film, for instance). The larger a project, the more difficult it becomes to organize the required workforce of artists without accepting capital in exchange for the surrender of some or all of the copyrights.

2 Artificial scarcity will be discussed at length further in the essay. The definition of artificial scarcity is the restriction on the production or distribution of goods, despite the available capacity for production, or capacity for sharing.

3 A non-commercialized work is a work that is still under copyright, but not made available to the public through common means of acquisition (eg. A book that is out of print). This is sometimes done by publishers to prevent competition with newer works; see *Walt Disney Co.*'s practice of making past films unavailable (the "vault").

4 "Rent", in this context, does not refer strictly to the concept of paying a landlord for the use of their property, although it is analogous to that, and that specific form of "rent" is a subset of the greater idea of "rentierism". Instead, "rent", in this context, refers to any activity wherein the owner of something (ex; a marketplace, a factory, or a living space) requires some monetary remuneration, without having "created" anything (if the landlord where to die, the building they own would not cease to exist.)

personal political grievances. Instead, I will seek to the best of my ability to thoroughly defend each suggestion I make; and, to suggest only the least impactful possible changes that will solve the discussed problem.

2. Addressing the Failings of Copyright Law

2.1 harm to the public domain

I am deeply aggrieved that the government of Canada has acceded to the demands of the government of the United States and accepted an extension of our copyright term, from 50 years following the death of the author, to 70 years following the death of the author, for general copyright. This extension serves to further weaken the public domain, restrict the freedom of information, stifle the creation of derivative works, and cement the control of large copyright-holding organizations over vast swaths of creative and functional works which otherwise would be available to the public at large for consumption, use, modification, redistribution, criticism, destruction, analysis, and-- among many other things, but most importantly-- the creation of new creative and functional works. My central concern is that the government of Canada is choosing to protect the interests of the *holders of existing copyrights*[1] over the interests of both authors of new works and the general public.

Let us consider, for example, the currently proposed extension of copyright terms-- from 50 years after the death of the author, to 70 years after the death of the author. This change has no material impact on the authors of creative works. The author, who is, in both cases, dead, cannot be protected or harmed. They are dead, and therefore, do not have any material interests[2]. The

1 While I have discussed the idea of *Publishers, Owners, & Distributors* in my introduction, The text body will again present this idea, in order to remain readable to any who did not read the introduction.

2 Some will argue that because it is possible for humans to both plan ahead and understand our own mortality, it is intuitive for a living person to have interest in what happens after they die. With regard to moral rights, the author does not make objection. However, economic privileges are the primary driver of all copyright law. The only way an author can benefit materially from economic privileges that extend past their death is to

original stated purpose of copyright laws was, in their inception, to grant special and exclusive privileges to the authors of creative works, to their material benefit, in order to encourage them to continue creating further creative works, to the [cultural] benefit of society. An author who is dead, is unable to create any further creative works, and is equally unable to benefit materially from any special and exclusive privileges conferred upon them by law. By extending the duration of the privileges granted by copyright beyond the lifetime of the author, the greater cultural and artistic milieu[1] suffers. The rights-holders, be they the descendants and inheritors of the author, or, in the more likely case, a non-human legal entity-- have no moral or economic incentive to create further works that would contribute positively to the overall cultural output of society. Instead, they have a vested interest in preventing or co-opting any criticism[2] of the original work which could generate revenue. Hence, their primary concern is not to *contribute* to the cultural output of a society, but to *exercise control*, particularly *economic* control, over that cultural output.

2.2 what is "culture"?

This idea of "cultural output" is an important one, and merits some discussion in order to clarify the forgoing arguments. Hereafter I shall refer to this cultural output-- which is all of the creative and artistic works, and criticisms of those works, produced in any given interval of time, by a society-- as the [Gross Artistic Product] of that society. The GAP is important to a society as it is the tangible embodiment of the ideas and feelings of the living peoples of that society at any given time. Creative works[3] can be shared, criticized, and shared again, in order to spread new ideas, evolve social paradigms, and contribute to a peoples' greater understanding of the world. A society with a large GAP would be a cultural leader; new ideas and works of art would be produced at a high rate; those works would be widely criticized by the people of that society, generating further new works; and, in a healthy "cultural system"[4] those works would be produced by a wide variety of authors. In contrast, an unhealthy cultural system produces few works; societal ideas are stagnant; cultural paradigms change slowly; most artistic works are produced by a small minority of the population, and few criticisms of those works are created. Of course, the simple measure of the volume of artistic works produced is not a complete or perfect measure of the health of the system. Despite this, it is one of few tangibly measurable properties that can we can use to evaluate the health of a cultural and artistic system.

2.3 the practical consequences of copyright law

We can clearly see that copyright law (as it is currently formulated) fails to serve the interest of society. This it does this threefold; by directly discouraging the criticism of existing works, indirectly discouraging the creation of new, original works, and granting monopolies which discourage or make illegal the sharing of existing works. The mechanism whereby this occurs is to

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preemptively sell those privileges to some second party, who will compensate them in advance. This represents a circumvention of the fundamental idea of copyright, which is that the *author* be granted special privileges and protections. This problem, along with the interest groups who are aggravating it, will be discussed later.

1 The sum of all the art and creative works that are created and consumed by a society.

2 Here, and henceforth, *criticism* is used in the broadest sense of the term; criticism might refer to a *review*, a *derivative work*, or any other work which leverages the original work in its creation.

3 Art, literature, and other creative works embody the ideas that members of a society hold about the world. This is because regardless of the content of an artistic work, it will always be coloured by the worldview of the author. Criticism and responses to a given work similarly contain the implicit (and occasionally explicit) responses of other members of society to that particular viewpoint.

4 This can be seen as analogous to an economic system. Both are productive systems driven by labour, which creates something of value; an economic system produces wealth, which is tangible and measurable, while the products of a cultural system are less easily perceptible.

enable copyright holding organizations[1] to profit from existing works for an effectively indefinite period-- well longer than a single human lifetime. This, in turn, motivates those organizations to maximize the "utility" of their copyrights, which, in practical terms, means three things:

- *Reduce competition*. Any action that can discourage the creation and publication of new, similar works will ultimately be advantageous for the copyright holder. This means they will exercise any legal privilege they can in order to prevent the creation of competing works[2].
- *Co-opt and control criticism/derivative works*. A copyright holder is motivated to take their special privileges to their logical extreme. There are few, if any, consequences for the copyright holder who aggressively pursues any and all appearances of their work in derivatives created by others, even if those derivative works represent no or little threat to the original work, are very substantially different, use only small amounts of the original work, or are protected under fair dealing[3,4].
- *Apply political pressure to extend their legal powers*. Copyright holders, and, in particular, organizations whose primary function and consists of holding copyrights, are motivated to apply political pressure to maintain their powers, extend the duration of their copyrights, widen the definitions of the law, weaken the protections and innate rights of the consumer, and otherwise cement their control over as much of the artistic product of a given jurisdiction as they can[5,6].

1 Regardless of who actually controls the copyrights, their behaviours can be predicted reliably if we model them as simple agents seeking to obtain as much "economic benefit" (revenue) as possible from any given copyright they hold. Additionally, by definition, no single human being can benefit from copyrights that extend beyond one lifetime. As such, it is disadvantageous to our understanding of the issue to consider the holders of copyrights in terms of individual persons.

2 For a concrete example of this, see *Nintendo v. Colopl*, an ongoing case in which tech giant Nintendo is suing a mobile game company which produces a similar game to its own *Dragalia Lost.* This is a textbook example of litigation designed to induce a chilling effect on competitors.

3 For a concrete, and ***utterly morally reprehensible*** example of this, consider the actions of music rights companies who submit copyright claims on "YouTube" videos under the DMCA (such claims allow them to take 100% of the revenue from the videos). They employ advanced AI algorithms and legions of workers to scour videos for even tiny amounts of music playing in the background, which might allow them to submit a claim. This can include, for example, a car driving past on the adjacent street, with a song playing on its radio.

