

Goodmans^{LLP} Update

Canada to Increase Copyright Term to “Life Plus Seventy Years”

On June 23, 2022, Royal Assent was granted to Bill C-19¹, an omnibus bill that implements significant amendments to the Canadian *Copyright Act* (the “Act”). In particular, the legislative amendments, once proclaimed into law, will increase the current term of copyright protection in Canada from “life plus fifty” – life of the author, to the end of the calendar year of the death of the author, plus fifty years – to “life plus seventy” – life of the author, to the end of the calendar year of the death of the author, plus seventy years. The new expansion of copyright protection in Canada will apply to all literary, dramatic, musical and artistic works.

Background

Bill C-19 is designed to implement Canada's commitment in the *Canada-United States-Mexico Agreement* (“CUSMA”)² to extend its basic term of copyright protection for works to life plus seventy, which is the same term of copyright protection as in the United States and the European Union. CUSMA came into force on July 1, 2020 and it requires Canada to implement this extension to life plus seventy by “no later than the expiration” of 2.5 years from that date.³ Based on this, the date of implementation could be interpreted as either December 31, 2022 or January 1, 2023.

CUSMA also requires Canada to extend terms of copyright protection that are calculated on a basis other than the life of the author – specifically, terms calculated from the date of publication – to “not less than 75 years from the end of the calendar year of the first authorized publication”.⁴ That change to the Act was implemented by Bill C-4, which, among other changes, extended the term of copyright protection for sound recordings published before the copyright expires to the earlier of: (i) 75 years from the end of the calendar year in which the recording was first published, and (ii) 100 years after the end of the calendar year in which the first fixation of the recording occurred.⁵ Bill C-4 received Royal Assent in March of 2020.

Timeline

The proposed extension of the copyright term in Canada is not yet in force. Rather, the amendments will come into force on a date to be fixed by order of the Governor in Council, which, as per CUSMA, must be no later than 2.5 years from July 1, 2020. Though the date is not yet fixed, the Canadian government has indicated that implementation of the copyright term extension will be sometime at the end of 2022.⁶

¹ Bill C-19, *Budget Implementation Act*, 1st Sess, 44th Parl, 2022 (assented to 23 June 2022), SC 2022, c 10 <<https://www.parl.ca/DocumentViewer/en/44-1/bill/C-19/royal-assent>>.

² *Canada-United States-Mexico Agreement (CUSMA)*, 1 July 2020 <Government Bill (House of Commons) C-19 (44-1) - Royal Assent - Budget Implementation Act, 2022, No. 1 - Parliament of Canada>.

³ *Ibid* at article 20.89.

⁴ *Ibid* at article 20.62.

⁵ Bill C-4, *Canada-United States-Mexico Agreement Implementation Act*, 1st Sess, 43rd Parl, 2019-2020 (assented to 13 March 2020), SC 2020 <<https://www.parl.ca/DocumentViewer/en/43-1/bill/C-4/royal-assent>>.

⁶ Government of Canada, Ministry of Industry, *Consultation paper on how to implement an extended general term of copyright protection in Canada*, (Ottawa: Minister of Industry, 2021) <<https://www.ic.gc.ca/eic/site/693.nsf/eng/00188.html#fn2>>.

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Implications

Whether the copyright term extension is implemented in December of 2022 or January of 2023 will have significant implications. The amendments do not provide for any “revival” of copyrighted works which previously entered the public domain. Therefore, works which are protected by copyright on or after the implementation date will be protected for an additional 20 years. However, works in which the copyright term has expired prior to the implementation date will remain in the public domain. Accordingly, depending on the date of implementation (i.e. December 31, 2022 or January 1, 2023), a work whose copyright term expires at the end of the 2022 calendar year may or may not be protected for a further 20 years.

Looking Forward

Once the copyright extension comes into force, there will likely be a renewed focus on the proper interpretation by Canadian courts of the “fair dealing” defense to copyright infringement in the Act in light of the extension. In the leading Supreme Court of Canada case of *CCH Canadian Ltd. v. Law Society of Upper Canada* (2004 SCC 13)⁷, the court discussed the need to strike a fair balance between the rights of copyright owners and those of copyright users and described fair dealing as an important “user’s right”. Now that the basic term of copyright protection will be extended in Canada for a further 20 years, query whether the Canadian courts will feel even more pressure to ensure that “user’s rights”, such as fair dealing, are liberally interpreted, so that this balance is preserved.

For further information, please contact any member of our [Entertainment Law Group](#).

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⁷ *CCH Canadian Ltd. v. Law Society of Upper Canada*, 2004 SCC 13, [2004] 1 SCR 339.