

# Crown copyright reform in Canada.

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Unexpected advocacy opportunity.

Amanda Wakaruk, Copyright Librarian  
(and former government information librarian)  
December 12, 2017



# What is Crown copyright?

*Copyright Act, s.12 (emphasis added)*

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>



# Crown copyright barriers for PSE & its libraries

- Unreasonable delays for clearances to use government works (e.g., using excerpts in published articles, digitization projects).
- Confusion and/or denials related to making copies of print materials for library use (e.g., various reports, royal commission documents, etc.).
- Confusion and/or denials about web harvesting government content (that later disappears, especially in the case of Harper Government DRAP).
  - DRAP (deficit reduction action plan) necessitated creation of CGI DPN (Canadian Government Information Digital Preservation Network)

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.

\* \* \*

## My (select) requests for information about OGL and/or Crown copyright from federal government agencies and departments:

June 2011, *Crown Copyright Licensing*:

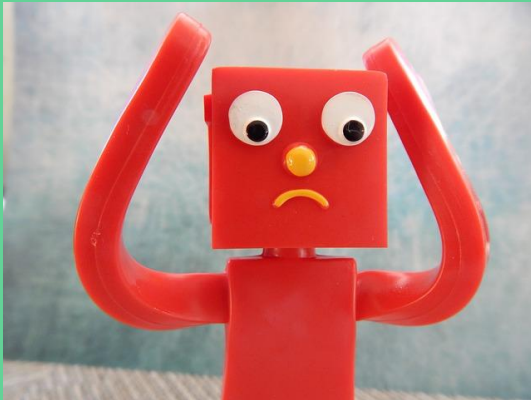
- provided email confirmation that TBS (non-commercial) terms of use applied across formats.

January 2015 - current, *Open Government Canada* (TBS):

- Open Government Licence (OGL) only applies to publications on [open.canada.ca](http://open.canada.ca) (269 as of Dec 2017)

November 30, 2016, *Canadian Heritage and Innovation, Science, and Economic Development Canada*:

- encourage public input, confirmed briefing file for Crown copyright exists



# e-petition on Crown copyright

Canadians have a right to use and re-use works produced by their government. Unfortunately, because of our outdated system of Crown copyright, such uses are unduly restricted.

## Whereas

- access to government information and the ability to distribute and encourage its re-use is of fundamental importance to a democratic society, as noted in the *Reproduction of Federal Law Order*, SI/97-5 <http://laws.justice.gc.ca/eng/regulations/SI-97-5/FullText.html>)
- the Government of Canada is committed to open government principles (<http://open.canada.ca/>)
- the Government of Canada believes that (commercial) exploitation of IP contributes to economic growth and job creation, and that such exploitation is best achieved outside of government (as noted in TBS Policy <http://www.ic.gc.ca/eic/site/068.nsf/eng/00005.html>)
- academic library projects to preserve and provide access to government works have been delayed or prevented due to confusion over Crown copyright (e.g., Canadian government publications restricted in HathiTrust, hundreds of hours spent to obtain permissions, etc.)

## Whereas

- current interpretations of existing government terms of use and government licences by government employees are inconsistent and confusing, especially since the closure of the Crown Copyright Licensing program in 2013 (<http://publications.gc.ca/site/eng/ccl/index.html>, see also <http://www.michaelgeist.ca/2013/11/crown-copyright-change/>)
- objectives of copyright law do not apply to publicly disseminated government works given that such works are created by public organizations for the benefit of the public (as per the Supreme Court of Canada in *Théberge v. Galerie d'Art du Petit Champlain* and *CCH v. LSUC*, which state that the objective of the law is to balance the incentivization and rewarding of creators with the encouragement of disseminating works in order to benefit society)
- the Government of Canada almost never pursues Crown copyright infringement claims (e.g., see Sessional paper 8555-412-57, tabled December 4, 2013, House of Commons)
- not all government works are intended for broad dissemination
- some works published by government agencies are authored or prepared by third parties
- the *Reproduction of Federal Law Order* is limited to federally-constituted courts and administrative tribunals

We, the undersigned citizens or residents of Canada call upon the House of Commons 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.**

<https://petitions.ourcommons.ca/en/Petition/Details?Petition=e-1116>





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# E-1116 (COPYRIGHT)

