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To Whom It May Concern,

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**RE: Implementation of the Extended General Term of Copyright Protection in the Copyright Act**

Thank you for the opportunity to submit comments on the implementation of the extended general term of copyright protection.

As noted in the publication entitled “A consultation on how to implement an extended general term of copyright protection in Canada,” stakeholders “have raised arguments in favour of and against extending the copyright term of protection.”

**The postulates of the supporters of a longer term**

Those in support postulate that the longer term will 1) “increase opportunities to monetize copyrighted content, and thereby increase the value of copyright holdings and encourage investment in the creation, acquisition, and commercialization of copyrighted content”, and 2) “further harmonize Canada’s general term of copyright protection with that of its major trading partners, enabling Canadian rights holders to compete internationally on a levelled playing field.”

A portfolio of valuable copyright holdings may, indeed, encourage investment in the creation, acquisition, and commercialization of more copyrighted content. It may, however, encourage larger payouts of the earnings such holdings have produced, thereby decreasing investments. In fact, only the law of demand can help rights holders achieve the goals they opine a longer term will allow them to achieve.

The argument according to which a longer term is procompetitive is a questionable one as most copyrighted content do not compete against one another. For example, people will not buy a novel by Alexandre Jardin over one by Dany Laferrière if what they want is to read the latter’s words. It is also rather questionable to argue that Laferrière would pact with a French publisher merely because his heirs will collect royalties for more years than they would had he signed with a Canadian one. That said, Canadians should have access to those

books Laferrière's publisher has ceased commercializing. A longer term must not adversely impact such access.

The push for longer terms is the plea of a class of rights holders whose popular assets are commercialized in many jurisdictions simultaneously. They rely on those lucrative holdings to finance investments, some of which they make in Canada.

### **The facts put forth by the detractors of a longer term**

Those against said extension have raised concerns over potential implications in relation to access to works. Yet their arguments, although based on undisputable facts, were brushed aside by the negotiators on the Canadian side of the Canada-United States-Mexico Agreement (CUSMA): a) no works will enter the public domain for a 20-year period, and b) it will now take 20 years longer for works to enter the public domain.

As a Genealogist Researcher, I, too, am concerned about the potential implications of longer terms for accessing certain works. The public's access to out-of-commerce works for purposes of research, scholarship, and preservation will inevitably be reduced if government refrains from implementing said extension.

### **Comments supporting the need for implementation**

No referendum was held on the CUSMA. Consequently, Canadians who are keen on safeguarding the public's interest – which include the public domain as a public good – now have to come to grips with an agreement they did not get to vote for. Government must not let these people down again.

I ask government that it introduces language similar to 17 U.S. Code § 108. Said article allows certain non-commercial users to reproduce, distribute, display, or perform copyrighted content if a work is not “subject to normal commercial exploitation” in its final 20 years of copyright.

I opine such a provision would mitigate “some of the disadvantages of term extension” the Standing Committee on Industry, Science and Technology has identified in its 2019 report.

Rights holders have argued that “life-plus 70” is good policy. Because it complies with the CUSMA, they will concur that such a provision is also good, balanced policy. After all, if statutory protection exists, it is not so much to facilitate the reward it affords rights holders over the course of two lifetimes (average life expectancy in Canada is 82 years) but rather to ensure that works return to society in one way or another. Indeed, as Jane C. Ginsburg explicates in her seminal paper “A Tale of Two Copyrights,” the enactment of a private property regime constituted a temporary incursion into the public domain with the latter remaining the *de facto* norm. Though such a provision does not make out-of-

commerce works enter the public domain, it nevertheless serves the public's interest in that it enables access.

Those who have come before us understood this. Take, say, Thomas Babington Macaulay's February 5, 1841 speech in the House of Commons (UK):

*It is good that authors should be remunerated; and the least exceptionable way of remunerating them is by a monopoly. Yet monopoly is an evil. For the sake of the good we must submit to the evil; but the evil ought not to last a day longer than is necessary for the purpose of securing the good.*

The Constitution of the United States of America is based on the same idea. It declares that "Congress shall have power (...) to promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries."

Similarly, the Statute of Anne of 1710 ("An Act for the Encouragement of Learning by vesting the Copies of printed Books in the Authors or Purchasers of such Copies") makes clear that copyright aims to incentivize authors to create so that the public may have access to and be enriched by their works. One would be remiss not to point out that the term of protection granted by this statute was 28 years (i.e., 14 years from the work's first publication, plus a renewal for a second 14 years if the author was still living). That said, I am well aware of the difference in context.

## **Summary**

These are just a few of the evidence one can put forth to highlight that copyright, as statutory law, exists to ensure that the public's interest is equal, if not superior, to the author's. The converse view places us in a world full of monopolies, certain active and prosperous, others dormant and unprofitable. Yet society cannot thrive, let alone be deemed egalitarian, if some of its citizens erect state-sanctioned, inextinguishable monopolies and argue them merely doing so benefits all.

By extending the term, the government of Canada has allowed the aforementioned class of rights holders to charge its people money for access to copyrighted content for an additional 20 years (cf. Paul Heald). The very least it could do for the people now is introduce a provision similar to 17 U.S. Code § 108. Doing so will ensure that the disadvantages of said extension identified by certain economists and the Standing Committee on Industry, Science and Technology are duly mitigated.

(signed)

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