



SCREEN COMPOSERS
GUILD OF CANADA

SCGC

GUILDE DES COMPOSITEURS
CANADIENS DE MUSIQUE À L'IMAGE

March 19th, 2021

Submission of the Screen Composers Guild of Canada

Via email: copyright-consultation-droitdauteur@canada.ca

Re: *Consultation on how to implement an extended general terms of copyright protection in Canada*

1. The Screen Composers Guild of Canada (SCGC) is the national association certified under the Federal Status of the Artist Act to represent all professional Anglophone composers and music producers for audiovisual media productions in Canada.
2. In brief, SCGC (i) supports the unconditional extension of the general term of copyright in Canada for musical compositions and sound recordings (ii) recommends a reduction in the current period before copyright in a musical composition reverts to its creator/author, and (iii) recommends that the *Copyright Act* be amended to clarify that the “creator” of a work is always its “author,” as distinct from any third-party who may become its “owner” for a period of time.
3. SCGC notes that under CUSMA, Canada has committed to implement, before the end of 2022, an extension of the general term of copyright from 50 years after the life of the creator/author, to 70 years after the life of the creator/author. This extension would safeguard the rights and livelihoods of Canadian creators, while bringing Canada’s general term of protection into line with the approximately 80 countries who have already done so.
4. SCGC fully agrees with stakeholders who have noted that this extension of Canada’s general term of copyright would “increase the opportunities to monetize copyrighted content, ... increase the value of copyright holdings and encourage investment in the creation, acquisition and commercialization of copyrighted content.”ⁱ
5. At the same time, SCGC recognizes the concerns that have been raised by other stakeholders, in terms of access by libraries and archives in particular to certain works that would have entered the public domain over the next 20 years, were it not for this extension from “life+50” to “life+70.”
6. While respectful of these concerns and the stakeholders who have raised them, SCGC notes that these issues are generally concentrated on the book publishing sector, and as such, respectfully submits that any accompanying measures to address concerns related to preservation, research or scholarship related to when books enter the public domain should not apply to musical compositions or sound recordings in the commercial marketplace (noting that a similar approach has been adopted in the European Union, where exemptions are limited to specific non-commercial uses by, primarily, libraries, museums and archives).

7. An unduly watered-down term of general copyright protection in Canada would only serve to place Canadian creators at a disadvantage relative to their international counterparts. It would result in less revenue being generated by the Canadian creative sector and would weaken the ability of creators/authors to determine the use and exploitation of works they create, ultimately resulting in a general undervaluing of creative content in Canada.
8. SCGC further recommends that the Government of Canada should adopt an accompanying measure related to when copyright reverts to the creator/author, after having been assigned to a temporary agent or publisher.
9. Under section 14 of the *Copyright Act*, copyright in most works currently reverts from the copyright holder to the estate of the creator/author 25 years after the author's death. The copyright is then controlled by the creator/author's estate for further 25 years, until ultimately entering the public domain after 50 years (or, presumably, 70 years, following the implementation of term extension).
10. SCGC strongly submits that any recommendation to extend the length of time before copyright reverts back to the creator/author, or their estate, would be fundamentally inconsistent with the underlying principles behind extension of the general term of copyright, i.e., that the creator/author of a work should be the one who determines its future uses, and who derives its economic benefits, over a longer timeframe.
11. On the contrary, SCGC recommends an accompanying measure by adopted in Canada, in line with the approach adopted by the United States, whereby a creator/author has the statutory right to terminate the assignment of copyright to a temporary agent or publisher after 35 years.
12. Extending the general term of copyright is fundamentally a recognition of the right of the author/creator to determine the use and valuations of their creative work. Aligning Canada's term of copyright reversion to that of the United States would be consistent with this principle.
13. In practical terms, SCGC notes that an abbreviation of the current copyright reversion term is necessary to counter increasingly anti-competitive behaviour by some independent media production companies in Canada. These companies are increasingly insisting that copyright in screen compositions be assigned to the producer, in perpetuity, as a condition of contractual engagement - despite the fact that these same producers are seeking regulatory protection from any forced-assignment of their own rights in the same works.
14. The rationale often deployed by independent media production companies to justify this forced assignment of copyright is that it is consistent with "work made in the course of employment" provisions in copyright and labour law. SCGC agrees that "work made in the course of employment" would be a reasonable term, if an employer-employee relationship actually existed. In fact, these contracts usually contain language making clear that no employer-employee relationship exists between the contracted parties. Composers are independent contractors without the leverage to resist these demands. As a result, creator/author rights are more often than not retained by the media production company commissioning the work, not the independent composer who creates it.

15. Absent regulatory intervention to prevent forced this type of copyright assignment as a condition of screen composers' contracts with media production companies, an abbreviated reversion term would ensure that Canadian screen composers --who are the rightful creator/author of the works in question--are able to reclaim copyrights they were previously forced to surrender to media production companies who commissioned the works in question.
16. This dynamic further points to the need to clarify in the *Copyright Act* itself that the "creator" of a work is, and will always remain, its "author". While another entity may become the "owner" of a work in the course of its commercial exploitation, it is a perverse outcome --and evidence of market failure requiring legislative redress--that the "owner" could be legally considered its "author" for material purposes.
17. In conclusion, SCGC (i) supports the unconditional extension of the general term of copyright in Canada for musical compositions and sound recordings (ii) recommends a reduction in the current period before copyright in a musical composition reverts to its creator/author, and (iii) recommends that the *Copyright Act* be amended to clarify that the "creator" of a work is always its "author," as distinct from any third-party who may become the "owner" for a period of time.
18. SCGC appreciates the opportunity to provide its views to this important consultation.

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ⁱ [Consultation paper on how to implement an extended general terms of copyright protection in Canada](#), page 4.