



Professional Photographers of Canada
Photographes professionnels du Canada

March 30, 2021

Submitted via email (copyright-consultation-droitdauteur@canada.ca)

To: The Honourable François-Philippe Champagne, Minister of Innovation, Science and Industry and the Honourable Steven Guilbeault, Minister of Canadian Heritage

Re: Response on behalf of CAPIC and the PPOC to Consultation on How to Implement Canada's CUSMA Commitment to Extend the General Term of Copyright Protection

This response is being submitted on behalf of the Canadian Association of Professional Image Creators (CAPIC) and the Professional Photographers of Canada (PPOC) with respect to the above-noted consultation on extending the general term of copyright protection.

Formed in 1978, CAPIC is a Canadian association of professional image creators (photographers, illustrators and digital artists) working in the field of visual communications. CAPIC is dedicated to maintaining fair and equitable industry standards and acting as a strong advocate for economic growth and copyright protection on behalf of all image creators. CAPIC has six chapters across Canada with its main office in Toronto.

The PPOC represents Canadian professional photographers as an advocate to address relevant legal issues and legislation and to elevate and maintain professional standards and ethics for all professional photographers. The PPOC offers a wide range of services to its members, including accreditation, competitions, education and legal resources. The precursor organization to the PPOC was originally formed in 1946.

Given their unique roles in representing image creators, who rely on copyright for their livelihoods, it is vital that CAPIC and the PPOC have the opportunity to respond on behalf of their members and all Canadian photographers, illustrators and image creators.

The Extension of the Copyright Term to Life-Plus 70 Years Should Not Include Accompanying Measures, including an Unnecessary Copyright Registration Requirement

CAPIC and the PPOC object to including any accompanying measures as part of the extension of the term of copyright to life-plus 70 years – in particular, the onerous copyright registration requirements recommended by the INDU Committee.¹

Under the Berne Convention, to which Canada is a signatory, registration is not required for copyright protection of a creator's work.² In Canada and other signatory nations, copyright is secured automatically when the work is created and fixed in a tangible form.³ While copyright registration in Canada provides certain benefits to copyright owners, it is entirely voluntary and not required for rights owners to own or enforce copyright in their work in Canada – *at least until now*.⁴

Requiring Canadian creators to register their works in order to be rewarded for their efforts for an additional 20 years adds an unnecessary level of complexity and cost to what should be a straightforward process.

An unwieldy registration requirement would put Canadian creators at a distinct disadvantage to their counterparts in the approximately 80 countries that have extended the term of copyright to life-plus 70 years or more without requiring additional formalities, including our major trading partners such as the United States, the United Kingdom, and the European Union countries, Mexico, Japan and Australia.⁵ For example, in the 28 EU countries, Canadian creators who have not registered their work will not obtain the same level of protection as European and American creators based on the application of the "*rule of the shorter term*".⁶

¹ Canada, Parliament, House of Commons, *Statutory Review of the Copyright Act: Report of the Standing Committee on Industry, Science and Technology*, 42nd Parl, 1st Sess, No 16 (June 2019) (Chair: Dan Ruimy) at 38 ("INDU Report") (see

<https://www.ourcommons.ca/Content/Committee/421/INDU/Reports/RP10537003/indurp16/indurp16-e.pdf>).

² *Berne Convention for the Protection of Literary and Artistic Works*, 9 September 1886, as revised at Paris, 24 July 1971 (see https://www.wipo.int/edocs/lexdocs/treaties/en/berne/trt_berne_001en.pdf).

³ See *id.*

⁴ *Copyright Act*, R.S.C., 1985, c. C-42, s. 53 ("Copyright Act").

⁵ https://en.wikipedia.org/wiki/List_of_countries%27_copyright_lengths

⁶ See <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:31993L0098>, Article 7.

In the United States, which is often cited by proponents of a registration requirement, copyright registration is only required for copyright owners to be entitled to certain *remedies* in litigation such as statutory damages if the work is registered before the infringement occurs or within three months of publication – it is not required in order to enjoy the benefits of copyright ownership.⁷ The additional registration requirement for copyright itself would create a unique and unprecedented hurdle for Canadian creators that would potentially put Canada offside the Berne Convention as an unnecessarily burdensome formality.

