

COMMUNICATION & COUNSEL

Subject: Copyright Developments

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Purpose

Last November, trustees were forwarded an email from the City Librarian's office pertaining to the World Intellectual Property Organizations' Standing Committee meeting on Copyright and Related Rights (WIPO SCCR) held in Geneva from 21 November to 2 December, 2011. This report has been drafted at the request of Chair Harder and Trustee Armit, to introduce the concept of copyright to trustees and answer questions as they relate to this complex subject.

Background

Canadian copyright law falls under federal jurisdiction and is governed by the *Copyright Act*, which protects original literary, artistic, musical and dramatic works. Copyright essentially means the right to copy and that right belongs to the copyright owner or creator of the work. Federal departments primarily responsible for copyright matters include: Industry Canada, the Canadian Intellectual Property Office, Canadian Heritage and the Copyright Board of Canada.

Parliament is currently debating changes to the current legislation in order to address the impact of copyright in a digital world. New technologies allow for the potential exploitation of copyrighted works, making dissemination and format-shifting easier and more accessible than ever before. As a result, technological protection measures to control access to copyright content or to prevent users from copying protected content are widely used.

The digital revolution has resulted in a shift in the way that libraries, including OPL, purchase, store and provide access to their electronic resources. Electronic material, obtained through licensing agreements with content providers, comes with digital rights management provisions which place restrictions on the use of digital content even for personal, not-for-profit use.

Bill C-11, the *Copyright Modernization Act*, currently being debated in Parliament, proposes some flexibility with regards to reasonable use of copyright material; however the rights of users to use content for the purpose of fair dealing and education would be superseded by the proposed legislation making it illegal to circumvent the technological protection measures or digital locks used to prevent copyright infringement or piracy.

Defining Intellectual Property

Creations of the mind, including inventions, literary and artistic works and symbols, names, images and designs used in commerce are referred to as **intellectual property**. Intellectual property is divided into two categories:

1. **Industrial property**, which includes inventions (protected by patents), trademarks (which protect words, designs, numbers, two-dimensional or three-dimensional forms, sounds or colors used to distinguish products or services in the marketplace) and industrial designs; and
2. **Copyright**, which includes literary and artistic works such as novels, poems and plays, films, musical works, artistic works (drawings, paintings, photographs and sculptures) and architectural designs. Also included are rights that protect performing artists in their performances, producers of sound recordings and those of broadcasters in their radio and television programs.

Essentially, copyright is the right of an owner to prevent **unauthorized copying** or use of his/her intellectual property by others. It deals with objects that do not exist in physical form, but of which one can still make ownership claims. For example, while a book is a tangible/physical object - a series of paper pages with words printed upon them and then bound by a cover, it is also an intangible object - a series of words organized in such a manner so as to express meaning to the reader. Copyrights are held in relation to this intangible part of the book.

Objects Covered by Copyrights

<ul style="list-style-type: none">• books• poetry• plays• software• motion pictures• songs	<ul style="list-style-type: none">• phonograph records• paintings• drawings• computer programs• sculptures• choreography	<ul style="list-style-type: none">• photographs• tables• compilations• translations as literary works• magazine articles
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Objects Not Covered by Copyrights

<ul style="list-style-type: none">• titles• short word combinations• ideas• a work in the public domain• plots• characters	<ul style="list-style-type: none">• facts• news• names• slogans• methods – as in method of teaching
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In order for something to be eligible for copyright protection in Canada the work must demonstrate:

- **Originality:** A work must be “original” in the sense that it must not be a copy itself.
- **Fixation:** The original work must be expressed in some material/tangible form that allows it to be seen or copied i.e. written on a piece of paper, saved to a digital file, recorded on film/CD.
- **Nationality:** For a copyright to exist in Canada, the creator must, at the time the work was created, be a citizen or subject of Canada, or of a foreign country that is a member of a multinational or bi-national agreement to which Canada is also a member.

Copyright Provisions

The general rule is that copyright lasts for the life of the author, the remainder of the calendar year in which the author dies, and for 50 years following the end of that calendar year. In other words, protection will expire on December 31 of the 50th year after the author dies. After that, the work becomes part of the public domain and anyone can use it without asking permission or paying royalties.

