

Report of the Copyright Committee for 2009/10

Copyright Committee members for this past year were Richard Pinnell, Dan Duda, and Elizabeth Hamilton.

Late breaking news, and by now probably already known to most of you, the Canadian government introduced Bill C-32, an Act to Amend the Copyright Act, which passed first reading on 2 June 2010. This copyright reform bill, with short title [Copyright Modernization Act](#), is available online. It has been nearly two years since an earlier copyright reform bill (C-61) was introduced and which later died when the 39th Canadian Parliament was dissolved prematurely.

The principal source of my information about this new bill is, as always, Michael Geist who maintains an excellent [copyright blog](#). He states that this bill is perceived as a balance between the interests of Canadian Heritage Minister James Moore and Industry Minister Tony Clement. Dr Geist comments that although the bill represents an attempt at balance between two sets of property rights—those of the IP rights holder and those of the consumer who has purchased content—there is “one giant caveat that has huge implications for millions of Canadians.” That caveat has to do with digital locks; the foundational principle of the new bill remains that anytime a digital lock is used—whether on books, music, movies, or electronic devices—the lock trumps virtually all other rights. The Canadian Association of University Teachers (CAUT) has commented on the bill’s prohibition on circumventing digital encryption: “This means material that is in paper format and can be legally copied now under fair dealing, cannot be copied for any reason, including educational or research purposes, if it is in electronic format and digitally encrypted.”

[Canadian Library Association](#) President John Teskey comments in more supportive terms: “Canadians will appreciate the expansion of fair dealing to include parody, satire, and education, and with some important modifications to the provisions on digital locks, this bill addresses a number of the concerns brought forward by librarians across the country.” Mr Teskey further notes that: “in previous rounds of copyright reform, user rights became significantly eroded as the bill went through the committee review process.” He reminds the library community to remain vigilant and engaged. There are no explicit references in the bill to maps, cartographic materials or geographic information, nor would one expect this to be the case.

In the ACMLA Copyright Committee’s report for 2008/09 there was some discussion about an issue associated with copyright protection on Goad fire insurance plans published more than 90 years ago. Since the early 1990s a private company in Markham, Ontario, the Insurers’ Advisory Organization (IAO) and now named Risk Management Services (RMS) (http://www.scm-rms.ca/home_e.asp; click on HEIRS) has claimed a 90-year term of copyright protection for these plans. This claim is controversial and is clearly at odds with the 50-year term for anonymous works. The resulting legal uncertainty has created a chilled environment that has

dampened the full and unrestricted use and enjoyment of these historic Canadian documents by members of the Canadian public including those in the academic and commercial sectors.

The Copyright Committee sent a letter on 21 May 2010 to Mr Doug Rimmer, Assistant Deputy Minister for the Documentary Heritage Collection Sector, Library and Archives Canada urging LAC to assume a leadership role in resolving this issue. We provided Mr Rimmer with comments from various authorities who suggested that such a lengthy period of copyright protection is unwarranted and that this position by RMS is not supported by Canadian copyright law.

Mr Rimmer asked David Brown, Manager, Cartography, Architecture and Geomatics to respond on his behalf, which Mr Brown did in a letter dated 13 July and again by email on 27 July. Since Mr Brown's email message was copied to all members of the Copyright Committee and to several ACMLA Board members, I feel I am liberty to share his comments with the general membership.

As you know, I understand the cartography community's frustration with how copyright and intellectual property rights for fire insurance plans are applied by various cultural institutions across the country, but with its broad mandate to collect, preserve and make accessible Canada's documentary heritage, LAC must develop and adhere to an approach to rights that is appropriate in the current legal and legislative environment and which is sustainable institutionally.

In association with Public Works and Government Services Canada (PWGSC), LAC is predominately concerned with the application of Crown Copyright. It is not LAC's policy to lobby for, or support the litigation of copyright associated with third-parties. May I suggest that members of the ACMLA Copyright Committee use the current copyright consultations to raise the issue associated with fire insurance plans and the Insurers' Advisory Organization.

There has been no further communication since 27 July between the Copyright Committee and the Library and Archives Canada.

Respectfully submitted,

Richard Pinnell, Chair
ACMLA Copyright Committee
7 June 2010