

## Entertainment Law

July 14, 2015

### Bill C-59: Canada Extends Copyright Term of Published Sound Recordings and Performer's Performances Fixed in Published Sound Recordings

The Canadian Government recently amended the *Copyright Act* of Canada (the “**Act**”) to increase the term of protection for both published sound recordings and for performer’s performances fixed in published sound recordings by an additional 20 years (i.e., from 50 years to 70 years after the calendar year of first publication) to a maximum of 100 years from the date of first fixation, as described more particularly below. The amendments were included in the Government’s 2015 budget bill, Bill C-59, and came into force when the bill received Royal Assent on June 23, 2015.

#### Background

Under the Act, the maker of a sound recording (typically, the record company) has a copyright in the sound recording and a performer has a copyright in a performer’s performance separate and apart from the copyrights which subsist in every original literary, dramatic, musical and/or artistic work. The term of copyright protection is different for sound recordings and performer’s performances than for works.

For works, the basic term of copyright protection in Canada is (i) the life of the author, (ii) the remainder of the calendar year in which the author dies, and (iii) a period of fifty years following the end of that calendar year (often called “life plus fifty”). However, before Bill

C-59 was implemented, the term of copyright protection for a sound recording was 50 years after the end of the calendar year in which the first fixation of the sound recording occurs or, if the sound recording was published before the copyright expired, a period of 50 years after the end of the calendar year in which the first publication occurs. Similarly, before Bill C-59, the term of protection for a performer’s performance was (i) 50 years after the end of the calendar year in which the performance occurs, if the performance is fixed in a sound recording before the copyright expires, (ii) a period of 50 years after the end of the calendar year in which the first fixation occurs, and (iii) if the sound recording in which the performance is fixed is published before the copyright expires, the earlier of (a) a period of 50 years after the end of the calendar year in which the first publication of the sound recording occurs, and (b) 99 years after the end of the calendar year in which the performance occurs.

#### Bill C-59: Key Points

- The term of copyright in a sound recording, set out in section 23 (1.1) of the Act, is amended so that if a sound recording is published before the copyright expires (i.e., before 50 years after the calendar year in which the first fixation of the sound recording occurs), the term of copyright protection is now the earlier of (a) 70 years from the end of the calendar year in which the first publication occurs (i.e., up from 50 years), and (b) 100 years after the end of the calendar year in which the first fixation of the sound recording occurs.
- For unpublished sound recordings, the term of protection remains 50 years after the end of the calendar year in which first fixation occurs.
- The term of copyright for a performer’s performance which is fixed in a sound recording

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and published, set out in section 23 (1) (b) of the Act, is amended so that the term of copyright protection is now the earlier of (a) a period of 70 years (i.e., up from 50 years) after the end of the calendar year in which the first publication occurs, and (b) 100 years (i.e., up from 99 years) after the end of the calendar year in which the performance is first fixed (i.e., as opposed to when the performance occurs).

- The extended term of protection does not apply to performer's performances not fixed in sound recordings, which are protected for 50 years after the end of the calendar year of the first performance.
- The Bill limits the scope of the changes to works protected by existing copyrights. It does not have the effect of reviving the copyright or providing a right to remuneration for works whose copyrights expired before June 23, 2015.

## Implications

The amendments more closely align the Act with current international standards. For example, the United States, the United Kingdom, and Australia have all adopted copyright protection terms for sound recording that exceed 50 years. Extending the terms of copyright protection to 70 years for performer's performances fixed in published sound recordings will enable Canadian performers to collect royalties for their performances in other countries that require a reciprocal period of copyright protection of at least 70 years such as those in the European Union.

Bill C-59 offers significantly increased copyright protection in Canada for published sound recordings and performer's performances fixed in published sound recordings and it reflects a general international trend towards such enhanced copyright protection.

For further information regarding these amendments, contact any member of our Entertainment Law Group.