4 Another concrete example of this is film and television rights holders, seeking injunctions against or claiming revenue from reviews or news reports which contain clips or images of the original works. It should be noted that despite the protections for reviews and news reporting in the *Copyright Act* section 29.1 and 29.2 respectively, there is no consequence for rights holder who seek injunctions or create claims in bad faith-- for example, targeting unfavourable reviews of their product.

5 In Canada, the *Office of the Commissioner of Lobbying of Canada* lists 469 active lobbyist registrations related to intellectual property, and a search of activity relating to intellectual property reveals thousands of communications between lobby groups and the government over the past 12 months. It should be noted that under the current *Lobbying Act*, only oral communications which are requested and planned by the lobbying party are recorded as official communications, and interactions initiated by the government or unplanned meetings are not required to be recorded. As such, it is unlikely that the number of reported communications represents the full extent of communication between lobby groups and the government.

6 In the United States, Spending on lobbying and related political activities by corporate entities categorized under [TV/Movies/Music] exceeded 150 million dollars in 2020. The *Walt Disney Corporation* alone spent almost 20 million dollars. Data from the Centre for

2.4 Lobbying, inequality, and democracy

This final point is perhaps the most concerning of all, as beyond simply harming consumers and critics/current authors, it suggests that there exists a deeply rooted incentive to undermine the integrity of the copyright system, built into the very way it functions. Copyright holding organizations tend to be wealthy by virtue of the monopolies they possess. This gives them enormous lobbying power-- Money enables them to make large donations to political parties, provide employment for politicians in the years after they leave politics, donate to non-government groups in order to secure their support, and conduct campaigns of propaganda designed to engineer public consent for their actions. In a market system, financial power is directly equivalent to political power. While the most egregious forms of corruption, such as vote buying, are prohibited by law, so long as money is able to be spent, those who poses money will be able to leverage it to influence the decision made in the political system. This flaw is an inherent contradiction in our democracy, which states that all persons should have equal political power, but, in practice, persons without wealth wield far less control over the political process than those who are moneyed. While it is not the purpose of this essay to provide an exhaustive proof of this sociological theory, a trivial example may help illustrate how our political-economic system rewards the wealthy with additional political influence.

Consider a voter (agent 1) who wishes to strengthen the public domain and alter copyright laws such that they favour the original authors of a work, and not necessarily the rights-holders. The practical policy changes this would entail could be, in this simplified example, reducing the length of the copyright term, and introducing a clause requiring any copyrighted work to always pay some royalties to the original authors. This voter, then, considers the options they have when it is time to vote in the election. The large parties, which are the only ones that have a chance of winning in their riding, do not support this voter's policy preferences. Additionally, those large parties have close financial ties with entities that oppose this voter's policy preferences. Smaller parties, whose platforms may or may not better align with the preferences of this voter, are not viable options because of the nature of first-past-the-post voting. Ultimately, this voter is unable to exercise any meaningful influence on government to advance their preferences.

Now consider a publishing corporation (agent 2) that owns many copyrights. Their preferred policy changes are extensions of copyright terms and provisions to ensure that, for example, employees or subcontractors have no legal rights with respect to the artwork they produce. This large corporation cannot vote. However, they can, upon observing the functions of the political system, determine that it is unlikely that any political party other than the two largest parties will ever hold power (as a result of the aforementioned voting system). Therefore, this stakeholder might choose to make campaign donations up to the legal limit, towards both of the large parties. They might additionally subvert these explicit legal limits, by, for example, covering the expense of their employees who attend expensive fundraising events. By these methods they encourage the political parties that they seduce to alter their platforms so that they are not in conflict with the interests of the stakeholder. By preforming these actions, the stakeholder (agent 2) has limited the political power of the voter (agent 1).

In this simple example, game theory dictates that if both agents are rational actors, they will take any reasonable actions that they can in order to secure their interests. If we again consider the avenues available to our agents-- Agent 1 is able to vote and (realistically) help to elect one of two major parties. Agent 2 is able to influence the policy platforms of both of these political parties.

Responsive Politics. Lobbying that occurs in the US is relevant to this discussion primarily because the proposed changes to copyright are a direct result of trade negotiations with the US government, which, because of the immense power of lobby groups in that country, tends to act in the interests of copyright holders.

In this game, Agent 2 always beats Agent 1. While this example is trivial, further examination of this particular issue is available in relevant texts[1].

2.5 The central role of legislation

In the forgoing example, we focused heavily on what each agent could do to influence copyright legislation. The reason for this is simple: the monopolies provided by copyright law are not natural, but are imposed by legislation. If no copyright law existed, the situation for creative works would be very different. This situation is not very interesting to us, as it is vanishingly unlikely that copyright law will cease to exist in a meaningful way in the foreseeable future. It does illustrate, however, how important the legislation is to creative works on the whole. It is extremely easy for an individual to make copies of most commercial copyrighted works, such as music, digital books, films, and so forth. The law prevents this, but crucially, it is the *only* thing preventing a situation of unrestrained copying and sharing. The law, and influencing changes to it, is of paramount importance to persons interested in copyright for any reason-- economic, social, moral, political-- because the law *is* copyright. Copyright, and all the consequences of it, exists only because of the law, and can only be altered by altering the law.

In the following section, we will discuss at length the copyright *as law*, including the benefits of copyright law, it's intentions, and unintended consequences. We will also briefly discuss alternative legal systems for copyright, as well as why the author does not support the abolishment or wholesale replacement of copyright law.

3. Copyright as Law

3.1 The benefits of copyright law

Copyright law has certain important and tangible benefits, not just to the holders of copyrights, but to society as a whole as well. The clearest way to illustrate the positive aspects of copyright law, is, in my opinion, to imagine a world in which copyright law is abolished or otherwise ceases to exist. This is a thought experiment[2], and while I, the author, will now walk you through it, I encourage you the reader, to imagine for yourself what the immediate and concrete consequences of abolishing copyright law would be.

In the event that copyright law where no longer present, we would expect activities that are prohibited by copyright law (such as the wholesale copying and redistribution of copyrighted works) to start to occur very rapidly. It is likely that individuals who carry out such activities would redistribute copyrighted materials at or very close to the cost of reproduction. If they did not, it is likely that they would be out-competed by another provider offering the same product at a lower price. This would, in practical terms, mean that almost every copyrighted work would be available, for free, on the internet, as the price of hosting content on the internet is very low, and easily offset by serving advertisements. Some providers might continue to charge a fee for access to their services: imagine a service such as *Netflix* in this hypothetical scenario-- they might continue to charge a fee for access, but it would likely be significantly reduced, and primarily serve as an alternative to advertisement-powered services offering the same content.

This, along with the fact that any given distributor could distribute any material, regardless of its

1 For a further treatment of the issue of *economic elites* see *Sociology: Understanding and Changing the Social world, chapter* 14.3, *"Theories of power and society"*. Freely available through the University of Minnesota Libraries, licensed under CC-BY-NC-SA 4.0

2 A thought experiment is the process of creating a hypothetical situation in which the consequences of a particular theory or principal can be thought through, often before executing a real, physical experiment, or in situations where it is not possible to conduct a real experiment.

origin, would mean that the public would have unprecedented access to creative and artistic works. Libraries[1] would be able to offer permanent downloads or copying of materials in their collections. Collectors of works that are copyrighted but out-or-print would be able to make copies of these rare works available again to the general public. Because tools for copying and sharing works are so cheap and easily accessible, not only publishing organizations, but single individuals would be able to participate in the dissemination of previously copyrighted materials. By extension, any attempt by a particular industry to create a publishing cabal to insulate themselves from the fallout of this event would certainly fail.

Because of the new level of access to information, the number of derivative works created by the public would skyrocket. Remixes of songs, edits of popular films, re-writes of books, fan-fiction[2] stories or artwork, and mashups of all sorts would no longer be illegal, and therefore they would be produced and distributed in far increased numbers. Small, independent projects, now free to cannibalize older works for their component pieces, would see faster production times and better overall quality, as a result of being able to use existing assets, such as music, artwork, or computer code, without having to pay costly licensing fees.
On the flip-side, large projects typically produced or financed by publishing corporations, such as mainstream film, video games, books and even music[3], would be produced at a much lower rate. Since there is no guarantee of return on investment, and even less of long-term exploitation, few, if any, publishing agents would choose to invest in the creation of new works. In addition, while works created outside of Canada would still likely enter the country and be distributed, it is almost certain that other economic sanctions would be placed against the country for abandoning international copyright agreements. Or, if we imagine that copyright law has disappeared on an international level, new works in the nature described above would cease to be produced worldwide.

