



MOTION PICTURE ASSOCIATION CANADA

March 26, 2021

Delivered by E-Mail

Jennifer Miller
Director General
Marketplace Framework Policy Branch
Innovation, Science and Economic Development Canada

Owen Ripley
Director General
Broadcasting, Copyright and Creative Marketplace Branch
Canadian Heritage

SUBMISSION IN RESPONSE TO “CONSULTATION PAPER ON HOW TO IMPLEMENT AN EXTENDED GENERAL TERM OF COPYRIGHT PROTECTION IN CANADA”

A. Introduction

The Motion Picture Association – Canada (MPA-Canada) serves as the voice and advocate of the major international producers and distributors of movies, home entertainment and television programming in Canada and is an affiliate of Motion Picture Association, Inc. (MPA). The global studios we represent – including Walt Disney Studios Motion Pictures; Netflix Studios, LLC; Paramount Pictures Corporation; Sony Pictures Entertainment Inc.; Universal City Studios LLC; and Warner Bros. Entertainment Inc. – are major investors in the Canadian economy through the production of long-running television series, major feature films, and blockbuster post-production, visual effects, and digital animation projects.

More broadly, the film, television, and streaming industry supports a dynamic creative economy in Canada, employing people in every province, across a diversity of skill sets and trades. In 2018/19 alone, more than 180,900 people – from special effects technicians to makeup artists to sound editors, carpenters and more – worked in jobs supported by the industry, with the total volume of film and television production reaching a record \$9.32-billion and generating \$12.8-billion in gross domestic product (GDP) for the Canadian economy.¹

Copyright is the foundation of Canada’s creative economy and a bedrock principle that supports the livelihoods of thousands of creators. Works of art, culture, and entertainment

¹ Canadian Media Producers Association, *PROFILE 2019 – Economic Report on the Screen-Based Media Production Industry in Canada*: https://cmpa.ca/wp-content/uploads/2020/04/CMPA_2019_E_FINAL.pdf

not only enrich the lives of Canadians, but drive economic and technological developments that fuel progress in Canada and around the world. Essential to this creativity are robust copyright laws that encourage creators and makers to continue their work, provide the right incentives to make sure everyone has access to content across multiple platforms, and ensure that the people who make that content are able to continue to do so.

MPA-Canada therefore welcomes the opportunity to provide this submission in response to the consultation paper on how to implement an extended general term of copyright protection in Canada ([“Consultation Paper”](#)).

For the reasons below, MPA-Canada respectfully submits that the Government of Canada should fulfil its treaty obligations under the Canada-United States-Mexico Agreement (CUSMA) without delay and without adding any additional or accompanying measures that would undermine the policy rationale to extend Canada’s general term of copyright protection and potentially conflict with Canada’s treaty obligations under the CUSMA.

B. Canada Already Agreed to Extend its General Term of Copyright Protection

As noted at the outset of the Consultation Paper, under the CUSMA, which entered into force on July 1, 2020, Canada has already agreed to extend its general term of copyright protection from 50 years after the life of the author to 70 years after the life of the author, but has until December 31, 2022 in which to do so. The policy rationale for extending the general term of copyright protection is aptly set out in the Consultation Paper, the key elements of which are highlighted below.

C. Canada’s Policy Rationale for Extending its General Term of Copyright Protection

The [news release](#) and [background](#) accompanying the Consultation Paper summarize the key elements of the policy rationale for extending Canada’s general term of copyright protection:

- **Comprehensive Copyright Framework** – *“In today’s fast-paced creative economy, it is critical for Canada to maintain a comprehensive copyright framework to encourage creation, acquisition and commercialization of copyrighted content.”*
- **Increased Opportunities and Investment** – *“A longer general term of protection will increase opportunities for Canadian rights holders to monetize copyright-protected content, thereby encouraging investment in the creation, acquisition and commercialization of such works. It will also harmonize Canada’s general term with that of our major trading partners, allowing Canadian rights holders to compete internationally on a levelled playing field.”*

The key elements of the policy rationale for extending Canada’s general term of copyright protection are further expanded upon in the Consultation Paper, which animates the reasons why the Government of Canada agreed, pursuant to the CUSMA, to extend its general copyright term of protection from 50 to 70 years after the life of the author:

- **Moving Beyond Minimum Standards** – *“International copyright treaties establish minimum standards that member states must adhere to, including a minimum life-plus 50 year term of protection, as well as national treatment obligations.”*

