

What Canadian Archivists Know About Copyright and Where They Get Their Knowledge



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RÉSUMÉ Cet article présente les résultats d'une étude qui a été menée afin de déterminer les sources du savoir des archivistes canadiens en matière du droit d'auteur et de mesurer la qualité de ces renseignements. L'étude montre que les archivistes canadiens obtiennent leurs renseignements par rapport au droit d'auteur à partir d'une variété de sources qui ne sont pas nécessairement sûres ni à jour; par conséquent, la qualité de leurs connaissances varie énormément. Certains semblent avoir une bonne connaissance du droit d'auteur tandis que d'autres comprennent mal certains aspects, ce qui peut avoir des conséquences néfastes sur l'accès et l'utilisation, ou mener un centre d'archives à ne pas respecter le droit d'auteur, quoique de façon involontaire. Cet article conclut en fournissant des recommandations pour assurer que les praticiens aient et conservent une bonne connaissance du droit d'auteur.

ABSTRACT This article reports the findings of a study which investigated the sources of Canadian archivists' knowledge of copyright and the quality of their knowledge in terms of the extent to which it is accurate and up-to-date. The study found that Canadian archivists obtain their copyright knowledge from a variety of sources, not all of which are authoritative or current; as a result, the quality of their knowledge varies greatly. Some appear to have a good understanding of copyright, others misunderstand certain aspects in ways that have consequences for access and use, or that may put the repository in a position of infringing copyright, albeit unintentionally. The article concludes with recommendations to address weaknesses in how practitioners learn about copyright and keep their knowledge current.

Introduction

Copyright law is an ingenious (albeit imperfect) policy mechanism.¹ It is the legal framework that grants creators of original works certain exclusive rights to control the copying, dissemination, and use of their works for a stated length of time, while simultaneously permitting certain specified uses of protected works

1 Laura J. Murray and Samuel E. Trosow, *Canadian Copyright: A Citizen's Guide* (Toronto, 2007), p. 1.

without the authorization of the rights holder.² It attempts to balance a complex array of competing private and societal interests, including those of creators, rights holders, users, and institutions that preserve protected material in order to make it available for use. The Supreme Court of Canada in 2002 provided a clear statement of the dual purpose of Canada's *Copyright Act* (hereinafter the Act) as "a balance between promoting the public interest in the encouragement and dissemination of works of the arts and intellect, and obtaining a just reward for the creator."³ While copyright law regulates the ownership arrangements for works of human expression by providing limited monopoly rights to creators, it also facilitates access to copyrighted works to "[serve] the interests of further creation and the growth of knowledge and culture."⁴

Similarly, archival material is acquired and preserved so as to make it available for the broader benefit of society. The materials preserved in archival repositories are "the information by-products of organizational or social activity."⁵ Archival holdings are a particularly important segment of cultural heritage in that they constitute the raw material for products such as biographies, theses, scholarly articles, family and local histories, as well as novels, plays, and television series. While textual records and photographs predominate, archival holdings also include sound recordings, moving image material, maps and plans, and documentary art. All such material potentially falls within the subject matter of copyright. At the same time, access to archival holdings is often subject to a number of limitations to "ensure that legislative requirements and donor agreements are upheld, and that the records are protected from theft, damage or rearrangement."⁶ Among the legislative requirements that must be upheld is copyright law.

Archivists are accustomed to dealing with copyright issues, which, to some degree, touch on all archival functions. For example, when acquiring material from sources outside their sponsoring organizations, archivists also attempt to acquire the copyrights (to the extent that the donor is the rights holder). In describing their holdings, archivists include information about any copyright restrictions; descriptions may also include information about copyright

- 2 While copyright laws generally reflect this broad framework, how a country implements its copyright policy depends on the specific provisions of its national law. The study reported in this article was conducted in the context of Canadian copyright law, which is determined by the Canadian *Copyright Act* (R.S.C. 1985, c. C-42) [hereinafter the Act], its regulations, and related case law. A readable account of the history of Canadian copyright law and its current provisions is found in *ibid.*
- 3 *Théberge v. Galerie d'Art du Petit Champlain Inc.*, [2002] 2 S.C.R. 336, 2002 SCC 34 [Théberge], para. 30.
- 4 Teresa Scassa, "Interests in the Balance," in *In the Public Interest: The Future of Canadian Copyright Law*, ed. Michael Geist (Toronto, 2005), p. 56.
- 5 Judith Ellis, ed., *Keeping Archives*, 2nd ed. (Port Melbourne, 1993), p. 477.
- 6 Sigrid McCausland, "Access and Reference Services," in *ibid.*, p. 273.

status (expired or not) and copyright owner(s). Preservation measures frequently include making a consultation copy so that fragile originals may be withdrawn from use. The reference service function is fraught with copyright issues. Because archival material is for the most part unique, it cannot be borrowed, and must be used on the premises of the archives, or reproduced for use elsewhere. Reproduction and dissemination of holdings in exhibits, publications, and educational programs is at the heart of repository outreach and public programming.

The ability to make digital copies of archival documents available on the Internet has enormous potential to increase access to archival material, and archival repositories have enthusiastically begun to digitize their holdings and make them available online. However, copyright presents a number of challenges in the digital environment. Diane Zorich's survey of digital cultural heritage initiatives refers to "the online intellectual property miasma."⁷ Manuals on the successful conduct of digitization projects suggest that copyright is widely perceived to be a problem in making cultural heritage materials available online due to difficulties in ascertaining whether or not the copyright has expired, identifying and locating rights holders in order to obtain the appropriate permissions, and general uncertainty about the application of copyright in the digital environment.⁸ The ease with which online content can be copied and further disseminated without consulting the archivist has caused some rethinking about appropriate controls on further uses in order to protect the interests of rights holders. Although clear best practices have yet to emerge, current approaches to the long-term preservation and use of digital objects involve a number of copyright issues.⁹

An understanding of copyright law has long been an important component of archival practice. However, copyright law is extremely complex. Furthermore, certain characteristics of archival material add to the challenges of administer-

7 Diane M. Zorich, *A Survey of Digital Cultural Heritage Initiatives and Their Sustainability Concerns* (Washington, 2003), p. 27.

8 Paula de Stefano, "Selection for Digital Conversion," in *Moving Theory into Practice: Digital Imaging for Libraries and Archives*, eds. Anne R. Kenney and Oya Y. Rieger (Mountain View, 2000), p. 11; Maxine K. Sitts, ed., *Handbook for Digital Projects: A Management Tool for Preservation and Access* (Andover, 2000), p. 77; Stuart D. Lee, *Digital Imaging: A Practical Handbook* (London, 2001), p. 18; June M. Besek, *Copyright Issues Relevant to the Creation of a Digital Archive: A Preliminary Assessment* (Washington, 2003).

9 See, for example, Library of Congress National Digital Information Infrastructure and Preservation Program, Joint Information Systems Committee, Open Access to Knowledge (OAK) Law Project, and SURFfoundation, *International Study on the Impact of Copyright Law on Digital Preservation* (July 2008), http://www.digitalpreservation.gov/library/resources/pubs/docs/digital_preservation_final_report2008.pdf (accessed on 17 December 2009).

ing copyright in a repository,¹⁰ and the rapidly changing digital environment raises new copyright issues. This article reports the findings of an exploratory study that investigated how Canadian archivists learn about copyright and the quality of their copyright knowledge, with particular regard to making their holdings available online.

Literature Review

Little research has been done into what information professionals know about copyright, or the sources of their copyright knowledge. Some American studies have found that the level of copyright knowledge of post-secondary educators is generally low;¹¹ however, a similar investigation of the level of knowledge of information professionals in any jurisdiction has never been done.

The situation is not much better with regard to the sources of copyright knowledge of information professionals and how they keep up-to-date on the issue. One can speculate that archivists learn about copyright through professional literature. Guides such as those by Wanda Noel, Jean Dryden, and Tim Padfield are aimed at those responsible for the administration of copyright in archival repositories.¹² Articles in professional journals offer advice regarding the particular difficulties of administering copyright in archival holdings.¹³

- 10 Archival material consists in large part of old, largely unpublished documents in a variety of documentary forms, some of which may be subject to different statutory provisions. The age of archival holdings often makes it difficult to identify and locate rights holders, and the fact that archival material is largely unpublished means that some of it is subject to longer terms of copyright protection than the life of the author plus fifty years.
- 11 Sandra L. Wertz, "Knowledge of the 1976 General Revision of the Copyright Law by College and University Media Center Directors in the United States" (PhD diss., University of South Carolina, 1984); Mark E. Chase, "An Analysis of the Knowledge Levels of Media Directors Concerning Relevant Copyright Issues in Higher Education" (PhD diss., University of Pittsburgh, 1994); Stephen L. Shane, "An Analysis of the Knowledge Levels of California K-12 Teachers Concerning Copyright Issues Related to Classroom Multimedia Projects" (PhD diss., Pepperdine University, 1999); Jasmine R. Renner, "Knowledge Level of Postsecondary Educators Regarding Copyright and Copyright-Related Issues," in *Colleges, Code, and Copyright: The Impact of Digital Networks and Technological Controls on Copyright and the Dissemination of Information in Higher Education*, ed. Centre for Intellectual Property and Copyright (Chicago, 2005).
- 12 Wanda Noel's *Staff Guide to Copyright: National Archives of Canada* (Ottawa, 1999) is widely used in archival repositories across the country. Jean Dryden's *Demystifying Copyright: A Researcher's Guide to Copyright in Canadian Libraries and Archives* (Ottawa, 2001) was written for users of archives and libraries, and for repositories responding to users' copyright questions. See also Tim Padfield, *Copyright for Archivists and Users of Archives*, 3rd ed. (London, 2007). Peter Hirtle is writing a similar guide for American archivists.
- 13 For countries whose copyright laws fall within the Anglo-American copyright tradition, such articles reflect similar issues across national boundaries and time. See, for example,

Within the Canadian archival community, the literature also documents the profession's attempts to address these issues through legislative change, in briefs submitted on behalf of the profession, and reports on the impact of changes to the law.¹⁴

Two British studies investigated aspects of the sources of copyright knowledge among information professionals. In their investigation of the costs of copyright compliance in British academic institutions, Sally Maynard and Eric Davies found that the amounts spent on staff training on copyright and related support materials varied, but were generally low in relation to the institutional budget; however, many institutions were not able to provide precise information about such costs.¹⁵ Charles Oppenheim and Ilona Woodward surveyed forty-seven participants in a British copyright listserv in order to look at the sources of the copyright knowledge of staff in higher education libraries in the United Kingdom, and how they kept their knowledge current.¹⁶ While most survey respondents were "very confident" or "quite confident" in their responses to queries, nearly one-quarter reported that they were "not very confident"; not surprisingly, many indicated that they needed more training. The study found that the national copyright listserv for librarians was the main means of keeping up-to-date, followed by newsletters and websites.