42ND PARLIAMENT

Initiated by Amanda Wa

keywords Crown copyr

Government Response T



- Petition detail
- Sponsor
- Government response
- History
- Signatures (1481)

Disclaimer regarding e-petitions



## RESPONSE TO PETITION

Prepare in English and French marking 'Original Text' or 'Translation'

PETITION NO.: 421-0173

PETITION NO.: 421-01734

BY: Ms. BENSON (SASKA)

BY: Ms. BENSON (SASKATOON WEST)

DATE: OCTOBER 20, 2017

DATE: OCTOBER 20, 2017

PRINT NAME OF SIGNATOR

PRINT NAME OF SIGNATORY: SIGNED BY THE HONOURABLE NAVDEEP

Response by the Minister of I

Response by the Minister of Innovation, Science and Economic Development

SIGNATURE  
Minister or Parliamentary Sec

SIGNATURE  
Minister or Parliamentary Secretary

SUBJECT

SUBJECT

COPYRIGHT

COPYRIGHT

ORIGINAL TEXT

ORIGINAL TEXT

REPLY

REPLY

The Government would  
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The Government would like to thank the petitioners for expre  
works produced by the Government.

The Government is awa  
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to finance the productic  
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context, crown copyrigh  
of Canadians to access a  
quality government info  
way that respects the ac

The Government is aware of the impact that Crown copyright i  
copyright applies to a wide range of government agencies with  
recovery to finance the production of information and content  
governmental branches and agencies to adopt the most appro  
publish. Given this context, crown copyright is a complex issue  
addressing the needs of Canadians to access information and c  
the quality and accuracy of government information.

The Government is com  
committee, Canada has  
accountability. Canada  
globally in the World W

The Government is committed to Open Government. As a mem  
committee, Canada has taken a leadership role in the global m  
Canada is a global leader in the publication and use of Open Data, and is currently running a pilot project in the form of the  
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

### Fix Crown Copyright

This page was created to support a House of Commons e-petition on Crown copyright that closed on September 23, 2017 and was tabled in the House of Commons on October 20, 2017. The petition requested that the Government of Canada respond to the longstanding need to fix Crown copyright in Canada and received almost three times the number of signatories required for certification.

As the petitioner, I made this request as a private citizen. However, it is informed by more than 15 years of working as a professional academic librarian with specializations in government information and, more recently, copyright. This is one of the ways I am trying to address barriers to the work of my employers (over the years), support frustrated library users, and contribute to the public good. I am not claiming that this e-petition represents the views of my employer.

On December 4, 2017, the Honourable Navdeep Bains, Minister of Innovation, Science and Economic Development (ISED) and Sean Casey, the Parliamentary Secretary to the Minister of Canadian Heritage (PCH), responded to the e-petition on Crown copyright. My comments about their responses are indented, below.

The Government of Canada's response recognized that parliamentarians will have an opportunity to revisit provisions related to Crown copyright as part of the upcoming review of the Copyright Act. However, the response also emphasizes two specific concerns related to removing the "all rights reserved" model of copyright for government works: cost recovery methods, accuracy and quality.

#### Cost Recovery

Both PCH and ISED state that some agencies rely on cost recovery to finance the production of government information and appear to use this as a rationale for maintaining Crown copyright.

Assuming a cost recovery model is justified for commercializing government works (and I am not suggesting that it is), what is the rationale for enforcing copyright to limit the use of government works that have been published and distributed at no cost, and what is the rationale for continuing to enforce copyright to limit the use of government works that have been made commercially available after the costs of producing that content have been recovered? If cost recovery is the rationale for retaining Crown copyright in works, then why not make openly available all works that never have been or are no longer being distributed commercially on a cost-recovery basis?

#### Accuracy and Quality

Both PCH and ISED mention the complex nature of Crown copyright, but do not explain how it is any more complicated than copyright for other works. They go on to state that there is a need to "strike a balance" between access to information needs and "other public interest considerations." Quality and accuracy are listed as those other public interest considerations.

Copyright is not a tool for ensuring accuracy or quality. Copyright does not address quality issues in any way and the only way copyright protection ensures accuracy of the original in subsequent reproductions is if that mechanism somehow allows for the complete control of every instance of distribution of the work and prevents any subsequent modifications, adaptations, or translations. Not only is this type of gatekeeper overreach impossible in an online environment, it would also be illegal (see Section III of the Copyright Act, Exceptions to Infringement) and is clearly at odds with the aims of Open Government.

