

Copyright Law in Canada | General Principles and Guidelines  
for History and Archives Working Group  
13 December 2010

### Relevant Legislation

- Copyright Act (1985)  
<http://laws.justice.gc.ca/en/C-42/index.html>
- Exceptions for Educational Institutions, Libraries, Archives and Museums Regulations (1999)  
<http://laws.justice.gc.ca/eng/SOR-99-325/index.html>
- Bill C-32: An Act to amend the Copyright Act (20 July 2010)
  - “Copyright Modernization Act”
  - currently past second reading in the House of Commons and referred to Legislative Committee for report  
<http://www2.parl.gc.ca/Sites/LOP/LEGISINFO/index.asp?List=Is&Query=7026&Session=23&Language=e>

### Digital Copyright Terminology

See Digital Copyright Canada website [http://www.digital-copyright.ca/copyright\\_jargon.shtml#C](http://www.digital-copyright.ca/copyright_jargon.shtml#C)

Key terms: Content, Creator, Audience, Fair dealing (Canada), Fair use (USA), Public domain

### Rules and Regulations

Legal Definition (3) For purposes of this Act, “Copyright”, in relation to a work, means **the sole right to produce or reproduce the work or any substantial part thereof in any material form whatever, to perform the work or any substantial part thereof in public or, if the work is unpublished, to publish the work or any substantial part thereof**, and includes the sole right

(a) **to produce, reproduce, perform or publish any translation of the work,**

(b) in the case of a dramatic work, to convert it into a novel or other non-dramatic work,

(c) in the case of a novel or other non-dramatic work, or of an artistic work, to convert it into a dramatic work, by way of performance in public or otherwise,

(d) in the case of a literary, dramatic or musical work, to make any sound recording, cinematograph film or other contrivance by means of which the work may be mechanically reproduced or performed,

(e) in the case of any literary, dramatic, musical or artistic work, to reproduce, adapt and publicly present the work as a cinematographic work,

(f) in the case of any literary, dramatic, musical or artistic work, **to**

**communicate the work to the public by telecommunication,**

(g) to present at a public exhibition, for a purpose other than sale or hire, **an artistic work created after June 7, 1988**, other than a map, chart or plan,

(h) in the case of a computer program that can be reproduced in the ordinary course of its use, other than by a reproduction during its execution in conjunction with a machine, device or computer, to rent out the computer program, and

(i) in the case of a musical work, to rent out a sound recording in which the work is embodied,

and to authorize any such acts.

Term of Copyright :

single, known  
author

(6) The term for which copyright shall subsist shall, except as otherwise expressly provided by this Act, be **the life of the author, the remainder of the calendar year in which the author dies, and a period of fifty years following** the end of that calendar year.

single, unknown  
author

(6.1) [...] where the identity of the author of a work is unknown, copyright in the work shall subsist for whichever of the following terms ends earlier:

(a) a term consisting of the remainder of the calendar year of the **first publication** of the work and a period of fifty years following the end of that calendar year, and

(b) a term consisting of the remainder of the calendar year of the **making of the work** and a period of seventy-five years following the end of that calendar year,

but where, during that term, the author's identity becomes commonly known, the term provided in section 6 applies.

Joint authors  
(unknown)

(6.2) Where the identity of all the authors of a work of **joint authorship** is unknown, copyright in the work shall subsist for whichever of the following terms ends earlier:

(a) a term consisting of the remainder of the calendar year of the first publication of the work and a period of fifty years following the end of that calendar year, and

(b) a term consisting of the remainder of the calendar year of the making of the work and a period of seventy-five years following the end of that calendar year,

Joint authors  
(known)

but where, during that term, the identity of one or more of the authors becomes commonly known, **copyright shall subsist for the life of whichever of those authors dies last, the remainder of the calendar year in which that author dies, and a period of fifty years following the end of that calendar year.**

(9.1) In the case of a work of joint authorship, except as provided in section 6.2, copyright shall subsist during the life of the author who dies last, for the remainder of the calendar year of that author's death, and for a period of fifty years following the end of that calendar year, and references in this Act to the period after the expiration of any specified number of years from the end of the calendar year of the death of the author shall be construed as references to the period after the expiration of the like number of years from the end of the calendar year of the death of the author who dies last.