Some recent studies of post-secondary archival education mention the importance of law, but none has looked explicitly at the extent to which copy-

the following articles that reflect Canadian, American, British, and Australian experience, respectively: Jean E. Dryden, "Copyright in Manuscript Sources," *Archivaria* 1 (Winter 1975); Michael J. Crawford, "Copyright, Unpublished Manuscript Records, and the Archivist," *American Archivist*, vol. 46, no. 2 (1983); Angie Whaley LeClercq, *Unpublished Materials: Libraries and Fair Use* (Washington, 1993); Jodi L. Allison-Bunnell, "Access in the Time of Salinger: Fair Use and the Papers of Katherine Anne Porter," *American Archivist*, vol. 58, no. 3 (1995); William Maher, "Between Authors and Users: Archivists in the Copyright Vise," *Archival Issues*, vol. 26, no. 1 (2001); J.B. Post, "Copyright Mentality and the Archivist," *Journal of the Society of Archivists*, vol. 8, no. 1 (1986); Deborah S. Osborn, "Copyright and Access to Archives," *Archives and Manuscripts*, vol. 12, no. 1 (1984). Although not published in the archival literature, Peter Hirtle raises many of the same issues: "Unpublished Materials, New Technologies and Copyright: Facilitating Scholarly Use," *Journal of the Copyright Society of the USA*, vol. 49, no. 1 (2001), pp. 259–62.

- 14 Grace Maurice Hyam, "The Working Paper on Copyright: A Preliminary Response," *Archivaria* 4 (Summer 1977); Hyam, "ACA Copyright Committee Reply to Keyes-Brunet," *Archivaria* 6 (Summer 1978); Corrado Santoro, "The Association of Canadian Archivists and Copyright Revision: An Update," *Archivaria* 21 (Winter 1985–86); Hyam, "Copyright Revision: Awaiting the Second Stage," *Archivaria* 27 (Winter 1988–89).
- 15 Sally Maynard and J. Eric Davies, *The Cost of Copyright Compliance in Further Education & Higher Education Institutions* (Loughborough, 2001), pp. 13–17, 21.
- 16 Charles Oppenheim and Ilona Woodward, "A Survey of Copyright Advice and Guidance in UK Higher Education Libraries," *Library and Information Research*, vol. 28, no. 89 (2004), pp. 50–56.

right is covered in such programs.¹⁷ In their investigation of the extent to which legal issues are covered in North American graduate programs in information and library schools, John Gathegi and Darrell Burke found that courses on copyright/intellectual property are least frequently listed within their grouping of information law courses.¹⁸ A recent study of the state of archival continuing education in the United States noted that copyright is a desired subject of any continuing education program.¹⁹

Research Design and Data Collection

The quality of archivists' copyright knowledge has implications for repository practice, particularly as repositories begin to digitize their holdings and make them available online. Misunderstanding copyright in some way could inappropriately limit access to archival holdings, or expose a repository to legal liability. If, for example, a repository selects for online access only material in which the copyright has expired, the repository could needlessly withhold access to a large quantity of material if staff were unaware that copyright in the posthumous works of authors who died before 1949 had expired at the end of 2003.²⁰ On the other hand, the repository could infringe copyright by selecting photos taken at least fifty years ago, unaware that the duration of copyright protection for photos was no longer based on the date of creation as a result of the 1997 amendments to the Act.²¹ A mistaken understanding of copyright may also inappropriately limit further uses if a repository is claiming copyright in holdings in which it is not the rights holder.

17 Livia Iacovino, "Teaching Law in Recordkeeping Courses: The Monash Experience," *Archives and Manuscripts*, vol. 25, no. 2 (1997), pp. 266–87; Richard J. Cox, Elizabeth Yakel, David Wallace, Jeannette A. Bastian, and Jennifer Marshall, "Archival Education in North American Library and Information Science Schools," *Library Quarterly*, vol. 71, no. 2 (2001), pp. 141–94; Carol Couture, "Education and Research in Archival Science: General Tendencies," *Archival Science*, vol. 1, no. 2 (2001), pp. 157–82; Jeannette A. Bastian and Elizabeth Yakel, "Towards the Development of an Archival Core Curriculum: The United States and Canada," *Archival Science*, vol. 6, no. 2 (2006), pp. 133–50.

18 John N. Gathegi and Darrell F. Burke, "Convergence of Information and Law: A Comparative Study Between i-schools and Other ALISE Schools," *Journal of Education for Library and Information Science*, vol. 49, no. 1 (2008), pp. 1–22.

19 Nancy Zimmelman, "A*Census: Report on Continuing Education," *American Archivist*, vol. 69, no. 2 (2006), pp. 388–89.

20 *Copyright Act*, R.S.C. 1985, c. C-42, s. 7(4). Posthumous works are literary, dramatic, or musical works or engravings that were not published or otherwise disseminated during the author's lifetime.

21 The term of copyright protection for photos taken after 1948 changed from creation plus fifty years to the life of the author plus fifty years (except where the author is a corporation whose shares are widely held, in which case the term provision of creation plus fifty years continues to apply). See *An Act to Amend the Copyright Act*, S.C. 1997, c. 24, ss. 7 and 54.1 (now s. 10 of the *Copyright Act*).

Given its complexity, it would not be surprising if Canadian archivists lacked a detailed understanding of copyright law. Statutes are written at a high level and their application to a particular set of circumstances often requires interpretation. In selecting what will be digitized for online access and attempting to control further uses, archivists apply and interpret copyright law; they are, in Robert Kidder's terms, filtering agents. He identified three categories of filtering agents that modify the impact of law: 1) law enforcers (e.g., police); 2) law interpreters (e.g., lawyers and judges); and 3) what he calls "target populations, the people who are supposed to be regulated by particular laws."²² He notes "a growing list of institutions, processes, and agents which filter any legal command, bending, modifying, or deflecting its effects according to the tides of conflict and cooperation among groups interested in, or having to react to, those laws."²³ Robert Ellickson's study of the behaviour of California ranchers and farmers in dealing with livestock and fencing matters found that they were quite ignorant of, or "badly misperceived," certain aspects of the laws that regulated such matters, and used a system of social norms rather than the law to maintain order.²⁴

A recent study of the copyright practices of Canadian archival repositories in digitizing their holdings for Internet access also investigated how staff members learn about copyright and the quality of their copyright knowledge.²⁵ The study assumed that the quality of archivists' copyright knowledge (in terms of accuracy and currency) influences institutional practice, because it is individual staff members who learn about copyright, communicate that knowledge to their colleagues, and transform it into institutional policies and procedures. It was also assumed that the quality of archivists' copyright knowledge is in turn influenced by the source(s) of that knowledge. To explore these matters, the study asked the following research questions:

- Where do Canadian archivists get their knowledge of copyright?
- What do Canadian archivists know about copyright?

To address these questions, the study employed the following sources of evidence: the content of 154 Canadian repository websites that featured archival material from the repository's holdings; 106 responses to a questionnaire sent to those repositories; 22 interviews with repository staff members; and 250 copyright policy and procedure documents found on the websites or submitted

22 Robert L. Kidder, *Connecting Law and Society: An Introduction to Research and Theory* (Englewood Cliffs, 1983), p. 136.

23 *Ibid.*, p. 142.

24 Robert C. Ellickson, *Order Without Law: How Neighbors Settle Disputes* (Cambridge, MA, 1991), p. 141.

25 Jean E. Dryden, "Copyright in the Real World: Making Archival Material Available on the Internet" (PhD diss., University of Toronto, 2008), available at <https://tspace.library.utoronto.ca/> (accessed on 17 December 2009).

with questionnaire responses.

The 154 repositories that served as the research population for this study were identified using the Archives Canada portal (www.archivescanada.ca). To be selected for inclusion in the study, a repository's website had to contain at least six archival documents from the repository's holdings. The process of identifying relevant repositories was combined with the first step of the data collection. Upon identifying a repository with a website that met the study's criteria, the site was examined in more detail. Data gathering from the websites was an iterative process, requiring several passes to be sure that all the relevant information on each website had been identified. A website data collection sheet was created to serve both as a checklist of aspects to look for while examining the websites, and as a template for a standardized summary of the relevant aspects of the website content. As each website was examined, the relevant pages from the site were printed, numbered, and annotated to note the hyperlinks, the presence (or absence) of common aspects, as well as any unique aspects of particular websites. Each repository was given a unique alphanumeric identifier;²⁶ the annotated pages from each website were numbered sequentially and filed in binders. As well, a summary sheet was completed for each website, summarizing its salient aspects with references to the numbered pages in the binders, where appropriate.

To obtain more structured data, a questionnaire was sent to the 154 repositories in the study.²⁷ Completed questionnaires were received from 106 repositories, a response rate of 69 percent. To further explore the evidence of copyright knowledge revealed in the website content and questionnaire responses, interviews were conducted with staff members of repositories that responded to the questionnaire. Interviewees were recruited through the questionnaire; 44 questionnaire respondents volunteered to be interviewed. To ensure that the interviewees were familiar with professional norms and their institution's copyright policies and practices, volunteers were screened based on their questionnaire responses regarding the number of years they had worked with archival material, level of education, and the years spent in their present position. Twenty-two interviews, each lasting about an hour, were conducted between 22 February and 13 June 2006. The semi-structured interview script consisted mainly of open-ended questions.²⁸ Where necessary, questions were added to clarify specific aspects of the repository's website content, the questionnaire response, and/or any relevant policy and procedure documents.

Policy and procedure documents on repository websites or submitted with

26 The alphanumeric identifiers are used in reporting the findings.

27 The questionnaire addressed a range of issues; however, only the responses to selected questions are reported here. The complete questionnaire is available in Dryden, "Copyright in the Real World," pp. 278–95.

28 The interview script is available in *ibid.*, pp. 304–9.

the questionnaire responses also provided relevant data. Typically, such documents are not written to convey the details of a repository's knowledge of copyright; however, some of them provided insights into the quality or sources of the repository's copyright knowledge.

Although the initial study did not look at the extent to which copyright is covered in Canadian graduate library and archives education programs, a separate study is currently investigating the coverage of legal issues in the nine Canadian schools that offer such programs.²⁹ As part of this larger study, the extent to which their course offerings cover copyright has been investigated. Their websites were reviewed to identify descriptions of courses (and, where available, syllabi, reading lists, etc.) that explicitly include copyright matters as signalled by words such as "copyright," "rights," "licensing," or "open access." Where a course description suggests that copyright *may* be covered, an email was sent to the instructor requesting more details and a copy of the syllabus or other course material. The websites were also reviewed to note schools with a continuing education program, and the extent to which such programs cover copyright.