- **Alignment with Canada’s Key Trading Partners** – *“Approximately 80 countries have moved to a term of life-plus 70 years or longer, including key trading partners such as the United States (U.S.), Mexico, the European Union (EU), the United Kingdom, Australia, Japan, and South Korea.”*
- **Levelling the Playing Field** – *“Canada’s implementation of its commitment to extend its general term of protection to life-plus 70 years will provide certainty that Canadian rights holders will benefit from this extended term in each of these countries, contributing to a more level global playing field and providing new export opportunities for Canadian creative industries and Canadian-made content.”*
- **Aligning the Term of Protection for Other Works and Subject Matter** – *“In addition to the outcome on extending the general term of protection, and consistent with the entry into force of the agreement and the CUSMA Implementation Act, Canada now provides extended terms of protection associated with certain types of works (i.e. anonymous and pseudonymous works and nondramatic cinematographic works) and certain subject matter (i.e. performer’s performances and sound recordings).”*
 - *“For example, Canada was required to extend the term of protection from 70 to 75 years from the date of publication for published sound recordings and performances fixed therein, and from 50 to 70 years after fixation for unpublished sound recordings and performances fixed therein.”*

D. Term Extension Should Not be Accompanied by a Registration Requirement

As noted in the Consultation Paper, the Standing Committee on Industry, Science and Technology (“INDU”), but not the Standing Committee on Canadian Heritage (“CHPC”), recommended that *“in the event that the term of copyright is extended, the Government of Canada consider amending the Copyright Act to ensure that copyright in a work cannot be enforced beyond the current term unless the alleged infringement occurred after the registration of the work”*. MPA-Canada agrees with the assessment in the Consultation Paper detailed below that adding such a registration requirement for the additional period of protection provided for under the CUSMA would conflict with Canada’s international treaty obligations and increase costs for copyright owners:

- *“The approach recommended by INDU raises serious questions in the context of Canada’s international obligations, as well as the costs that would be borne by copyright owners and the duplication of administrative efforts that might result.”*
- *“Numerous international treaties to which Canada is a party (e.g., Berne) prohibit the imposition of any ‘formalities’ that would need to be satisfied for foreign works to benefit from copyright protection in Canada.”*
- *“In addition, with new pressure on copyright owners to register their works, such an approach would likely result in increased costs in the form of registration fees and associated administrative and legal costs, particularly for owners of copyright in multiple works.”*

E. Canada Should Extend the General Term of Protection Without Additional Measures

For the reasons set out in the Consultation Paper as noted above, MPA-Canada agrees with the policy rationale animating Canada's decision to extend its general copyright term of protection from 50 to 70 years after the life of the author under the CUSMA. While the Government of Canada technically has until December 31, 2022 in which to implement this critical change to Canada's copyright regime, Canada should fulfil its CUSMA treaty obligations without delay and without adding any additional or accompanying measures that would undermine the policy rationale to extend the general copyright term of protection and potentially conflict with Canada's treaty obligations under the CUSMA.

F. Other Amendments Should be Considered Apart from CUSMA Implementation

MPA-Canada appreciates that concerns have been raised about orphan works and out-of-commerce works and agrees that it is well worth considering the means to address these issues. However, the examination of such issues, as well as those stemming from the statutory review of the *Copyright Act*, should be considered as part of a *separate* process that is not tied to the implementation of Canada's treaty obligations under the CUSMA.

As noted in the Consultation Paper, "*Canada could extend the general term of protection by 20 years, to life-plus 70 years, without any accompanying measures*" and that "[i]mplementing term extension in this manner would not close the door to the possibility of future reforms to address the concerns raised by some stakeholders in relation to access to orphan works and out-of-commerce works" [emphasis added].

MPA-Canada agrees with the above assessment and therefore urges the Government of Canada to give effect to the policy rationale that animated Canada's decision to extend its general copyright term of protection from 50 to 70 years after the life of the author under the CUSMA by implementing this critical change to Canada's copyright regime without delay and without adding any additional or accompanying measures.

MPA-Canada welcomes the opportunity to participate in future consultations that seek to address issues stemming from the statutory review of the *Copyright Act* that are not linked to implementing Canada's treaty obligations under the CUSMA.

MPA-Canada, on behalf of its members, appreciates the opportunity to provide this submission in response to the Consultation Paper and we look forward to discussing the matter with you at your convenience.

Yours very truly,



Hafeez Rupani
VICE PRESIDENT, LEGAL AFFAIRS