While I could continue this thought experiment further, I will terminate it here, as I feel I have covered the major, immediate effects of removing copyright law. We can summarize them as follows:

Societal Benefits of copyright law:

1. By complying with international law, we avoid economic sanctions
2. Publishers are encouraged to invest their capital into new projects, on the promise of ROI

Societal Ills of copyright law:

1. Copyright law creates artificial scarcity, limiting the access of the public to information that would be easily accessible in a truly free market
2. Copyright limits the creation derivative works
3. Copyright limits the assets available to creators not able to pay licensing fees to use copyrighted material in their work
4. Other ills of copyright, as covered in section 2.3 and section 1, which are here summarized as a single point

1 Libraries are an interesting case as they are en extant example of a direct subversion of copyright law for the public good. By collecting many works, and then lending those works out to the public, they are able to provide the public with access to information they might not have otherwise been able to afford to purchase. Libraries are not allowed to make copies of the works they own, but by allowing many people to access the same work in turn, they subvert the need to copy a work in order to make it widely available.

2 While it might not seem intuitive, current copyright law's provisions about *derivative works*, along with the broad interpretations of "intellectual property" that forms our legal precedent, mean that "fan-fiction"-- original stories about existing characters from a piece of media- are probably illegal.

3 Although music would be affected to a lesser degree- artists would still be able to sell tickets to live-action shows, and even though they wouldn't be able to stop the broadcast or recording of those events, that still represents a significant income that wouldn't be available to the other mediums mentioned above.

3.2 The intent of copyright law

It is important for us to establish what the intent of copyright law is, or what it should be, in order to categorize these consequences as either *intentional* or *unintentional*. Modern copyright law in Canada does not provide an unambiguous statement of the law's intent, instead providing only the law itself for us to analyze, and attempt to discern for ourselves what its intentions are. Since I have no desire to parse a lengthy legal text which was written collaboratively over hundreds of years and by various governments to find it's *intent*, I will instead state what I believe copyright law should seek to accomplish. Since I do not make any argument about the intent of current copyright law, I therefore sacrifice the ability to categorize any of its consequences as unintentional. While it is a naive assumption, we must assume, unless we are to make a further analysis of *The Copyright Act*, that it practically accomplishes all that it sets out to do with, no undesired side effects. Luckily, this does not change the way we will be discussing it here, which is to say, preforming a subjective analysis of how well it accomplishes what *we think it should* accomplish. Note that this analysis would look very different for someone with a different interpretation of what copyright law *should* be, so it is of central importance that we clearly establish what we desire from copyright law before we begin to critique it.

Copyright Law in Canada should seek to accomplish the following, in order of importance:

1. Protect the moral rights of the author of a work.
2. Protect the interests of the Public, primarily their interest in being able to readily access a work, to manipulate it, and to create derivative works from it.
3. Protect the economic interests of the Author of a work, such that they are fairly remunerated for good produced by the work that they created.
4. Protect the economic interests of publishers and authors, such that they are encouraged to continue producing new works, for the public good.
5. Protect Canadian works internationally, and protect international works inside Canada, under these same principals.

While this may not be the "real" intent of *The Copyright Act*, it does accomplish all of these objectives to some degree. Evidently, there must be some compromise between the interests of the Public, and the last three objectives. In its current form, the *Act*, admittedly, favours the economic interests of publishers, but does still provide some protections for authors and the public. Even though, as I described in the introduction, it is possible for a publisher to fire an author with no further compensation after the creation of a work, authors are entitled to wages while they are employed. Yes, this is the *bare minimum* that we could possibly hope for, but it is a protection nonetheless. While the *Act* also limits the public's freedom in many ways-- including intrusively preventing manipulation of an owned copyrighted work to circumvent electronic counter-copy measures, which courts have disappointingly upheld-- it does also provide some limited protections of the public good, including protections for fair dealing, which apply to, among other things, reviews, reporting, research, and study.

3.3 Unintended consequences

Copyright law has many consequences, some of which may not be intentional. Here we will consider to be unintended anything which violates the directive of copyright as we have defined it above.

Fan-Fiction. Under a strict interpretation of the law, user-generated content that uses "substantial portions" of a protected work may be illegal. While there is a specific provision in the *Act* to protect user-generated, non-commercial content, much fan-fiction, or works of fan-art, are distributed through platforms that allow the author or artist to place some advertisement to generate revenue alongside the work.

Additionally, the organizations that host this content likely generate revenue by placing advertisements even when they do not offer a revenue-sharing program with the creator of the content. Both of these situations, but especially the latter, could be considered commercial exploitation. Finally, many authors and artists who create derivative works generate revenue through a donation schema[1], which could also be considered commercial exploitation of their work.

Derivative Works. Since it is a violation of copyright to exercise any right granted to the copyright holder, and it is a right granted to the rights holder to reproduce their work or "substantial portions" thereof, it is not clear at what point a derivative work is an infringement of the copyright of the original author. A "substantial portion" of a work is not clearly defined, especially since the *Act* covers many kinds of works. While it may not be an infringement of copyright under the *Act* to use a small portion of a song, or a clip from a film, or other small portion of a work, in a new original work, it must be avoided by authors and artists, as the only way to prove that their work is original and does not infringe on an existing copyright is through court proceedings, which are expensive and long.

Copyrights and trademarks. Because of the way trademark law operates in Canada, a trademark does not *need* to be registered[2] in order to be defended in court. This gives a copyright holder an additional angle from which to attack derivative works. Say, for example, that a group of creators decides to recreate a video-game that is out-of-print. They recreate the code and visual assets from scratch, meaning that they have in no way violated the copyrights surrounding the original work. However, even if the group has altered the title of the work, the names of characters, and of locations, nothing is stopping the original rights-holder from serving them in court over trademark violation. Given that the new work is, by definition, very similar to an existing, registered and copyrighted work, there is a substantial chance that the original rights-holder will win their legal action, or at least obtain a temporary injunction against the dissemination of the recreation.

The power of cease and desist. Rights holders are able to issue legal threats in the form of cease & desist letters when they believe that their copyrights, or other legal rights, often referred to by the misnomer "intellectual property[3]", have been violated. Rights-holders, however, as we have discussed in section 2.3, are encouraged t take the broadest possible interpretation of their legal rights. This, combined with the fact that most individuals and even small businesses do not have the resources to engage in court proceedings, means that in many cases, the rights-holders are judge, jury, and executioner by the power vested in them by the Cease & Desist letter. Because no special provisions exist to assist small entities and single individuals in legal conflict with large and wealthy rights-holders, it is often wiser to accede to the demands of these groups when given legal notice, even if they are overstepping their legal rights. This, in turn, creates an extra-legal "precedent"-- a rights-holding group will be emboldened by the success of their legal threats,

1 *Patreon*, a website that allows individuals to collect monthly donations in exchange for creating and publishing works, is an example of such a schema.

2 Note that to defend and unregistered trademark, the complainant is required to prove certain things they would not have to prove if they were defending a registered trademark.

3 "Intellectual property" is a misnomer because it does not refer to property, or something which can be owned, but to special legal rights such as copyright, trademarks, or industrial designs. This seemingly meaningless semantic difference is in fact very important, as rights-holding groups have tried, largely successfully, to create the public perception that they "own" certain ideas just as one would "own" a tool or a piece of clothing. However, because of the nature of ideas-- once someone has an idea, it cannot be taken away; but they can share it as much as they like-- Ideas cannot be owned, only controlled. For example, *Disney Co*. controls the "Mickey Mouse" trademark, but they do not "own" Mickey Mouse; Mickey Mouse is part of the cultural consciousness of the general public. *Disney Co*., the "owners", can only control how Mickey Mouse is legally used, in commercial settings. They cannot, and it would be ridiculous to think they could, stop you, for example, from painting the likeness of Mickey Mouse on the walls of your child's bedroom.

and others who receive such threats are more likely to succumb to them if they are aware of others, in similar circumstances, who did the same.

