

Crown copyright: update

Government Information Day

Vancouver, April 26, 2019

Amanda Wakaruk, Copyright Librarian, University of Alberta



What do you think of when you hear the word COPYRIGHT?

Copyright is an enclosure mechanism and policy instrument created by government.

It provides rights holders with the sole right to reproduce, publish, disseminate, etc. works subject to copyright.

It provides users with (very) limited rights (comparatively) to make use of those works.

Copyright protects goods that are increasingly non-rivalrous.

(Supply is essentially unaffected by consumption.)

How does copyright
serve the public
interest?



What is Crown copyright?

Copyright Act, s.12

Without prejudice to any rights or privileges of the Crown, where any work is, or has been, prepared or published by or under the direction or control of Her Majesty or any government department, the copyright in the work shall, subject to any agreement with the author, belong to Her Majesty and in that case shall continue for the remainder of the calendar year of the first publication of the work and for a period of fifty years following the end of that calendar year.



What is Crown copyright?

Copyright Act, s.12

Without prejudice to any rights or privileges of the Crown, where any work is, or has been, prepared or published by or under the direction or control of Her Majesty or any government department, the copyright in the work shall, subject to any agreement with the author, belong to Her Majesty and in that case shall continue for the remainder of the calendar year of the first publication of the work and for a period of fifty years following the end of that calendar year.

“Crown copyright comes from and is justified by a particular non-democratic conception of government.” -- David Vaver

<https://web.archive.org/web/20100527140536/http://www.lexum.umontreal.ca/conf/dac/en/vaver/vaver.html>

- government has the sole right to reproduce, produce, and publish the works of government
- saving words “without prejudice to...”
- “agreements” can be lost over the course of time
- perpetual copyright for unpublished works
- **control over public goods (non-rivalrous and non-excludable)**

How does Crown copyright serve the public interest?

Top

Concerned stakeholders ask for change, 1980-2018

- Canada. Minister of Communications and Minister of Consumer and Corporate Affairs. From Gutenberg to Telidon, A White Paper on Copyright: Proposals for the Revision of the Canadian Copyright Act. 1984. Excerpt relevant to Crown copyright: <https://drive.google.com/file/d/0B13VrrzqeRbuNG9KV0hBdGNIMTA/view>
- Canada. House of Commons Debates. Waddell, June 12, 1981, page 10545 and Kaplan, June 2, 1993, page 20215.
- Canada. House of Commons. Sub-Committee of the HC Standing Committee on Communications and Culture on the Revision of Copyright recommended that, “Crown copyright be abolished for some categories of materials and that the scope be greatly restricted for other categories.” 1985.
- Canada. Industry Canada. Supporting culture and innovation: report on the provisions and operation of the Copyright Act. 2002. <http://publications.gc.ca/collections/Collection/lu4-19-2002E.pdf>
- Canadian Federation of Library Associations. Position Statement: Modernizing Crown Copyright. http://cfla-fcab.ca/wp-content/uploads/2018/09/Doc12-CFLA-FCAB_statement_crown_copyright-Aug-1-2018-final.pdf
- Dryden, Jean. Rethinking Crown copyright law. Policy Options. 2018. <http://policyoptions.irpp.org/magazines/september-2017/rethinking-crown-copyright-law/>
- Freund, Luanne and Elissa How. “Quagmire of Crown Copyright: Implications for reuse of government information.” Canadian Law Library Review. 40.4 (2015). https://issuu.com/callacbd/docs/cllr_40_4_final.1
- Geist, Michael. [The Final Copyright Consultation Numbers: No Repeat Of Bill C-61](http://www.michaelgeist.ca/2010/04/copycon-final-numbers/). April 9, 2010.
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- Torno, Barry. Crown Copyright in Canada: a Legacy of Confusion. Ottawa : Research and International Affairs Branch, Bureau of Intellectual Property, Consumer and Corporate Affairs Canada, c1981.
- Vaver, David. Copyright and the State in Canada and the United States. 1995. <https://web.archive.org/web/20100527140536/http://www.lexum.umontreal.ca/conf/dac/en/vaver/vaver.html>
- Wakaruk, Amanda. E-petition 1-1116, Copyright. <https://petitions.ourcommons.ca/en/Petition/Details?Petition=e-1116>