Findings

Sources of Copyright Knowledge

Data from the questionnaire responses, interviews, and policy and procedure documents addressed the first research question: "Where do Canadian archivists get their knowledge of copyright?" This article looks at different aspects of archivists' sources of copyright knowledge, including how archivists learn about copyright initially, how they keep up-to-date, where they seek answers to specific questions, and how they learn about repository copyright practices.

Learning about Copyright

Questionnaire respondents were given a list of twelve ways that archivists could learn about copyright (as well as space to add others) and asked to mark all that applied. The results are presented in Table 1. Four sources were marked by at least half of the respondents. The top two were professional association workshops and colleagues in the profession, mentioned by 88 (83 percent of the 106 respondents) and 85 (80 percent) respondents respectively. Books and newsletters followed closely, marked by 76 respondents (72 percent). Sixty-five respondents (61 percent) marked statute and regulations. The remaining sources were marked by fewer than half of the respondents.

29 British Columbia, Alberta, Manitoba, Western Ontario, Toronto, Montréal, McGill, Laval, and Dalhousie.

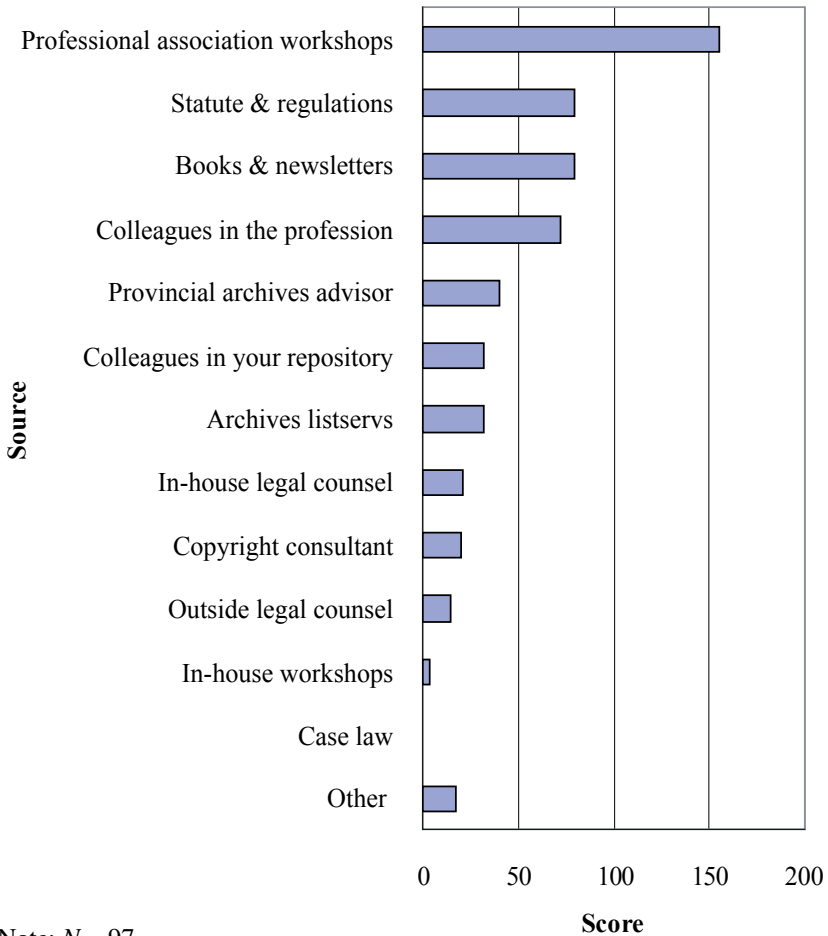
Table 1: Sources of Archivists' Copyright Knowledge

Source	Frequency	Percentage of Questionnaire Respondents
Professional association workshops	88	83%
Colleagues in the profession	85	80%
Books and newsletters	76	72%
Statute and regulations	65	61%
Colleagues in your repository	52	49%
Archives listservs	49	46%
Provincial archives advisor	34	32%
In-house legal counsel	30	28%
Copyright consultant	21	20%
Outside legal counsel	16	15%
Case law	9	8%
In-house workshops	8	8%
Other	12	11%

Note: $N = 106$

Respondents were then asked to rank the top three sources of their copyright knowledge in order of importance. The responses were coded so that a ranking of one (most important) was given a value of three, a second place ranking was given a value of two, and a third place ranking a value of one. The results are presented in Figure 1. Workshops sponsored by professional associations³⁰ are considered by far the most important source of copyright information, followed by books and newsletters tied with statute and regulations, and colleagues in the profession. Another cluster of “archival” sources (provincial archives advisor, colleagues in your repository, and archives listservs) follows. The lowest rankings are found in a cluster consisting of legal counsel (in-house or outside), copyright consultant, in-house workshops, and case law.

30 Following the 1997 amendments to the Act, the Bureau of Canadian Archivists (BCA) Copyright Committee developed a curriculum for a two-day workshop “on Canadian copyright law and its application to archives [to be] available to any association or institution wishing to sponsor the workshop” (see *BCA Copyright Committee 1998–9 Annual Report*). The workshop was intended to be taught jointly by an archivist and a copyright lawyer.



Note: *N* = 97

Figure 1: Ranking of Importance of Sources of Archivists' Copyright Knowledge

When asked to elaborate on their questionnaire responses regarding how they learned about copyright, eight interviewees mentioned the value of training opportunities such as workshops (particularly those sponsored by professional associations) as a means of getting started. As Leslie commented, “Those workshops were seminal. They provided us with the tools, the broad understanding as much as you can cram into the people attending in a day or two days. That’s enough to get them going.” Judy, whose repository was giving high priority to copyright issues, noted, “When it started getting crazy [requests for copies of documents skyrocketed in the months preceding an important anniversary of the parent organization], we divided up the responsibilities and everybody had

to go off and take copyright courses.” Margaret valued the workshops, and also noted that her awareness of copyright originated as a graduate student in an archival studies program.

As noted, the initial study did not look at the copyright content of Canadian graduate library and archives education. However, preliminary findings of a current study that is investigating the extent to which legal issues are covered in such programs reveal that copyright is not well covered. The results are shown in Table 2.

Table 2: Courses that Address Copyright in Canadian Graduate Programs

	MAS (UBC)	MLS or equivalent with archival concentration (Toronto, McGill, Montréal)	MLS or equivalent (Alberta, Dalhousie, UBC, UWO)	MA in History with archival concentration (Manitoba, Laval)
INDIVIDUAL COURSES				
Information/libraries/ archives in society		3	4	1
Information policy		3	3	0
Legal issues for info. professionals		1	1	0
Information ethics		2	0	0
Archives overview		0	2	0
Selected issues in archival studies		0	0	1
GROUPINGS OF RELATED COURSES				
Collection development		4	5	0
Public service & info. retrieval	1	3	3	1
Managing digital holdings		1	6	0
Managing still images and AV materials	1	2	1	0
Knowledge management/ Competitive Intelligence		2	1	0
Publishing/ Book history		0	2	0
TOTAL	2	21	28	3

Note: *N* = 54 courses

Key: Shaded cells indicate required courses.

No course is devoted entirely to copyright; to the extent that it is covered, copyright is part of another course. Copyright is likely to be addressed in specific courses that most schools offer, particularly a core course on information (or libraries or archives) in society, or an elective course on information policy. Where such courses are offered, copyright is also addressed in courses on legal issues, information ethics, and introduction to archives. The bottom part of the table represents groupings of related courses. For example, all library schools have at least one course on collections development, which is likely to cover licensing matters; this grouping includes related courses such as serials management and collection development for particular types of libraries. Another grouping includes courses that cover aspects of managing still images and audiovisual materials, which often raise copyright issues.

It may appear that the extent to which copyright is addressed in Canadian graduate programs is very limited; however, as noted, these are only the courses where copyright (or related terms) is mentioned in the course description or syllabus. Email communications from instructors reveal that copyright may also be covered as part of a larger discussion, or it may come up in response to student questions. As well, students may choose to do an assignment on copyright.

Only four of the nine schools have a continuing education program. By far the largest of these is the Professional Learning Centre (PLC) at the Faculty of Information at the University of Toronto, whose offerings include three courses on copyright.³¹ The School of Library, Archives, and Information Studies at the University of British Columbia partners with the PLC to offer web-based courses for information professionals;³² however, PLC's copyright courses are not offered online. Dalhousie and Alberta have modest programs that do not currently include copyright; Dalhousie delivers continuing education content through various means including "custom training"; Alberta offers workshops to the professional community (that appear to coincide with one-credit courses for graduate students).³³

The questionnaire responses provided a direct answer to the question: "Where do you get your knowledge of copyright?" However, policy documents from twenty-two repositories also provide indirect evidence of the print or online sources of Canadian archivists' copyright knowledge. Five repository policy documents, intended primarily for internal use by repository staff, contain footnotes or bibliographies that document the secondary sources on which the policy was based. Of these, two cite Noel's *Staff Guide to Copyright* pre-

31 <http://plc.fis.utoronto.ca/courses.asp?listorder=1> (accessed on 18 July 2009).

32 <http://www.slais.ubc.ca/COURSES/ce.htm> (accessed on 18 July 2009).

33 http://sim.management.dal.ca/Continuing_Education/; <http://www.slis.ualberta.ca/workshops.cfm> (both accessed on 18 July 2009).

pared for the National Archives of Canada (now Library and Archives Canada [LAC]); one cites Lesley Ellen Harris's *Canadian Copyright Law*; a third cites both.³⁴ A more recent policy cites Harris's online course, taken in 2005.³⁵ The fifth (much longer) document from Repository 4V (that "informs [the repository's] digital copyright work") cites many disparate sources including Harris's book; federal government reports; the websites of collective societies (including Access Copyright); American, British, and Canadian law journals; and other American sources. Twelve repositories direct researchers to sources of further information about copyright. Such sources are usually links to the Act itself (or Bill C-32),³⁶ or to websites of federal government departments or agencies with a mandate for copyright matters, including the Canadian Intellectual Property Office, the Copyright Board, and the two departments responsible for copyright policy (Department of Canadian Heritage and Industry Canada). One repository links directly to specific – albeit out of date – documents within the Department of Canadian Heritage's Copyright Policy Branch site.

