

**Community, Past, Present & Future**



**MAPLE RIDGE  
HISTORICAL SOCIETY**

# **Family History Group**

**Submission to Standing Committee on Industry,  
Science and Technology**

**In Regard to Statutory Review of the *Copyright Act***

December 2018

# Introduction

The Maple Ridge Family History Group submits this brief to the Statutory Review of the *Copyright Act* to promote awareness in the Committee regarding the needs and concerns of family historians about the copyright constraints that govern our work in telling Canada's story.

The Family History Group is a standing committee of the Maple Ridge Historical Society. The Family History Group was founded in March 1999 in response to broad community interest in this special area of research. The purpose of the committee is to support members in starting their family history research.

The Family History Group attends family history conferences throughout the province of British Columbia with displays. Many of the group members teach family history classes throughout the province and beyond.

A monthly newsletter is produced and accessed online through the Maple Ridge Museum and Archives website. Members contribute to the newsletter with articles they have written on topics of interest. The newsletter is shared with genealogical societies throughout the province.

For the past several years the group has undertaken researching local families. The accumulation of the research is distilled into presentation boards, written into newspaper articles, and deposited into the community archives.

This submission addresses the confusion that surrounds the use of previously published materials and unpublished original and copied documents and images, with particular concern for the changes proposed by the US Mexico Canada Agreement.

## Federal Copyright Review

In 2018 the Federal government started a review of Canada's copyright laws with the aim for completion in early 2019. As family historians we are directly affected by copyright. As researchers we want access to records. As family historians we are also often self-publishers and educators.

We support Canadian creators, publishers, libraries and archival institutions but also understand that copyright should strike a balance between protecting a creator's income while, at the same time, allowing for the freedom for new works to be created using previously created materials.

We feel strongly that copyright law should be accessible and easily understood by the general public and not require legal advice to ensure compliance.

## Key Points

- Copyright is too complicated.
- USMCA extension from 50 to 70 years is detrimental to libraries, archives, and non-fiction authors.
- Copyright should protect the ability of creators to generate revenue from their work during their lifetime.

- The educational exemption means a loss of revenue for creators, especially those authors in the non-fiction category.
- Fair dealing should be more clearly defined especially in the digital age and the world of self-publishing.
- Works created by the Crown should be in the public domain.
- Licencing fees from corporations and archival institutions for works in the public domain should be minimal.
- Creators who have assigned their copyright to someone else under contract should be able to get copyright back within their lifetime.

## Too Complicated

Right now, the main *Copyright Act* is vague and then defined and refined through legal actions. However, those refinements are not embedded into the law itself. With the ease of internet publishing, self-publishing, mash-ups, etc. it is easy for individuals to infringe the laws.

That means, that we, as family historians, presenting and publishing, could easily get caught. We do not have legal expertise nor the means to pursue expensive legal advice for the presentation of our projects. We need guidelines that are easy accurate, reliable, and easily understood.

Copyright should be simpler, easier to understand and to follow in both creating original works and in the use of these works in subsequent works either as references or as starting points for original works by other creators. We do want to respect the creators both as to crediting their work and allowing them the financial gain due to them. However, the rules must not be clouded by ambiguity and confusion so as to allow diversity and development of new creations.

## USMCA Copyright Extension

Under the new USMCA deal is a requirement to extend the term of copyright protection to match the terms in the United States. This would shift the term from the life of the creator plus 50 years to the life of the creator plus 70 years. This will block works from entering the public domain for an additional 20 years.

Copyright is supposed to strike a balance between protecting creators and allowing for the creation of new works. Adding 20 years to the copyright term has a detrimental impact on libraries and cultural institutes who have invested in digitization projects. It also increases licensing fees by another 20 years for these institutions for materials in databases, etc., For historians, it keeps historical records behind a paywall for another 20 years.

## Fair Dealing and Educational Use

The Copyright Act of Canada states that fair dealing for the purpose of: research; private study; education; parody; criticism and review; and news reporting, does not infringe copyright.

However, it does not define what is educational use or a set percentage or amount of copying that can be called "fair dealing". An entire article or page from a newspaper or periodical; a whole blog

post; an entire entry from an encyclopedia or similar reference work; one chapter of a book; a poem from an anthology?

