



POSITION STATEMENT MODERNIZING CROWN COPYRIGHT

ISSUE:

Libraries and archives must be assured that making, distributing, and preserving copies of digitized and born digital government works does not result in copyright infringement.

BACKGROUND:

Canadian libraries and archives have built print collections of government materials that are relied upon by the public and government employees alike. In the print era, these collections included, but were not limited to, publications distributed by the Depository Services Program of Canada (DSP, 1927-2013). Today, the Publishing and Depository Services Directory program provides access to select federal born digital and digitized works and is informed by policies established by the Treasury Board of Canada Secretariat.

Separately, the *Libraries and Archives of Canada Act* allows this cultural memory organization (LAC) to acquire and act as a repository for government information. All three components of this information ecosystem, (libraries and archives, the DSP, and LAC) are needed to ensure that access to government information is maintained. Unfortunately, Crown copyright is a barrier to this work, restricting the reproduction and dissemination of government information.

Section 12 of the *Copyright Act* pertains to Crown copyright and is based on section 18 of the United Kingdom's *Copyright Act of 1911*. Though the UK statute has been extensively amended since, section 12 remains functionally unchanged since its enactment in 1921 and provides governments with copyright protection for works

“...prepared or published by or under the direction or control of Her Majesty or any government department.”

Because a term length of fifty years is only specified for published works in section 12, unpublished works hold Crown copyright in perpetuity. This presents additional problems for libraries and archival institutions across the country.

ANALYSIS:

Navigating the terms of use in Crown works is unnecessarily complex. Interpretation of this provision is currently the responsibility of government rights holders; i.e., individual government agencies. This is separate from policies established under the *Access to Information Act*, which maintains a balance between the right to access government information and security of the state.

It is unclear why economic controls (as per section 12 of the *Copyright Act*) for government materials are required in addition to controls related to dissemination (as per the *Access to Information Act*).

Furthermore, maintaining barriers for the re-use of government works is at odds with the principles of Open Government and the Treasury Board's own policies, the latter of which appear to support the commercialization of government works outside government.

RECOMMENDATION:

CFLA-FCAB recommends that Parliament eliminate Crown copyright on all publicly accessible government works or make those works openly licensed by default (e.g., using a Creative Commons licence).

CFLA-FCAB also recommends that Parliament examine section 12 of the *Copyright Act* to clarify the need for Crown copyright in other government works. This examination should be an open process that includes submissions, public consultations, and parliamentary hearings.