Two documents produced by the Bureau of Canadian Archivists (BCA) Copyright Committee³⁷ were referred to, or included in, the data from three repositories. One repository's form for ordering copies suggests that users consult a booklet summarizing the changes resulting from the 1997 amendments.³⁸ Two other repositories (in an in-house policy document, and on the website, respectively) refer to a report prepared by Noel for the BCA Copyright Committee and sent to the archives listserv in 2005, which summarizes the 2004 amendments to the Act³⁹ and the Supreme Court decision in *CCH Canada Ltd. v. Law Society of Upper Canada* (hereinafter *CCH*).⁴⁰ Two university archives

34 Noel, *Staff Guide*; Lesley Ellen Harris, *Canadian Copyright Law*, 3rd ed. (Toronto, 2001).

35 Since 2002, copyright lawyer Lesley Ellen Harris has offered online courses on copyright. One interviewee and one questionnaire respondent reported having taken one of her online courses.

36 Bill C-32 (*An Act to Amend the Copyright Act*, S.C. 1997, c. 24) received royal assent in April 1997; its provisions are now part of the *Copyright Act*. However, as will be discussed, some research participants appear to think that Bill C-32 is the *Copyright Act*.

37 In December 2005, responsibility for the Copyright Committee was transferred from the Bureau of Canadian Archivists to the Canadian Council of Archives. The earlier name has been retained because it was correct at the time of data collection for this study.

38 Wanda Noel and Elizabeth Hawkins, *The New Copyright Law and Archives* (Ottawa, 1999).

39 The 2004 amendments repealed two statutory requirements that directly affected repository operations: an archives had to 1) attempt to locate the copyright owner before making a copy for a patron's research or private study, and 2) keep records of such copies made for patrons (*Copyright Act*, s. 30.21(5) and (6)). Amendments to the *Copyright Act* were part of the statute merging the National Archives and the National Library to establish Library and Archives Canada (*Library and Archives Canada Act*, S.C. 2004, c. 11, s. 21(3)).

40 The *CCH* case is significant because it clarified the meaning of originality (a fundamental requirement for copyright protection), and provided a list of six factors to be applied in order to determine whether a particular dealing is fair. In 1993, Canadian legal publishers sued the Law Society for the allegedly infringing activities of the Law Society's Great Library

also refer their website users to the university library copyright policies and the university's Access Copyright licence.⁴¹

The sources discussed thus far are grounded in Canadian copyright law; however, somewhat problematic are the references to American sources in Repository 4V's position paper (discussed above), and on repository 5H's site, which includes (without title or attribution) a link from the word "copyright" in the repository's fee chart to the US-based Association of Research Libraries' 1994 statement of principles on intellectual property. As will be discussed, two other repositories appear to have taken some of their practices and wording from outdated American copyright law, although the specific sources are not indicated.

Keeping Up-to-date

Copyright is an evolving area of law, particularly in Canada, where the federal government launched an ongoing copyright reform initiative in 2001,⁴² and where the Supreme Court has, over the past five years, issued some landmark decisions relating to the application of copyright in both the analogue and digital environments. Thus, learning about copyright once is not sufficient; it is also important to keep one's knowledge current. Questionnaire respondents were asked, in an open-ended question, how they keep up-to-date with changes in the law. The results are presented in Table 3.

Just over one third of respondents (35 percent) mentioned only one means of keeping up-to-date; 65 percent of respondents mentioned two or more. Listservs are by far the most common means of keeping current; the most frequently mentioned listserv is Arcan-I.⁴³ The second most common means of keeping up-to-date was publications, a category that included newsletters, articles, books, and printed material. Workshops and training activities were mentioned as often as colleagues as a means of keeping up-to-date. Keeping current through colleagues included emails from, or discussions with, them

in photocopying published legal materials and faxing the photocopies to Law Society members upon request. After two appeals, the case was heard by the Supreme Court, which found, in a unanimous decision, that the Great Library's copying activities were fair dealing, and overturned a lower court decision that the legal materials in question were not sufficiently original to merit copyright protection (*CCH Canadian Ltd. v. Law Society of Upper Canada*, [2004] 1 S.C.R. 339, 2004 SCC 13 [*CCH*]) (hereinafter *CCH*).

41 These sources are somewhat misleading because they do not deal with archival material, and neither archival material nor digital copying fall within the scope of Access Copyright licences.

42 At the time of writing (July 2009), significant amendments to the Act have yet to be made.

43 The Arcan-I listserv is provided "for the discussion of archival issues and interests of particular relevance to Canadian Archives and archivists" (see <http://www.mailman.srv.ualberta.ca/mailman/listinfo/arcan-1> (accessed on 17 December 2009)). Many of the provincial archives associations also have listservs for their members.

(including the provincial archives advisor). Following closely was information or alerts from professional associations. Other means included Internet sources (8), legislation (7), professional meetings (5), legal counsel (4), and news media reports (3).

Table 3: Ways in which Archivists Keep Up-to-date with Changes to Copyright Law

Means of Keeping Current	Frequency	Percentage of Questionnaire Respondents
Listservs	42	47%
Publications	34	38%
Workshops and training activities	20	22%
Colleagues	20	22%
Professional association information or alerts	18	20%
Other	29	33%

Note: $N = 89$

Six questionnaire respondents expressed particular views on this issue. Three noted that it was not easy to keep their knowledge of copyright current. Another noted, “We have not done a very good job of this.” Two more were somewhat disdainful of the need to keep current; in response to the question “How do you keep up-to-date with changes in the law?” one stated, “I don’t. Very little in our holdings is copyrighted by any external entity.”

How archivists keep up-to-date with changes to copyright law was also explored in the interviews. Interviewees mentioned two particular ways of keeping current about copyright: workshops and the Arcan-I listserv. Two stressed the importance of workshops as a means of learning about changes to the law once they were in place. As Lee said, “I think the workshops are really, really important particularly when there *are* changes and updates. And I guess it’s the provincial and national associations’ job to make sure that we are aware of the changes.” Seven more mentioned the bulletins on the Arcan-I listserv as the main method used to become aware of changes to copyright law.⁴⁴ Of these, three mentioned the role of the BCA Copyright Committee as the body responsible for informing the archival community of changes to the law.

44 The BCA Copyright Committee uses the Arcan-I listserv to disseminate information about developments in copyright law.

In order to explore how information about copyright is disseminated within the repository, interviewees were asked what they would do with information learned at a copyright workshop or from an article in which they learned something new about copyright. While the responses varied – depending on the size of the repository and the interviewee’s position within the organization – it was revealed that the information would be shared in some way with staff who deal with copyright, including management. As Dick said, “Well, depending on the circumstances, I’d share it with staff who are dealing with it here, in the first case. And then I’d file it away for use when those circumstances came up. But I would first share it so everyone knows that OK here’s something new that we should be aware of.”

As noted, amendments to the Act in 2004 and the Supreme Court decision in the *CCH* case were particularly relevant to archivists. As well, amendments to the Act were introduced in Parliament in June 2005 but died on the order paper when an election was called.⁴⁵ Archivists’ awareness of these specific changes, actual and proposed, was explored in a series of interview questions (later discussed in more detail); however, the responses provided further insights into how they keep current.

Five interviewees noted that they kept a reference file or binder on copyright to which they would add any information disseminated on the listserv (or from other sources) regarding recent developments. While few could accurately recall the details about the specific events, they noted that, had these questions come up in the course of the workday, they would have consulted their reference file. Two others remarked that they would ask a particular colleague that they rely upon for copyright information.

With regard to proposed amendments, three interviewees noted that they would be unlikely to pay attention until a change actually happened. As Judy said, “I know there are things that I have saved and put in [a reference file], but because they haven’t been passed yet I haven’t paid a whole lot of attention. It’s on my peripheral vision but I figure until it’s actually happening, why am I filling my head with this stuff?” Archivists appear to rely on others (particularly the BCA Copyright Committee) to inform the community of changes once they actually occur.

Answering Specific Questions

Learning generally about copyright is one aspect of acquiring knowledge of the area; however, finding the answer to a specific question is another important element to consider. Questionnaire respondents were given a list of possible sources they might consult if they had a specific question about

45 Bill C-60, *An Act to Amend the Copyright Act*, 1st Sess., 37th Parl., 2005.

a copyright matter, and were asked to check all that applied. The results are presented in Table 4. Questionnaire respondents consider colleagues in the profession, the statute and regulations, and books and newsletters to be the three most important sources consulted in seeking the answer to a specific question. Another cluster of sources (listservs, repository colleagues, and in-house legal counsel) are consulted by approximately one-third of respondents. The archives advisor is next, followed by a cluster of those with expertise in copyright law, or in law generally (in-house copyright specialist, outside legal counsel, and copyright consultants). Of the ten respondents who mentioned other sources, five mentioned searching on the Internet.

Table 4: Sources Consulted in Response to a Specific Question about a Copyright Matter

Source	Frequency	Percentage of Questionnaire Respondents
Colleagues in the profession	76	72%
Statute and regulations	70	66%
Books and newsletters	63	59%
Archives listservs	36	34%
Colleagues in your repository	35	33%
In-house legal counsel	34	32%
Provincial archives advisor	25	24%
In-house copyright specialist	19	18%
Outside legal counsel	14	13%
Copyright consultant	11	10%
Other	10	9%

Note: $N = 106$

Questionnaire respondents were then asked to indicate which of the sources listed they would consult *first* if they had a specific question about a copyright matter. The results are presented in Table 5. One-quarter of respondents indicated that the first source they would check would be the statute and regulations. Eighteen percent would first check secondary sources; 17 percent would consult colleagues in the profession. Each of the remaining sources would be consulted first by fewer than 10 percent of respondents.

Table 5: Source Consulted First in Response to a Specific Question about a Copyright Matter

Source	Frequency	Percentage of Questionnaire Respondents
Statute and regulations	25	25%
Books and newsletters	18	18%
Colleagues in the profession	17	17%
Provincial archives advisor	9	9%
In-house legal counsel	9	9%
Colleagues in your repository	8	8%
In-house copyright specialist	6	6%
Copyright consultant	2	2%
Outside legal counsel	1	1%
Other	5	5%

Note: $N = 100^*$

* Six responses that reported more than one source were not counted.

That two text sources rank at the top may be somewhat surprising, since it is well-known that information seekers tend to first go to other people,⁴⁶ and some archivists perceive the statute to be complex and difficult to understand.⁴⁷ It is true that the remaining sources (selected by 52 percent of the questionnaire respondents) are all people; however, they are not a homogenous group, and the responses require a more nuanced analysis. If related sources are combined to form the categories “archival colleagues,” “in-house expertise,”⁴⁸ and “external expertise,” the results are those presented in Table 6.

46 Donald O. Case, *Looking for Information: A Survey of Research on Information Seeking, Needs, and Behavior* (San Diego, 2002), pp. 142, 289.

47 Fifty questionnaire respondents provided comments on what they would change about copyright law to make their jobs easier. Of those, twenty-two called for the Act to be simplified or clarified, or for an interpretive guide, or both.

