

Written Submission for the Consultation on How to Implement an Extended General Term of Copyright Protection in Canada

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Music Publishers Helping to Create, Promote and Protect Canadian Songs in Both Official Languages

Music Publishers Canada is a membership-based organization that ensures the views of music publishers working in Canada are heard. It is our mission to create business opportunities for our members and to promote their interests and those of their songwriting partners through advocacy, communication, and education.

Music publishers invest in thousands of Canadian songs and songwriters that are heard daily on the radio, on streaming services, in video games and in film, television and other screen-based productions around the world. At its heart, music publishing is about championing a song and its songwriter through the lifespan of its career and the song's copyright.

Copyright Term Extension Should be Implemented Immediately, Without Accompanying Measures

MPC applauds the Government's commitment to extending the general term of copyright protection in works – that is, musical, literary, dramatic, and artistic works – to the international standard of the life of the author plus 70 years. MPC strongly supports the suggestion in the white paper that *Canada extend the term of protection without any accompanying measures*. It further urges the Government to *implement term extension before the end of 2021*.

The current term of copyright protection for works in Canada, the life of the author plus 50 years, is out of step with modern copyright law. Apart from achieving consistency with international norms, extending the term of copyright in works will promote the underlying purposes of copyright law, and provide tangible economic benefits, by increasing the resources available to music publishers to invest in the creation of new musical works for domestic and international exploitation.

Orphan Works and Out-of-Commerce Works Should be Considered Separately

MPC believes that the discussion of orphan and out-of-commerce works is not directly connected to Canada's obligation to implement term extension under CUSMA. While it may be important to address the use of certain types of orphan and out-of-commerce works, in certain sectors, we are not aware of any international precedent for doing so specifically in response to term extension. Issues related to orphan and out-of-commerce works are notoriously complex – indeed, the United States has been grappling with them for decades – and require careful consideration. Consultation on those issues must not delay the prompt implementation of term extension.

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When considering approaches to orphan and out-of-commerce works, it is important to recognize material differences between sectors. Most of the scenarios contemplated in the white paper appear to relate mostly to literary and other printed works — out-of-print books, etc. — and not to musical works. That is not surprising: through collective societies like SOCAN and CMRRA, the music publishing industry already benefits from robust registration and licensing solutions that make orphan works a relative rarity. And songs rarely, if ever, fall “out of commerce”; even if a particular sound recording becomes unavailable for some reason (which is unusual in itself), it is almost always possible for another performer to re-record the same song and thus return it to the market. As a result, the schemes discussed in the white paper are unlikely to be especially relevant to the music sector.

In fact, experience suggests that many who inquire about “orphan” musical works have not performed a diligent search. Many may have not even bothered to consult the sophisticated systems already in place at SOCAN and CMRRA to assist with that process. But the existence of those systems illustrates that, at least in the music sector, commercial licensing solutions may be more effective than legislative mechanisms. In the case of CMRRA, for example, the “Unclaimed Works Portal for Online Music Services” allows rights holders to search the active repertoire of online music services in Canada, in order to identify and claim any as-yet-unmatched recordings and unverified shares of matched works.

MPC is concerned that the rushed implementation of an orphan works scheme could lead to unintended consequences and confusion. For example, it is important that institutions with large collections of supposed orphan works are not able to use the introduction of an orphan works scheme to set up a commercial enterprise licensing those works at prices that could disrupt existing markets for similar works that remain available for licensing.

The implementation of term extension was considered in detail as part of the parliamentary review of the Copyright Act by the Standing Committees on Industry and Canadian Heritage. Implementation should not now be combined with a consultation on orphan and out-of-commerce works that is still in the most preliminary stages. These are complex issues that require much more consultation and research. MPC would welcome further discussions with the Department on this subject.

Exceptions Must be Approached With Caution

For the same reasons, exceptions for the use of works during the final 20 years of protection, or more than 100 years after their creation, must be approached with caution. It is important to remember that any exception by its nature means potentially valuable uses for which copyright owners are not compensated. Experience shows that new exceptions inevitably lead to unintended consequences and prolonged litigation, the costs of which must be balanced against any perceived benefits.

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Again, while this may be an important discussion in relation to certain types of works, the structure and characteristics of the music industry may make it less so for musical works. In any event, the issue requires careful study – which MPC would be pleased to assist with – and should not be allowed to delay the prompt implementation of term extension.

Conclusion

Canada's copyright laws are out of step with those of its major trading partners as well as the underlying rationale for the structure of our own copyright regime. This is an unreasonable cost to existing Canadian talent in royalties from abroad, as well as to emerging artists who rely on support from rights holders through reinvestment.

Canada should follow the lead of other like-minded nations and expand the protections afforded to its artists and the industry more broadly by extending the general term of copyright protection for works to the life of the author plus 70 years. The change is long overdue. Canada should implement it immediately – before the end of 2021 – and without accompanying measures that could complicate or delay the process and lead to unintended consequences.