

Notes and Communications

The Working Paper on Copyright: A Preliminary Response

In April 1977 the Department of Consumer and Corporate Affairs released a publication entitled *Copyright in Canada: Proposals for a Revision of the Law*, by A.A. Keyes and C. Brunet. This publication marked the completion of several years of intensive study by the two-man task force. The Public Archives of Canada presented a brief to the task force in 1974, and Mr. Keyes has spoken to archivists twice at their annual meetings.

The analysis which follows is a personal impression, written very soon after the release of the Working Paper and without the benefit of anyone else's ideas or reactions. While it is a hastily-prepared analysis, the subject matter is so important to archivists that the main points of the Working Paper warrant immediate attention. My remarks apply to textual material only, because I am not sufficiently familiar with the copyright problems of archivists working with maps, photographs, films, and other media, to be able to comment authoritatively on them.

The basic philosophy of the Working Paper is that copyright law is property law, and the rights of creators are its central preoccupation. The following recommendations of the Working Paper are probably the most significant for textual archivists:

1. Copyright on unpublished material should subsist for more more than seventy-five years after the death of an author, or one hundred years after the author's death if the papers have been deposited in a library or archives.¹
2. All photocopying except by the owner of copyright should continue to be considered an infringement of copyright. The only statutory exception for archives should be that "the making of a copy for the sole purpose of preserving . . . material which is deteriorating or damaged" should be permitted.²
3. The defence of "fair dealing" should be acceptable only in cases involving published (not unpublished) material.³
4. There should be continuing study and review of Canadian copyright law and technological developments affecting it.⁴

At the present time, copyright on unpublished material subsists in perpetuity. Any reduction in the term of such copyright is helpful to archivists. However, one hundred years after the author's death is still a very long time, particularly when in most cases the

1 A.A. Keyes and C. Brunet, *Copyright in Canada: Proposals for a Revision of the Law* (Ottawa: Consumer and Corporate Affairs Canada, 1977), p. 65.

2 *Ibid.*, p. 175.

3 *Ibid.*, pp. 147-9.

4 *Ibid.*, pp. 231-3.

archivist and the researcher do not know to whom the copyright has descended. One must also ask why copyright should subsist twenty-five years longer when material has been placed in an archival repository than when it has not. The explanation preceding this recommendation suggests that families may be reluctant to place their papers in a research institution unless they can be sure of retaining copyright for three or four generations. This is, I submit, the opinion of legal theorists with no understanding of the practical problems of archivists. In fact, a large percentage of papers are presented by people who do not hold copyright on them, and who therefore could not have been motivated by considerations of copyright when making the decision of whether or not to place the papers in the archives. Furthermore, even when the donor does hold copyright, he or she very rarely understands the implications. As an example of the problem, the Public Archives of Canada has received indignant letters from donors who feel that the institution has placed unreasonable obstacles in the way of researchers wishing to obtain copies of material on which the donors hold copyright.

The recommendation concerning the right to copy for preservation is appreciated; however, the other recommendations concerning photoduplication are simply not applicable in a public-service institution. It is not politically feasible for a government-supported archives to refuse to make photocopies of papers in its custody, unless specific information concerning the copyright holder can be provided. An archivist may say, "We are not able to provide a copy of this document unless you obtain permission of Mr. John Doe, 1234-5th St., New York." However, if he or she says, "We are not able to provide a copy without permission from the holders of copyright, but we have no idea who these people may be or how you might contact them. The only information we have is that the papers were given to us in 1962 by Mr. John Brown of London, England," the archivist personally and the institution itself will be accused of willfully withholding information, if not of secrecy, obstruction, perhaps even conspiracy and "Watergate-ism"!

The third point concerns "fair dealing". It represents no substantial change from the present law, but is a provision which archivists had hoped to see modified. In fact, it is the inapplicability of the "fair dealing" clause to unpublished material that makes the recommendations concerning photocopying and the duration of copyright such a serious matter for archivists.

The fourth recommendation, concerning continual study and review of the copyright act, is the section likely to be most helpful and promising for archivists.

One cannot help comparing these recommendations with the provisions of the revised American law on copyright, passed last year. Two points worth mentioning immediately in the American law are:

1. "Fair use" of a copyright work "for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research" is not an infringement of copyright.⁵
2. In the matter of photocopying, there is specific recognition of the work of libraries and archives. It is not an infringement of copyright "for a library or archives, or any of its employees acting within the scope of their employment," to make and distribute a copy of a work, provided that this is done "without any purpose of direct or indirect commercial advantage," and that the library or archives is open to the public, and that the copy includes a notice of copyright.⁶

What should archivists do next? First, as many archivists as possible should read the Working Paper. Although Mr. Keyes informed me that the paper was aimed at an

⁵ United States of America, Public Law 94-553, par. 107.

⁶ *Ibid.*, par. 108.

intellectual level only slightly above idiocy, I found some of the passages rather complex and not beyond misinterpretation. If archivists agree with my analysis, then we should make renewed representations to the Department of Consumer and Corporate Affairs, as strongly as possible. The archival profession cannot accept a situation in which a large percentage of its daily work is technically illegal.

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Toronto Area Archivists Group

Since its creation four years ago, the Toronto Area Archivists Group (TAAG) has been working toward a greater understanding of the archival profession and the role of the archivist. The group has given those persons interested in archives the opportunity to meet and discuss problems common to all institutions.

The majority of the 120 members of TAAG are from smaller institutions in the Toronto area, although the membership is expanding to other cities throughout the province. Unlike the staff of larger institutions who are able to become specialized in a specific area, most members of TAAG have to be specialists in all aspects of archival work. These range from accessioning valuable materials to dealing with customs brokers to ordering shelving from steel companies. One of the major services TAAG has tried to provide is putting people in contact with those who can help them solve their particular problems.

Courses for people working in the archival field are not readily available at the present time. However, monthly meetings of TAAG, hosted by members of the group, help to generate new ideas and methods of handling specific problems. Those topics discussed over the past six months include the care, handling and storage of maps, the forensic sciences and the forgery of documents, oral history, and methods of caring for photographs, which included a discussion of the collections of the City of Toronto Archives and the Ontario Archives. A particularly interesting visit to the Toronto Star Library stimulated a discussion about the differences between special libraries and archives.

Through liaisons with other organizations in the Toronto area, TAAG is hoping to expand its archival education programme. For the past two years, TAAG has held a one-day workshop together with the University of Toronto Library School Alumni Association (LSAA). This year, for the first time, the LSAA-TAAG committee was joined by members of the Ontario Museum Association (OMA). The aim of the first liaison committee was to further the interests of both librarians and archivists in subjects common to both. With the addition of the members of the OMA it is hoped that a more active workshop programme will be developed to strengthen learning opportunities for people whose professions overlap in certain areas.

This year's workshop, entitled "Creative Approaches to Display," explored the display of books, documents and small artifacts. Held at the University of Toronto Library School, the workshop covered topics such as "Exhibits and Preservation," "Exhibits—Themes and Concepts," "Exhibiting Copies," "Display Cases," "Labelling," "Matting," and "Physical Background of Displays."

The need for special supplies has always been a major problem for persons working in archives, particularly in small organizations which require small amounts of materials but must buy large quantities. In an attempt to alleviate the problem, TAAG began purchasing materials in large quantities from the suppliers and distributing them to members. Although minimum orders of materials, such as Hollinger boxes and acid-free stock, cannot be handled because of the lack of storage space, the centralized purchasing has been very successful so far. An additional difficulty arises with the importing of conservation