48 In five of the six cases where the in-house copyright specialist would be consulted first, that specialist is within the parent body but outside the repository. Thus, the in-house specialist was not included in the “archival colleagues” category.

Table 6: Categories of Sources Consulted First in Response to a Specific Question about a Copyright Matter

Category	Sources Included	Frequency	Percentage of Questionnaire Respondents
Archival colleagues	Colleagues in the profession, colleagues in your repository, archives advisor	34	34%
Statute and regulations	n/a	25	25%
Books and newsletters	n/a	18	18%
In-house expertise	Copyright specialist, legal counsel	15	15%
External expertise	Outside counsel, copyright consultant	3	3%
Other	n/a	5	5%

Note: $N = 100^*$

* Six responses that reported more than one source were not counted.

If sources were combined in this way, 34 percent of questionnaire respondents would consult professional colleagues first; as one of them noted, “I usually begin by contacting colleagues in the profession.” One-quarter would first consult the statute and regulations. Eighteen percent would consult books and newsletters; 15 percent would consult in-house resources (either the copyright specialist or the legal counsel). External sources that would incur a fee are least likely to be consulted first. Only one questionnaire respondent reported that they go first to outside legal counsel, noting that this occurs only “if we have the money!”

It is not surprising that the statute and regulations would be consulted at some point, but it is somewhat surprising to find that this source ranks ahead of books and newsletters, given the number of respondents who commented on the complexity and difficulty of copyright law. This seeming discrepancy was explored with the thirteen interviewees who indicated in their questionnaire responses that they would, at some point, consult the statute and regulations if they had a specific question about copyright. Of those, four find the statute difficult and would try to find the answer from another source. As Alex said:

... and in fact I have looked at these things. But it's absolutely true these things are so complex that if there's some other way to get advice from someone who is more cognizant of the complexity of the law, that would be a first step ahead of actually looking at the Act.

The other nine, however, are quite comfortable going to the statute, either because they are accustomed to dealing with legislation in other areas, or because they want to go to the Act to see what it says, seeking clarification from other sources if necessary as a follow-up step. As Rose said:

This has become much more the norm if you're an archivist to deal with all of these different aspects of ... legislation, and regulation.... I would go to the authority first; ... see what it is, and then if I have to talk to somebody, I can be much more specific to what I'm referring to.

Diane described the process she follows,

I like to start there [with the Act], but I use the National Archives *Staff Guide* a lot to interpret areas where I don't feel it's clear or I need more clarification.... If I can't find anything that seems to cover a particular situation, I would consult colleagues who I felt have dealt with situations like this, or who have perhaps more knowledge ... That's the process that I go through until I got to someone who could help me out with it.

Dick reported that he looks at the legislation as a follow-up to copyright-related discussions or notifications on the archives listserv.

As far as books are concerned, the National Archives *Staff Guide*⁴⁹ was explicitly mentioned by eleven repositories in questionnaire responses, in interviews, and/or on the websites. This is not surprising; the *Staff Guide* was made available to the Canadian archival community through the Canadian Council of Archives for \$15. It was the “textbook” used in the copyright workshops developed by the BCA Copyright Committee. Because of its low price, its use in training events, and its archival focus, the book is a resource most repositories would be likely to have. As two questionnaire respondents noted, however, the *Staff Guide* has not been updated since it was published in 1999, and they use it in conjunction with the copies of notices of updates that some keep in a reference file of more recent copyright information. One of the interviewees also noted that printed sources generally might not be current, saying, “if I'm looking at something that was published in 1996, chances are I should be looking at a more recent source.”

As Table 6 shows, 15 percent of the respondents would consult in-house expertise, either the copyright specialist, legal counsel, or both. Two interviewees from university archives noted that, although the copyright officers at their respective universities deal mainly with licensing of published materials and classroom uses, and may not know much about archives, they are knowledgeable and helpful in assisting with copyright questions.⁵⁰ Of these interviewees,

49 Noel, *Staff Guide*.

50 Two other university archives refer their website users to the university's copyright officer for further information about copyright; however, it is not known whether these archivists

Beth noted that she relies on the copyright officer in part because she does not have easy access to legal advice. Lee relies to some extent on the in-house lawyer, although she noted that, “the problem with lawyers is that lawyers don’t know anything about archives. So you have to educate them about archives and archival material and then let them try and blend that in with what they know about copyright.” If Lee had a specific question she would consult her workshop notes first, then a colleague in another repository on the same campus, and then the university library’s copyright officer. Judy noted that turnover in the legal services staff available to her government repository meant that there was little continuity, stating:

Because we work for the government, we are assigned different lawyers from time to time. Some are more aware than others. The one we have now is very good.... So I feel quite confident that we’re getting the right advice now.... [However with her predecessor, we had to push a bit]. We did ask questions, and then what [the former lawyer] did was ask a colleague who knew more, and it took months and months but in the end it seemed like it was OK.

A questionnaire respondent from another government repository also commented that, “in-house legal counsel is not necessarily well-versed in copyright legislation.”

Learning about Repository Practices

Knowing the provisions of a statute and its regulations is one thing; administering legal obligations within a repository is another matter. Training sessions, publications, and updates about amendments are primarily a means of learning about the provisions of the Act, but they may not address such matters as what to include in a copyright policy, or the terms and conditions that a repository may put on uses of its website. For this aspect of copyright knowledge, there is evidence on the websites and in the interview data that repositories base their institutional practice on documents and wording borrowed from other repositories. For example, twelve repositories⁵¹ use the following statement setting out the terms and conditions of use of website content:

Access to digital images and text found on this website and the technical capacity to download or copy it does not imply permission to re-use. Prior written permission to publish, or otherwise use images and text found on the website must be obtained from [repository].

also consult the copyright officer.

51 One other repository uses only the first sentence.

In another example, two municipal archives use identical wording to communicate copyright information and the twelve conditions of use pertaining to photographs ordered from the institution. These two repositories' wording of the particular condition specifying one-time use is used by four other repositories. Duplication on a smaller scale is seen in the virtually identical wording of the terms of use statements for two exhibits on two other municipal archives websites. While it is impossible to determine which repository first used these statements, the presence of identical or similar wording suggests that repository staff may look to see what others have done, rather than composing a copyright statement or terms of use from scratch.

This is borne out in the interview data. Four interviewees reported that they turn to the Internet for guidance to see how others have dealt with a particular issue (e.g., a selection policy; a virtual exhibit design; making copies for researchers in digital formats; or a statement setting out conditions of use of website content). For example, when designing the repository's first virtual exhibit, Alex reported looking first at a major exhibit done by another repository, and then, "we kind of wafted around, looked at a few things, and took bits and pieces, thought that it was important to have those sections." The same interviewee also uses her personal networks; knowing that a colleague in another province was working on guidelines for digitization projects, she was able to obtain a copy of the draft. Two interviewees from small community archives rely on the provincial archives advisor, whose mandate includes making model documents available to institutions in the community for their adaptation and use. Another interviewee reported that the policy document that "informs [his repository's] digital copyright work" was made available on request to other repositories in the province, and it continues to be used in the orientation of contract staff who do the scanning in his repository. Interview data about the role of personal networks and the archives advisor support the findings from the questionnaire data, indicating that archival colleagues are an important source of knowledge about copyright. When asked if he had anyone in particular in mind, an interviewee who had ranked colleagues in the profession as the most important source of information about copyright, responded, "There's no particular individual. There's discussions that come up from time to time, and just watching what other people tend to do on their websites and just more or less learning from other folks but no particular individuals."

Quality of Archivists' Copyright Knowledge

Archivists' sources of copyright knowledge are diverse, ranging from structured training events to publications to professional colleagues. However, the foregoing suggests that some of these sources are not current, or are from another jurisdiction. Professional colleagues are reported to be an important source of copyright information, but they themselves may not always be well-informed.

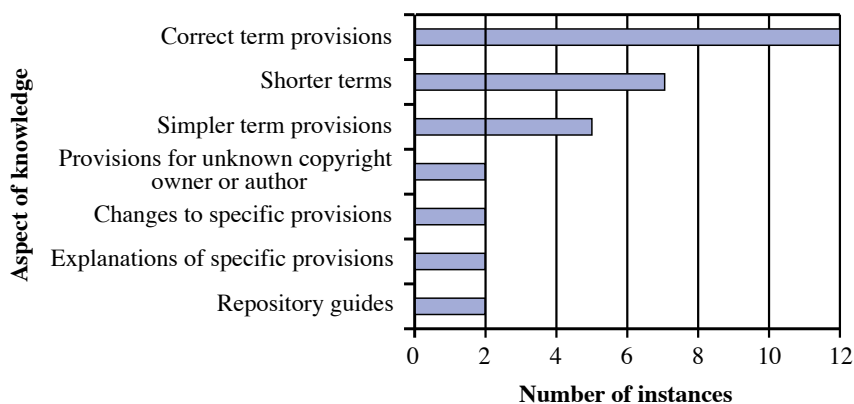
The second research question (What do Canadian archivists know about copyright?) was intended to discern the quality of their knowledge of copyright. For the purposes of this study, quality of knowledge is understood to reflect accuracy and currency (that is, the extent to which respondents correctly understand the relevant provisions of the Act, and the extent to which their knowledge is up-to-date in that it reflects recent amendments and case law). It is also assumed that institutional policy documents and websites are just as much evidence of archivists' knowledge as questionnaire responses and interviews because repositories' policies are written by staff archivists.

However, the study was not designed to administer a comprehensive "test" of archivists' copyright knowledge, so the findings must be treated with some caution. Conveying the details of the provisions of the *Copyright Act* is rarely the primary purpose of policy documents or website content; thus, many of the policy statements available to this study provide no evidence about levels of copyright knowledge, and where details of copyright are presented, they are unlikely to be comprehensive.⁵² Similarly, only questionnaire respondents who provided detailed answers to open-ended questions may have revealed something about an aspect of their copyright knowledge, but those who provided general responses disclosed no information in this regard. Finally, the sources of data vary greatly in their evidential weight; for example, institutional policy documents and website policy statements are probably more reliable as evidence than "off-the-cuff" questionnaire responses and interviews. Nonetheless, while it is not possible to provide more than a general impression of the quality of archivists' copyright knowledge, some observations can be made about selected aspects of this matter.

Accuracy of Archivists' Copyright Knowledge

Evidence that archivists correctly understand aspects of copyright law was found in the questionnaire responses, in internal policy documents, and in website content from the few repositories that provide explanations of copyright law for researchers. Twenty-six repositories provided 32 instances of an accurate knowledge of copyright law. The data are summarized in Figure 2.

52 Only two detailed guides prepared to assist repository staff in applying copyright to their holdings were available to this study.