June 12, 1981

COMMONS DEBATES

10545

CROWN COPYRIGHT—REQUEST FOR REVIEW BY GOVERNMENT

Mr. Ian Waddell (Vancouver-Kingsway): Madam Speaker, my supplementary question is for the Prime Minister and it refers to government policy for distributing documents. In the United States every document is public property and can be distributed. In Canada we have Crown copyright, which is quite proper. Documents come out in this form and are very rarely distributed in this way. In the United Kingdom there is a sort of a middle road where there is Crown copyright but through a government circular some documents are made available to be published like this.

I hesitate to use the words, but in the interests of “participatory democracy”, which some people may still believe in, is the Prime Minister prepared to commit the government at least to reviewing the nature of publishing documents and government reports so that they can get out to the people who can read, in this case about the workings of the oil monopoly in Canada? They would become better informed citizens and would be able to deal with these problems.

Hon. J.-J. Blais (Minister of Supply and Services): Madam Speaker, I want to advise the hon. gentleman that the policy he has described is exactly that which I follow. I enter into negotiations on a regular basis, a bona fide basis, and I do grant the copyright at any time there is justification. The purpose of the policy that I follow is to make available to as many Canadians as possible the information they ought to have. In effect that is why the report is available both in summary and in complete form. As for negotiations, anyone who wants to deal with me in good faith, Madam Speaker, can rest assured that I will deal with him in good faith.

* * *

- 1984 white paper recommended that guidelines be created to prevent unduly restrictions to public access to government works

- 1985 report of the Sub-Committee of the House of Commons Standing Committee on Communications and Culture on the Revision of Copyright recommended that, “Crown copyright be abolished for some categories of materials and that the scope be greatly restricted for other categories.”

See Judge, Elizabeth F. “Crown Copyright and Copyright Reform in Canada,” 2005.

service will be extended to the suburbs of Calgary when manpower becomes available. either by the lifting of con-

Routine Proceedings

I would particularly like to pay tribute to the hon. member for Outremont for his work in chairing the subcommittee that drafted this report.

[*Editor's Note: See today's Votes and Proceedings.*]

* * *

COPYRIGHT ACT

MEASURE TO AMEND

Hon. Bob Kaplan (York Centre) moved for leave to introduce Bill C-442, an act to amend the Copyright Act.

Madam Deputy Speaker: Pursuant to Standing Order 68(2), the motion is deemed adopted.

Mr. Kaplan: Madam Speaker, under the Canadian Copyright Act, which follows a British precedent several hundred years old, the copyright of documents which are issued by the government including statutes, for example, are the private property of the Crown. Anyone who copies them theoretically and legally is responsible to pay a royalty for them.

This is inconsistent with the practice in most other countries and the purpose of this proposed law is to abolish the Crown copyright and make public documents public property.

Madam Deputy Speaker: Mr. Kaplan moves that the bill be now read the first time and printed.

Pursuant to Standing Order 69(1), the motion is deemed adopted.

Bill read the first time and printed.

* * *

THE HOUSE OF COMMONS OF CANADA

BILL C-442

An Act to Amend the Copyright Act

R.S., c. C-42;
R.S., c. 10
(1st Supp.),
cc. 1, 41 (3rd
Supp.), c. 10
(4th Supp.);
1988, c. 65;
1990, c. 37;
1992, c. 1;
1993, c. 23

Her Majesty, in Council, with the advice and
consent of the Senate and the House of Commons
of Canada, enacts

**1. Section 11 of the Copyright Act is
repealed and the following substituted
therefor:**

No copyright
for Her Majesty

**12. No copyright shall subsist in any work
which is, or has been, prepared or published by
or under the direction or control of Her
Majesty or any government department.**

Coming into
force

**2. This Act shall come into force on
January 1, 1994.**

Problems with interpretation include...

- Confusion about terms of use on government websites
- Confusion about harvesting or digitizing and then distributing legacy materials
- Confusion about third party content (who owns it?)
- Confusion and delays cause the **loss of cultural resources, lost opportunities for research and learning, and/or reduced visibility and impact for government information**

Cultural stewards are being prevented from serving the public good.

