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PROPOSAL FOR STUDY ON COPYRIGHT PROTECTION OF TECHNICAL STANDARDS

prepared by the Delegation of Canada

Proposal for Study on Copyright Protection of Technical Standards

Canada proposes that the Standing Committee on Copyright and Related Rights (SCCR) commission a study to survey the approaches of Member States to the copyright protection of technical standards incorporated into legislation or regulations.

The reliability, consistency and safety of many common products, services and processes across different markets and suppliers is due in large part to compliance with technical standards. These standards protect consumers and support market growth by improving consumers' confidence in their purchases; driving innovation, lowering businesses' compliance costs and fueling competition by providing a foundation of up-to-date technical know-how for all suppliers; and facilitating international trade by supporting the compatibility of goods and services across jurisdictions. Thousands of standards exist over many different fields, including electronics, information technology, telecommunications, engineering and manufacturing, health and safety, environmental protection, construction and more.

Generally, standards are developed and updated over time by consensus of experts working through standards development organizations (e.g., voluntary standards). Standards may also be developed nationally by domestic bodies or internationally by multi-jurisdictional committees. Once adopted by appropriate oversight bodies, standards are often incorporated into countries' national legislation and regulations. Obligations pertaining to the development and incorporation of standards are similarly reflected in international trade agreements. At least some standards development organizations publish and sell copies of their standards to end-users, including industry professionals, and reinvest the proceeds in updating those standards or developing new standards.

Member States may have different approaches to the copyright protection afforded to technical standards that are incorporated into their domestic legislation or regulations. In some jurisdictions, copyright may subsist and be owned by standards development organizations and so third parties seeking to copy and distribute the standards must first receive the organizations' authorization. In other jurisdictions, third parties may be permitted to sell copies of these standards without the organizations' authorization. Different approaches can thus affect standards development organizations' funding models and in turn their ability to continue developing and updating standards. In addition, different approaches may also impact the public's ability to access these standards.

To look more closely at this issue, Canada proposes that the SCCR ask the Secretariat to commission an expert to prepare a factual, empirical study for Member State consideration on the following points:

(a) the copyright protection granted by Member States to standards incorporated directly or by reference in their legislation or regulations, including whether copyright subsists in such standards, who owns any such copyright, to what specific acts any such copyright applies and any requirements of such protection;

(b) what exceptions to or limitations of such copyright may exist in Member States' laws, including the ability of third parties to access, copy, distribute or commercialize these standards without standards development organizations' authorization;

(c) how standards development organizations across Member States fund their work and manage their rights, such as through publishing, selling or licensing copies of their standards, receiving government funding or receiving funding from industry or professionals; and

(d) whether or how copyright protection in standards incorporated directly or indirectly in legislation or regulations affects the public's ability to access such legislation or regulations; and

(e) whether or how Member States' laws regarding access to documents or open government acts contain exceptions to the protection of copyright on documents, such as the standards development organizations' Technical Standards, including obligations for such private bodies to disclose any documents insofar as they perform public functions or operate with public funds.

Canada hopes that the results of this study will help to inform Member States' understanding of national experiences worldwide and foster further consideration of this issue at the national level.

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