

Bureau of Canadian Archivists Copyright Committee
Report to the Archival Community
May 7, 2003

The past two years have been busy ones for the Copyright Committee, doing behind-the-scenes and preparatory work, and we are slowly but surely gearing up for a new round of amendments to the Copyright Act. We would like to share with the archival community what we've been doing.

June 2001 Consultation

In June 2001 the Departments of Heritage and Industry released a series of documents including *A Framework for Copyright Reform*, and *A Consultation Paper on Digital Copyright Issues*. These documents launched a major initiative to amend the Canadian copyright legislation to conform to the realities of the digital environment. Comment was invited from all stakeholders and from the public.

The Copyright Committee at that time was composed of: Greg Brown (ACA), Victorin Chabot (AAQ), Guy Dinel (CCA), Grace Hyam (ACA), and the chair Nancy Marrelli (AAQ), with Greg Eamon (National Archives), observer. Our group worked very hard to prepare a detailed brief in response to the initiative, and it was submitted in September 2001. The Copyright Committee brief, entitled, *Comments on A Framework for Copyright Reform and A Consultation Paper on Digital Copyright Issues* is available on the BCA Copyright Committee website:

<http://archives3.concordia.ca/bca.html>

Our brief emphasizes the necessity for wide consultation, and for balance in the legislation and the necessity for archivists to respect the rights of both the creators (our depositors) and the users. We underlined the importance of enhancing, not penalizing, research and private study in the digital environment, and we detailed certain problems of preservation in the digital environment.

The response to the government initiative was overwhelming and along with our brief, more than 700 submissions were made. The original documents and the responses are available at:

<http://strategis.ic.gc.ca/epic/internet/incrp-prda.nsf/vwGeneratedInterE/Home>

Consultations

In the face of such interest in copyright in the digital environment, the government organized consultation meetings on these issues across the country in spring 2002. The BCA Copyright Committee participated in two of these meetings, one in Montreal, and one in Ottawa. We presented our positions, brought forward our issues and initiated

dialogue with other stakeholders and with government policy people; we discussed and we lobbied.

Funding and Operations of the Copyright Committee

In 2001 and 2002 it was evident that the Copyright Committee needed a stable funding base if it was to carry out its mandate. Budget submissions were made and we are very grateful that in summer 2002 the CCA generously provided a modest budget that allows us to contract out for a limited amount of essential legal advice, drafting and translation of briefs, and minimum expenses involved in representing the archival community as required. The expenses of the representatives of the three associations in the BCA Copyright Committee (AAQ, ACA, CCA) continue to be paid by each association, and joint expenses are shared. We do almost everything by e-mail and conference calls to limit our expenses. Many of the copyright stakeholders (writers, musicians, photographers, film people, the education sector, etc.) have full-time lobbyists and large budgets for lobbying and preparation of documentation, but so far we are managing to hold our own and get our issues on the table.

Section 7/Section 30.21 Revisions

In the winter of 2002 the Committee was invited to participate in discussions with other stakeholders (writers, historians) to determine if a compromise could be reached on certain parts of Section 7 of the law concerning protection of unpublished works. After a series of negotiations in which there was give and take on each side, all parties agreed on a compromise amendment. The proposed change would increase the period of protection for a small category of unpublished works but would change the limitations to the exceptions in Section 30.21, relieving archives from some obligations that are very problematic to us: to locate copyright holders in certain cases before making a copy, and to maintain certain records and 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>

We expect these amendments will be introduced as part of a rider to a separate legislative package in the very near future.

The amendments represent a compromise but we believe the benefits are important enough to accept the package.

Section 92 Review

The 1997 legislation included a mandatory 5-year review (called the Section 92 Review) to be submitted to Parliament in 2003.

In preparation for this the Copyright Committee believed it was very important to submit a brief summarizing outstanding archives issues and our position on them. We were able to contract for a first draft of the brief and we worked with this carefully to ensure that all issues were covered in clear language, and that our recommendations were comprehensive but succinct. The report, *Canadian Copyright Law Revision: Issues of*

Importance to Archival Institutions, was submitted to the Departments of Industry and Canadian Heritage on April 29, 2002. It contains 31 outstanding issues and our recommendations on each of them. This document is available on our web site:

<http://archives3.concordia.ca/bca.html>

The Departments of Industry and Canadian Heritage made their report to Parliament in early October 2002. It is available at:

http://strategis.ic.gc.ca/epic/internet/incrpprda.nsf/vwGeneratedInterE/h_rp01106e.html

The Section 92 review is on the back burner at the moment. The Parliamentary Committee is supposed to review the review document and report back to Parliament by October 2003, but it is expected that an extension will be requested. Consultations and discussions will be held in due course and we hope there will be an attempt at consensus building. We will participate in this process with due diligence because the report to Parliament that will result will be the blueprint for copyright reform over the next few years. It is likely that the actual reform process will not begin in this government mandate as it will be a long and difficult process if experience is any guide!

WHAT'S COMING UP?

As always with the Copyright Committee, we are hostage to other people's agendas and scheduling. Our best guess about what will happen in the near future is:

Section 7/Section 30.21 amendments

We expect that soon an amendment to the Copyright Act will be introduced in Parliament to change the length of protection for certain unpublished materials in Section 7, and to eliminate some of the restrictions and requirements in Section 30.21 of the Copyright Act. As soon as such an amendment is passed the Copyright Committee will issue information to the archival community about how the law has changed and clear and precise instructions on implementation.

Section 92 Review

We expect a call for input into the Section 92 review of the Copyright Act, but we are not certain when that will come. The Copyright Committee will likely be working on this over the summer and early fall. We also expect that we will participate in numerous consultations and discussions over the next 18 months on a variety of issues concerning copyright in the digital environment. We will lobby at the department and parliamentary level to bring forward the issues and positions important to the archives community because this review process will result in the blueprint for copyright reform in the short, medium, and long term, and it is essential that issues of importance to archives are included.

We are very aware that the process of copyright law reform often seems very distant and very esoteric and the details frequently seem completely incomprehensible! We sometimes have to remind ourselves why we are involved in the process of copyright law reform. The Copyright Committee thinks the introduction to our brief of April 2002 (available on our web site) summarizes very well why we are involved in this difficult and often tedious process:

Archives are the memory of the nation

Archivists safeguard for present and future generations the essence of who Canadians are and what we have done. Our mandate is to serve society as a whole, to provide ongoing access to the records reflecting the great diversity of Canadian life: ordinary Canadians and everyday life, those who have attained fame and fortune, institutions which act on an international level and those based in Canadian neighbourhoods, the records of the humble and anonymous and those of well-known Canadians past and present. Archives house the diaries of Mackenzie King and those of a Prairie housewife during the Depression, photographs by Karsh and photos taken by YMCA campers.

Archives are special places in relation to copyright: by our very nature we represent the balance between creators and users which copyright legislation tries to achieve. Our materials originate with creators, our users are those seeking to access them. Since our "clients" are both creators and users, we balance the rights of one and the other as part of our daily business.

The Copyright Committee will make every effort to keep the archival community informed about what is going on with copyright. If you have any questions, comments, or concerns, please do not hesitate to get in touch with us. We welcome your input.

BCA Copyright Committee:

Greg Brown (ACA)

Victorin Chabot (AAQ)

Guy Diné (CCA)

Nancy Marrelli (AAQ), Chairperson

Brian Owens (ACA)

Greg Eamon (Library & Archives of Canada - observer)