Intellectual property. The idea that something meta-physical, like an idea, can be owned, is transparently ridiculous if you think for even a brief moment about the nature of ideas. An idea can never be taken away, no matter how many times it is shared; in the words of Irish playwright Bernard Shaw,

> "If you have an apple and I have an apple, and we exchange these apples then you and I will still each have one apple. But if you have an idea and I have an idea, and we exchange these ideas, then each of us will have two ideas."

The natural consequence of the immaterial nature of something so ephemeral as a creative work, is that any person who receives, and subsequently consumes that work-- whether it be by reading or listening or some other means-- will now be in possession of all the ideas therein, up to their capacity for comprehension; and those ideas will have exerted some influence on the understanding of the reader[1] of the world around them. This is integral to the very nature of creative works. Yet, it has become a popular position, thanks in no small part to propagandization by interested parties, that such a thing as "intellectual property" exists. This they used to influence the decisions of courts and governments to afford them additional rights and privileges to "defend" their "property". This is particularly egregious in the case of corporations, who are not human, nor are they creative. They can not even posses ideas, much less own them; but I digress. The particular consequence of this idea of "intellectual property" is that legal faculties, such as courts, tend to take a very broad interpretation of the law with respect to certain, specific kinds copyrights and trademarks, often beyond the rights afforded for them in the law; that is to say, *franchises*. The idea of a *franchise* does not exist within the *Act*, which provides copyrights for individual works only. However, consider the following: the "Harry Potter *franchise*", the "Star Wars *franchise"*, the "Mario *franchise*", the "James Bond *franchise*". These sorts of related works tend to be treated as monolithic entities instead of a series of disconnected, independent copyrights like any other. It is not uncommon for the owner of a *franchise* to receive special treatment when seeking injunctions against derivative works that might, had they been derived from a single copyrighted work, not have been considered to infringe. This particular problem is wholly unique from the other issues listed here, as it is not caused by the *Act*, but by the interpretation of it in the context of a society that has been conditioned to believe in the myth of intellectual property. However, as there *are* specific policy changes that could improve this situation, it still merits inclusion in this essay.

3.4 Explicit failings of the *Act*

If the failings above are unintentional, or at least do not seem to be explicitly intended by the *Act*, then these failings are the opposite: the text of the *Act* itself creates these problems.

Work made in the course of employment, the *Act*, section 14(3). This section explicitly divorces a worker from any kind of copyright, for works that they create for an employer. While in a certain way, this does make sense, as it would not be reasonable to expect each employee who contributes to a given work to wield the full extent of copyright privileges, it opens the door for the situation described in the introduction: That a worker in a "creative industry", or even a whole group of workers, or an entire studio, be dismissed by their employer upon completion of the work; now, the employer stands to reap all the benefits of the copyright privileges, while the person(s) who created the work, the actual authors, have no privileges-- moral or economic-- over the work that they created. This section of the *Act* applies to all works which can be copyrighted, with minor exceptions only for

1 Watcher, listener, player, etc.

certain moral rights reserved by the authors of articles in magazines or newspapers.

In practice, this section of the Act functions as labour code, as it dictates the relationship between employee and employer, in the absence of any other special agreement. Because copyright is under federal jurisdiction, provincial labour codes are unable to protect creative workers in their provinces. In the absence of collective bargaining agreements, which are a relative rarity in many creative industries, employees are poorly positioned to negotiate any special agreement to retain parts of their copy-rights, especially because by default, all rights are unconditionally surrendered. This single section is perhaps my biggest grievance with the *Act* as it stands, as it allows, and even encourages, authors to be separated from their copy-rights, and the transferal of those copy-rights to the Publisher.

Translation of a work, the *Act*, section 3(1)(a). This section outlines the most basic of copyrights, including protections for the exclusive publication of translations of the work. This means, in practice, that any work created in a Berne-convention country, or indeed in Canada, may only be published in a translated form by the behest of the original author (or publisher, as is usually the case). Translation is an expensive and difficult process involving the time and expertise of skilled translators, as well as artists who may be required to alter parts of a visual work in order to implement the translation. Because of the costs associated with translation, may works are never translated, or are translated only into English, Spanish, or other widely spoken languages. Even in the case where works do receive translations, they often lag far behind the original publication of the work, sometimes by months or years. However, because the rights-holders have a monopoly on the distribution of translated copies, any translation made before an official translation is released cannot be legally distributed; there is no competition, and therefore no pressing incentive, to translate the work. This naturally creates a situation where the vast majority of works will, for the entire duration of their copyright period, remain untranslated and unavailable in languages other than the one they were created in.

3.5 The problem of enforceability in an age of information freedom

In addition to creating several problems, both intentional and not, copyright law in the internet age faces specific problems with regard to enforceability. This issue of enforceability is not intended to be a main focus of this essay, and the author encourages the reader to investigate the issue of enforceability further; however, it merits at least some discussion in this context, as it is a major influence on the effectiveness of copyright on the whole, including both it's negative and positive aspects.

In the age of digital communication, it is incredibly easy to copy, share, and distribute materials. This includes copyrighted works. The tools of enforcement that worked in the past to prevent the unauthorized sale of copied materials are ineffectual in an environment where digital copies can be created, and therefore shared, at practically no cost. Indeed, one of the primary concerns of copyright (that competing publishers might steal revenue by breaking a monopoly) is no longer even relevant, as almost all copied materials are distributed at no charge at all. This leads to a situation of necessary compromise. It is impossible to effectively enforce the artificial scarcities imposed by copyright law without absolute surveillance, which in itself, beyond being impractical, is certainly immoral. One of the most important rights afforded to citizens in our society, which allows it to remain free, is the freedom from unwarranted invasions of privacy. In no uncertain terms, copyright cannot be effectively enforced without violating this freedom.

We are left with a choice to either create a world that is not free as a result of mass surveillance, or to admit that copyright can never again be effectively enforced. While it is becoming increasingly evident that certain powerful actors,

including, in many cases, governments, are working to make the former a reality, it seems unlikely that even such a world will allow for practical enforcement of copyright. It is simply too easy to hide one's actions, even in a state where almost no personal privacy remains. And, what few aspects of privacy have not yet been stripped away from the citizenry, have been defended in courts of law, leading to a precedent that, until overturned, makes it all but impossible to establish the widespread surveillance required to truly root out piracy.

So, if copyright law is unenforceable, why is it important in the first place? It could grant indefinite monopolies on creative works, but those mean little if they are being widely shared, without consequence, within days of their publication. And, in certain ways, this is true: many of the greatest societal ills brought about through copyright law are eased by reality of piracy. Works that are no longer commercially available have never before been so easy to access; and, this "competition" discourages may of the worst practices we see from copyright holders. Piracy also allows even the poorest members of society unfettered access to works that they would otherwise be unable to afford. In fact, in practical terms, because piracy is often much more inconvenient that purchasing a legitimate copy of a work, it is often only those who would otherwise have never experienced the work, usually for financial reasons, who access it through pirated mediums.

Despite this, copyright law still exerts a heavy hand on the landscape of creative works. Piracy benefits only the consumers of the works, and various ways in which copyright law fails Authors are unsolved, or even aggravated, by piracy. Additionally, derivative works do not benefit from illicit distribution at all. Since works shared in this way are shared for free, even if this allows the creator of a derivative work to disseminate their creation, it does not provide them any financial incentive to do so, and severely limits the market of people who will consume their work. Finally, it is the author's opinion that today, copyright law works largely by mutual consent and moral obligation. Many persons who could choose to obtain a work for free, purchase it instead because they consider piracy to be a moral wrong. Our society does not teach one particular moral framework[1], but legalism[2] is, by definition, the moral framework on which our legal system works: that which is dictated by the law is right, and that which is prohibited by the law is wrong. Consequently, many persons in our society use, at least to some degree, legalism as one of their moral frameworks. Since the law dictates that it is illegal to make and share copies of a copyrighted work, they may conclude that such an action is also *immoral*.

