

CHANGES TO CANADIAN COPYRIGHT - RANGING FROM AI TO IOT, TO 20 YEARS LONGER PROTECTION

Posted on July 29, 2022

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Canada's treaty obligations under the *Canada-United States-Mexico Agreement* ("**CUSMA**")^[1] and Canada's statutory requirement to review the *Copyright Act* every five years^[2] have jointly prompted the modernization of the Canadian copyright legal framework. The Government of Canada launched public consultations in 2021 about Canadian copyright laws, including to extend the duration of the copyright term, as well as to enhance regulation of artificial intelligence ("**AI**"), the Internet of things ("**IoT**"), and online intermediaries. Following these consultations, Canada proposed two bills in 2022 to amend the *Copyright Act*.

Background

Canada's copyright laws have seen significant legislative attention in the last three years.

CUSMA came into force on July 1, 2020 and required Canada to extend its general term of copyright protection from 50 years to 70 years after the life of the author by the end of 2022.^[3] This extension was the topic of one of three public consultations on copyright launched by the government in 2021.

On December 16, 2021, Prime Minister Justin Trudeau, in his latest Mandate Letters for the Ministers, asked the Department of Canadian Heritage and the Department of Innovation, Science and Economic Development to work together for amendments to the *Copyright Act* to enhance the protection of artists, creators and copyright holders.^[4]

Two bills were brought before Parliament to amend the *Copyright Act* in 2022: (1) Bill C-19, the *Budget Implementation Act, 2022, No.1* ("**Bill C-19**");^[5] and (2) Bill C-244, *An Act to amend the Copyright Act (diagnosis, maintenance and repair)* ("**Bill C-244**").^[6]

Proposed Copyright Amendments

Extension of Copyright Term to 70 years

The public consultation on copyright term, held from February to March 2021, discussed the implementation of the proposed extended term and the implications for rights holders.^[7] The extension of the copyright term will

provide copyright owners with more time to monetize their works and is meant to encourage the creation of more Canadian works. Under CUSMA, Canada committed to extend its general term to 70 years after the life of the author and has a transition period lasting until December 31, 2022, to implement this change.^[8] This change will align Canada's protection of copyright term with other jurisdictions, including its major trading partners, such as the United States,^[9] the United Kingdom,^[10] and the European Union.^[11]

However, many user-oriented groups opposed this extension during the consultation, as the extended term means a longer period of restricted and otherwise limited public access and use.

After the consultation, Bill C-19 was introduced. This bill will amend the *Copyright Act* by, among other things, increasing the duration of general copyright protection until 70 years after the life of the author.^[12]

The proposed changes will not revive copyright, meaning that the new sections do not have the effect of reviving the copyright in any work in which the copyright had expired before the day on which new sections come into force.^[13] In other words, if the new Act comes into force on January 1, 2023, and the copyright expired on December 31, 2022 (after the life of the author plus 50 years), such copyright expired and is not revived for another twenty years. On the other hand, if the copyright would have expired on December 31, 2023, such copyright continues for another twenty years. This implementation creates complexity and potentially uncertainty for users that rely on the public domain nature of works for which copyright has expired.

Regulation of Artificial Intelligence and the Internet of Things^[14]

The public consultation on AI and the IoT, held from July to September 2021, aimed to modernize Canada's copyright framework by adapting to developments relating to AI and IoT.^[15] AI refers to machines and systems that can carry out tasks generally thought to require human intelligence, and so to do with limited or no human intervention.^[16] AI raises challenges relating to both the use of copyrighted works as part of text and data mining to train and develop AI applications, as well as to using AI to create, produce and distribute literary, musical and other kinds of works. The IoT refers to the network of physical devices (beyond computers, smartphones, and tablets) equipped with sensors, software, and other technologies to connect and exchange data with other devices over the Internet.^[17] With more than 12.2 billion Internet-connected devices globally in 2021, the IoT allows people to connect various physical devices to the Internet, ranging from consumer products (e.g., kitchen appliances or cars) to industrial tools (e.g., as used in manufacturing or supply chains).^[18]

Technological protection measures (“**TPMs**”) are used to protect and control access to digital copyrighted content (e.g., software) incorporated within devices in the IoT. A person circumventing a TPM may be subject to civil remedies (or criminal penalties if done for commercial purposes).^[19] However, these legal protections for TPMs inhibit the development of interoperable products, and CUSMA allows certain exceptions of

circumvention activities, including the interoperability of computer programs.^[20]

After public consultation, Bill C-244 was introduced to address the challenge of TPMs barriers in the IoT.^[21] The bill will allow the circumvention of a TPM in a computer program if the circumvention is solely for the purpose of the diagnosis, maintenance, or repair of a product.^[22] Also, the bill extends the definition of “circumvent” and “technological protection measures” to include computer programs, which newly captures computer programs within the scope of this section. This bill will grant device owners the right to repair software-controlled devices and not to be restricted by the manufacturer.

