Heavy is the head that wears the crown (copyright).

The need for Crown copyright reform in Canada.

Amanda Wakaruk, Copyright Librarian
ABC Copyright Conference
Kingston, Ontario
June 29, 2017
What is Crown copyright?

Copyright Act, s.12 (emphasis added)

Without prejudice to any rights or privileges of the Crown, where any work is, or has been, prepared or published by or under the direction or control of Her Majesty or any government department, the copyright in the work shall, subject to any agreement with the author, belong to Her Majesty and in that case shall continue for the remainder of the calendar year of the first publication of the work and for a period of fifty years following the end of that calendar year.

“Crown copyright comes from and is justified by a particular non-democratic conception of government.” -- David Vaver

- 1984 white paper recommended that guidelines be created to prevent unduly restrictions to public access to government works

- 1985 report of the Sub-Committee of the House of Commons Standing Committee on Communications and Culture on the Revision of Copyright recommended that, “Crown copyright be abolished for some categories of materials and that the scope be greatly restricted for other categories.”

See Judge, Elizabeth F. “Crown Copyright and Copyright Reform in Canada,” 2005.
Reproduction of Federal Law Order

SI/97-5

Registration 1997-01-08

Reproduction of Federal Law Order

P.C. 1996-1995 1996-12-19

Whereas it is of fundamental importance to a democratic society that its law be widely known and that its citizens have unimpeded access to that law;

And whereas the Government of Canada wishes to facilitate access to its law by licensing the reproduction of federal law without charge or permission;

Therefore His Excellency the Governor General in Council, on the recommendation of the Minister of Canadian Heritage, the Minister of Industry, the Minister of Public Works and Government Services, the Minister of Justice and the Treasury Board, hereby makes the annexed Reproduction of Federal Law Order.

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SI/98-113(F).

Date modified: 2016-12-02

Why did they exclude government publications?
I had some difficulty in adjusting the conflicting claims of Bobtail and Sam tail should not be given all the land from neighborhood of the Methodist Mission, a there; that he himself had drawn logs for wanted to live near Rev. Mr. Glass, whose his reserve, and not in Bobtail's; and, mo on the north side of the river as far as the possession of it before Bobtail, as could Morleyville. After carefully considering line north from a point on the river twen dence, so as to take in the logs he had dr river frontage of a mile and a-half on the Bobtail, on a visit to some lakes which h Green, my assistant, whom I had instructe corner of a field belonging to Bobtail, wa from the men and sat down on them, as a ban's rights. After talking the matter to the west immediately south of the nell he had drawn for a house. Bobtail wish in Papaschase's house, but the latter had

For Seven Generations
An Information Legacy of the
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Web Renewal Action Plan

Reduce Redundant, Outdated and Trivial Content

Government of Canada websites should deliver easy-to-find, clear, accurate, up-to-date information to their visitors. To make government information easy to find and use, government departments need to be aware of the information published online and ensure quality information is delivered, evaluated and reviewed regularly.

The key steps in managing an effective content lifecycle are outlined below.

The benefits of removing Web content that has become redundant, outdated or trivial (ROT) include:

- Increased ease of finding and using Web content
- A better experience for visitors
- Decreased website maintenance costs
- Enhanced ability to deliver services online

thus improve services by saving clients time and effort.
What is Open Government?

Librarian Questions (email correspondence with TBS Open Government Team, November 2016):

Q: What is covered under the Open Government licence?
A: The Open Government Licence covers everything that is published on open.canada.ca (datasets, open information, proactive disclosure, access to information requests).

Q: Does this include ALL information published and openly disseminated by the Government of Canada? That is, publications and documents regardless of format?
A: No, the Open Government Licence only applies to what is published on open.canada.ca (regardless of format).
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b. In May 2015, Canadian librarians and government information management experts were consulted on the planned direction for the Open Information Portal. The Government of Canada’s Open Information Portal was launched and integrated into Open.Canada.ca. Progress to date is considered to be Phase 1 of the portal’s development.

The portal consolidated and provided single-window, searchable access to over 170,000 digital information resources from the Government of Canada Publications collection (publications.gc.ca) and from Library & Archives Canada. All digital information resources that it provides are available for free download via this service and are licenced under the Open Government Licence - Canada. A common metadata profile for open data and open information has been developed and shared with data and information experts internal and external to the Government of Canada.

January 2017

Removed due to incompatibility with OGL (e.g., Crown copyright).
Crown or Emperor?

The Emperor’s New Clothes

A story explained by pluralistic ignorance exposed by an innocent.

Crown Copyright

**Advantages**

**Government’s perspective:**
- Revenue generation: provides monopoly over the production, reproduction, performance, or publication of a work.
- Integrity, accuracy, authenticity of the work. (Official marks are a better mechanism than Crown copyright for these purposes.)

**User’s perspective:**
- Can’t think of any.

**Disadvantages**

**Government’s perspective:**
- Administration: Have to staff positions to answer permission requests, questions.

**User’s perspective:**
- Barrier to re-use (privacy, limited distribution/access, fees, etc.).
- Bolsters democratic deficit, especially given that aims are at odds with Open Government principles.
e-petition on Crown Copyright

Canadians have a right to use and re-use works produced by their government. Unfortunately, because of our outdated system of Crown copyright, such uses are unduly restricted.

