

March 2020

Bill C-4 Receives Royal Assent: Incoming Changes to the Intellectual Property Landscape

On March 13, 2020, Bill C-4 (also known by its short title of the **Canada-United States-Mexico Agreement Implementation Act**) (the "**Act**") received Royal Assent. Below are some of the incoming changes to the intellectual property landscape when the applicable provisions of the Act come into force:

- **Copyright** – Extension of copyright terms in anonymous works, cinematographic works and sound recordings, and new offence for the removal or alteration of electronic rights management information.
- **Trademarks** – Detainment of suspected counterfeit goods in customs transit control or customs transshipment control in Canada, and presumption of infringement on certain importation activities.
- **Trade Secrets** – Criminalization of certain offences related to trade secrets, including the communication and making available thereof by deceit, falsehood, or other fraudulent means.

Copyright – Amendments to the *Copyright Act*

The Act extends the copyright terms of anonymous works, cinematographic works and sound recordings under the *Copyright*

Act.¹ For anonymous and pseudonymous works, the copyright term will be 75 years following the end of the calendar year in which the work was made. However, if the work is published before the copyright expires, the term will continue to the earlier of either 75 years following the year in which first publication occurs or 100 years following the year in which the work was made.² The same rule applies to works of joint authorship where the identity of all the authors is unknown.³ The copyright term for cinematographic works and sound recordings will be extended to 70 years from the year of creation. Where the work is published during this time, the term will continue to the earlier of 75 years following the year in which first publication occurs, or 100 years following the year in which the work was made.⁴

The Act also creates a new offence for the removal or alteration of electronic rights management information from a sound recording with the knowledge that such removal will facilitate or conceal infringement of the owner's copyright or adversely affect the owner's right to royalties. This new offence may be punished by means of an indictable offence or summary conviction, with a fine of up to \$1,000,000 and/or imprisonment for up to 5 years.⁵

Note that these new provisions do not have the effect of reviving the copyright or right to royalties from any works in which the copyright or the right to royalties will have already expired by the time these new copyright provisions come into force.

Trademarks – Amendments to the *Trademarks Act*

Under the *Trademarks Act* (when section 108 of the Act comes into force), goods imported on a commercial scale that bear trademarks identical or indistinguishable from a registered trademark are

¹ RSC 1985, c C-42 [*Copyright Act*].

² Bill C-4, s.24 (when in force, *Copyright Act*, *supra* note 1 at s 6.1).

³ Bill C-4, s.24 (when in force, *Copyright Act*, *supra* note 1 at s 6.2).

⁴ Bill C-4, ss. 26 and 29 (when in force, *Copyright Act*, *supra* note 1 at ss 11.1, 23(1), 23(1.1)).

⁵ Bill C-4, s.30 (when in force, *Copyright Act*, *supra* note 1 at ss 42(3.2), 42(3.3)).

presumed to infringe on the rights of the owner of said registered trademark.⁶ In addition, goods, including wine, spirits, agricultural products or food, which are suspected of being counterfeit are considered to have been imported for the purpose of release, even while remaining in customs transit control or transshipment control in Canada.⁷ Such changes will allow for more thorough investigation powers by customs officers to detain and prevent the importation of counterfeit goods. Furthermore, customs officers may now also provide the names and addresses of any persons involved in the movement of the alleged counterfeit goods to the owner of the protected mark, giving such owner more information to use in pursuing remedies under the *Trademarks Act*.⁸

Trade Secrets – Amendments to the *Criminal Code*

The Act establishes a new hybrid offence under the *Criminal Code* that criminalizes the obtaining, communicating or making available of trade secrets by deceit, falsehood or other fraudulent means.⁹ The Act also creates an offence for anyone that further obtains, communicates or makes available a trade secret with the knowledge that it was obtained in such a fraudulent manner. These offences may be punished by means of an indictable offence or summary conviction, with imprisonment for up to 14 years.¹⁰ To stay proceedings, a remediation agreement may be entered into by an organization alleged to have committed the offence.¹¹

Included in the amendments to the *Criminal Code* is a definition of “trade secret”, which is defined as information that: (a) is not generally known in the trade or business that uses or may use that information; (b) has economic value from not being generally known;

⁶ Bill C-4, s. 108 (when in force, RSC 1985, c T-13 [*Trademarks Act*] at s 20(1.01)).

⁷ Bill C-4, s. 109 (when in force, *Trademarks Act*, *supra note 6* at s 51.03(2.4)).

⁸ Bill C-4, s. 110 (when in force, *Trademarks Act*, *supra note 6* at s 51.06(1)(b)).

⁹ Bill C-4, s. 37; RSC 1985, c C-46 [*Criminal Code*].¹⁰ Bill C-4, s. 37 (when in force, *Criminal Code*, *supra note 9* at s 391).

¹⁰ Bill C-4, s. 37 (when in force, *Criminal Code*, *supra note 9* at s 391).

¹¹ Bill C-4, s. 38 (when in force, *Criminal Code*, *supra note 9* at Part XXII.1).

and (c) is the subject of efforts that are not reasonable under the circumstances to maintain its secrecy.¹² Another statute in which "trade secret" is defined is the *Security of Information Act*;¹³ however, that statute is generally reserved for acts of terrorism and espionage affecting national security.

The provisions of the Act will come into force on a date to be fixed by order of the Governor in Council. To discuss how these incoming changes may affect your business, please do not hesitate to contact a member of our intellectual property group.

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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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¹² Bill C-4, s. 37 (when in force, *Criminal Code*, *supra* note 9 at s 391(5)).

¹³ RSC 1985, c O-5.