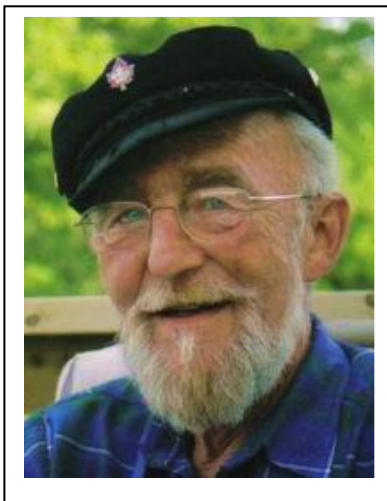


Copyright and the Family Historian



There has been a fair amount of discussion recently in genealogical circles about copyright legislation and the Lanark County Genealogical Society published a useful summary of it in their June, 2004 Newsletter. This may seem a 'dry' subject but really most of the legislation is a guide to ethical behavior that we are all committed to anyway.

Generally libraries and archives are responsible for implementing the provisions of the Copyright Act as they affect our use of their collections but it is important to understand the basics. The Act was first promulgated in 1924 and has had revisions every couple of years. Recently there have been some very serious revisions and it is now 60 sections long and so complex that there are lawyers who specialize in this one Act.

First of all, it is important to know that 'facts' cannot be copyrighted. They are considered to be in the public domain.

Only the way in which facts are expressed can be considered original and subject to copyright.

Copyright means, literally, the right to copy but the Act goes beyond this. In Canada, the author or creator of an original work automatically owns the copyright of it. As soon as you have written it down or entered a computer file, or processed your photograph, you have copyright in it. Legally, no one may copy this for public use without your permission. Internet text and graphics are included in this copyright protection as are computer discs (called 'mechanical contrivances' in the Act).

The Act also protects the moral rights of the author or creator. These rights include the right to be associated with the work by name and the right to the integrity of the work. The integrity could be infringed by the way in which the work, or part of it, is used through distortion, association with other works, or commercialisation that would prejudice the author's honour or reputation.

Quoting small sections of a work does not constitute an infringement as long as the proper credit is given to the author. This is considered 'fair dealing' in the Act but extracting a substantial part of the work without permission is not permitted. Copying for purposes of research is also generally permitted under this exception.

One section of the Act that I have never seen discussed in the burgeoning literature is 13.(2). This section provides that if an engraving, photograph, portrait, plate, or other original was ordered and paid for by someone, then that person shall be the first owner of the copyright. Note that this regards an original, not a print from an original negative. The photographer usually retains copyright in the negative if you just buy his print. On the other hand, I recently commissioned (and paid) a very talented local artist, Patricia Mantil, of Blakeney, to do portraits of my grandparents. Therefore, I own the copyright to the work, but it must be noted that she retains her moral rights in it as the creator.

With a few exceptions (some of which are too complex to even think about) copyright in a work continues for fifty years after the end of the year in which the creator dies. One exception of note is that if a photograph was taken before December 31 1948, its copyright has expired and it is now in the public domain.

You can view the full text of the Copyright Act at: <http://www.cb-cda.gc.ca/info/act-e.html>
But an appropriate lawyer should be consulted for authoritative answers.