Regulation of Online Intermediaries

The consultation on online intermediaries, held from April to May 2021, focused on the liabilities and obligations of entities that facilitate access to the dissemination and use of copyright-protected content on the Internet (i.e., search engines like Google).^[23]

Copyright holders and online intermediaries expressed different views when participating in this consultation. Under the current copyright framework, online intermediaries are liable if they infringe a copyright or serve primarily to enable infringement by others, but are not liable if they merely provide the technical means to the infringers (i.e., safe harbor protections).^[24] Rights holders argue that this framework reduces their remuneration from online uses of their content and advocate modifying the safe harbor protections for online intermediaries, so that rights holders will be paid equitably.

The Government has not yet introduced a bill relating to online intermediaries. However, given the more creator-oriented direction of the latest Mandate Letters for the Ministers, Canadian copyright holders may see stronger protections within upcoming legislative changes. McMillan will continue to monitor this potential development.

[1][ps2id id='1' target=''] See CUSMA, [Article 20.62](#) and [Article 20.89.4](#).

[2][ps2id id='2' target=''] *Copyright Act*, RSC 1985, c C-42, s 92 [*Copyright Act*]. The first comprehensive review of the *Copyright Act* was in 2012, that led to the adoption of the *Copyright Modernization Act*. The second review was in 2019 in review of the *Copyright Modernization Act* that resulted in various recommendations to *Canada's Copyright Act*, but to date no changes have been introduced. These consultations represent the latest phase in the Government's review of the *Copyright Act*.

[3][ps2id id='3' target=''] See CUSMA, [Article 20.62](#) and [Article 20.89.4](#).

[4][ps2id id='4' target=''] Office of the Prime Minister of Canada, “[Minister of Innovation, Science and Industry Mandate Letter](#)” (December 16, 2021); “[Minister of Canadian Heritage Mandate Letter](#)” (December 16, 2021).

[5][ps2id id='5' target=''] [Bill C-19](#) had its first reading in the House of Commons on April 28, 2022, and received royal assent on June 23, 2022, but the date of coming into force is not yet published.

[6][ps2id id='6' target=''] [Bill C-244](#) had its first reading in the House of Commons on February 9, 2022 and is currently at second reading in the House of Commons.

[7][ps2id id='7' target=''] Government of Canada, “[Consultation on how to implement Canada's CUSMA commitment to extend the general term of copyright protection](#)” (April 28, 2021).

[8][ps2id id='8' target=''] See CUSMA, [Article 20.62](#) and [Article 20.89.4](#).

[9][ps2id id='9' target=''] See [Copyright Law of the United States, chapter 3, section 302\(a\)](#).

[10][ps2id id='10' target=''] See [Copyright, Designs and Patents Act 1988, section 12](#).

[11][ps2id id='11' target=''] See [Directive 2006/116/EC of the European Parliament and of the Council of 12 December 2006 on the term of protection of copyright and certain related rights, article 1\(1\)](#).

[12][ps2id id='12' target=''] [Bill C-19](#), division 16:176 Amendments to the Act (proposed Copyright Act, section 6).

[13][ps2id id='13' target=''] [Bill C-19](#), division 16:280 Transitional Provision.

[14][ps2id id='14' target=''] For more details on these public consultations, please refer to our previous bulletins: [Canadian Copyright Consultation on Artificial Intelligence — The Precipice of a New Copyright Era](#); and [Canadian Copyright Consultation on the Internet of Things — Rights to Repair and Interoperability](#).

[15][ps2id id='15' target=''] Government of Canada, “[Consultation on a Modern Copyright Framework for Artificial Intelligence and the Internet of Things - Strategic Policy Sector](#)” (February 15, 2022).

[16][ps2id id='16' target=''] World Intellectual Property Organization, “[Revised Issues Paper on Intellectual Property Policy and Artificial Intelligence](#)” (2020).

[17][ps2id id='17' target=''] Government of Canada, “[A Consultation on a Modern Copyright Framework for Artificial Intelligence and the Internet of Things](#)” (July 16, 2021).

[18][ps2id id='18' target=''] IoT Analytics, “[Number of connected IoT devices growing 18% to 14.4 billion globally](#)” (May 18, 2022).

[19][ps2id id='19' target=''] *Copyright Act*, sections 41.1 and 42(3.1).

[20][ps2id id='20' target=''] CUSMA, [Article 20.66, at para. 4\(a\)-\(g\)](#). CUSMA allows seven categories of circumvention activities: a) ensuring interoperability of computer programs; b) identifying flaws in encryption technology; c) protecting minors from accessing inappropriate content online; d) testing or correcting the security of computer systems or networks; e) identifying and disabling the collecting of personal information; f) law enforcement, intelligence, or security; and g) access by a non-profit library, archive, or educational institution for the purpose of making acquisition decisions.

[21][ps2id id='21' target=''] Before Bill C-244, its predecessor Bill C-272 also introduced the identical amendments of Bill C-244 in 2021, but was halted by the new election.

[22][ps2id id='22' target=''] Bill C-244, section 41.121.

[23][ps2id id='23' target=''] Government of Canada, “[Information on the Modern Copyright Framework for Online Intermediaries consultations](#)” (December 7, 2021).

[24][ps2id id='24' target=''] *Copyright Act*, sections 31.1, 41.25 and 41.26.

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A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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