A person who believes that an action is *immoral* may choose not to take such an action, even if it is the most optimal action for achieving their desired ends. In such a case, a person may *choose* to purchase a copy of a creative work out of a sense of moral obligation, and not because they are practically unable to obtain the work in any other way. A person who judges the action to be *amoral*, either because they do not subscribe to legalism as a moral framework, or they have reasoned that for one reason or another, it does not apply in a certain case, may *still choose* to purchase a legitimate copy of a work, purely out of an understanding that financial contribution to the publisher or author makes the creation of a future work more likely. Even though these people could, with no immediate, personal consequence, pirate a copy of the work in question, they choose to abide by copyright law for moral or functional reasons.

While this state of affairs does not solve the problems of copyright law, it does provide an alternative to the parties involved in consuming copyrighted works: they can choose not to

1 A moral framework is a set of philosophical ideals by which right is differentiated from wrong. Some common moral frameworks include Utilitarianism, Legalism, and Theology (Religiosity).

2 Legalism as a moral framework, in its simplest incarnation, is moral system that judges right and wrong purely based on the law. Not to be confused with Chinese Legalism, a philosophy originating in ancient China which influenced both Taoism and Confucianism.

participate in copyright law, with little or no personal consequence. This puts copyright law in a unique space, as persons who oppose copyright law on moral, political, or functional grounds, can *choose* not to abide by it. Returning to the example in section 2.4, in which the voter who was opposed to copyright law was left with no option to influence policy changes in the law--that person can simply choose to not participate in the copyright system, at least financially. Through libraries, it is even possible to obtain copyrighted works legally, while still not participating financially in the system[1]. However, there are aspects of copyright law that you cannot simply opt out of, especially inasmuch as they regard the creation of new works. For these reasons, copyright law is still important, even when it cannot be enforced.

3.6 Alternative legal frameworks: replacements for copyright law

Critics of copyright law have put forward a multitude of alternative legal frameworks to replace copyright law as it currently stands. I will briefly touch on some of the more popular or notable examples, along with the advantages and disadvantages they have when compared with current copyright law.

(a) Abolishment of Copyright; The Public Domain

This suggestion calls for the abolition of all copyright law, and the placement of all previously copyrighted material into the public domain. Advocates of this approach argue that copyright is already ineffectual (because of piracy); that a strengthened public domain is a public good; that industry would continue to produce works, such as film, television, games, and so forth, by forming cabals or societies, whereby major distributors would respect "copyrights" even if such rights did not legally exist, relegating sharing to small, secondary distributors, analogous to today's pirates; that the legitimized competition from such secondary distributors would force publishers and distributors to improve practices towards authors and workers, as if authors or workers made public their grievances against such entities, public opinion would turn against them and the public would seek alternative distributors; "crowdfunding" or "prepaying" for works before they are created would allow the financing of the works that require larger teams or spans of time to produce, and would lead to products that the public wants being produced, instead of what is decided on by publishing companies; and that when such works are published, and pass into the public domain, they would be available to the whole public, not just those who can afford to purchase them.

Because we have already discussed in some length the advantages and disadvantages of the total abolishment of copyright, I will now move on to other proposals.

(b) The Shortening of Copyright to 5 years: the "pirate party" position

In the late 2000s, a political movement known as the "pirate movement" started, originally in Sweden. This movement was largely a reactionary movement in opposition to the new and invasive measures for protecting copyright then being implemented around the world, in an attempt to restrict file sharing. In the words of Mikkel Paulson, former leader of the Canadian Pirate Party,

> "Whether you watched a movie at a friend's house that you didn't pay for,

1 While libraries do make token financial contributions to the holders of copyrights for the works they circulate, many more persons may consume a copyrighted work through a library than would otherwise be possible. This represents both a subversion of the economic controls of copyright law, and a tool to allow access to copyrighted works to the general public, especially those who cannot afford to purchase those works.

> or if you borrowed a book, that's essentially what they are calling piracy."

The pirate movement primarily agitates for digital privacy and copyright law reform, with proposals often suggesting some or all the following sweeping changes:

- Reduce the term of copyright to (5-27) years after the date of publication.
- Exclude from infringement of copyright any sharing carried out for non-commercial purposes.
- Remove provisions from copyright law that allow for the invasion of privacy of the general public
- Optionally, create media bursaries to encourage the creation of creative works, in exchange for the reality of reduced revenues from widespread file sharing

These changes to copyright law are evidently quite extreme. Proponents and members of the movement argue that so-called piracy and file sharing are widespread, and that punishments are disproportionate to the crime; that copyright durations are excessively long, far longer than is necessary in order to allow the publisher or author to make a return on investment, and therefore encourage them to continue making works; that modern copyright law is unable to cope with the internet, and as a result is becoming increasingly invasive of privacy; that a law that acknowledges the realities of file sharing, and creates some sort of system, such as a media fund, to compensate for this, is the best way to balance encouraging the continued creation of media with protecting the privacy and other interests of the public.

This proposal firmly swings the balance of copyright law in favour of the interests of the public, and away from the interests of publishers. It does not do away with copyright entirely, but does severely reduce the length of the monopolies granted by copyright, and, by extension, their financial value. It strengthens the public domain by passing works into it much sooner, and reduces artificial scarcity by decriminalizing file-sharing. In some proposals, it seeks to offset the negative economic impacts on publishers by creating some sort of bursary, possibly through a levy on internet subscriptions, that would serve to encourage the continued creation of creative works in a world where copyright can no longer be effectively enforced.

My primary complaint with this proposal is that it does little to protect the Authors of creative works. It primarily aims to defend the interests and rights of the general public, which is admirable, but the proposals to mitigate negative impacts on creative industries tend to be simplistic at best, and ultimately easily exploitable by publishers. Existing levy systems, such as Canada's own blank media levy, face problems in the methodology of distribution of levy funds, almost always favouring major labels over smaller artists.

(c) Alternative Compensation System; the Levy System

Critics of copyright have suggested several forms of alternative compensation for artists that would allow for the free sharing of copyrighted works, with a levy or tax system in place to compensate artists and publishers, instead of profits from direct sales. Such a system already exists in Canada, in the form of the blank media levy, mentioned above. The advantages of such a system are that they allow free copying and sharing of media, eliminating artificial scarcity. The technological and social costs of attempting to enforce copyright are also reduced significantly.

The primary disadvantage of a levy system is the *where does the money go* problem. Collecting a levy on, say, internet connections, would not be particularly difficult, but subsequently deciding how to distribute those funds is a nontrivial problem. One possible solution is to provide each internet user with a unique code, or key, which they would need to provide to the distributor each time they wished to download a piece of media. The distributor would then collect the codes of everyone who had downloaded a particular item, tally them, and submit the tallies to the levy distribution office, who would then distribute funds at the end of each financial period depending on the number of downloads. The problem with this system is that any redistribution schema is vulnerable to attack, and in order to render it more robust, more resources must be used, diminishing both the benefits and simplicity of the system. This system would almost certainly also represent a reduction in the total revenue of publishing companies, or the levy would become onerously large. Corporations eager to preserve profits would doubtless oppose this system, and fight to arrange for distribution ratios that favoured publishers over authors. Still, of all the systems listed in this "alternatives to copyright" section, the levy system is the most robust and practical total alternative to copyright, and the only system that it is reasonably possible to implement in the near future, without a total disruption of the industries involved.

(d) Crowdfunding; The Ransom System

The principal of crowdfunding larger creative works to circumvent the need for a publisher is one that has been demonstrated in recent years for medium-scale projects in many artistic mediums, including ones that traditionally dominated by publishing corporations because of their high startup costs, such as film and video-games. The "crowdfunding" solution is one that is proposed to be able to work under any model of copyright, including both present day copy-law and no copy-law at all. It is a model of government non-intervention; in this model, authors, or a publisher as an intermediary, collect funds before a work is published, and, once a certain threshold is reached, the work is released, *in theory* under a free licence or directly into the public domain.

