

## *Notes and Communications*

### *Copyright Revision: Awaiting the Second Stage*

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For some years, Canadian archivists and researchers have been awaiting a revision of the Copyright Act because the current act, which came into effect in 1924, is seriously out of date. Archivists have participated in, and responded to, several studies and reports prepared on this subject by the Department of Communications and by Consumer and Corporate Affairs Canada over the last decade.

In May 1987, the government introduced Bill C-60, "An Act to Amend the Copyright Act." This is not the total revision of the Copyright Act that we archivists had been awaiting. Instead, Bill C-60 consists of a series of amendments to the Copyright Act of 1924, and reference to the 1924 text is necessary in order to understand the new act. Bill C-60 does not address the issues of fair dealing, the duration of copyright on unpublished material, exceptions for archives, or Crown copyright. These are to be handled in a second bill which will complete the revision of the act.

Before outlining the parts of Bill C-60 which I think are of most importance to archivists, I should make it clear that I am not a lawyer, but an archivist who has been studying the question of copyright for some time. Having discussed Bill C-60 extensively with many interested parties, I believe the following analysis to be reasonably accurate.

The issues covered in Bill C-60 which are of most concern to archivists are computer programs, moral rights, and the use of collectives. The new bill gives copyright protection to computer programs, but also extends the "fair dealing" clause to cover the copying of computer programs in certain circumstances. The new rules concerning computer programs probably will not affect archivists very much, provided that the present "fair dealing" clause, or something very similar, is retained in the new legislation. If the "fair dealing" clause is not retained, or is significantly modified, then archivists working with machine-readable documents may encounter the same difficulties as those faced by other archivists.

The new rules concerning moral rights were a surprise to archivists and may have serious consequences. Bill C-60 provides that the author of a work has "the right to the integrity of the work," the right "to be associated with the work as its

author by name or under a pseudonym, and the right to remain anonymous" (Section 12.1). Another provision is that a work may not be "distorted, mutilated or otherwise modified" or "used in association with a product, service, cause or institution" if this is "to the prejudice of the honour or reputation of the author" (Section 18.2). The term of moral rights is the same as the term of copyright, which will probably be the life of the author plus fifty years, and Section 12.2(2) outlines in detail who will inherit the moral rights after the author has died. It is interesting that there is no similar section indicating who will inherit copyright.

A provision relating to moral rights was included in the 1924 act, but the wording was not as strong as in the new act, and the rights lasted only for the lifetime of the author. What the new provisions in this area will mean in practice will depend on how the courts interpret them, but archivists are worried. The ACA protested, unsuccessfully, against the broad wording of the new provisions and particularly against the assertion of the author's right to remain anonymous. We wonder whether this will mean that, if an item in our holdings is unsigned but we know who wrote it, we will be obliged to assume that the author wished to remain anonymous. It is standard bibliographic practice among librarians and archivists, especially those who use the Anglo-American Cataloguing Rules, to identify the author in such situations, and we would feel that we were not fulfilling our responsibilities to the researching public if we failed to include such information in our indexes and finding aids. Unless and until we receive legal advice to the contrary, I would recommend that we continue to identify such authors in our reference tools.

The moral-rights provisions will also affect publications and exhibitions. The copyright owner retains moral rights even after assigning copyright. For example, if Joe Blow owns copyright in a work which an archives wishes to exhibit, and the archives has obtained his permission to exhibit it, Blow could still protest if the manner of exhibition either associated him with a cause or institution with which he did not wish to be associated, or was, in his opinion, prejudicial to his honour or reputation. For example, the exhibition might be about disarmament and Blow might be an ardent militarist; or the exhibition might include works by someone Blow considered incompetent, and he (Blow) might feel that his reputation was being damaged by association. Similarly, in a publication, the copyright owner could sue if he felt that his work had been quoted out of context, paraphrased in a way that distorted the meaning, or associated with a cause that he did not support. And after Blow's death, his descendants would retain these rights for fifty years.

The final area of concern to archivists is collectives. There are detailed provisions for the "Collective Administration of Copyright" (Sections 50.1 to 50.6), but the bill does not state when, exactly, collectives are to be used. Archivists were worried for a while by hints that the "fair dealing" clause might be dropped and that all research use of copyright material might be looked after by collectives. This fear now seems to be unsubstantiated, but we are still not sure of the extent to which collectives may affect us.

Many authors consider libraries to be infringing their (the authors') intellectual property rights, especially with regard to the provision of photocopies to patrons, but recognize that libraries are also the authors' best customers. Therefore, authors tend to be reluctant to sue libraries, however angry they may be about library prac-

tices. Librarians, for their part, generally do not want to infringe creators' rights, but they would face a staggering administrative load if they had to keep track of all the material photocopied on their premises and arrange for the payment to copyright holders of a few cents for each page copied. In a collective system, authors get together to form an organization called a collective, which negotiates a lump-sum royalty payment with libraries and other research institutions. The money for the royalty payment usually comes either from a small surcharge on the cost of photocopies ("user pay") or else from a government grant. The collectives decide how the money is to be distributed among their members. The authors are sure of some return for the use of their works, the administrative costs for libraries are quite reasonable, and both sides are spared the trauma and financial costs of lawsuits. The benefits of the system are real and understandable, although there are some problems in obtaining and distributing the royalty money.

Unfortunately, we do not see how collectives could deal with archival material. In a very large number of cases, archivists do not know who owns copyright on their holdings, and the copyright owners themselves are often unaware of their rights. Also, the financial benefit to be derived from the publication of archival material is usually quite small. Therefore, there is little incentive for people who own copyright in archival material to go to the trouble of forming collectives. There are, of course, some exceptional cases in which the copyright on as-yet-unpublished material in an archives is indeed very valuable, but in these cases the copyright owner usually prefers to negotiate an agreement directly with the person who wants to publish the material, rather than join a collective and share the profits with many people whose contribution to the collective in financial terms would be negligible. We archivists have no objection to the provisions in Bill C-60 relating to collectives, but do not see them as very helpful to us.

Bill C-60 also contains some provisions for the collective administration of performing rights, which may affect archivists who deal with audio-visual material, but the impact is difficult to assess until we see the complete copyright revision package.

In summary, Bill C-60 deals with several matters of concern to archivists, and the sections most likely to affect us are those relating to moral rights. The second part of copyright revision will be more important to archivists than Bill C-60. We eagerly await the second stage of copyright revision.