
Crown Copyright and Federal Information Resources October 3, 2006

Cal Becker
Coordinator & Senior Counsel
Intellectual Property Secretariat
Department of Justice

Crown Copyright and Federal Information Resources

1. Origins of Crown Copyright
2. Crown Copyright &
Federal Information Resources
 - Legal Information Resources
 - General Government Information Resources

Origins of Crown Copyright

- 1538 – Henry VIII - privilege of printing regulated via patents issued by royal prerogative
- State censorship against sedition and heresy
- 1557 – Stationers' Company – created by royal charter to administer a guild system to control printing
 - Not only to secure stationers' property rights, but also to implement a more effective system for government surveillance of the press.

Origins of Crown Copyright - 2

- Preamble to the Stationers' Company Charter
 - Know ye that we, considering and manifestly perceiving that certain seditious and heretical books rhymes and treatises are daily published by divers scandalous malicious schismatical and heretical persons, not only moving our subjects and lieges to sedition and disobedience against us, our crown and dignity, but also to renew and move very great and detestable heresies against the faith and sound catholic doctrine of Holy Mother Church, and wishing to provide a suitable remedy in this behalf....

Origins of Crown Copyright – 3

- At inception, the essence of copyright was
 - Crown prerogative
 - Censorship
 - Trade regulation
- Contemporary Crown copyright
 - Combination of Crown prerogative and legislation (s. 12)
 - Used to control access to government information resources ("information management")
 - Inhibits trade by making access to government information more difficult than trading partners in NAFTA

Origins of Crown Copyright – 4

- *Quaere* whether Crown copyright is appropriate for management of government information resources
 - Combination of 1538 exercise of royal prerogative and verbatim rendering of UK copyright legislation from 1911.
 - Strategic commercial and industrial data controlled by Crown copyright and made available on a user-pay basis
 - Consistent with the "information age", the "knowledge economy" of the new millennium?

Crown Copyright and Legal Information Resources

- 1995 – Justice posted federal statutes and regulations on its Internet site with a permission notice
 - Principle: free access to federal law
 - Practical rationale: avoid burden of dealing with requests for permission
- Principal concern: whether to use a disclaimer to avoid liability for negligent misrepresentation – decided against

Crown Copyright and Legal Information Resources - 2

- 1997 – Reproduction of Federal Law Order
 - reproduction of federal law: without permission and without charge
 - applied to federal statutes and regulations and the decisions of federal courts and tribunals
 - an exercise of Crown prerogative, not based on any statutory authority
 - relied on s. 12 of the *Copyright Act*: "published under the direction or control of the Crown"

Crown Copyright and General Government Information Resources

- 2000 – Common Look and Feel
 - Cabinet decision to establish a common look and feel for government information resources on the Internet: May 4, 2000
 - required, *inter alia*, a reconsideration of Crown copyright in controlling access to government information resources
 - © constituted a prohibition on reproduction
 - disclaimers to avoid liability for negligent misrepresentation
 - indemnification clauses

Crown Copyright and General Government Information Resources

- One view: PWGSC was designated the "mandatory common service provider" for the administration of Crown copyright
 - same regime for paper and electronic
 - display ©
 - require written permission to reproduce government information resources
 - maintain infrastructure required to grant and record permissions to reproduce materials from federal websites

Crown Copyright and General Government Information Resources

- The prevailing view:
 - government information resources should be as freely accessible as possible
 - rationale for putting information on the Internet was to facilitate the widest possible access
 - acknowledged that copyright was virtually unenforceable in an electronic medium
 - no desire to maintain infrastructure required to administer Crown copyright on the Internet

Crown Copyright and General Government Information Resources

- The result:
 - no copyright notices on federal websites (generally)
 - instead, permission notices, with optional prohibition on commercial redistribution
 - no disclaimers of liability for negligent misrepresentation as to currency or accuracy of information
 - no indemnification clauses