

# CLIENT ALERT

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1

## Good News for Creators: Canada Extends Copyright Term

by Paul E. Bain and Jane Wu

Just under the wire, before the end of 2022, Canada enacted a significant change to its copyright law. December 30 was fixed<sup>1</sup> as the day on which section 281 of the *Budget Implementation Act, 2022, No. 1* would come into force. The result: copyright protection under the *Copyright Act* of Canada was extended from 50 years to 70 years after the life of the author (or artist or creator). The extension does not apply to works already in the public domain as of December 31, 2021. Works that would have fallen in to public domain at the end of 2022 are however captured by the 20-year extension.

The change brings Canadian copyrights in line with the United States and the rules in some 80 other countries. The US term has been 70 years post-death since 1998, and passage of the *Sonny Bono Copyright Term Extension Act* (Sonny and Cher's "I got you Babe" will slip into the public domain in 2068 as a result of Sonny's untimely death before his bill became law). The commitment to extending copyright temporal limits resulted from the Canada-United States-Mexico Agreement (CUSMA).<sup>2</sup> Under that trade agreement, enacted on Canada Day (July 1), 2020, Canada had a 2 ½ year transition period to implement the change. Mexico's rule is life plus a century unless the artist died before 1956, in which case, there is a 20-25 year post-mortem protection period. This is bad news for the estate of the artist Frida Kahlo who died in 1954 and whose work continues to be commercialized by all manner of infringers.

Canadian law was overdue to align with US intellectual property rules. Important differences remain: Canada recognizes and protects moral rights in the *Copyright Act*, while the US has only a water-down version in the form of the *Visual Artists Rights Act* of 1990. As the title implies, it only applies to visual art and artists of a 'recognized stature.' Canada also extends copyright protection to government works, a concept that does not exist in the United States, where all government works are public domain.

Policy-makers north of the border have been discussing the change for years. Concerns regarding protections afforded to Canadian content creators under the *Copyright Act* were highlighted in a 2019 Report.<sup>3</sup> The government noted a number of concerning trends underlying the need for greater copyright protection, in addition to the 20-year gap between the Canadian term of protection and that of most other jurisdictions. These trends include an increasing gulf between the value of content consumed by Canadians and the revenues received by creators, the increasing number of artists living below the poverty line, the prevalence of illegal file-sharing, and a general decline in the consumption of and ability to produce Canadian content ("CanCon"). Closing the copyright temporal gap won't solve all these issues overnight, but the hope is that the increase in the general term of copyright protection will enhance export opportunities for CanCon, lead to greater monetization of such content, and the growth of Canadian firms in cultural industries. Good for CanCon but perhaps not for fans of fantasy literature; as the CBC pointed out, readers of J.R.R. Tolkien will now have to wait until 2043 for free copies of *The Lord of the Rings*.

For more information on protecting copyrights, please contact our [copyright attorneys](#).

### About the Authors



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<sup>1</sup> Pursuant to [Order in Council 2022-1219](#)

<sup>2</sup> Government of Canada, "Canada-United States-Mexico Agreement (CUSMA) – Chapter 20 – Intellectual Property Rights" (last modified July 23, 2020) at Art. 20.62(a) online: <https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/cusma-aceum/text-texte/20.aspx?lang=eng>

<sup>3</sup> The *Shifting Paradigms* Report from the Standing Committee on Canadian Heritage in May of 2019.

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