

**Memorandum of the Society of Composers, Authors and  
Music Publishers of Canada  
(SOCAN)**

**Consultation Paper on How to Implement an Extended  
General Term of Copyright Protection in Canada**

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## **Consultation Paper on How to Implement an Extended General Term of Copyright Protection in Canada**

SOCAN is Canada's largest music rights society and administers public performance, communication and reproduction rights of authors, composers and publishers of music. We currently have more than 160,000 Canadian members and clients, and we also represent the repertoire of all foreign performing right societies and the vast majority of reproduction right societies in the Canadian territory.

SOCAN welcomes the extension of the term of copyright protection to the life of the author plus 70 years, which will greatly benefit Canadian authors, composers and music publishers. SOCAN strongly believes that the best course at this stage is to implement term extension without any accompanying measures. The reform of the current orphan works regime and the creation of a new out-of-commerce regime will require careful study and consultation and should be undertaken as part of Canada's broader copyright reform initiatives.

### **TERM EXTENSION**

Granting protection for life plus 70 years ensures that SOCAN's members and all Canadian creators compete internationally on a levelled playing field. In fact, a longer term of protection in Canada will better allow music publishers to reinvest the revenues they derive from the exploitation of copyright protected works in the discovery, support, and development of songwriters and composers. Additionally, from a multinational perspective, longer terms of protection in a market provide incentives for foreign companies to invest in repertoire in that market. In both cases, providing for a longer term of copyright protection in Canada will strengthen domestic reinvestment in cultural development and diversity, as well as foreign investment in Canada's substantial local talent.

Criticisms that term extension negatively impacts users have been consistently found baseless. Canada's major trading partners, each with term extension to at least life plus 70 years, are examples that refute those criticisms.

The term extension is part of Canada's obligations under the Canada/United States/Mexico Agreement (CUSMA). SOCAN supports the Government's decision not to make the extension of term conditional on any kind of registration formalities. In addition to raising questions about Canada's compliance with its international treaty obligations, such conditions would create real administrative challenges and would be generally prejudicial to Canadian rights holders.

### **ACCOMPANYING MEASURES**

Term extension required under CUSMA should be implemented without accompanying measures.

The issues of orphan and out of commerce works are complex and involve a variety of considerations with implications for creators, rights holders, users, and other stakeholders. Copyright protects very broad and diverse categories of works in very different industries. It is important that any reform in the area of orphan works and out of commerce works take into consideration the impact on the rights of authors and owners. It will be necessary to determine the threshold measures to locate the copyright holder, the applicable conditions to the use of the work, the appropriate compensation models, the scope of licences or exemptions, and the choice of authorities to administer them. The answers may be different depending on the subject-matter of the work. The suggestion in the Government's consultation paper that such reform could extend to reviewing and amending the definition of what constitutes *publication*, a core concept in copyright law, serves to underscore the importance of proceeding carefully as we adapt our laws to the digital age.

It is SOCAN understanding that jurisdictions such as the European Union and the United States engaged in elaborate consultation processes to assess potential legislative frameworks for orphan works and out of commerce works. It is most telling that the solutions adopted vary from jurisdiction to jurisdiction. While Canada can benefit from the studies already conducted by other governments, these studies need to be updated to take into consideration developments in media and technologies. Most importantly, the solutions ultimately adopted need to be adapted to Canadian needs.

## **CONCLUSION**

SOCAN believes that there is no impediment to introduce term extension now and without any accompanying measures, respecting our international obligation under CUSMA. An extension of Canada's term of copyright protection for musical works is consistent with the underlying spirit and intention of the Berne Convention. Term extension will have a direct long-term impact on cultural reinvestment by rights holders.

Finally, it would be a mistake to rush to craft solutions to any issues regarding orphan works and out of commerce works simultaneously with the ratification of CUSMA. As noted in the consultation paper, more careful consideration does not close the door to the possibility of future reforms. Rather, this approach would provide an opportunity to take into account the concerns of various stakeholders and to better assess the Canadian needs and solutions.