Joint authors (non-  
Canadian)

(9.2) Authors who are nationals of any country, other than a country that is a party to the North American Free Trade Agreement, that grants a term of

	protection shorter than that mentioned in subsection (1) are not entitled to claim a longer term of protection in Canada.
Owner of Copyright	(13.1) Subject to this Act, the author of a work shall be the first owner of the copyright therein.
Corporate/collective authorship	(13.3) Where the author of a work was in the employment of some other person under a contract of service or apprenticeship and the work was made in the course of his employment by that person, the person by whom the author was employed shall, in the absence of any agreement to the contrary, be the first owner of the copyright, but where the work is an article or other contribution to a newspaper, magazine or similar periodical, there shall, in the absence of any agreement to the contrary, be deemed to be reserved to the author a right to restrain the publication of the work, otherwise than as part of a newspaper, magazine or similar periodical.
Fair dealing:	(29) Fair dealing for the purpose of research or private study does not infringe copyright.
Research	
Criticism	(29.1) Fair dealing for the purpose of criticism or review does not infringe copyright if the following are mentioned:
Citation	(a) the source; and (b) if given in the source, the name of the (i) author, in the case of a work, (ii) performer, in the case of a performer's performance, (iii) maker, in the case of a sound recording, or (iv) broadcaster, in the case of a communication signal.
Copying for preservation	(30.1) (1) It is not an infringement of copyright for a library, archive or museum or a person acting under the authority of a library, archive or museum to make, for the maintenance or management of its permanent collection or the permanent collection of another library, archive or museum, a copy of a work or other subject-matter, whether published or unpublished, in its permanent collection
Rare materials	(a) if the original is rare or unpublished and is (i) deteriorating, damaged or lost, or (ii) at risk of deterioration or becoming damaged or lost; (b) for the purposes of on-site consultation if the original cannot be viewed, handled or listened to because of its condition or because of the atmospheric conditions in which it must be kept;
Technology upgrade	(c) in an alternative format if the original is currently in an obsolete format or the technology required to use the original is unavailable; (d) for the purposes of internal record-keeping and cataloguing; (e) for insurance purposes or police investigations; or (f) if necessary for restoration.
Archived material (unpublished & manuscript)	(30.21) (1) It is not an infringement of copyright for an archive to make a copy, in accordance with subsection (3), of an unpublished work that is deposited in the archive.  (2) When a person deposits a work in an archive, the archive must

give the person notice that it may copy the work in accordance with this section.

(3) The archive may only copy the work if

Absence of express prohibition by any owner

(a) the person who deposited the work, if a copyright owner, did not, at the time the work was deposited, prohibit its copying;

(b) copying has not been prohibited by any other owner of copyright in the work; and

Research purposes

(c) the archive is satisfied that the person for whom it is made will use the copy only for purposes of research or private study and makes only one copy for that person.

### Relative and Likely Amendments

- Clause 28 of Bill C-32 slightly expands the exception found in paragraph 30.1(1)(c) of the Act by allowing a library, an archive or a museum to make a copy of a work in its permanent collection in an alternative format if the original is in a format that is obsolete or the technology required to use the original is unavailable or is becoming unavailable.
- Clause 29 of the Bill C-32 permits libraries to distribute materials digitally; however, the library must take measures to ensure that the client prints one copy only of the digital form, does not communicate the copy to another person and ensures that the copy is destroyed within five days of using it. Digital distribution is only permitted if there are no digital locks on the materials. **Clause 30 applies similar provisions to unpublished works deposited in archives.**
- New sections 30.02 and 30.03 of the Act create an exception to allow educational institutions that have a licence for the reprographic reproduction of works to make digital reproductions and to communicate them. An obligation to take measures to prevent communication to the public is once again imposed on educational institutions.
- New section 30.04 of the Act allows educational institutions, for educational purposes, to reproduce, communicate and perform for students works that are available on the Internet, provided that such materials are legitimately posted, are not clearly marked as prohibiting such reproduction and if the educational institution was not aware that the materials were posted on the Internet in violation of the owner's rights. A copyright symbol alone would be insufficient as notice that the exception does not apply to a work.