

# GOOD NEWS FOR THE CULTURAL COMMUNITY—CUSMA AND COPYRIGHT

JEANANNE KIRWIN, Q.C.

The drama of last fall's Canada-United States-Mexico Agreement (CUSMA) trade negotiations remains vivid in Canada's collective memory. Images arise of small, but feisty and eminently admirable, Albertan Chrystia Freeland, Canada's deputy prime minister, holding her own with American and Mexican counterparts as they reconstructed what was once known as NAFTA—North American Free Trade Agreement. According to the federal government website, "The [new] agreement provides key outcomes for Canadian businesses, workers and communities in areas such as labour, environment, automotive trade, dispute resolution, culture, energy, and agriculture and agri-food." ([international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/cusma-aceum/summary-sommaire.aspx?lang=eng](http://international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/cusma-aceum/summary-sommaire.aspx?lang=eng))

Less well-known is that some of the most disputed issues in the CUSMA negotiations related to intellectual property, such as expanded protection for trade secrets, enlarged border measures preventing entry of counterfeit goods, enhanced trademark rights protecting country names and, most relevant to creators, extended protection for copyright works.

To comply with CUSMA, the three member countries must guarantee their domestic legislation meets treaty standards. CUSMA provides in Article 20.63 that each country must ensure its legislation (in Canada, the *Copyright Act*) stipulates that where copyright protection of a work is based on a person's lifespan, then the term must not be

less than the life of the author and 70 years after the author's death—called "life + 70."\* Canada has 2.5 years to implement changes in its laws to comply with the copyright extension terms of the treaty.

Controversy has developed about the term extension's implementation, but debate is futile, since the treaty binds Canada and the extension is mandatory. Here are some issues and responses:

- **The extended term will adversely affect consumers of copyright content because they will have to pay for copyright-protected content for a longer period.** That assumes the price of works drops as soon as they fall into the public domain, but that is not true. Some publishers of public domain works reap a greater profit from sales. Others produce augmented versions of such works, for example, critical analysis, commentary, footnotes, photographs and drawings. The price differential is not noticeable to the consumer.
- **The extended term will adversely affect the economy because royalties will be paid for 20 years longer than at present.** However, the public may not know that royalties amount to only 10 per cent of the publisher's revenues. The change in law will not enrich creators. There is a flip side to consider: if creators receive royalties for a longer period, they will spread their income in the form of higher expenditures.
- **The right of owners to the additional 20 years is thought to be conditional upon registration of their copyright interests at the Canadian Copyright**



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**Office, which will lead to extra costs.** Registration is beneficial, because it enhances the creators' rights, but is not required to enjoy copyright as Canada is a member of the Berne Convention (see sidebar). Since requiring registration to enjoy an additional 20 years will

\*For sound recordings and performances, the term of protection must be extended from 70 years to 75 years.

## BERNE CONVENTION FOR THE PROTECTION OF LITERARY AND ARTISTIC WORKS

The Berne Convention, adopted in 1886, deals with the protection of works and the rights of their authors. It provides creators such as authors, musicians, poets, painters with the means to control how their works are used, by whom, and on what terms. It is based on three fundamental principles and has a series of provisions determining the minimum protection granted, and special provisions available to developing countries that want to make use of them.

—World Intellectual  
Property Organization

**Who is an author?** The person who creates the work; the one who first fixes the work in a tangible form, such as by writing, saving digitally, or recording.

**What does “the term” of copyright mean?** The duration of the protection of a work before the work falls into the public domain. The copyright statute in each country determines the length. Members of the Berne Convention, including Canada, must have a minimum term of 50 years. U.S. law provides for life + 70 years; Mexico provides life + 100 years; and in Canada, the current term is life + 50 years. Most countries of the European Union have a term of life + 70. Thus, the extension brings Canada in line with most of its trading partners.

**What is the public domain?** Although not defined in the *Copyright Act*, the term refers to works used without obtaining permission from or compensating the copyright owner. Once the term of copyright protection expires, works fall into the public domain. There are other reasons copyright may not protect a work, but copyright term expiry is the most common one.

**Is copyright registration mandatory to enjoy the term of protection?** No. Copyright arises because of creation. The Berne Convention requires that member countries not make copyright conditional upon registration.

be contrary to the Berne Convention, it is unlikely they will impose the registration condition.

Most important, when creators benefit, so do consumers. The more robust our copyright law, the more likely artists will engage in producing high-quality works that proclaim our Canadian culture. It aligns the interests of consumers and creators.

Early in 2020, the federal government introduced Bill C-4 that deals with term extension. The bill had its first reading on January 29, 2020. By the time you read this column, the precise wording of the implementing legislation will be better understood.

Let's celebrate the CUSMA term of copyright extension as good news for the cultural community—creators and consumers alike. ■

*Jeananne Kirwin, Q.C., a lawyer in Edmonton, practices in the areas of intellectual property and corporate/commercial law with an emphasis on trademark and copyright registration and enforcement (kirwinllp.com).*



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