Note: $N = 32$ instances from 26 repositories

Figure 2: Instances of Accurate Knowledge of Copyright Law

Question 8 of the questionnaire asked the following question from respondents who said that, for their repository's website, they selected documents whose copyright has expired: "How is it determined that the copyright has expired in any particular document?" Responses from 11 repositories provided 12 instances of correct term provisions, 8 of which applied to photos and 4 to textual material. Question 40 asked: "What, if anything, would you change about copyright law as it affects your job?" Of interest are the 16 responses from 14 repositories that revealed that some archivists are sufficiently well versed in the current provisions of the Act to make specific and well-informed suggestions about what to change. Seven questionnaire respondents called for shorter terms of copyright protection; for example: "*Réduire les délais. 50 ans après la mort est trop long.*" Of those, 3 specifically addressed the lengthy term in some posthumous works,⁵³ none more emphatically than the following respondent:

People who died between 1949 and 1998 should NOT have their unpublished material protected until 2049. This exception to the life plus 50 year rule is hard to explain to the public, as well as keeping fabulous resources from being fully used.

Another respondent wanted the term of copyright "based on publication/creation date rather than death dates" because creation dates are more easily determined. Five others wanted simpler terms; of those, one wanted uniform terms for all media; the other four commented specifically about photos. Of those four, three noted how difficult it was to apply a term rule based on life of the author when the author was frequently unknown; the fourth said, "*Revoir le*

53 *Copyright Act*, s. 7(3).

droit d'auteur s'appliquant aux photographes professionnels pour permettre la diffusion complète des photographies, même lorsqu'elles ont été payées." Two others wanted special provisions for situations where the copyright owner or author was unknown. Two more called for changes to particular provisions, referring to them by section number rather than name; one said: "*Modifier l'article 14* [the reversionary clause]"; the other said: "30.21(3) onerous for archives."⁵⁴ The detailed guides prepared by two repositories to assist their staff in applying copyright to their holdings are for the most part correct. Two other repositories, whose websites provide explanations of copyright law for researchers, provide accurate explanations of fair dealing, and the non-infringing use of an insubstantial part of a work, respectively. Not only do these responses indicate an accurate knowledge of particular aspects of copyright, but the suggested changes also reveal a desire to make holdings available sooner than the current term provisions allow, and to make the application of copyright law to archival material less complicated.

However, the data sources also included direct statements that provide evidence of inaccuracies or misunderstandings pertaining to a number of aspects of copyright. The following analysis is limited to inaccuracies or misunderstandings found in policy documents and websites, on the assumption that they have undergone a review, unlike questionnaire responses and interview content. Such statements were analyzed first by determining whether the possible result was serious or not, based on its effect in terms of access to holdings, compliance, or copyright guidance for researchers. For example, the fact that two websites refer to "the Canadian Copyright Act (1999)" or "the 1999 Copyright Act" as the authority for their copyright policies may be evidence of confusion regarding the coming into force of certain provisions of Bill C-32,⁵⁵ but is unlikely to impede someone wanting to look at the *Copyright Act*.

Specific areas of misunderstanding that could have serious consequences were then analyzed using the following three codes:

- it could reduce access to archival holdings in some way;
- the repository could be infringing copyright; or
- it provided misleading information to visitors to the repository's website.

While one could argue that an erroneous understanding of a provision of copyright law is also misleading, the three categories were considered to be mutually exclusive, and a specific instance of a misunderstanding is assigned to only one category.

The areas of misunderstanding are reported in Table 7. The 30 instances of

54 S. 30.21(3) lists the conditions a library, archives, or museum must comply with before making copies of archival holdings for researchers.

55 Although Bill C-32 received royal assent in 1997, its provisions were not fully in force until 1999.

misunderstandings of copyright law come from the websites and policy documents from 19 repositories. Within each area of misunderstanding, a repository has been counted only once, even if a particular misunderstanding was mentioned in both sources. However, where a repository misunderstands more than one aspect of copyright, it is counted more than once. Of the 19 repositories, 2 are counted in four different areas of misunderstanding; 1 is counted thrice, 3 are counted twice; the remaining 13 appear once. Of the 30 instances of misunderstandings in Table 7, 15 (50 percent) potentially reduce access; 2 (7 percent) may put the repository in an infringing position, and 13 (43 percent) provide misleading information to website users. Each area of misunderstanding is discussed below.

Table 7: Instances of Misunderstandings of Specific Aspects of Copyright Law

	Reduced Access	Infringing	Misleading
Term of protection	4		2
Posthumous works	5	1	5
30.21 narrowly interpreted	4		
Fair dealing	2		1
Bill C-32 = Act			4
Moral rights		1	1
Total	15	2	13

Note: $N = 30$ instances from 19 repositories

Six repositories misunderstand the term of protection in some way. As noted above, the term provision of creation plus fifty years continued to apply to photographs taken after 1948 where the author is a corporation whose shares are widely held. None of the four repositories that discuss the amended term provisions on their websites or in policy documents mentions the corporate term provision; they mention only that the duration of copyright in photographs is the life of the author plus fifty years. Because the corporate term provision (creation plus fifty) is very likely shorter than life plus fifty, such photos could be in the public domain.

Repository 3J's copyright policy also bases the calculation of the term of copyright on the date of the document. The same policy also presents the general provision for the term of copyright protection as "the fifty plus principle," without specifying a triggering event. Repository 6J's website conflates several different provisions for copyright duration and ownership into one when it states, "Copyright of unpublished records remains with the creator, commissioner [of a photograph] or owner of the records for life plus fifty years."

In addition to confusing ownership of the documents with ownership of copyright in them, this statement also is misleadingly ambiguous in that it does not specify whose life is the basis of the duration of copyright.

The 1997 amendments changed the provisions for posthumous works, which are very complex.⁵⁶ Nine repositories misunderstand aspects of these provisions; of those, five appear to be unaware of any changes, and four others misunderstand the scope of the provisions. Turning to the first group, three repositories apparently are either unaware of the changes to the term of copyright in posthumous works, or they have not updated their websites, which include special provisions for unpublished material, such as, “Literary rights to all unpublished materials remain in the possession of the authors, heirs, or assignees. The user assumes full responsibility for obtaining permission to publish such items in whole or in part.” Two other repositories place similar conditions on the use of unpublished materials, using wording that reflects pre-1976 American law.⁵⁷ When asked about the references to common law copyright on his website, Larry responded, “I think a lot of these documents have been around for quite some time.... a lot of that is taken from old practice.” These special conditions for unpublished works are not unusual if the works are still protected by copyright; however, the expiry of the first transitional provision for posthumous works brought many early works into the public domain in 2004. Thus, the statements that imply that copyright in unpublished works never expires may be considered as barriers to access, because there is no recognition that some of these works may already be in the public domain, and that the amendments ended the possibility of perpetual copyright in posthumous works.

Four other repositories misunderstood the scope of application of the posthumous works provisions. Internal policy documents from two repositories

56 Before the 1997 amendments, posthumous works were protected for fifty years after the date of publication. If the work was never published, the effect was perpetual copyright protection because the event that triggered the fifty-year term never occurred. The 1997 amendments phased out perpetual protection for posthumous works by providing the standard term of protection (life of the author plus fifty years) to works whose authors die after 31 December 1998, whether or not the works were published during the author’s lifetime. However, to be fair to those authors’ heirs who thought they had perpetual protection in their ancestor’s unpublished work, two transitional provisions were provided. The first has expired; it provided that posthumous works by authors who died before 31 December 1948 were protected until 31 December 2003 (*Copyright Act*, s. 7(4)). The second transitional provision provided that posthumous works by authors who died between 31 December 1948 and 31 December 1998 were protected until 31 December 2048 (s. 7(3)).

57 Until the American copyright law was amended in 1976, unpublished works were protected, not by the statute, but by common law, and as long as a work remained unpublished, the creator’s rights never expired. In 1976 the law was amended to provide that all works, published or not, are subject to a statutory term of protection. In one sense, these details are irrelevant, because common law copyright does not exist in Canada (s. 89), and because American copyright law does not apply in Canada. However, two repositories appear to have borrowed or adapted wording that refers to common law copyright.

contain errors in this regard. Repository 2O's chart to assist staff in applying copyright does not include the transitional provision that protects certain posthumous works after 2049, saying instead that the term in such works is life of the author plus fifty years, thus exposing the repository to the risk of copyright infringement. The problem is compounded by the fact that the chart also erroneously excludes moving image materials from the application of the posthumous term provisions, while including within posthumous works *documents iconographiques*, which it defines as “[des] œuvre[s] exécutée[s] à la main, telle qu'un dessin, une peinture, une gravure.” Of all the types of artistic works, only engravings are covered by the provisions for posthumous works.⁵⁸ Repository 6B's staff manual is confusing in that it inconsistently presents the relevant death dates of authors of posthumous works; speaking in some places of those who died before 31 December 1948 (which is correct), and in others of those who died before 1948.

The expiry of the first transitional provision brought a host of older works into the public domain on 1 January 2004. However, based on the policy documents available to this study, only two repositories changed their policy documents to reflect this. A comparison of the 2002 version of the copyright section of Repository 2V's policy and procedure manual with the 2005 version of the manual reveals that they added the following statement to their policy (and to their reading room regulations): “As of 2004, unpublished literary works whose authors died prior to 1949 are now in the public domain.” This, however, is an oversimplification of the substance of the amendment; on one hand, the change is not limited to literary works; on the other, it applies only to works that had not already been published after the author's death and before 31 December 1998.⁵⁹ The second repository's summary of the 1997 amendment reveals a serious misunderstanding: “Written works by an author who died prior to 1945 are in the public domain; written works by an author who died between 1945 and 1998 are copyrighted until 2048. Written works by an author who died after 1998 are copyrighted until fifty years after their death.” Not only is the date wrong, but it misses the fact that the transitional provisions apply to more than written works, and it also misses entirely their application to posthumous works. Because both policy documents are available online, this information may mislead those who consult those repositories' websites.

The 1997 amendments also added a provision (s. 30.21) that allows an archives to make a single copy of an unpublished work in its holdings for a researcher, provided that certain conditions are met. Four repositories appear to have a narrow understanding of the scope of this exception. One charges a

58 *Copyright Act*, s. 7(1).

59 Posthumous works published after the author's death and before 31 December 1998 are protected for fifty years from publication. See *Copyright Act*, s. 7(2).