Based on CIPO's current copyright registration rules, the registration requirement would be particularly onerous for CAPIC and PPOC photographer members. Digital technology allows photographers to create thousands of images annually: one recent study estimated that 1.4 trillion photographs would be taken in 2020.⁸ While the United States allows an individual to register up to 750 photographs created within a single year at a cost of US\$55 per registration, CIPO only allows one work per registration.⁹ Accordingly, the single registration that would cost \$55 in the United States, would require 750 separate registrations at a cost of \$37,500 (\$48,750 if not done online).¹⁰ The vast majority of Canadian photographers are small business owners and sole proprietors who would not be able to afford the *luxury* of having the same level of copyright protection as creators working in other fields or their international counterparts.¹¹

In addition, copyright registrations for artistic works in Canada (which cover photographs and illustrations) only require the title of the work without a copy of the registered work (digital or otherwise)¹², thus limiting the ability for the registration system to act as any kind of effective database of copyright, as proponents of the registration requirement have suggested.

In brief, our current voluntary copyright registration system would need to be completely overhauled if a registration requirement is implemented. It would also require a massive educational and outreach campaign to inform Canadian creators that they

⁷ 17 U.S.C. § 412 ("U.S. Copyright Act")

⁸ See <https://focus.mylio.com/tech-today/how-many-photos-will-be-taken-in-2020>

⁹ U.S. Copyright Office, Circular 42, *Copyright Registration of Photographs* (see <https://www.copyright.gov/circs/circ42.pdf>); for Canada, see https://www.ic.gc.ca/eic/site/cipointernet-internetopic.nsf/eng/h_wr02281.html ("The title must identify a single work. If the work is published in a series of books or parts, as in the case of an encyclopedia, a single application for the whole work is sufficient. Do not include descriptive matter that does not constitute a part of the title.").

¹⁰ For U.S. Copyright Office registration fees, see <https://www.copyright.gov/about/fees.html> (\$55 fee for "Registration of a claim in a group of published photographs or a claim in a group of unpublished photographs"); for CIPO fees, see <https://www.ic.gc.ca/eic/site/cipointernet-internetopic.nsf/eng/wr00091.html>.

¹¹ See, e.g., <https://sba.ubc.ca/blog/industry-overview-portrait-photography>

¹² See requirements set forth by CIPO under heading "Preparing your application for registration" at https://www.ic.gc.ca/eic/site/cipointernet-internetopic.nsf/eng/h_wr02281.html



Professional Photographers of Canada
Photographes professionnels du Canada

need to register their work in order to be entitled to the term of copyright protection provided for under the *Copyright Act*. The cost and burdens of requiring copyright registration would effectively remove the practical benefits that CAPIC and PPOC members would obtain from the additional term of copyright – essentially rendering them and thousands of other Canadians as second class creator citizens.

However, none of this is necessary if we simply extend the term of copyright in the same manner that it has been extended throughout the world for all creators without roadblocks such as registration.

While CAPIC and the PPOC maintain that the term extension should not require any accompanying measures, we would not object to reasonable and tailored reforms addressing concerns raised by some stakeholders regarding access to orphan and out-of-commerce works, similar to the measures introduced in the United States when the term of copyright was extended in 1998.

On behalf of their members, CAPIC and the PPOC are thrilled that Canada is joining our key trading partners in extending the term of copyright to life-plus 70 years in recognition of the vital contributions made to our culture and economy by Canadian creators. We greatly appreciate having this opportunity to address this critical issue to help ensure that the implementation of the term extension does not include unnecessarily burdensome accompanying measures.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "D Pollack".

Dan Pollack
Dipchand LLP
dpollack@dipchand.com
(416) 504-5805

cc: Brian Boyle, MPA, FPPO, HLM, PPOC Acting Copyright Chair (brian.boyle@sympatico.ca)
Sasha Sobrino, CAPIC National General Manager (sasha@capic.org)