

Canadian Copyright: A Citizen's Guide. Laura J. MURRAY and SAMUEL E. TROSOW. Toronto: Between the Lines, 2007. 254 p. ISBN 978-1-897071-30-4.

Does the thought of copyright give you the shakes? If so, this book may be just what you need to start thinking differently about copyright, both as an archivist and as a citizen. Professors Laura Murray and Samuel Trosow have written *Canadian Copyright: A Citizen's Guide* to address what they see as “a serious legitimacy crisis in copyright law” (p. 3). They are concerned that “pirate talk, threats of lawsuits against consumers, and promotion of law reform to limit consumers’ rights” blur the distinction between “large-scale commercial infringement, which is indeed damaging to all stakeholders, and the ordinary use of legitimately purchased, borrowed, or viewed materials, which contributes to the growth of culture and democracy” (pp. 2–3). The book derives from their belief that “[w]idespread knowledge of existing law can enable people to make more effective use of it – in our terms, to *practise fair copyright*” [their emphasis] (p. 2).

As educators, it is not surprising that Murray and Trosow are advocates of access and use; however, their shared concern about the state of copyright law in Canada originates from very different backgrounds. Murray is a professor of English at Queen’s University. Her interest in copyright arose out of her background in Aboriginal Studies, and her concern about the rhetoric (“pirate talk”) associated with copyright in the digital environment. In order to provide a forum for an alternative view of Canadian copyright reform, she established a website called www.faircopyright.ca. Trosow, formerly a practising lawyer and law librarian, holds joint appointments in the Faculty of Law and the Faculty of Information and Media Studies at the University of Western

Ontario. His detailed knowledge of copyright theory and statute and case law has been combined with Murray's interviews and conversations with creators and other copyright stakeholders, as well as questions and comments submitted to her website, to produce a copyright guide for citizens, particularly "independent or freelance creators, amateur creators, and consumers" (p. 6).

The book is organized into four parts. The first, "Ideas," sets out the rationales for copyright, and the problems inherent in applying a property approach to intellectual (as opposed to physical) property. The second chapter provides an overview of the history of Canadian copyright law, and its development in the context of the international copyright treaties that Canada has signed.

Part II, "The Law," presents the main provisions of the *Copyright Act*.¹ The discussion starts with the scope of copyright (what it covers and what it doesn't), including the duration of copyright, i.e., when copyright expires and protected subject matter falls into the public domain and may be used by anyone. The book then discusses the rights of copyright owners and the difficulties in determining ownership, before moving on to the rights of users, with particular emphasis on fair dealing and the Supreme Court of Canada's landmark decision in the *CCH* case.² Part II concludes with enforcement of owners' rights, and the difference between civil and criminal cases.

As archivists know only too well, the *Copyright Act* is extremely complex, and Murray and Trosow have done a good job of explaining the main provisions related to criteria for protection, duration, the rights of owners and users, and penalties. Where appropriate, provisions relating to specific aspects of the *Act* are presented, not in the text, but in tables (e.g., duration of copyright term in special cases [p. 50] and additional limitations on owners' rights [in addition to fair dealing and those for qualifying educational institutions, libraries, archives, and museums] [pp. 86–89]). However, some of the minutiae of Canadian copyright law has been omitted, including the term rules for cinematographic works (moving-image material) that lack "dramatic" character,³ ownership rules for certain cinematographic works made before 1994,⁴ and the reversionary clause.⁵ Considering that the authors are advocates of access and use, it is ironic that they have incorrectly added a year to the term of copyright protection for posthumous works of authors who

1 *Copyright Act*, R.S.C. 1985, c. C-42.

2 *CCH Canadian Ltd. v. Law Society of Upper Canada* [2004] 2004 SCC 13, available at www.canlii.org/ca/cas/scc/2004/2004scc13.html (accessed on 25 June 2008).

3 *Copyright Act*, s. 11.1.

4 *An Act to Amend the Copyright Act*, S.C. 1993, c. 44, s. 76(2).

5 *Copyright Act*, s. 14.

died between 1949 and 1998; copyright in such works will expire on 31 December 2048, not 2049 (p. 51).

The third part, "Practice," devotes a chapter to each of the following topics: design, digital rights management, education, film and video, journalism, libraries and museums, music, photography, visual arts, and websites. Within each chapter, the authors discuss particular situations in which copyright is a barrier to use or inappropriately restricts users' rights. While specific archival issues are not addressed, these chapters will stimulate your thinking about bigger copyright issues. For example, the chapter on film and video should get archivists thinking about those who want to use archival material in their films, and an archives' mandate to make its holdings available for use. The chapter on photography raises a number of interesting issues: while archivists might be happy to see the complex special rules for photographs disappear, the authors point out certain problems that may arise if photos are subject to the same rules as other artistic works.

