

Report on Proposed Amendments to the Copyright Act  
April 3, 2003

In the last round of amendments to Canadian copyright law there were significant changes made to copyright protection of unpublished works. Bill C-32 received Royal Assent in April 1997

The amendments included a provision for transition from perpetual copyright for unpublished works to standard protection of life plus 50 years. Some stakeholders were very unhappy about the final terms of this transition and some of those whose interests were affected (in particular the heirs of L.M. Montgomery and other authors whose unpublished works would come into the public domain in 2004) began lobbying to change the terms of the transition period. Some discussions and meetings were held in 1997-1999 but the matter was not resolved.

In early 2002 the government hired Wanda Noel to see if a compromise solution might be possible. Meetings and discussions were held with various stakeholders and a proposed solution was developed which on the one hand adjusted the transition period, and on the other hand addressed certain complications to the exception allowing archives to provide researchers with single copies of unpublished works that were in an archives before September 1, 1999. The participants in the meetings were representatives of the Canadian Historical Association, the Bureau of Canadian Archivists (Copyright Committee), the National Archives of Canada, and the Writers Union of Canada. There were difficult negotiations and eventually there was give and take on both sides. The resulting solution was approved by the boards/governing bodies of all the stakeholder organizations. The BCA Copyright Committee, the BCA, the ACA, the AAQ, and the CCA all agreed this compromise was acceptable because it has removed certain obligations that are very problematic to archivists, to keep certain records and to make them available to the copyright holders.

Wanda Noel's detailed report on the process is available at:

<http://strategis.ic.gc.ca/epic/internet/incrpprda.nsf/vwGeneratedInterE/rp01107e.html>

Her report summarizes the solution as follows:

"The solution consists of two parts.

First, section 7 of the Act would be amended to provide the following:

a) where an author died before January 1, 1930 with a work which had not been published by December 31, 2003, the work is protected until December 31, 2003. If, however, the work is published on or before December 31, 2003, the work is protected for 20 years from the date of publication.

b) where an author died after December 31, 1929 and before January 1, 1949 with a work which had not been published by December 31, 2003, the work is protected until December 31, 2017. If, however, the work is published on or before December 31, 2017, the work is protected for 20 years from the date of publication.

If the Act is amended as suggested, the rules relating to the term of copyright in posthumous works would be summarized as follows:

. . .

The second part of the solution would amend section 30.21 which provides archives with an exception to make single copies of unpublished works in an archival institution for research and private study purposes, provided that certain conditions are met. This exception creates two categories of unpublished works: those which were in an archive before September 1, 1999 (the date the exception came into force) and those which are placed in an archive after September 1, 1999. For the first category (unpublished works already in an archive before September 1, 1999) there are currently two statutory conditions. The copy can be made only if the archive 'is unable to locate the [copyright] owner', and records must be kept of copies made under this section. The second part of the proposed solution is to amend section 30.21 to eliminate both of these conditions. "

Note: For the sake of brevity I have not included it here but the report also includes an easy-to-consult table of how the practical rules would change for a variety of situations. This table shows clearly how the amendments would work in practice.

In late February 2003 the message below was distributed by the Federal Government to a variety of stakeholders, inviting comments on the proposed amendments to the Copyright Act. Although the time allowed was extremely brief, no responses were received.

The BCA Copyright Committee has no plans to oppose the legislation. It is a compromise but one we feel has enough advantages for us to support the amendments. It appears likely that they may be introduced in the near future.

We invite your comments and questions.

BCA Copyright Committee  
Greg Brown (ACA)  
Victorin Chabot (AAQ)  
Guy Dinel (CCA)  
Grace Hyam (ACA)  
Nancy Marrelli (AAQ), Chairperson

Greg Eamon (Library and Archives of Canada - observer)

Message from the Intellectual Property Policy Directorate, Industry Canada

and the Copyright Policy Branch, Department of Canadian Heritage

On October 3, 2002, Supporting Culture and Innovation: Report on the Provisions and Operation of the Copyright Act (Section 92 report) was tabled in the House of Commons on behalf of the Minister of Industry. It proposes an agenda for copyright reform that sets out groupings of issues to be addressed in the short, medium and long terms. Among the short-term issues is whether section 7 of the Copyright Act should be amended to alter the provisions, which will result in certain old unpublished works falling into the public domain in 2004.

In this regard, prior to Bill C-32, unpublished works had perpetual protection. With the passing of Bill C-32 in 1997, section 7 of the Act was amended to provide that all works are protected for the standard term of life of the author plus 50 years following the year of the author's death, regardless of publication. The amendment was subject to certain transitional provisions relating to works not published by December 31, 1998 namely:

The works of authors who died before December 31, 1948 will fall into the public domain on January 1, 2004, and

The works of authors who died between December 31, 1948 and 1998 will be protected until January 1, 2049.

For those who died after 1998, the standard term of protection would apply.

Various individuals had expressed concern with respect to the transitional periods and have sought amendments to the transitional term of protection. The government undertook to consider the issue and hired an outside consultant, Wanda Noel, to consider possible changes to the transitional period. Two consultation meetings were held in January and February 2002 with representatives from the Canadian Historical Association, the Bureau of Canadian Archivists, the National Archives of Canada and The Writers' Union of Canada. The working group has developed a proposal described in

Copyright Protection in Unpublished Works: Final Report  
(<http://strategis.ic.gc.ca/epic/internet/incrpprda.nsf/vwGeneratedInterE/rp01107e.html>).

To ensure that all interested parties are provided an opportunity to comment on the working group's proposal, the Departments of Canadian Heritage and Industry Canada are posting the document and seeking views on it. These comments will be taken into account in determining the most appropriate course of action in respect of section 7 of the Copyright Act. We would ask that you provide a written response by March 7, 2003. Written comments may be sent by e-mail (WordPerfect, Microsoft Word or HTML formats) to:

[copyright-droitdauteur@ic.gc.ca](mailto:copyright-droitdauteur@ic.gc.ca)  
with the following reference: "Comments - Section 7 of the Copyright Act".

Comments may also be sent by mail or fax to Comments - Section 7 of the Copyright Act at either of the following:

c/o Intellectual Property Policy Directorate  
Industry Canada  
235 Queen Street  
5th Floor West  
Ottawa, Ontario  
K1A 0H5  
fax: (613) 941-8151

c/o Copyright Policy Branch  
Department of Canadian Heritage  
275 Slater Street  
7th Floor  
Ottawa, Ontario  
K1A 0M5  
fax: (613) 990-6230