This system has the advantage of not requiring any policy implementation, and functioning in a wide variety of contexts. Proponents of this model often suggest it in the context of the abolition of copyright, in which it would act as an alternative financial incentive to create works; instead of publishing a work for sale and slowly recouping the costs associated with its creation, the work is "held for ransom" until a certain threshold of funding is reached. Additionally, this particular system is quite democratic, insofar as there is not an excess of wealth inequality in a society, as each person can pledge funds towards the works that they most wish to see created.

The largest disadvantage of this system is that it does not, in fact, represent a full alternative to copyright. In a system where copyright has been abolished, it would, in fact, function as advertised. However, within our current copyright system, there is no incentive to release the final product under a free licence; note that I said *in theory*. In practice, almost all creative works created through crowdfunding sites, like *Kickstarter,* are released under *all rights reserved* copyright licences, as there is no reason to do otherwise. These works are then subject to all the same problems with copyright that we have discussed previously. In addition, it requires some trusted middleman between the authors and the investors, to collect funds and distribute them to the authors once thresholds are reached. This middleman or agent is essentially a publisher, and authors are left with just as little, or perhaps even

less, negotiating power under this system, compared to current copyright law.

(e) Copyleft

Once again, this is not an alternative to existing copyright law; in fact, it requires copyright law in order to function. Copyleft philosophy takes advantage of the legal rights granted to copyright holders. Usually, copyrighted works are distributed under an *all rights reserved* licence, which means that the end user receives none of the rights to copy or distribute the work, and that those special rights and privileges are reserved by the author or publisher. However, nothing prevents an author from releasing their work under a *licence,* which may variously grant the recipient some of the rights of the copyright holder, and prescribe conditions for the use of those rights and privileges. A noteworthy example of a copyleft licence is the GPL 3, which is a software licence that allows for free copying and use of the software, but requires that any copies of the software be released under the same licence, and that any alterations to the software also be released. Copyleft licences function by providing a valuable asset for free, but subsequently requiring that further assets created with that base also be released for free.

Copyleft is powerful and useful in certain situations, but, by and large, does not address the failures of copyright as a system. It allows authors to encourage the creation of more free software, but restricts the creators of subsequent pieces of software to use the same licence, which may not be desirable, even if they are proponents of free software. It also largely fails to address all areas of copyright that are not software, as it was designed for, and works particularly well with, software, but does not work very well with other copyrighted works.

(f) The Universal Library

The “Universal Library” is a proposed alternative system to copyright, in which all works are committed to and distributed by, a library, or many libraries. In this system, no provisions are made for publishers, only for the public and for authors; in this sense, it can be seen as a “Utopian” system. Creative works are accessible freely to the public via the library or group of libraries, who are granted the rights to copy and distribute any and all works, and have a mandate to both preserve and disseminate those works for the general public. The library maintains records of usage of the materials, and correspondingly provides compensation to the authors of the works. There are different interpretations of how this system might work, but in my preferred interpretation, the library is free to withhold a certain amount of compensation form the most successful authors, who would otherwise receive much more compensation than they require to live comfortably, and use those funds to finance the creation of new works, either directly, or through some independent subsidiary charged with that particular task. The question of how money would be raised is also one with many answers, but again, in my preferred implementation, the library is funded taxation, as it is a public good, similar to healthcare, trees along the side of the street, or a walking path.

While the “universal library” may at first brush appear very similar, almost identical, even, to the levy system, it has several key differences:

- It eliminates publishers as a concept, opting to instead distribute funds directly to authors, and also to take over the roll of financier for larger projects;
- It consequently eliminates the profit motive on the part of the financier, which is a major cause of

artistic interference from publishers in our current system;

- Because of the existing infrastructure that libraries have in place to track the usage of their materials, both physical and digital, they are uniquely positioned to help solve the *data collection* and *usage metrics* problem, which plagues so many proposed systems which rely on some form of communal funding;
-

3.7 Proposed changes to the *Act*

Ostensibly, this essay is about the proposed changes to the copyright act (the extension of Canadian copyright term to match the US copyright term). Having discussed at length the many particularities of copyright law, I come now to my central question: Do the proposed changes to the *Act* bring it closer, or further, from fulfilling the purpose copyright, as outlined in section 3.2? Namely, do the changes:

a) Protect the moral rights of the author?

b) Protect the interests of the public?

c) Protect the economic interests of the author, in such a way as to compensate them for their efforts to create the work?

d) Protect the economic interests of Publishers, to encourage the further financing and creation of future works?

e) Protect Canadian works internationally, by complying with international copyright law?

Each of these questions has a different answer, so I will examine them in turn, and summarize my findings at the end of this section.

a) Moral rights

The proposed changes to the *Act* have little to no impact on the moral rights of the author. Once the author is dead, they are no longer able to defend their moral rights by legal means, and there does not exist any precedent in Canadian law for rights-holder (either a corporation or a descendant) to pursue action with regard to moral rights after the death of the author. If anything, the obligation falls upon the state, as the steward of the public domain, to protect the moral integrity of works whose authors are dead, or which have passed into the public domain. The extension of copyright term does not alter this situation.

b) The public good

The proposed changes to the act unambiguously damage the public interest in weakening the public domain and lengthening the term of the monopoly that rights-holders are granted, which emboldens those actors to seek further extensions to their copyrights. No argument can be made in good faith that the changes to the *Act* are a benefit to the public. The government has in effect, admitted this, by suggesting the possibility of further changes to the *Act*, to mitigate the negative effects of the extension of the copyright term.

c) The economic interests of Authors

The proposed changes to the act do not improve, in any significant way, the economic prospects of authors in Canada. No special provisions are included to guarantee royalties to authors, no levy is proposed to compensate them for their contributions to the public good, and no limitation is made on publishers, requiring them to share any portion revenues with the authors. The *Act*,

after the new changes, will continue to fail Canadian and international authors who are employees. The changes do not represent a material change even for authors who retain the full extent of their copy-rights, as the extension of the copyright term is after their death. This does not even represent a substantial increase in the value of a copyright, should the author sell it, as most of the revenue made from a creative work is made soon after it's publication[1]; it is unlikely that a 100+ year-old work will be generating any substantial amount of revenue one way or another.

d) The economic interests of publishers

While a work might not generate very much revenue at all tens of decades on from its publication, the extension of the copyright term *does* benefit publishers, if only by allowing them to exert control over the work, and it's derivatives, in order to minimize competition for more recent works. Additionally, this change symbolically strengthens the grip of publishers over their "intellectual property", and signals that the government of Canada is willing to sacrifice the interests of its citizens to satisfy the demands of powerful lobby groups, which sets a poor precedent not just for copyright, but all aspects of public policy in which the interests of the public must be balanced against those of corporations and oligarchs.

e) International interoperability of copyright

This is, perhaps, the only aspect in which the proposed changes to the *Act* succeed in furthering its actual purpose. In this case, the extension of the copyright term mean that Canadian authors in the United States will be granted the full term of U.S. copyright, which is a good thing if and only if U.S. copyright law succeeds in promoting the forgoing four points, which, unfortunately, it does not-- it being very stilted in favour of publishers, and failing in many of the same ways as Canadian copyright law when it comes to protecting authors and the public.

3.8 Conclusions

It is the opinion of the author that the proposed changes to the *Act* represent a move away from what copyright law should be striving to achieve. The author formally recommends to the Government of Canada, her ministers, and to the representative of Her Majesty the Queen in Canada, the Governor General, that the proposed changes ***not*** be accepted into law. It is the author's view that negotiations should be reopened with The Government of the United States of America, in light of recent changes in the political situation in that country, to seek an alteration to the US-M-CA trade agreement that would allow Canada to retain it's current copyright term, and, indeed, to encourage the Government of the United Sates to reduce its own copyright term to match that of Canada, and the minimum stipulated duration under the Berne Convention, to which both Canada and the United States are signatories.

