

Letter to the Editor



I wish to respond to the matter raised in Heather Martin's review of my book *Demystifying Copyright* in *Archivaria* 81.¹ She refers to a difference of opinion regarding the term of copyright in photographs taken before 1949, discussed in a recent article in *Open Shelf*,² I have carefully read the article (and the more focused discussion in *Canadian Intellectual Property Review*),³ and I stand by the interpretation that copyright in photos taken before 1949 has expired, based on the following evidence. The term of copyright in most photographs changed on 1 January 1999 from creation plus 50 years to the life of the author plus 50 years.⁴ This change applied to photos "in which copyright subsists on the date of the coming into force of [section 54.1],"⁵ i.e., 1 January 1999. If the copyright had expired before 1 January 1999, as was the case with photos taken before 1999 because 50 years had passed since their creation, the change in term to life plus 50 years does not apply. This interpretation is shared by a number of copyright experts, including David Vaver, Normand Tamaro, Wanda Noel, and Lesley Ellen Harris.⁶ There were further changes in the term provisions for photographs in 2012, but again, one of the transitional provisions of the amending statute clearly states that the change did not have

1 Heather Martin, review of *Demystifying Copyright*, 2nd ed., by Jean Dryden, *Archivaria* 81 (Spring 2016): 166, n1.

2 Margaret Ann Wilkinson, Carolyn Soltau, and Tierney G.B. Deluzio, "Copyright in Photographs in Canada since 2012," *Open Shelf* (1 December 2015), accessed 22 August 2016, <http://www.open-shelf.ca/151201-copyright-photographs>.

3 Margaret Ann Wilkinson and Tierney G.B. Deluzio, "The Term of Copyright Protection in Photographs," *Canadian Intellectual Property Review* 31 (December 2015): 95–109.

4 *An Act to Amend the Copyright Act*, SC 1997, c 24, s. 54.1.

5 *Ibid.*

6 See David Vaver, *Copyright Law* (Toronto: Irwin Law, 2000), 145–46; David Vaver, *Intellectual Property Law: Copyright, Patents, Trade-Marks*, 2nd ed. (Toronto: Irwin Law, 2011), 145–46; Normand Tamaro, *The 2013 Annotated Copyright Act* (Toronto: Carswell, 2012), 386; Wanda Noel, *Staff Guide to Copyright* (Ottawa: National Archives of Canada, 1999), 27; and Lesley Ellen Harris, *Canadian Copyright Law*, 4th ed. (Toronto: Wiley, 2013), 128.

the effect of reviving copyright in any photographs in which copyright had expired at the time the amendments came into force (7 November 2012).⁷ If Parliament had intended to extend copyright beyond the term specified before the amendments came into force, surely the amending statutes would have clearly said so.

Sincerely yours,
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⁷ *Copyright Modernization Act*, SC 2012, c 20, s. 59(1).