The University of British Columbia states in their instructions to faculty that the copy must be either: “10% or less of a Work, or no more than: (a) one chapter from a book; (b) a single article from a periodical; (c) an entire single poem or musical score from a Work containing other poems or musical scores.”<sup>1</sup>

The rule of thumb previous to this copyright update was 3% for criticism and review and did not include educational use.

Today, royalties to creators and publishers for the copying for their works have declined by 80 percent since 2013.<sup>2</sup> Some of this decline could be attributed to the ease of digital access and the notion that everything on the internet is in the public domain but certainly a decline of 80 percent cannot be internet use alone. Why are Canadian creators and publishers subsidizing the education system at the expense of their own income?

While fair dealing certainly has a place for research, journalism, and parody, it is hard to make the argument for 10 percent for educational use. Ten percent is a substantial portion of an author’s work. In the case of a magazine — a whole article is 100 percent of that author’s work. In the case of a blog post, the whole post could be considered 100 percent.

Part of the measure should also be how the material is used. If an instructor shows a YouTube video in class or a website, the creator of the video or website still gets web traffic and payment from advertising. However, if that same material is incorporated into a new work, then the creator is no longer generating any income from their work.

Clarification needs to be made as to what percentage of a work can be used and how that material is used under fair dealing.

## **Copyright Protection of Government Works**

In Canada, federal and provincial government works are protected by copyright. Under American copyright law, U.S. government works, including any work created by an employee of the U.S. federal government as part of that person’s official duties, are in the public domain and may be freely used without permission by Americans.

As works created by the federal government are essentially paid for by taxpayer dollars, it follows that they should be in the public domain for use by Canadians.

## **Digitization of Works in the Public Domain**

Legal clarification needs to be made for digital versions of paper or microfilm records in the public domain. For example, a company or archival institution should not be able to claim copyright or for the digital version of a book, or a census record that is in the public domain.

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<sup>1</sup> “Fair Dealing Requirements for UBC Faculty and Staff,” The University of British Columbia, <https://copyright.ubc.ca/requirements/fair-dealing/>

<sup>2</sup> Access Copyright 2016 Annual Report, “Royalty Distribution Trend” table, 6: [www.accesscopyright.ca/media/112021/annualreport\\_2016.pdf](http://www.accesscopyright.ca/media/112021/annualreport_2016.pdf)

While it is understood the digitization costs money it is, again, taxpayer dollars that fund these projects at archival institutions.

For corporations such as Ancestry, it is understood that they have the right to charge a fee for access to their databases but there should be more clarity for the users as to what is in the public domain and what is not. They also seem to be claiming ownership over records in the public domain.

Currently they state “Public Domain Content: Some Ancestry Content may be in the public domain, and yet also subject to restrictions on reuse. We refer to Ancestry Content in the public domain as ‘Public Domain Content.’ You are free to use a small portion of individual photos and documents that are Public Domain Content, but you must obtain our written permission to use more than a small portion of these collections.”

## **Limitation where author is first owner of copyright**

Section 14(1) of the *Copyright Act* states that authors and composers who transfer or assign the copyrights of their work by contract must wait until 25 years after death to get them back.

Mr. Adams has proposed changing the law from 25 years after death to 25 years after assignment. Essentially authors and composers could retain copyright to their works within their own lifetime.<sup>3</sup>

## **Conclusion**

In summary, copyright guidelines should be accessible, current, and easy to comply with, and easily understood. The proposed USMCA extension from 50 to 70 years is detrimental to libraries, archives, and, non-fiction authors. The educational fair dealing exemption means a loss of revenue for creators. Canadian creators and publishers should not be subsidizing the education system. Works created by the Crown should be in the public domain. Licencing fees from corporations and archival institutions for works in the public domain should be minimal. Creators who have assigned their copyright to someone else under contract should be able to get copyright back within their lifetime.

We appreciate the opportunity to express our concerns.

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<sup>3</sup> Terry Pedwell, “Bryan Adams calls for changes to Canada’s copyright laws to help artists,” *Globe and Mail*, September 18, 2018, <https://www.theglobeandmail.com/politics/article-bryan-adams-calls-for-changes-to-canadas-copyright-laws-to-help/>, retrieved November 13, 2018.