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Incentives

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Oil Sands: Indigenous peoples



[PDF version](#), 1.61 MB

Impact of the oil sands on Indigenous communities

About 23,000 Indigenous peoples from 18 First Nations and 6 Métis settlements live in the oil sands region in northeast Alberta. Some Indigenous peoples in the region have expressed concern over the cumulative effects of oil sands development. The Government of Canada is working directly with Indigenous communities in and around the oil sands region to address and manage the impacts of development.



Oil Sands

A strategic resource for Canada, North America and the global market

Indigenous peoples

Impact of the oil sands on Indigenous communities

major project reviews was announced that includes five principles. Two of these principles directly address concerns expressed to the Government of Canada by Indigenous peoples:

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Aussi disponible en français sous le titre : Sables bitumineux : Peuples autochtones

May 2016



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i Please note that the Open Information Portal contains a sample of government of Canada publications and information resources. For more resources, please visit [Government of Canada Publications](#) and [Library and Archives Canada](#).

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- Publications (649)
- Reports Tabled in Parliament (3)



Confusion about legacy materials and third party content

Advocacy efforts, 2018 Copyright Act Review



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E-1116 (COPYRIGHT)

42ND PARLIAMENT
Initiated by Amanda Wakaruk from Edmonton, Alberta, on May 26, 2017

keywords [Crown copyright](#) [Public works](#) [Video recordings](#)

Government Response Tabled

[Petition details](#)

[Member of Parliament](#)

[Government response](#)

Petition presented to the House of Commons on October 20, 2017

Government response tabled on December 4, 2017 (Sessional Paper)

• [421-01734_ISED_E.pdf](#)

• [421-01734_PCH_E.pdf](#)

[History](#)

Open for signature : May 26, 2017, at 3:19 p.m. (EDT)

Closed for signature : September 23, 2017, at 3:19 p.m. (EDT)

Signatures (1481)

Whereas:

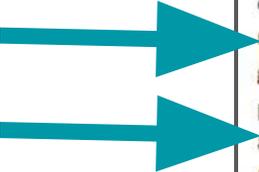
- Canadians' right to use works produced by the government is unduly restricted by our outdated system of Crown copyright;
- Access to government information and the ability to distribute and encourage its re-use is of fundamental importance to a democratic society (see SI/97-5);
- The government is committed to open government principles;
- The government states that exploitation of IP contributes to economic growth and is best achieved outside government (TBS Policy on Title to IP Arising Under Crown Procurement);
- Library projects to preserve and provide access to government works have been delayed or prevented due to confusion over Crown copyright;
- Interpretations of existing government terms of use and licences by government employees are inconsistent and confusing, especially since closure of Crown Copyright Licensing program in 2013;
- Objectives of copyright law do not apply to publicly disseminated government works given that they are created by the government for public benefit (SCC in *Théberge v. Galerie...* and *CCH v. LSUC* state law's objective is to balance rewarding of creators with disseminating of works in order to benefit society);
- The government rarely pursues infringement claims (e.g., Sess. paper 8555-412-57, Dec 4, 2013, HC);
- Not all government works are intended for broad dissemination;
- Some works published by the government are authored or prepared by third parties; and
- SI/97-5 is limited to federally-constituted courts and administrative tribunals.

We, the undersigned, **citizens (or residents) of Canada**, call upon the **House of Commons** to to add Section 12.1 to the Copyright Act:

12.1 Works noted in section 12 are no longer protected by copyright upon being made available to the public.

REPLY

The Government would like to thank the petitioners for expressing their concerns regarding Canadians' ability to use works produced by the Government.



The Government is aware of the impact that Crown copyright can have on how these materials are used. Crown copyright applies to a wide range of government agencies with various mandates, some of which rely on cost recovery to finance the production of information and content. The current practice gives flexibility to different governmental branches and agencies to adopt the most appropriate way to handle the content they produce or publish. Given this context, crown copyright is a complex issue, and it is important to strike a proper balance between addressing the needs of Canadians to access information and other public interest considerations, such as ensuring the quality and accuracy of government information.



