

IPIC/CBA Submission on Bill C-36, *Library and Archives of Canada Act*

The following are the comments of the Joint Technical Copyright Committee of the Intellectual Property Institute of Canada and the Canadian Bar Association's National Intellectual Property Law Section, on Bill C-36 amending the term of copyright protection in unpublished works in section 7 of the *Copyright Act*. Our comments identify a problem with the drafting of section 21 of the Bill.

The text of section 21 of Bill C-36 amending the term of protection for unpublished works in section 7 of the *Copyright Act* provides a conflicting term of copyright protection for the same work. The problem is best explained by example.

An author died in 1935 and the estate published the work in 1997. This situation falls within two conflicting term rules. The first rule that applies is found in subsections 7(1) and (2) of the existing *Copyright Act* and results in a term of 50 years from publication. The same situation also falls within the rule in subsection 7(5)(b) as amended by section 21 of Bill C-36, and it results in a term of 20 years from publication.

The problem can be rectified by deleting the words "before December 31, 2017" in subsection 7(5)(b) after "if it has been published or performed in public or communicated to the public by telecommunication on or " and replacing them with the words "AFTER DECEMBER 31, 1998 AND BEFORE JANUARY 1, 2018". In other words, subsection 7(5) (b) of the *Copyright Act* would read:

(5) Despite subsection (4), if the relevant death referred to in subsection (1) occurred after December 31, 1929 and before January 1, 1949, copyright in the work referred to in that subsection subsists

- (a) until December 31, 2017, if it has not been published or performed in public or communicated to the public by telecommunication on or before that date; and
- (b) if it has been published or performed in public or communicated to the public by telecommunication on or AFTER DECEMBER 31, 1998 AND BEFORE JANUARY 1, 2018, until its publication or performance in public or communication to the public by telecommunication, whichever happened first, for the remainder of the calendar year of the publication, performance in public or communication to the public by telecommunication, as the case may be, and for a period of 20 years following the end of that calendar year.

With this change, it would be clear that the rule in subsections 7(1) and (2) would be the only one to apply in the example above, i.e., the term of copyright in the work would be 50 years from the date of publication.

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