\$15 research fee “where copyright has to be established before an item can be photocopied.” The basis for this is not clear, nor is it clear how it is administered in practice, but it is needlessly restrictive, since both the archives provision and the fair dealing provisions permit making photocopies for research or private study without clearing copyright first.⁶⁰ Another repository stated (with regard to its photocopying policies), “copying of entire works is prohibited” which has no statutory basis. Repository 5H misunderstands the Act by limiting copying on the basis of membership: “Due to our understanding of Canadian copyright rules, we can only make copies for Members of our society; we must also ask that you confirm that you would use any copies for personal research only.” In its photographic reproduction policy, Repository 7D states: “In instances where copyright for a photograph rests with another institution or individual, the researcher is required to make reproduction arrangements directly with them.” This policy puts the researcher to needless effort, because a repository can provide a single copy for research or private study regardless of who owns the copyright.

Table 7 includes evidence of misunderstanding of moral rights by two repositories. One addresses the author’s right of attribution in the terms of use statement for two virtual exhibits. Its website states: “*Le défaut de mentionner la source et le nom des ayants droit sera considéré comme une atteinte au droit moral, de même que toute modification du contenu de ce site et individuelle-ment, de chacun des documents présentés.*” This is misleading in that it implies that the name of the copyright owner is required, when in fact it is the name of the author(s). The other repository’s draft policy contains an erroneous statement about the duration of moral rights: “They remain with the creator until his or her death unless the author agreed to have these rights waived.” In fact, moral rights last for the life of the author plus an additional fifty years.⁶¹

In an effort to inform users about copyright, four repositories provide a link to the current version of the *Copyright Act* on the Department of Justice website.⁶² However, four other repositories refer or link, not to the Act, but to Bill C-32, which amended the *Copyright Act* in 1997.⁶³ No amendment bill stands alone; its provisions can be understood only with reference to the statute it is amending; in any case, once Bill C-32 received royal assent, its provisions were incorporated into the Act. Three of these repositories include links to Bill C-32 on their websites; one of these links both to Bill C-32 and the current statute.

60 Consistent with this restrictive approach documented on their website, this repository’s questionnaire response to a question asking them to indicate what, if anything, they would change about copyright law that affects their job, called for a provision that researchers be allowed to copy material for private research, a provision already in the Act.

61 *Copyright Act*, s. 14.2(1).

62 www.laws.justice.gc.ca/en/C-42 (accessed on 17 December 2009).

63 *An Act to Amend the Copyright Act*, S.C. 1997, c.24.

The fourth repository refers to Bill C-32 as the Canadian *Copyright Act* in three different policy documents. The archivists in these four repositories appear to believe that Bill C-32 *is* the *Copyright Act*. Where the reference is a website link, it could be that archivists do not regularly review and update their websites;⁶⁴ in the fourth case, while the repository's copyright policy was changed to reflect the amendments that took place in 2004, the references to Bill C-32 were carried forward unchanged from the repository's 2002 copyright policy, to the 2005 revision and the reading room regulations. Because the policy is on the repository website, this information may mislead users, and because repositories borrow from each other, may perpetuate wrong information.

Fair dealing is an area of copyright law of particular interest to archivists and archival repositories. As seen in Table 7, misunderstandings of fair dealing can restrict access in some cases or mislead in others. Evidence about archivists' understanding of fair dealing is found on three repository websites. Two websites present, respectively, a narrow interpretation of fair dealing, or lack of awareness of fair dealing entirely, that may present a barrier to access to archival material. Repository 2N suggests that fair dealing applies only to published materials when it says, "... The Archives can also provide a copy of a portion of published material for the purpose of research or private study under the Fair Dealing provisions of the *Copyright Act*." Repository 2V does not appear to be aware of fair dealing as an alternative to the exceptions for libraries, archives, and museums when its policy and procedure manual states: "Under the new *Copyright Act*, the Archives is no longer able to make photocopies from published works held in the Reference Library. Researchers are advised to obtain copies from institutions that hold a special copying license."⁶⁵ Repository 5S "grants" what it calls "fair use" of the content of its website for non-profit research or study provided that the repository is cited as the source. This statement is misleading for two reasons. Fair dealing is a user's right under the statute, and is not within a repository's power to grant or withhold; furthermore, this statement suggests that the repository owns the copyright in the digitized works that appear on the site, which may not be the case.

Archivists' understanding of fair dealing was explored in the interviews. It appears that seven interviewees do not have a clear understanding of fair deal-

64 However, this does not appear to be the case for Repository 4R, whose website also includes a link to Bill S-16, a private bill introduced in the Senate that died on the order paper when Parliament was prorogued in 2004, and was not reintroduced. Because repository 4R's questionnaire response also refers specifically to Bills C-32 and S-16 ("CCA (Canadian Council of Archives) projects must fall under Can. Copyright law Bill C-32 & Bill S16"), it appears that the belief that these two bills *are* the copyright law is well-entrenched in this repository.

65 This policy decision may, however, be based on an interpretation of s. 30.21 (which permits an archives to make a single copy of an *unpublished* work in its holdings for researchers) as prohibiting making a copy of a published work.

ing. As James commented, “When I think of fair dealing, I think of books. I don’t think of archival material when I think about fair dealing.” Others confuse fair dealing with blanket licences or the archives exception (section 30.21). Four interviewees are uncertain about the difference between the Access Copyright (formerly CanCopy) licence and fair dealing. When asked what she thought about the fair dealing provision, Jan responded, “This is the CanCopy thing? Like you can copy 10%?” and Colin said, “I’m often hearing special collections staff telling people you’re allowed to copy 10% of a book, and I’ve never been clear whether that was them interpreting what fair dealing means or may be that’s a CanCopy provision.” Two others did not realize that the archival exception was different from fair dealing. As Judy said:

Obviously I’m confused about this because we just refer to the archival exceptions here. That’s what we use. So fair dealing I don’t know. Either we have felt that it doesn’t affect us more, I don’t know. Anyway we’re not in the interpretation business for our researchers. So what we do is talk about the archival exemptions; that’s what we’re concerned with here but so far as fair dealing, we leave a lot of that up to them to try and figure out.

It appears that archivists’ understanding of fair dealing varies widely, including confusing fair dealing with licences or with other provisions of the Act.

It is not easy to combine the foregoing discussions of instances of accurate and inaccurate knowledge to arrive at a meaningful conclusion. The issues are wide-ranging, and reflect the complexity of copyright law. However, one area of copyright law invites scrutiny: the term of protection for photos. As noted, the 1997 amendments changed the term provisions for photos from creation plus fifty years to the life of the author plus fifty years (except where the author is a corporation whose shares are widely held). These changes came into force on 1 January 1999; but they were not retroactive, thus, photos taken before 1949 are in the public domain. This is one of the most straightforward provisions in the *Copyright Act*. However, of the 20 repositories that provide information about the public domain cut-off date, more than half of them are inaccurate in some way, as set out in Table 8.

Table 8: Repositories' Understandings of the Public Domain Cut-off Date for Photos

	No. of Repositories
Pre-1949 (correct)	11
Pre-1948	8
Pre-1950	2
Creation + 50 years	4
Total	25

Note: $N = 25$

Eleven repositories correctly understand that photos taken before 1949 are in the public domain. However, another 14 are wrong in some way: 8 think that any photo taken before 1948 can be used freely; 2 more think that any photo taken before 1950 can be used freely. Questionnaire respondents from 4 other repositories are apparently unaware that the term provisions have changed; their questionnaire responses indicate that they think that the term provision continues to be fifty years from the date of the photo.⁶⁶ To sum up, 11 (44 percent) of the 25 repositories that address this issue are correct; 10 (40 percent) are out by a year in either direction; 4 (16 percent) apparently are unaware of any change. In other words, more than half of the repositories that provide information about this relatively straightforward matter are mistaken, which may have the following consequences.

Selecting for online access only photos in which copyright has expired, believing that photos taken before 1948 are in the public domain (but photos taken in 1948 are not), has the effect of blocking online access to an entire year of photos that could be made available without concerns about copyright. On the other hand, repositories that select photos taken before 1950 may be selecting photos that they *think* are in the public domain. They will not consider it necessary to obtain authorization from rights holders, and thus are risking the possibility of copyright infringement. As well, the pre-1950 cut-off date is publicly available on one repository's website, and potentially misleading to users.

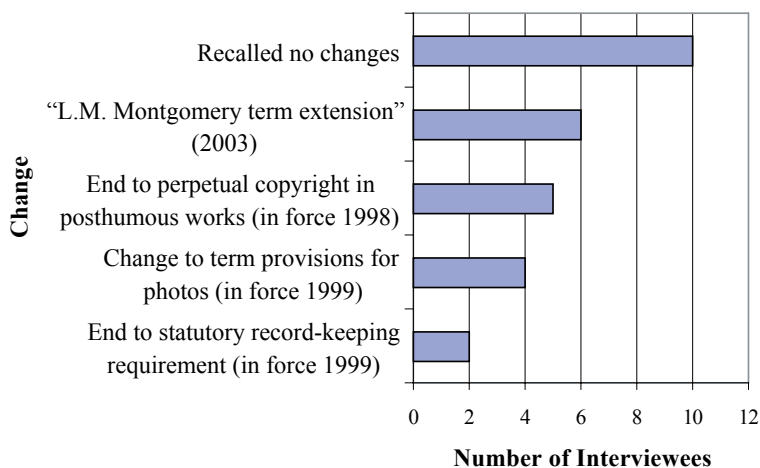
66 While this is still true for photos in which the author is a corporation whose shares are widely held, the responses do not mention that distinction.

Currency of Copyright Knowledge

Archivists' awareness of changes to Canadian copyright law was explored in a series of interview questions designed to learn more about the quality of their knowledge in terms of its currency. The first question asked about the most recent information they recalled about a change to copyright law that affected their institutional practices. It was expected that interviewees would mention the 2004 amendments that removed the statutory requirement for recordkeeping, or possibly the *CCH* decision of the same year. However, while responses included aspects of the 2004 amendments, they also included various changes that were part of the 1997 amendments. The responses are summarized in Figure 3. Five interviewees gave two issues in their responses, so the number of responses totals more than 22.

Ten did not recall any change to copyright law that had affected their institutional practice. Two recalled a change that had to do with the end of the requirement to keep records of copies made. Six recalled a change that had something to do with the works of L.M. Montgomery;⁶⁷ of those, three were aware that the proposed change to the term provisions had not passed; two did not know the status of the measure; and one was unable to provide any details. Four interviewees said that the most recent change they recalled was new term provisions for photos (that came into force in 1999); five referred in various ways to the changes that came into force in 1998 and ended the possibility of perpetual copyright in unpublished works.