The Government is committed to Open Government. As a member of the Open Government Partnership steering committee, Canada has taken a leadership role in the global movement to improve transparency and accountability. Canada is a global leader in the publication and use of Open Data, and is currently ranked #2 globally in the World Wide Web Foundation's Open Data Barometer. Also, with the Open by Default pilot, the government increases transparency by making available documents from specific departments to public researchers, businesses and

Page 1 of 2

engaged citizens to strengthen partnerships and supports the pursuit of common goals with interested stakeholders in civil society.

Canada's Copyright Act includes a requirement that Parliament review the legislation every five years. The first review is expected to begin in late 2017 or early 2018. This will provide parliamentarians with an opportunity to consider the current copyright framework, including provisions related to Crown copyright.



Advocacy efforts, 2018 *Copyright Act* Review

*Written briefs requesting review or removal of Crown copyright for publications**

<https://www.ourcommons.ca/Committees/en/INDU/StudyActivity?studyActivityId=9897131>

- Amanda Wakaruk
- Campus Stores Canada
- Canadian Council of Archives
- CARL
- CAUT
- CFLA
- Council of Atlantic University Libraries
- Council of Post Secondary Library Directors BC
- Creative Commons Canada
- Dalhousie Faculty Association
- Langara College
- Library Association of Alberta
- Macewan University
- Maple Ridge Family History Group
- Meera Nair
- Mount Royal University
- Southern Alberta Institute of Technology
- U of Alberta LIS Class

*CANLII and CALL briefs only concern legal materials

Advocacy efforts, 2018 *Copyright Act* Review

Oral testimony requesting review or removal of Crown copyright

April 17, 2018: Canadian Association of University Teachers

Questions from MP Terry Sheehan and MP David de Burgh Graham, with responses from Charlotte Kiddell and Paul Jones

<https://www.ourcommons.ca/DocumentViewer/en/42-1/INDU/meeting-101/evidence>

April 24, 2018: Canadian Association of Research Libraries <https://www.ourcommons.ca/DocumentViewer/en/42-1/INDU/meeting-102/evidence>

April 26, 2018: Canadian Federation of Library Associations <https://www.ourcommons.ca/DocumentViewer/en/42-1/INDU/meeting-103/evidence>

May 9, 2019: Jean Dryden (open mic) <http://www.ourcommons.ca/DocumentViewer/en/42-1/INDU/meeting-111/evidence>

May 10, 2018: Brianne Selman (open mic) <https://www.ourcommons.ca/DocumentViewer/en/42-1/INDU/meeting-113/evidence>

May 11, 2018: Canadian Association of Law Libraries

Question from MP Terry Sheehan with response from Kim Nayyer <https://www.ourcommons.ca/DocumentViewer/en/42-1/INDU/meeting-114/evidence>

May 11, 2018: Susan Paterson (open mic) <https://www.ourcommons.ca/DocumentViewer/en/42-1/INDU/meeting-115/evidence>

May 29, 2018: Wikimedia Canada

Questions from MP Frank Baylis and MP Maxime Bernier, with responses from Jean-Philippe Béland

<https://www.ourcommons.ca/DocumentViewer/en/42-1/INDU/meeting-118/evidence>

Advocacy efforts, 2018 *Copyright Act* Review

Oral testimony requesting review or removal of Crown copyright

May 31, 2018: Canadian Council of Archives

Questions from MP Frank Baylis, MP David de Burgh Graham, and MP Mary Ng, with responses from Nancy Marrelli

<https://www.ourcommons.ca/DocumentViewer/en/42-1/INDU/meeting-119/evidence>

October 3, 2018: Question from MP Dan Albas, with response from Paul Gagnon

<https://www.ourcommons.ca/DocumentViewer/en/42-1/INDU/meeting-130/evidence>

October 29, 2018: Creative Commons Canada and Open Media

Questions from MP David de Burgh Graham, with responses from Kelsey Merkley and Laura Tribe

<https://www.ourcommons.ca/DocumentViewer/en/42-1/INDU/meeting-134/evidence>

November 28, 2018: Question from MP Dan Albas, with response from Jeremy de Beer

<https://www.ourcommons.ca/DocumentViewer/en/42-1/INDU/meeting-140/evidence>

December 10, 2018: Michael Geist

Questions from MP Dane Lloyd, MP Brian Masse, and MP David de Burgh, with responses from Michael Geist, Bob Tarantino, Casey Chisick, and Ysolde Gendreau <https://www.ourcommons.ca/DocumentViewer/en/42-1/INDU/meeting-143/evidence>

