

Canadian Crown Copyright Conundrum

Amanda Wakaruk, Copyright Librarian (former Government Information Librarian), University of Alberta

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“Open Government is about making government more accessible to everyone. This means giving greater access to government data and information to the Canadian public and the business community.” <http://open.canada.ca/en/about-open-government>

Despite the official Government of Canada statement, above, [Section 12 of the Copyright Act](#) specifies that any work prepared or published by the Canadian government is subject to crown copyright. This means that substantial reproduction of government information beyond fair dealing and stated terms of use requires permission. In addition, and according to the terms of use found on Government of Canada web sites, it is unclear if fair dealing is an option when the use is commercial in nature.

In late 2010¹, the Crown Copyright Licensing (CCL) office posted long-overdue information about when permission for reproduction was required and when it was not². Fairly liberal uses for non-commercial purposes that excluded revisions, adaptations, or translations were articulated but CCL also stated that “permission is always required when the work being produced will be distributed for commercial purposes.” At best, this official government statement seemed inconsistent with the spirit of the Supreme Court of Canada’s decision in *CCH v. LSUC*,³ if not their own commitment to the Open Government initiative.

CCL was dissolved in 2013 and responsibilities related to copyright determinations and permissions were assigned to author agencies. Today, terms of use language varies between departments. While these variations appear trivial in most cases, interpretations by departmental staff can be wide ranging. For example, numerous academic librarians have been denied permission by multiple departments to conduct web harvesting activities for collection development purposes (i.e., save content) and reproduce content for non-commercial purposes, even though these uses are permissible under the original CCL terms.

¹ The CCL, Public Works and Government Services Canada handled crown copyright requests for reproduction for many federal government agencies until it was closed in 2013. A few agencies (e.g., Statistics Canada, Library of Parliament, National Research Council) handled their own permissions, separate from CCL.

² While this text was removed from the Government of Canada web site, it remains accessible via the Internet Archive, a non-profit organization based in the US:
<https://web.archive.org/web/20130117061915/http://publications.gc.ca/site/eng/ccl/aboutCrownCopyright.html> Current permission statements can be found via the “Terms and Conditions” link on most Government of Canada web sites, e.g.,
<http://www.ec.gc.ca/default.asp?lang=En&xml=5830C36B-1773-4E3E-AF8C-B21F54633E0A>

³ *CCH Canadian Ltd. v. Law Society of Upper Canada*, [2004] 1 S.C.R. 339, 2004 SCC 13
<http://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2125/index.do?r=AAAAAQATQ2FuYWRhIEV2aWRlbnNlEFjdAE>

In at least one of these cases, the cause for denial was linked to the removal of content from a Government of Canada web site. That is, the government employee would not provide permission to reproduce a publication for non-commercial purposes since that publication was no longer available on the web site. This contradicts email communication I had with CCL in 2011, when I was informed that the terms of use language (referred to earlier) applied to, “all publications regardless of the date of publishing” and that “we invite you to take advantage of this notice, and to further consider it as your official confirmation that prior written approval to reproduce any GC information for the above said purposes is no longer required, regardless of the format in which it is published.”

While copyright and permission determinations like these are most likely errors on the part of uninformed and overworked government employees, it can take months (and sometimes years) to confirm acceptable uses for government information. In many cases, the work at hand is abandoned and, in the meantime, content is sometimes removed from government web sites. What purpose is crown copyright serving in these cases? Or at all, for that matter?

Furthermore, frustrated communication on this topic is typical. The Twitter exchange below shows a request for clarification about the CCL transition in 2013 from University of Ottawa law professor Michael Geist, a response from then-President of the Treasury Board of Canada Secretariat (TBS), Tony Clement, and my question about an official notice a year later. My question remains unanswered despite follow-up emails to TBS employees, with the most recent request sent last month. When a colleague at a major university in California asked me for clarification about cross-departmental use interpretations related to content with crown copyright I sent them the image below, the TBS email address, and the best of luck.

The image is a screenshot of a Twitter thread. It features three tweets. The first tweet is from Michael Geist (@mgeist) on 25 Nov 2013, stating that the Treasury Board has stopped administering crown copyright and asking for clarification from @TonyClementCPC. The second tweet is from Tony Clement (@TonyClementCPC) on 30 Nov 2013, responding that the non-commercial policy remains in effect. The third tweet is from Amanda Wakaruk (@awakaruk) on 18 Dec 2014, asking where the notice was posted. The interface includes profile pictures, names, handles, dates, and interaction icons like retweets and favorites.

Michael Geist @mgeist · 25 Nov 2013
Treasury Board has stopped administering crown copyright.
@TonyClementCPC why? what abt non-com licence? bit.ly/18jkXNS

RETWEETS 11 FAVORITE 1

9:11 AM - 25 Nov 2013 · Details

Tony Clement @TonyClementCPC · 30 Nov 2013
@mgeist The Crown Copyright non-com policy still remains in effect for all depts. I'm posting a notice to that effect. Thx.

Amanda Wakaruk @awakaruk · 2m
@TonyClementCPC @mgeist Where was this notice posted?

12:26 PM - 18 Dec 2014 · Details

Why do we need to ask for permission to use materials produced with our tax dollars and by our government? Why create confusion about the fair dealing exception for commercial uses? This does not encourage civic engagement nor support a liberal democracy.

In comparison, works created by the US Government Printing Office, which is often described as the world's largest publisher, are (for the most part) in the public domain. Canadian experts have recommended a similar approach here in Canada.⁴

Let's hope the 2017 Copyright Act review includes recognition of the need to reduce barriers to government information in a country that claims to embrace the principles of open government.



⁴ For example, see <http://www.michaelgeist.ca/tag/crown-copyright/> and especially Judge, Elizabeth F., Crown Copyright and Copyright Reform in Canada. IN THE PUBLIC INTEREST: THE FUTURE OF CANADIAN COPYRIGHT LAW, Michael Geist, ed., Irwin Law, Chapter 19, pp. 550-594, September 2005. Available at SSRN: <http://ssrn.com/abstract=819112>