Finally, Part IV, "Policy," discusses alternative mechanisms that complement copyright as a means of fostering the production and dissemination of human expression. The book concludes with a discussion on the future of copyright, including the authors' suggestions for amendments that would better represent fair copyright.

For those who try not to think too much about copyright, this book may help you overcome your distaste; after all, the authors consider copyright law to be an "ingenious [albeit imperfect] policy mechanism" (pp. 1, 186). The organization of the material is logical and the writing is clear. Even if you do no more than look at the illustrations at the beginning of each chapter, you will still get the message (e.g., a self-serve photocopier surrounded by a barbed wire fence [p. 142], a writer juggling a bunch of sticks [copyright is a bundle of *separate* rights] [p. 53], and a King Kong-like Uncle Sam standing on the roof of the Parliament Buildings embracing the Peace Tower [p. 200]). The reader in a hurry can stick to the main text and skip the shaded sidebars; however, ignore them at your peril, because they contain illustrative or provocative quotations, summaries of cases mentioned in the text, extracts from the *Act*, and questions that often challenge our assumptions or beliefs about copyright. The main text is supplemented with endnotes that go beyond citing sources; they provide additional information such as commentary or explanation, quotations, and extracts from the *Act*. However, it would have been more effective to place this information in footnotes on the bottom of the page, as the reader who generally skips endnotes may miss useful details. For the reader who reads text, sidebars and endnotes, and still wants more, each of the four parts begins with suggestions for further reading, supported by a full bibliography of all sources cited. The volume also contains an excellent index to cases, works, authors, and subjects. To encourage citizens to become more familiar with the law, the authors also include a short guide to understanding

legal citations and finding case law on-line so that citizens can read it for themselves (pp. 233–35).

This book was not written for archivists so it is not surprising that their particular concerns, such as difficulties in identifying or locating copyright holders (pp. 70, 73, 163–64) or the lengthy term of copyright protection for certain posthumous works (p. 51), are mentioned in only a few places. In fact, it appears that the authors know very little about archives; they are critical of “public archives [that] often charge high fees to people who want to photograph images or objects in their collections ... [or] ban photography outright” (p. 168). They also appear to be unaware that it is far more common for archives to charge use fees for copies of photographs (including those in the public domain) in order to generate revenue.

Nonetheless, this book should be added to every archivist’s copyright reference shelf precisely *because* it is not written for an archival audience. By eschewing a detailed exploration of the rules, and setting copyright law within the broader context of information and social policy, this book presents archivists with a new way of thinking about copyright, in their professional capacity or as citizens. It also exposes readers to case law, and provides a good understanding of how courts have interpreted the statute and why uncertainty exists if (as is frequently the case with the application of copyright law in the digital environment) the courts have not been asked to interpret the law. In addition, much of the value of the book lies in the fact that it is Canadian. Furthermore, it is the most up-to-date resource for Canadian copyright. While a handful of other Canadian reference sources exist, they have not been updated to reflect amendments and case law from the current decade.⁶

Most importantly, however, the volume gives the archival profession permission to be less fearful about copyright, and to interpret copyright more generously. My recent dissertation found that the copyright practices of Canadian repositories are, on the whole, more restrictive than the law envisages, both in terms of what is selected for Internet access and in terms of controlling further uses.⁷ There appears to be a disconnect between archives’ copyright practices and their broad mandate to make their holdings available for use. *Canadian Copyright* suggests ways of interpreting copyright more generously, for example, by following the Supreme Court’s lead in a liberal interpretation of fair dealing. And, if the current law does not work well for

6 Jean Dryden, *Demystifying Copyright: A Researcher’s Guide to Copyright in Canadian Libraries and Archives* (Ottawa, 2001); Lesley Ellen Harris, *Canadian Copyright Law*, 3rd ed. (Toronto, 2000); Wanda Noel, *Copyright Guide for Canadian Libraries* (Ottawa, 1999); and Wanda Noel, *Staff Guide to Copyright: National Archives of Canada* (Ottawa, 1999).

7 Jean Dryden, “Copyright in the Real World: Making Archival Material Available on the Internet” (PhD diss., University of Toronto, 2008).

archivists, this volume provides clear and specific suggestions about what we should be lobbying for in our ongoing efforts at copyright reform.

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