December 12, 2018: Meera Nair

<http://www.ourcommons.ca/DocumentViewer/en/42-1/INDU/meeting-144/evidence>





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European Commission adopts CC BY and CC0 for sharing information



Timothy Vollmer
April 2, 2019

Last week the European Commission [announced](#) it has adopted CC BY 4.0 and CC0 to share published documents, including photos, videos, reports, peer-reviewed studies, and data. The Commission joins other public institutions around the world that use standard, legally interoperable tools like Creative Commons licenses and public domain tools to share a wide range of content they produce. The [decision](#) to use CC aims to increase the legal interoperability and ease of reuse of its own materials.

CC licences are a solution to a problem.

We can avoid the problem by removing Crown copyright.



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C-440 An Act to amend the Copyright Act (Crown copyright)
Sponsor
Brian Masse (Windsor West)
Last Stage Completed
Introduction and First Reading in the House of Commons (2019-04-09)
Progress: ██████████

Text of the Bill
Latest Publication
All Published Versions

Status of the Bill
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House of Commons
First Reading

Chamber Sitting: 401	2019-04-09
Introduction and First Reading	2019-04-09



The press conference on the new private member bill (#C440) on removing #CrownCopyright is now available.
cpac.ca/en/programs/he...

- Status of the Bill
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 - Major Speeches at Second Reading
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 - Recorded Votes
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CAUT welcomes @BrianMasseMP's leadership on addressing #CrownCopyright and thanks @awakaruk's tireless work to advance this issue #FairCopyright #copyrightreview #CdnPSE

In the Chamber @HoCChamber
@BrianMasseMP introduced Bill #C440 in the #HoC.

C-440
An Act to amend the Copyright Act (Crown copyright)
SPONSOR
Brian Masse, NDP (Windsor West)



cpac House Senate Live

NDP MP Brian Masse Outlines Proposal to Modernize Crown Copyright Laws

English Français Floor

06:04 / 16:52

Wide Player

HEADLINE POLITICS

NDP MP Brian Masse Outlines Proposal to Modernize Crown Copyright Laws

New Democrat MP and innovation critic Brian Masse holds a news conference on Parliament Hill to discuss his private member's bill that aims to make almost all government documents and publications public. Masse tabled Bill C-440 the day before his news conference. He is joined by Amanda Wakaruk (copyright librarian, University of Alberta), Katherine McCoolgan (executive director, Canadian Federation of Library Associations), and Julie Morin (project officer, Canadian Association of Research Libraries). (April 10, 2019) (no interpretation)

BILL C-440

An Act to amend the Copyright Act (Crown copyright)



Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

R.S., c. C-42

Copyright Act

1 Section 12 of the *Copyright Act* is replaced by the following:

No copyright — Her Majesty

12 Without prejudice to any rights or privileges of the Crown, no copyright subsists in any work that is, or has been, prepared or published by or under the direction or control of Her Majesty or any government department.

Transitional Provision

Copyright ceases to subsist

2 Without prejudice to any rights or privileges of the Crown, any copyright subsisting in a work referred to in section 12 of the *Copyright Act*, as it read immediately before the day on which this Act comes into force, ceases to subsist as of the day of that coming into force.

Timing...

- Industry Committee report with recommendations is being prepared. Release date unknown.
- Parliament 42:1 last sitting day is June 21, 2019.
- Federal election is October 21, 2019.



What happens next?

- Industry Committee report will hopefully include recommendations related to Crown copyright.
- Stakeholders continue to communicate with government departments (and hope to assist with transitional briefing binders).
- Impact of PMB C-440?
- Influence (if any) of SCC Keatley v Teranet?

<https://www.scc-csc.ca/case-dossier/info/sum-som-eng.aspx?cas=37863>

Questions?

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Copyright Librarian
University of Alberta

<https://sites.google.com/a/uaberta.ca/wakaruk/>

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Courtesy of Kim Kemmer