The author further recommends to the Government of Canada, her ministers, and to the representative of Her Majesty the Queen in Canada, the Governor General, the following amendments to *The Copyright Act*, regardless of whether the proposed changes to the duration of

1 This should be self-evident, but for the unconvinced, consider films, which are often judged as financially successful or unsuccessful by their first box-office weekend. Now consider that the copyright term extension is happening, at the minimum, 50 years after the publication of a work-- four order magnitude more time than the duration over which the majority of a film's revenue is garnered (about 1 month or so, less than 100 days; 50 years is close to 20 thousand days)

copyright are accepted or not. The recommended amendments to the copyright act are as follows, the entirety of 4 of this essay; more general policy recommendations, which do not take the form of amendments to the *Act*, will be presented in section 5.

4. Recommendations

My recommended amendments to the *Act* will be categorized by intended result, and will be presented as a numbered list from *least disruptive* to *most disruptive*.

4.1 Protection of the economic and moral interest of the author, especially the author who is an employee

1. Alter the *Act*, subsection 13 (3) to read:
    - Where the author of a work was in the employment of some other person under a contract of service or apprenticeship and the work was made in the course of their employment by that person, the person by whom the author was employed shall, in the absence of any agreement to the contrary, be the first owner of the copyright; notwithstanding they shall not be the owner of the moral rights, as these are inseparable from the author; and, the employee shall be entitled to a royalty 5% of all revenues from commercialization of the work. If the work is a *collective work*, or if more than one employee contributed to the work, the 5% shall be split evenly between the contributors, unless an agreement is signed by all contributors, in which case it may be distributed by hours worked, but by no other metric. No agreement or contract may reduce the entitlement of the employee(s) beyond 5%, and any agreement which entitles the employee(s) to some greater royalty shall be subject to the same enforcement, as though it where

written in this act. This royalty shall endure with the employee for the duration of their life, but not with their inheritors after their death, in absence of any agreement to the contrary, which may extend the entitlement to the inheritors of the author up to the duration of the copyright, but may not reduce the entitlement beyond the life of the author. Where there are multiple authors, and one dies, the royalty shall be adjusted such that the 5% is distributed among the authors who remain. Where the work is an article or other contribution to a newspaper, magazine or similar periodical, there shall, in the absence of any agreement to the contrary, be deemed to be reserved to the author, in addition to the moral rights and rights to royalty, a right to restrain the publication of the work, otherwise than as part of a newspaper, magazine or similar periodical.

2. Alter the *Act*, subsection 14.1 (2) to read:
    - Moral rights may not be assigned but may be waived in whole or in part. Moral rights may never be separated, by any means, be it a contract of employment or otherwise, from the original author of a work.
3. Alter the *Act*, subsection 14.1 (3) to read:
    - An assignment of copyright in a work does not by that act alone constitute a waiver of any moral rights. Moral rights shall not be waived by a contract of employment.
4. Alter the *Act*, subsection 14.2 (1) to read:
    - Moral rights in respect of a work subsist indefinitely.
5. Alter the *Act*, section 14.2 (1) to read:
    - The moral rights in respect of a work pass, on the death of its author, to the state, which, as the steward of the public domain, is responsible to protect the moral rights of all authors deceased or unknown.
6. Repeal the *Act*, subsection 14.2 (3), Which is with respect to subsequent succession of moral rights, which is not relevant under the revised subsection 14.2 (2)
7. Add to the *Act* a subsection numbered 5 (1.3), titled *extension of the natural rights of the author to works from countries to which the Act Applies*, which reads:
    - Any work which is published in Canada, which originates in any country to which the *Act* applies, and in Canada generates revenues, shall be subject to the provisions of the *Act* 13 (3) which describe minimum royalties which are owed to the original authors of a work, including those who where employees at the time of the creation of the work; and power shall be vested in the Government of Canada to retain the amount required by the *Act*, from each sale of such work within Canada, in order to distribute such royalties to the original authors of the work; excepting such a case as in which the distributor presents a contract which meets or exceeds the minimum royalties owed to the original author of the work, as defined in the *Act*. For any work which is published in Canada which originates in a country to which the *Act* does not apply, power is vested in the Government of Canada to collect minimum royalties as described above for a period of 25

years after the publication of the work in Canada.

8. Add another, related subsection, numbered 5 (1.31), and titled *The right to know to whom royalties are paid*
    - Any citizen of Canada may request, from the distributor of a work, a list of the recipients of the royalties for that work, which must include each person who receives royalties, including minimum royalties required by the *Act* for persons employed at the time of the creation of a work. An author who chooses to remain anonymous or use a pseudonym, as is their right as defined in subsection 14.1 (1) of the *Act*, must appear on this list as *anonymous* or by their pseudonym. Such a list must also note what total portion of the revenues from the work is dedicated to royalties, but not how the royalties are distributed between the recipients. It must be provided in a format that is machine-readable and in a timely manner, and the distributor is not entitled to charge a fee for the provision of such information.

Further policy options "for the protection of the economic and moral interests of the author", which may or may not take the form of changes to the *act*, will be presented in section 5.

4.2 For the protection of the Public Good, and strengthening of the public domain

1. Add to the subsection, numbered 28.1, a point (1), which reads:
    - It is not an infringement of the moral rights of the author, if, by any act or omission that would be contrary to the moral rights of the author of the work or performer of a performance, a person mutilates, distorts or modifies a work to the prejudice of the author or performer's honour or reputation, if the resulting work is clearly credited and labelled as being a modification for the purpose of (a) critique of the original work or performance; or (b) satire or commentary, for which the mutilation, modification or distortion of the original work was the most effective way to convey such satire or commentary.
2. Repeal from the *Act* section 41, and all of its subsections, in its entirety; as well as all other references in the *Act* to the contents of section 41 and its subsections.

Further policy options "for the protection of the public good, and strengthening of the public domain", which may or may not take the form of changes to the *act*, will be presented in section 5.

4.3 For the protection of the economic interests of publishers, music labels, distributors, and so forth

The author considers that the *Act* already, in most ways, sufficiently protects the interests of publishers *et al*. However, additional policy recommendations, including recommendations to guarantee certain economic protections for these groups in a digital age, will follow in section 5.

5. Further Policy Recommendations

While section 4 contains certain concrete, immediate recommendations for changes to the *Act*, including extensive changes to the way authors are compensated for the sale of their works, there are more nebulous or larger-scale changes that either would not make sense in a list alongside other amendments that they might obsolete, or perhaps because they might seem nonsensical if taken on their own; but for whatever reason, I did not feel that they were appropriate to immediately recommend as changes to the *Act*, and so I did not include them in section 4. Each of these wider policy recommendations might be more appropriate to be brought forward as a house resolution first, before beginning to implement the relevant actions.

5.1 Decriminalize file sharing

File sharing, or "piracy" as it is often called, is a reality of the internet age. Canadian copyright law must acknowledge this and unambiguously decriminalize the non-commercial sharing of media online. It is simply not tenable to retain laws which are no longer enforceable, and which paint large swaths of the population of our country as criminals. Furthermore, the longer we allow the myth of theft of copyrighted materials to be promulgated, the more we risk compromising our privacy, as publishers and rights-groups will stop at nothing to eliminate any threat to their monopolies. They will not hesitate to install in every home devices which monitor internet traffic, deploy advanced artificial intelligence systems to profile and target the most vulnerable, and to make examples of anyone they can, without regard to the deep social costs that this has for the predominantly poor portion of the population that engage extensively in file-sharing. It is not moral to accuse those who share files of theft, when no one has been deprived of anything. It is impossible to steal that which can be reproduced freely. Copyright, and the corresponding artificial scarcities it seeks to enforce, are a fiction legislated by the government, which can just as easily be legislated away. It is unjustifiable, and even morally reprehensible, for the government to impose criminality on its citizens when their actions do no harm to anyone.

5.2 Impose an internet levy

I am certain beyond any doubt that upon reading that "[piracy] [does] no harm to anyone", some painfully conservative individual involuntarily cried out, "the shareholders, bob! Who's looking out for them, HUH??[1]" However, I do not suggest that it is appropriate that we allow unrestricted file sharing without some compensation to those who create the content that is being shared. A simple levy on internet connections, added to the monthly bill, would quickly collect huge sums of money-- some back-of-the-napkin calculations suggest that a levy as low as $1 a moth, or $10 a year, would collect over 300 million dollars annually. Similarly to how the levy on blank media currently operates, the collected funds would be distributed to eligible parties based on usage[2]. The primary reason I did not include this proposal in section 4 is that the particulars of how much the levy should cost, and how distribution should be determined, are nontrivial issues that require detailed attention in order to reach

1 This is a quote from the Disney/Pixar film *the Incredibles*. I have included it as a joke, and, I'm sorry to tell you, if you are reading this footnote, you probably didn't get it.