#### Open Government

Both PCH and ISED reaffirm a commitment to Open Government. The Open Government Declaration prioritizes the need for access to government information and the Open Government Partnership references a definition of "open" as being material that can be freely used, reused, and redistributed by anyone.

Regarding the cost recovery rationale, a fee-based access model for government information is at odds with the moral imperative of governments to provide barrier-free access to (non-sensitive) government information. Furthermore, taxpayers have already paid for the production of this information and shouldn't have to pay twice for access to it, or for the ability to reuse that content.

It should also be noted that paying for government information has not, in the current regime, resulted in the removal of barriers to the reuse of those works.

Regarding the accuracy and quality rationale, this is difficult to distinguish from the sort of controls that are antithetical to the principles of Open Government.

#### Balance

Both PCH and ISED speak of the role of Crown copyright in striking a balance, which is at the core of copyright law. The exceptions to infringement found within the Copyright Act are intended to provide a balancing mechanism between the needs of rights holders and the public good. This makes sense when economic protections and rights are of paramount importance. With respect to government information, a more relevant balance, between access and security, is achieved through freedom of information legislation, not through the enforcement of Crown copyright.



Presenter, "Government information librarians and Crown copyright (an update)," Government Information Day Ontario pre-conference, October 25, 2017.

Panelist, "Copyright pressure points: field observations from an academic copyright librarian," Canadian Association of Law Libraries webinar, [The Conversation Continues: Copyright in Context for CALL Members](#), September 13, 2017.

Presenter, "The commons and Crown copyright: it's time for reform in Canada," Creative Commons community call, August 22, 2017. <https://doi.org/10.7939/R33B5WN2C>

Presenter, "Heavy is the head that wears the crown (copyright)," Kingston, Ontario, ABC Copyright Conference, June 29, 2017. <https://doi.org/10.7939/R3WH2DT50>

Co-Presenter with Scott Day, MacEwan University, "Confused by copyright? You are not Alone. We can help," Edmonton, Alberta, NEOS Miniconference, June 9, 2017. <https://doi.org/10.7939/R3HH6CJ34>

Presenter, "CopyWhat? Copyright issues for the instruction librarian," Edmonton, Alberta, WILU, May 25, 2017.

Presenter, "Do it right the first time: Copyright, Creative Commons, and OER," Edmonton, Alberta, Alberta OER Summit, May 11, 2017. <https://doi.org/10.7939/R3571809V>

Panelist, "Copyright: fence or facilitator for open education?" Edmonton, Alberta, Open Education Week 2017 Panel: Be it Resolved that All Knowledge be Open, March 30, 2017. [https://era-av.library.ualberta.ca/media\\_objects/avaon:1288](https://era-av.library.ualberta.ca/media_objects/avaon:1288) timecode 29:20

Presenter, "Could it be a case of the emperor's new clothes? Crown copyright and Canada's commitment to open government," Toronto, Ontario, Government Information Day, December 9, 2016. <https://doi.org/10.7939/R3Z60C56R>

Presenter, "Copyright, Open Licensing, and Academic Authors: What Librarians Need to Know," Edmonton, Alberta, AAAL Meeting, November 17, 2016.

Co-Presenter with Don Taylor and Jennifer Zerke, Simon Fraser University, "Assessing Copyright Risk Tolerance for Large-Scale Digitization Projects," Halifax, Nova Scotia, ABC Copyright Conference, May 27, 2016. <https://era.library.ualberta.ca/files/b73666467r-V1rttNUrJaQ>

Co-Presenter with Catherine McGovern, University of Ottawa, and Michelle Lake, Concordia University, "Here today, where tomorrow? Monitoring and making sense of Government of Canada web content changes in a post-depository environment," Ottawa, Ontario, Canadian Library Association Annual Conference, June 4, 2015. <http://hdl.handle.net/10402/era.41980>

Presenter, "Keeping government information on the record: stewardship in a digital age," Toronto, Ontario, Canadian Association of Research Libraries, [Leviathan North: Long-Term Access to Government Information in a Digital Era](#), May 15, 2015. <http://hdl.handle.net/10402/era.41157>

