

Appendix Two – Intellectual Property Rights

INTELLECTUAL PROPERTY RIGHTS AND ARCHIVES

What are intellectual property rights?

Intellectual property rights are the rights of people and organizations over the use of the “works” (i.e., documents, photographs, publications and other works) that they have created. For the most part, these rights are defined in Canada's Copyright Act. The Copyright Act defines economic rights over reproduction, performance, broadcasting, publication and authorization as well as moral rights, the rights of an author to protect their reputation and personality.

In most cases, copyright protection lasts for a defined period of time. Once that period of time has passed, the “work” is no longer protected by the Copyright Act, and it is considered to be in the public domain or owned by the public at large. According to the National Archives of Canada Staff Guide to Copyright, the general rule established in the most recent revisions to the Copyright Act is that copyright protection for “works” lasts for “the life of the author of the work, the remainder of the calendar year in which the author dies, plus an additional fifty years.”

However, because of different provisions in the Copyright Act over the years for different types of works, there are few generalizations that can easily be made about whether material is under copyright protection or not. The National Archives of Canada Staff Guide to Copyright provides some relevant examples related to copyright and archives:

- Prior to amendments in 1997 that came into effect in 1998, the Copyright Act stated that photographs were protected for fifty years from the date the photograph was taken. So, photographs taken prior to December 31, 1948 are in the public domain. According to the Guide, “if a photograph was in the public domain prior to January 1, 1999, it will remain in the public domain.”
- Unpublished works from an author who died before December 31, 1948 that remained unpublished as of December 31, 1998 are protected until December 31, 2003.
- Unpublished works from an author who died on or after December 31, 1948 that remain unpublished as of December 31, 1998 are protected until December 31, 2048.
- Unpublished works from an author who died after December 31, 1998 are protected for 50 years from the end of the year in which the author died. This reflects the general rule of copyright protection established in the most recent revisions to the Act in 1997.

How do these rights affect archival repositories?

The documents (defined in the broadest sense) created by individuals and organizations are considered works with the protection of the Copyright Act. Archival repositories must respect the provisions of the Act and make copies, either for researchers or for internal purposes, in keeping with the Act.

If copyright has been specifically transferred to the institution at the time of donation, the repository can administer the copyright as it sees fit.

It should be noted that there is a difference between the Copyright Act and the terms under which an archival repository provides reproductions to researchers. If an image or document is in the public domain, the Copyright Act cannot protect it. However, the archival repository usually agrees to provide researchers with a copy of that image or document under certain terms and conditions, which is a type of contract. If the researcher does not abide by those terms and

conditions, the researcher has broken his/her contractual obligation to the archival repository but not the Copyright Act.

Please note that individual archival institutions are solely responsible for addressing the copyright issues for the material in their archives. The Archives Society of Alberta is not responsible for the actions taken by individual institutions in copying or digitizing material.

For a more detailed explanation of copyright legislation and its implications for cultural institutions, refer to Appendix Three, [The Digital Environment, Copyright Legislation and Cultural Institutions](#).

Resources for Intellectual Property

This discussion of copyright issues addresses only basic definitions and concerns regarding this subject. This brief discussion paper is for information purposes only and should not be considered legal advice. The ASA strongly recommends that each institutional member undertaking digitization projects become familiar with the aspects of copyright law affecting the projects they are undertaking. Some resources for copyright issues in archives settings are:

Jean Dryden, *Demystifying Copyright: A Researcher's Guide to Copyright in Canadian Libraries and Archives*. Available from the Canadian Library Association: <http://www.cla.ca/marketplace/clabooks.htm>

Lesley Ellen Harris, *Canadian Copyright Law*, 3rd Edition (2001). Available at bookstores.

Wanda Noel, *National Archives of Canada Staff Guide to Copyright*. (1999) Available from the Canadian Council of Archives: <http://www.cdncouncilarchives.ca/public.html>

Canadian Heritage Information Network (CHIN). This website, primarily serving the Canadian museum community, has a section dealing with intellectual property issues. http://www.chin.gc.ca/English/Intellectual_Property/index.html.

Canadian Heritage. Copyright Policy Branch. The website has publications available online related to copyright and new media. http://www.pch.gc.ca/progs/ac-ca/progs/pda-cpb/index_e.cfm