2 Usage-based distribution is an excellent theory that is difficult to implement well in practice. While the existing distribution schema used by the blank media levy is functional, it has been criticized for favouring large labels and artists because of its methodology.

acceptable results. A full, independent study should be commissioned by the government on how to collect the data used for the distribution of levy funds.

5.3 Unofficial translations and out-of-print/obsolete works

Specific exceptions should be added to the copyright act for the case of translation of a work which the author shows no intent to translate. Otherwise, except for a small handful of works which are profitable to translate, translations of almost all works are not legal for many decades after publication. The specific mechanics of the translation exception are plastic, but I suggest that it operate on the following principals:

- Intent to translate must be declared by a copyright holder, and if they do not produce a translation within some fixed period, which might vary depending on the type of work, they surrender their exclusive right to produce a translation into the given language;
- A translator may create a translation of such a work, and distribute it either free of charge, or at the standard market price for such a product; in the later case, revenue is split 50/50 between the translator and the original author
- A subsequent official translation does not render illegal any previous unofficial translations, but does preclude any future translations.

Similarly, for out-of-print works, or works which need to be updated to a new format to avoid obsolescence, but this process is not undertaken by the copyright holder because of cost or other factors:

- Copies of out-of-print works may be distributed non-commercially for as long as the work is out of print
- Works that are obsolete, such as videos on VHS or DVD, or computer programs designed for operating systems that are no longer current, may be “translated” to newer formats in much the same way as linguistic translation mentioned above

5.4 Remixes, edits, modifications, rewrites, and other derivative works

Derivative works that involve significant creative work from the secondary author should be protected as unique works under copyright law. However, I did not place this in section 4, as determining what constitutes “significant creative effort” is nontrivial and deserves further attention. Obviously, it is undesirable to enable bad actors to make minor changes to an existing work, and pass it off as an original. However, if a work is sufficiently unique that, had it been made by the original author, it would have constituted a separate copyrighted work-- in this case, the derivative work should be protected as a unique work under copyright law.

5.4.1 Protections against trademark entrapment for derivative works

A unique problem faced by derivative works is that they may require the use of characters, names, symbols and so forth which are protected by trademark law. Even derivative works that use so little of the original work that they would not conflict with current day copyright law face this challenge. It’s hard, if not impossible, to create a derivative, even if it is a fully original work only sharing a setting, characters, etc. without using something that could be a trademark. As a result, Derivative works should be explicitly protected

against trademark action, so long as the work is clearly marked as a derivative, and credit is given to the original author and work.

5.5 Consequences for the improper use of copyright

As was mentioned earlier in this essay, one of the most vexatious aspects of copyright law is the aggressive nature of copyright holders in the legal field, and the lack of consequences they face for abusing their copyright privileges and engaging in frivolous litigation or even just threatening such litigation. I am uncertain of what sort and degree of consequence would be appropriate to discourage this sort of undesirable behaviour. To grant relief to the targets of this poor behaviour, the best solution I can conceive of is the creation of some kind of ombudspersons' office specifically for copyright, which would be vested with some set of powers they could wield in defence of the public. As I am unclear on how exactly this should be implemented, however, I have left it here as a more general policy recommendation.

5.6 Shorter duration copyright terms

While the Berne convention, of which Canada is a signatory, does not allow for copyright terms less than the lifetime of the author plus 50 years, this term is excessively long for accomplishing the primary purpose of copyright, which is to remunerate authors for their efforts, encourage the creation of more works, and, let us not forget, protect the public interest in having access to those works as broadly and as soon as possible. Current copyright law and the durations thereof where not developed in the context of encouraging the production of new works, and it is not clear that longer durations increase the rate of production of works, or that they substantially benefit the financial well-being of authors. Copyright law should be reevaluated on the world stage, and Canada should be a leader in advocating for this. Real research should be done into what the smallest possible copyright term which still stimulates the creation of new works is, and then copyright terms should be shortened accordingly. Holistic systemic alternatives to copyright, including the levy method discussed in section 3.6 (c), should be evaluated on their merits and given real contemplation as practical alternatives to copyright law in the modern world. The Government of Canada should apply international pressure for copyright reform, and be a leader in this domain, encouraging other states to follow our example and modify their own copyright laws to the benefit of their citizens.

5.7 future policy planning and the abolition and replacement of copyright

The government of Canada should create a workable long-term plan to phase out copyright as a system, and replace it with a more just system that better serves the people, and authors, and that reduces or eliminates altogether the need for publishing and distribution corporations. While such a system may seem Utopian and unobtainable, by making concrete plans and moving slowly but firmly towards a better system, even seemingly Utopian ideals can be realized.

6 Conclusion and final arguments

Copyright law has the potential to bring about much societal good, but in present day, it is extracting a heavy toll from our society, intellectually, socially, and economically. Our government has repeatedly modified copyright law, and stands to do so again, purely to the benefit of publishers, while continuing to neglect the needs of authors and the wants of the public. Ultimately, this essay, and even our flawed democratic process are unlikely to result in any material changes to copyright law at all; There is no incentive for the wealthy and the powerful to listen to the complainings of the meek labourer or the common peasant. Why, then, spend tens of hours writing an extensive essay that it is unlikely will even be read by, much less influence, the decision-makers with regard to these issues? Why dedicate time and passion, mental energy and emotional labour on an effort that I knew to be fruitless before I even began it? The answer is twofold.

First, I write as a warning. I write these suggestions to offer a path of salvation for copyright law; a way to back down from the edge, to reduce hostility between the public and the publishers. If the law does not change, we will reach a breaking point. The young generation who have been raised in an era of freedom of information will not let that freedom go without a fight. And that young generation, a generation who despite extensive propaganda, do not, on the whole, believe that copyright is moral; a generation who have been scared and left destitute by economic upheavals that took place when they were children, caused of the greed of the already unfathomably wealthy, the plutocrats; a generation who have been raised in a world that is already being ravaged by climate change, a preventable disaster, the consequences of which have been left to them; that generation, that generation of young people will soon outnumber the old guard. Your house of cards, your legal fictions and imagined wealth cannot last forever, and they will not endure a tide of angry youth.

And so, I wash my hands of this thing: let it not be said that I did not warn them, that I did not call them to change their ways. I have done my part, and can do no more. I cannot change the law or alter precedent, but what I can do, I have done. I have spoken the truth to power and none can say that I did not. I have voiced the concerns of the common people, and it cannot be said that they ignored us because we did not speak. If they ignore us, if the law stays as it is, if nothing changes, let it not be said that I did not do all that was within my power to change it. I have spoken, and I will not rescind what I have said.

Second, I did not, in fact, write this text merely as a call for action to the powers that be, to the Government and her Ministers, to the Representative of Her Majesty the Queen in Canada-- No, I wrote this also for the sort of people who think like me, who snort when they see the words “Her Majesty the Queen”; Who don’t believe that law dictates morality; Who are opposed to oppression, and are advocates of freedom-- to these people I write a call to action. Let us change the world.

Declaration and Signature

We, the undersigned Citizens of Canada, call upon the House of Commons to reject the proposed extension to the term of copyright in Canada; and we call upon the Government of Canada to accept the forgoing proposals for alterations to *The Copyright Act*, to pass a resolution indicating support for these alterations posthaste, and to make all reasonable efforts to reform the *Act* in the interest of the people of Canada.

Signed:
30-Mar-2021, Dallin Backstrom

The following is an essay expressing my concern, as a private citizen, with the proposed extension of Canada's copyright term under USMCA, specifically written for submission and consideration in the process of public consultation on this matter. After the end of the public consultation, it will be published separately as an open letter to Her Majesty the Queen's representative, the Governor General of Canada, and to [her] advisors, the Ministers of the Government of Canada.