Presenter, "What do you mean you don't have a copy? An attempt to document Government of Canada web content removed from open access," Simon Fraser University, Vancouver, British Columbia, Government Information Day, April 24, 2015. <http://hdl.handle.net/10402/era.40992>

Presenter, "Cuttings or compost? Working with the weeding outfall of LAC and GoC," University of Ottawa, Ottawa, Ontario, [Government Information Day](#), October 16, 2014. <http://hdl.handle.net/10402/era.39967>

Presenter, "Canadian Government Information Private LOCKSS Network," Stanford University, Palo Alto, California, [LOCKSS Partner Meeting](#), September 3, 2014. <http://hdl.handle.net/10402/era.39811>

Presenter, "Government Information in Canada: Update 2014," Jasper, Alberta, Alberta Library Conference, April 26, 2014. <http://hdl.handle.net/10402/era.38580>

Co-Panelist with Devika Levy and Shana Waggoner, World Bank, "Strategies for Finding Reliable International Statistics and Publications," Joint ACRL/CHOICE/World Bank Webinar, March 26, 2014.

Presenter, "The Changing Research Library Collection," India Institute of Technology, Roorkee (IIT Roorkee), India, Indo-Canadian Best Practices Symposium, November 11, 2013.

Presenter, "FOI in Canada: The Changing Role of the Government Information Librarian," Toronto, Ontario, Government Information Day, November 1, 2013. <http://hdl.handle.net/10402/era.38185>

Co-Presenter with Tom Smyth, Library and Archives Canada and Sam-Chin Li, University of Toronto, "Web Harvesting the GoC: A Collaborative Effort," Toronto, Ontario, Government Information Day, November 1, 2013.

Presenter, "Introducing the CGI-PLN: Using the LOCKSS Program to Preserve DSP Content in a Changing Environment," Toronto, Ontario, Government Information Day, November 1, 2013. <http://hdl.handle.net/10402/era.38184>

Co-Presenter with Mark Jordan, Simon Fraser University, "Why is this link dead? Aren't government publications all online? Preserving digital federal content with the Canadian Government Information Private LOCKSS Network," St. John's, Newfoundland, Access Conference, September 26, 2013. <http://hdl.handle.net/10402/era.34040>

Presenter, "Government Information in Canada: Update," Chicago, Illinois, ACRL Science and Technology Section Federal Science Update, ALA Annual, June 29, 2013.

Panel Presentation with Scott Reed, Internet Archive and Kelly Lau, University of Alberta, "Community Tools and Best Practices for Harvesting and Preserving At-Risk Web Content," Winnipeg, Manitoba, Association of Canadian Archivists Conference, June 15, 2013. <http://hdl.handle.net/10402/era.32072>

Co-Presenter, "Web Archiving at UAL," UAL Spring Training Session, May 16, 2013.

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Roundtable Discussant, "Challenges to Continued Access to Federal Government Information," Vancouver, British Columbia, British Columbia Library Association GovInfo Day, April 26, 2013.

Co-Presenter with James Jacobs, Stanford University, "Lots of Copies keep Docs Safe: Using LOCKSS to create distributed digital government information depositories," Seattle, Washington, ALCTS PARS Digital Preservation Interest Group Meeting, ALA Midwinter, January 27, 2013.

Co-Presenter with Michael McCaffrey, University of Toronto, "Official Statistics for Reference Librarians – Yes, you need to know this stuff!" Ottawa, Ontario, [Canadian Library Association Conference](#), June 2, 2012. [http://www.cla.ca/conference/2012/assets/sessions/IT1\\_CLA2012\\_talk.pdf](http://www.cla.ca/conference/2012/assets/sessions/IT1_CLA2012_talk.pdf)

Co-Presenter with Patti Ryan and Richard Hayman, "Using Our Voice: Bringing a Socially conscious Approach to Information Literacy (IL) Practice," Edmonton, Alberta, [Workshop on Instruction in Library Use \(WILU\)](#), May 23, 2012. [http://sites.macewan.ca/wilu2012/files/2012/06/May23\\_1600\\_HaymanWakarukRyanStoniowski\\_UsingOurVoice.pdf](http://sites.macewan.ca/wilu2012/files/2012/06/May23_1600_HaymanWakarukRyanStoniowski_UsingOurVoice.pdf)

# Resources

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# Questions?

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Courtesy of Kim Kemmer