Whereas

- access to government information and the ability to distribute and encourage its re-use is of fundamental importance to a democratic society, as noted in the Reproduction of Federal Law Order, SI/97-5 http://laws.justice.gc.ca/eng/regulations/SI-97-5/FullText.html)

- the Government of Canada is committed to open government principles (http://open.canada.ca/)
Whereas
- the Government of Canada believes that (commercial) exploitation of IP contributes to economic growth and job creation, and that such exploitation is best achieved outside of government (as noted in TBS Policy http://www.ic.gc.ca/eic/site/068.nsf/eng/00005.html)
- academic library projects to preserve and provide access to government works have been delayed or prevented due to confusion over Crown copyright (e.g., Canadian government publications restricted in HathiTrust, hundreds of hours spent to obtain permissions, etc.)
Whereas

- current interpretations of existing government terms of use and government licences by government employees are inconsistent and confusing, especially since the closure of the Crown Copyright Licensing program in 2013

(http://publications.gc.ca/site/eng/ccl/index.html, see also http://www.michaelgeist.ca/2013/11/crown-copyright-change/)
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Oil Sands: Indigenous peoples

Impact of the oil sands on Indigenous communities

About 23,000 Indigenous peoples from 18 First Nations and 6 Métis settlements live in the oil sands region in northeast Alberta. Some Indigenous peoples in the region have expressed concern over the cumulative effects of oil sands development. The Government of Canada is working directly with Indigenous communities in and around the oil sands region to address and manage the impacts of development.
Oil Sands

A strategic resource for Canada, North America and the global market

Indigenous peoples

Impact of the oil sands on Indigenous communities

At the outset of its review of current and future major project reviews was announced that includes five principles. Two of these principles directly address concerns expressed to the Government of Canada by Indigenous peoples:

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May 2016

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Federal government correspondence

**Asked permission to web archive site (2012):**

Unfortunately we are not in a position to help advise you on how to resolve your technical difficulties* in archiving GoC website content.

My more immediate concern is ensuring you are provided proper guidance and information regarding Crown Copyright and Licensing and what this means when reproducing (via an archive) GoC website information on your institutions website. To this end, I've sent an email to the Crown Copyright and Licensing and Library of Canada seeking their advice and input on this matter.

*not wanting to circumvent a robot.txt file

**Asked permission to web archive site (2013):**

I apologize for the delay in getting back to you. Unfortunately, we decline your request to allow your user agent archive.org_bot to crawl the website. To respect the recommendation of the Office of the Privacy Commissioner of Canada that xxxx protect personal information on their websites by using web robot exclusion protocols, the xxxx implements the robots.txt protocol to prevent search engines such as Google from crawling certain areas of our website that include personal information about individuals who participate in xxxx processes and displaying these search results.

Why is restricted personal information openly available on a govt web site in the first place?

Where is such guidance and why is it necessary if noncommercial use is ok?
Federal government correspondence

Asked permission to make a copy for a library collection (2015):

Usually, when a publication is not on the website anymore, it means it is no longer available to the public and the government of Canada is not allowed to give you permission even for a non-commercial purpose. But looking at the publication title, it looks to be owned by xxxx. Here is a link that may help you in your research:


My requests for information about OGL and/or Crown copyright from federal agencies/depts:

June 2011: CCL provided email confirmation that TBS (nc) terms of use applied across formats.

January 2015 - December 2016: Open Government Canada (TBS)
  - OGL only applies to 53 publications on open.canada.ca (as of December 2016)

November 30, 2016: Canadian Heritage (CH) and Innovation, Science, and Economic Development Canada encourage public input. CH confirmed briefing file for Crown copyright.

New restrictions for new formats? Were print publications ever withdrawn from depository libraries?
Having to ask permission is a barrier.

Government employees not being able to or taking an unreasonable amount of time to answer requests for permission is a barrier.

Government employees providing inconsistent answers to requests for permissions is a barrier.

Crown copyright is a barrier.
Whereas

- objectives of copyright law do not apply to publicly disseminated government works given that such works are created by public organizations for the benefit of the public (as per the Supreme Court of Canada in *Théberge v. Galerie d’Art du Petit Champlain* and *CCH v. LSUC*, which state that the objective of the law is to balance the incentivization and rewarding of creators with the encouragement of disseminating works in order to benefit society)
Whereas
- the Government of Canada almost never pursues Crown copyright infringement claims (e.g., see Sessional paper 8555-412-57, tabled December 4, 2013, House of Commons)
CBC threatens podcast app developer for using publicly available content, suggests 'license fee model'.

Sean Craig
Tuesday, Nov 8, 2016

In a move that could impact your morning commute, the Canadian Broadcasting Corp. has sent a legal threat to the developers of a podcast app, claiming that accessing the public broadcaster’s publicly available RSS feed without paying a licensing fee constitutes “commercial use” and is a violation of its copyright.

A spokesperson for the CBC said that while the broadcaster offers its podcasts for free on most third party apps and services, those third parties are “not permitted to sell ads on CBC content without our consent. To that end, we have sent a letter reminding them of this policy.”

One of Canada’s leading experts on digital and intellectual property law was left baffled by the CBC’s message.

“I don’t get the claim,” said Michael Geist, the Canada Research Chair in Internet and E-Commerce Law at the University of Ottawa. “An app that simply brings in a publicly available feed that you have made public is not something I’m convinced is a commercial use.”

Geist added that CBC News articles have terms and conditions associated with them, as does the broadcaster’s website. “If I read a news article through a browser or any other reader, which are applications that access publicly available content, that’s not a commercial misuse.”

“This all leaves beside the broader issue of why the CBC would want to limit the access the public has to content and information they paid for,” he said.
Whereas
- not all government works are intended for broad dissemination
- some works published by government agencies are authored or prepared by third parties
- the *Reproduction of Federal Law Order* is limited to federally-constituted courts and administrative tribunals
We, the undersigned citizens or residents of Canada call upon the House of Commons to add Section 12.1 to the Copyright Act:

12.1 Works noted in section 12 are no longer protected by copyright upon being made available to the public.

Resources


Questions?

Amanda Wakaruk, MLIS, MES
Copyright Librarian
University of Alberta

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