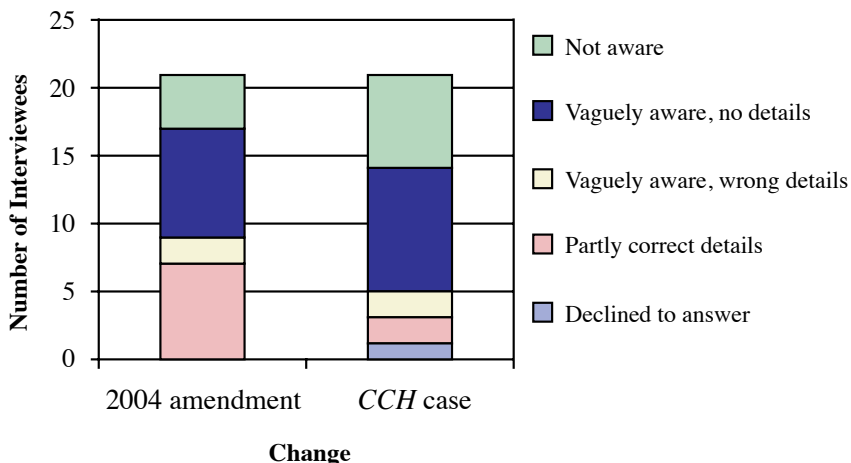
67 The initial version of the bill that resulted in the 2004 amendments was popularly referred to as "The L.M. Montgomery Copyright Term Extension Act" because it was widely perceived to reflect efforts by Montgomery's estate to extend the term of copyright protection in her unpublished letters. Their efforts were not successful; the provisions for an extension of the term of copyright protection were removed from the bill in the course of its passage through Parliament.



Note: $N = 22$

Figure 3: Interviewees’ Awareness of Recent Changes to Copyright Law

Interviewees were then asked if they recalled anything about the 2004 amendments and the Supreme Court decision in the *CCH* case. The responses are summarized in Figure 4.⁶⁸



Note: $N = 21$

Figure 4: Interviewees’ Awareness of Specific Changes to Copyright Law

68 One interviewee was not asked about any of these specific changes because it was evident from earlier responses that the volunteer-run repository lacked the resources, expertise, and interest to follow copyright. Another person declined to answer the question about the *CCH* case.

Regarding the 2004 amendments, four interviewees were not at all aware of them, and eight reported having heard something about them but could supply no details. Two more were mistaken about the details: one thought the amendments had something to do with privacy issues; another thought they had something to do with fair dealing. Seven were partly correct but their recollections were incomplete or combined with earlier amendments. Of those seven, two referred both to the 1997 amendments (photos in one case, and the transitional provisions in section 7 in the other) and the so-called L.M. Montgomery term extension aspect of the 2004 changes. Three referred only to the Montgomery aspect. Two interviewees noted both key aspects of the 2004 amendments (that the term of copyright was not extended and that the statutory requirement for recordkeeping was repealed), but one was not sure whether it had passed or not. One mistakenly believed that the efforts by the Montgomery estate to extend the term of copyright protection in Montgomery's works had gone to the Supreme Court, which had ruled against the estate.

Based on the policy documents available, only one repository reviewed its policy between 2002 and 2005 and removed the record-keeping requirement. However, three interviewees from other repositories reported on specific changes to their practice because they no longer had to keep records of copies made for researchers. As Richard put it, "We heaved a sigh of relief at the point that we didn't have to maintain those records."

The interview script also included a specific question about the Supreme Court decision in the *CCH* case, which clarified and broadened the scope of fair dealing. In response to this question, seven interviewees recalled nothing about it, nine reported hearing something about it but could supply no details, and two provided erroneous details. Only two had a partial understanding of the case in terms of its implications for repository practice: one was aware that the outcome favoured users and that it represented a significant precedent, the other recalled that the case dealt with self-serve photocopying and claiming copyright in law reports.

Discussion and Recommendations

Canadian archivists appear to go to some effort to learn about copyright. While some may have been introduced to copyright during graduate studies, copyright is not covered in depth in library and archives graduate programs, and the findings of the study suggest that learning about copyright is very much a matter of continuing education after entering the profession. Questionnaire responses reveal that archivists learn about copyright primarily from workshops sponsored by professional associations, printed sources, professional colleagues, and the statute itself. Sources cited in policy documents include the same printed sources as well as online resources from federal government agencies responsible for copyright matters. As far as keeping up-to-date with

copyright law is concerned, archivists use a variety of sources, with announcements on listservs most frequently mentioned, followed by various publications. In addition to being a means of learning about copyright, workshops are also a means of keeping up-to-date. When informed of some change, many add the information to a reference file for future consultation.

Archivists also consult a variety of sources in seeking answers to specific questions; interview data suggest that seeking an answer to a specific question may require consultation with several sources until an answer is found. Colleagues in the profession, the statute, and printed sources are mentioned most frequently. However, when asked what they would consult first, archival colleagues moved to the top of the list, followed by the statute, and printed sources. Although other data suggest that some archivists find the statute daunting, many look to it as a starting point before consulting further sources. In seeking guidance in the administration of copyright within institutions, repositories often borrow from each other. Other repositories (and colleagues in them) are a source of models for institutional practice.

The study suggests that the quality of Canadian archivists' knowledge of copyright varies greatly, although these findings must be used cautiously, given the design of the study, and bearing in mind that statements that speak to the accuracy of copyright knowledge, one way or the other, are from a minority of the repositories in the study. The accuracy of archivists' copyright knowledge is uneven; while some appear to have a correct understanding of particular provisions of the Act, others misunderstand aspects of copyright in ways that may have consequences for access and use, or that may put the repository in a position of infringing copyright, albeit unintentionally. Even when dealing with a straightforward provision such as the cut-off date for public domain photos, more than half the repositories that provide data about this issue are mistaken in some way.

Some of the misunderstandings are the result of a lack of awareness of changes to the law. The findings suggest that archivists know little about recent changes, although it may be somewhat unreasonable to expect them to keep the details in their heads. As noted, some keep a file of reference material and, had these questions come up in the workplace, they would have consulted their reference file for the details. Nonetheless, two-thirds or more of the interviewees indicated no awareness of recent changes, awareness (but no details), or a mistaken understanding of the outcome. Their knowledge is also confused in that it conflates events that occurred at different times.

The study provides evidence of weaknesses in what Canadian archivists know about copyright, weaknesses that may have adverse consequences such as reduced access to holdings, legal liability, or perpetuating erroneous or misleading information. While the gaps in archivists' knowledge may be the result of a number of factors, the study looked at one such factor – the sources of copyright knowledge – and identified some problems in the ways that they learn

about copyright. It appears that the training offered has not been fully effective, and there are deficiencies in the completeness, currency, and availability of the resources available to archivists and their repositories. Such matters bear further investigation. Replicating the study in other jurisdictions or in related domains, such as libraries and museums, may reveal more successful alternative means of delivering copyright education.

However, more immediate remedies are needed. Copyright is an important professional matter. Archivists are responsible for their repositories' compliance with copyright (and other laws), but copyright law is very complex and its application in the evolving digital environment is not entirely clear. It is not realistic to expect every archivist to be an expert in copyright law. Archivists must, however, have a general understanding of how copyright works, and they need better tools and resources to assist them in managing their copyright responsibilities. The following recommendations point to possible courses of action.

The fact that participants in the study relied heavily on post-appointment workshops to learn about copyright and the limited copyright coverage in graduate programs, both suggest a need for more robust copyright content in graduate programs so that practitioners learn about copyright earlier. Such content must cover not just the provisions of the law, but also how the law operates in relation to the mission of cultural heritage institutions, and the role of the information professional in administering copyright. Curriculum development has begun in this area: a collaborative project at Virginia Tech and the University of North Carolina to develop a curriculum for digital libraries will include a module on intellectual property. As well, the DigCCurr (Digital Curation Curriculum) project to develop an international curriculum to support the management and preservation of digital materials across their life cycle will also presumably be addressing copyright issues in a way that recognizes differences between national copyright regimes.⁶⁹ The resulting curriculum modules will be freely available to those wishing to offer copyright education within graduate programs or as post-appointment training.

Digital and communications technologies have changed the copyright landscape, and the application of copyright in the digital environment continues to evolve through statutory amendments and case law, as well as new business models and practices. Keeping up with changes to copyright law is not easy, and it is essential that practitioners are made aware of changes and their implications for practice in a timely fashion. This is often done by a committee or working group affiliated with a professional association; the members of such

69 See Digital Libraries Curriculum Development project at <http://curric.dlib.vt.edu>, and the various stages of the DigCCurr project at <http://ils.unc.edu/digccurr/index.html> (both accessed on 17 December 2009).

committees are usually volunteers with an interest in the topic, and they notify the membership of the changes through listserv postings. The study suggests that such a model works reasonably well, as long as the committee has adequate resources.

Simply notifying the community of changes is, however, not enough. Timely, authoritative, and accessible continuing education programs must supplement such notices in order to inform practitioners of the details of relevant changes and their implications for practice. The quality and timeliness of such offerings are dependent on the availability of qualified instructors. To be effective, the sponsors of such offerings must be committed to work closely with those who have the time and expertise to monitor changes to keep abreast of changes, and be prepared to organize and deliver a suitable training package in response to changes. Such courses should also be offered regularly in the intervals between amendments, reflecting any changes in case law and best practices.

Archivists also need answers to copyright questions that arise in their daily work; however, they lack authoritative, up-to-date reference materials. Practitioners want an interpretive guide to assist them in determining how to proceed in particular copyright situations. The *Staff Guide* published by the (then) National Archives of Canada served admirably, but it is now a decade old and out of date. A new edition is needed, and it would make sense to make it available online where it is readily accessible and can be quickly updated. However, someone has to be responsible for the production and maintenance of such a guide to ensure that the content is authoritative and current. Whether this should be the responsibility of professional associations or some other body, and the extent to which that entity would be prepared to go beyond generalities to avoid legal liability, are difficult questions that would have to be addressed if such a vision is to become a reality.

Closely related to this is a need for access to a copyright expert, someone a practitioner could contact with a specific question and get an authoritative answer, instead of making the rounds of possibly ill-informed colleagues. While there are individuals with the necessary expertise (knowledge of the law combined with a thorough understanding of the mission and operation of cultural heritage institutions), they would presumably expect to be fairly compensated for their time and expertise, and it is not clear who would support the cost of such a copyright consultation service.

To return to Kidder's model,⁷⁰ the study makes it clear that Canadian archivists "filter" copyright law for their repositories, their colleagues, their users, and other repositories. However, copyright is just one of many aspects of their work competing for attention and resources. Practitioners do not always address copyright issues correctly, in part because the sources of their copyright know-

70 Kidder, *Connecting Law and Society*.

ledge may be inadequate in various ways. This paper suggests possible ways of addressing weaknesses in how practitioners learn about copyright and keep their knowledge current. As a consequence, one might expect a greater level of copyright expertise and a higher standard of professional practice.