



Canadian Council of Archives
Conseil canadien des archives

Crown Copyright Issues Affecting Archives – Looking for your input

Dear Colleagues,

You will find below a draft document on Crown copyright Issues Affecting Archives. This has been prepared by the Canadian Council of Archives (CCA) Statutory Review Working group, established to examine and address issues related to the Canadian archival community in the current review of the Canadian Copyright Act.

The Working Group is composed of:

Nancy Marrelli, Chair

Jean Dryden, appointed by the Association of Canadian Archivists

Frédéric Giuliano, appointed by l'Association des archivistes du Québec

We are working on this documentation in ongoing efforts to move forward on changes to Crown copyright in Canada. We would very much appreciate you reviewing the document and getting back to me by November 15 with any comments or suggestions. Specific examples drawn from your experience would be particularly appreciated.

Thank you in advance for your important collaboration on this topic and all copyright issues.

Nancy Marrelli

Special Advisor-Copyright/Conseillère spéciale, Droit d'auteur Board of Directors/Comité de direction

Canadian Council of Archives/Conseil Canadien des archives

130 Albert Street, Suite 1912 Ottawa ON K1P 5G4

Tel: (613) 565-5445 Fax: (613) 565-5445 Cell: (514) 804-8118 <http://www.archivescanada.ca/>

Crown Copyright Issues Affecting Archives – a Preliminary Examination
CCA Statutory Review Working Group
November 7, 2019

Extract from the Copyright Act:

12 Without prejudice to any rights or privileges of the Crown, where any work is, or has been, prepared or publishes by or under the direction or control of Her Majesty or any government department, the copyright in the work shall, subject to any agreement with the author, belong to Her Majesty and in that case shall continue for the remainder of the calendar year of the first publication of the work and for a period of fifty years following the end of that calendar year."

- * R.S., 1985, c. C-42, s. 12
- * 1993, c. 44, s. 60

<https://laws-lois.justice.gc.ca/eng/acts/C-42/page-4.html#docCont>

Accuracy and integrity were the original reasoning for the necessity of government control and attribution embedded in the concept of Crown copyright. Nearly a hundred years later, the digital environment has changed the landscape and Crown copyright should be revisited and re-thought.

CLARIFICATION OF THE STATUTE ITSELF

Jurisdiction of Crown Copyright

Does Crown Copyright cover records of provinces and territories?

Primary legislation is covered by Crown copyright. By virtue of an order in council primary legislation is available for open use as long as accuracy and integrity are maintained.

Things can get fuzzy when it comes to executive/bureaucratic/legislative branch materials on the question of what is included in Crown copyright and what is not, for example, correspondence by a member of parliament who is also a government minister. It would be helpful to clarify these issues.

Royal Prerogative

"without prejudice to any rights or privileges of the Crown" – the Royal prerogative should be clarified. The origins are historical but the categories covered are not specified.

Moral Rights and Crown copyright

The moral rights issue surrounding Crown copyright requires clarification.

Fair Dealing and Crown copyright

Fair dealing for Crown copyright requires clarification.

Works produced in part or in whole by contractors for government

Rights ownership will usually be determined by contractual agreement for these records. This information is not always readily available and it may be unclear who is the rights holder without asking the creator department.

Works “prepared or published by or under the direction or control of Her Majesty or any government department”

What does ‘prepared’ mean? What does ‘direction’ mean? What does ‘control’ mean?

The various combinations in this provision refer to 16 different possibilities. In addition to defining the terms, the language needs to be simplified.

How does Crown copyright apply to records of foreign governments (including other Commonwealth countries)

ADMINISTRATION OF CROWN COPYRIGHT

Revenue generation by Government Departments

Some government departments see the rights clearance of Crown copyright protected works as a source of revenue—in line with current government practice. While the use for serious commercial purposes can generate income, the use for non-commercial purposes can be prohibitive. The human resources required to clear rights can be a problem for archives undertaking large digitization projects.

Administration of Crown copyright at the Federal Government level

Since the federal licensing office was closed in 2013 it has become much more complicated to clear the use of Crown copyright materials. Creating departments are now responsible for clearing the rights. (with the exception of records that have been deposited with Library and Archives Canada (LAC), in which case, it is LAC that clears the rights) Things got off to a very rocky start in 2013 and clearing rights became very chaotic, but there has been some improvement over the years. Some government agencies have clear policies and procedures in place (<https://www.canada.ca/en/department-national-defence/corporate/intellectual-property/crown-copyright.html>) but some federal agencies areas do it “on the fly” and clearing the rights can become a nightmare.

Administration of Crown copyright at the Provincial/Territorial level

Administration of Crown copyright in the provinces and territories is inconsistent among provinces/territories and with Federal Government practice. In addition, the policy and practice are often unclear and difficult for users to navigate. Non-commercial use is often openly authorized for material appearing on the web site but the process for authorization for other records is not always clear.

<https://www2.gov.bc.ca/gov/content/home/copyright>

<http://www.qp.alberta.ca/copyright.cfm>

<https://www.saskatchewan.ca/copyright>

<https://www.ontario.ca/page/copyright-information-c-queens-printer-ontario>

<https://novascotia.ca/copyright/>

<https://www.princeedwardisland.ca/en/information/finance/open-government-licence-prince-edward-island>

Open Government and Public Access

There is an international trend to Open Government and Public Access—and Canada has expressed support of the principle, but the law and the regulations in Canada have to reflect this. A general statement of policy is not enough to ensure these principles. This is an important issue for Crown copyright.