There are circumstances when individuals can use copyright material without asking permission or paying royalties. These are called **fair dealing provisions**. Under the *Copyright Act*, exceptions to infringement include exemptions for the purpose of research, private study, criticism, review or news reporting. There are also special provisions for non-profit libraries, archives and museums.

Copyright and New Technologies

Licensing of copyrights is common in cultural sectors, such as the music, movie, and television industries, where the creators of works sell or license their copyright to producers and distributors in exchange for monetary compensation. This model is now being used for electronic resources, including eBooks, which means the electronic products in library catalogues are not owned, but leased – sometimes long term, sometimes on a yearly basis. The use of **digital media** raises legal issues that do not arise with the use of traditional printed materials – namely copyright and contract.

Music, movies, pictures, and literature can be easily obtained free of charge through sharing on the Internet, mobile media devices, and digital copying technology. This has resulted in an explosion in the distribution of intellectual goods and has threatened the traditional free market system of intellectual property, as artists, producers and distributors no longer gain the same financial benefits from their goods. A number of technologies are now available that may be used to thwart the infringement of copyright materials on-line. Many rights-holders use such **protective technologies** (e.g. encryption) in disseminating their works. At issue is the question of fair dealing and whether/when copyright legislation should penalize individuals who circumvent these protective measures.

A recent WIPO study shows that libraries and archives work under a patchwork of provisions that differ from country to country. Some of the problems facing libraries and archives include:

- The absence of exceptions to copyright for the purpose of preservation and replacement;
- Exceptions that enable libraries and archives to preserve and make available printed material that has not been updated for a digital environment;
- Imposed licenses for digital information and **technological protection measures** (TPM), which are used by rights holders to **control access and use of content**.

Library and archives groups have been advocating for an international treaty so that WIPO Member States can establish a set of basic, minimum limitations and exceptions for the benefit of libraries, archives, and their users in their national copyright laws.

WIPO's Standing Committee on Copyright and Related Rights recently met to discuss a draft treaty on copyright limitations and exceptions for libraries and archives (as referenced in an email from the City Librarian's Office, November 23, 2011). They also discussed a proposal for an international instrument on limitations and exceptions for persons with print disabilities.

The meeting concluded with an agreement for further discussion on topics relating to libraries and archives. Member States have until the end of February 2012 to submit written comments to WIPO for inclusion in the document *Provisional Working Document containing comments on and textual suggestions towards an appropriate international legal instrument (in whatever form) on exceptions and limitations for Libraries and Archives* (SCCR/23/8 Prov.), which will be discussed their meeting in 2012.

Impact of Copyright and New Technologies on the OPL

The Ottawa Public Library is expanding its digital collections, which include on-line databases for research purposes, downloadable audio books and music collections and eBooks. Unlike print collections, virtual collections are leased – ownership and control stays in the hands of the content providers and they essentially dictate how borrowers access and use the content. Pay per use has been factored in and is reflected in the subscription fee, which is often tied to number of card holders or circulation figures. These costs are part of the digital licensing fee, which can also include maintenance fees since the content providers host the content as well.

Cost savings are not necessarily realized when purchasing digital content like eBooks, because like a physical copy of a book, the model is generally one title, one user. Multiple copies must be purchased to address waiting lists. (*Note: OPL maintains a 1 copy : 5 requests purchase ratio for all requested materials, save and except : DVDs, music CDs (which have a 1:15 ratio and audio books which have a 1:8 ratio).* Earlier this year Harper Collins imposed a 26 checkout limit on its eBooks, which meant the digital file locked and the title was no longer available after 26 check outs. Additional purchases were required to keep the title in circulation. Until there is more competition in content provision and delivery for a non-retail market, libraries will be forced to comply with content providers and imposed subscription models with negotiated licensing agreements in place.

Conclusion

Canadian copyright reform is currently being addressed in Parliament with Bill C-11 – The Copyright Modernization Act. A decision on Bill C-11 is pending. The OPL continues to monitor developments in the copyright debate in order to assess any impact these may have on the collections provided to its users.

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