

## **AMENDMENTS TO THE COPYRIGHT ACT**

- Exceptions for libraries, archives and museums
- Exceptions for persons with perceptual disabilities
- Changes relating to unpublished works
- Parallel importation of books

***Who can use the exceptions?***

***What kinds of activities and services are covered?***

***What restrictions are there?***

***What regulatory requirements have to be met?***

### ***Who can use the exceptions?***

- exceptions for libraries, archives and museums can be used by institutions that
  - maintain collections that are open to the public or to researchers
  - are not established for profit
  - are not administered or controlled by a body established for profit
- where the exceptions permit a library, archive or museum to make a copy on behalf of another library, archive or museum, the copy may only be made if the other library, archive or museum meets the same criteria
- exceptions for persons with perceptual disabilities can be used by any non-profit organization acting on behalf of such a person
- exceptions for parallel importation of books can be used by individuals, by federal or provincial government departments, by libraries, archives and museums, and by educational institutions

***What kinds of activities and services are covered?***

- maintenance and management of collections
- assisting in “fair dealing”
- making copies of articles for research
- self-service photocopying
- assisting persons with perceptual disabilities
- making copies of unpublished works
- importing books directly from foreign sources

***What restrictions are there?***

- none of the copying permitted by the exceptions for libraries, archives and museums may be carried out with a “motive of gain”
- further restrictions apply to specific exceptions

***MAINTENANCE AND MANAGEMENT OF COLLECTIONS***

**PURPOSE:**

- making a copy of a work for purposes of maintenance or management of the library’s permanent collection

**PERMITTED COPYING:**

- making a copy of an original that is rare or unpublished and deteriorating, damaged or lost, or at risk of deterioration, damage or loss;
- making a copy for purposes of on-site consultation if the original cannot be viewed, handled, or listened to because of its condition;
- making a copy of an original that is currently in an obsolete format or when the technology required to use the original is unavailable;
- making a copy for purposes of internal record-keeping and cataloguing;
- making a copy for insurance purposes or police investigations; or
- making a copy if necessary for restoration.

**RESTRICTIONS:**

- the exception does not apply if an appropriate replacement copy is available commercially (either through purchase or through a licence with a collective)
- any intermediate copy that is made in order to make the replacement or surrogate copy must be destroyed

**REGULATIONS:**

- there are no regulations pertaining to the exception

***ASSISTING IN “FAIR DEALING”***

**PURPOSE:**

- making a copy within the limits of “fair dealing” on behalf of a patron

**PERMITTED COPYING:**

- making a copy that would be considered fair dealing for the purpose of research or private study if the copy were made by the patron personally
- making a copy that would be considered fair dealing for the purpose of criticism or review if the copy were made by the patron personally
- note that fair dealing, although not defined in the Copyright Act, is generally considered to apply only to an insubstantial part of a work

**RESTRICTIONS:**

- if the fair dealing copy is made for a patron of another library, the copy given to the patron must not be in digital form

**REGULATIONS:**

- the library making the copy must record the following information:
  - the date of the request
  - information that is sufficient to identify the work (e.g., title of the work, title of the periodical or newspaper, date or volume/number of the issue, page numbers for the pages copied, ISBN, ISSN)
  - the name of the library making the request (if the request is made on behalf of a patron of another library)
- the information must be kept for at least three years
- the information must be made available on request by the copyright owner, a representative of the copyright owner, or a collective society authorized to grant licences for the work
- requests for the information may be made once a year and must be answered within 28 days of receipt (or later, if agreed to by both parties)

- note that the regulation pertaining to record-keeping will remain in effect for “fair dealing” copying only until December 31, 2003
- the library must inform the person requesting the copy (by stamping or otherwise noting on the copy) that it is to be used solely for the purpose of research or private study, and that any other use may require the authorization of the copyright owner

### ***COPIES OF ARTICLES FOR RESEARCH***

#### **PURPOSE:**

- making a single copy of an article published in a newspaper or periodical for a person requesting the use of the copy for research or private study

#### **PERMITTED COPYING:**

- making a single reprographic copy of an article or part of an article published in a newspaper or periodical
- the copy may be made for a patron of the library or for a patron of another non-profit library, archive, or museum

#### **RESTRICTIONS:**

- copying of works of fiction or poetry or dramatic or musical works is not permitted
- copying of articles published within the previous twelve months is permitted only if the article was published in a scholarly, scientific, or technical periodical
- the person requesting the copy must satisfy the library that the copy will not be used for any purpose other than research or private study
- the person must be given only a single copy of the article
- if the copy is made for a patron of another library, archive, or museum, the copy given to the patron must not be in digital form
- any intermediate copy that is made in order to make the copy for the patron must be destroyed

## **REGULATIONS:**

- the library making the copy must record the following information:
  - the date of the request
  - information that is sufficient to identify the work (e.g., title of the work, title of the periodical or newspaper, date or volume/number of the issue, page numbers for the pages copied, ISBN, ISSN)
  - the name of the library making the request (if the request is made on behalf of a patron of another library)
- the information must be kept for at least three years
- the information must be made available on request in writing by the copyright owner, a representative of the copyright owner, or a collective society authorized to grant licences for the work
- requests for the information may be made once a year and must be answered within 28 days of receipt (or later, if agreed to by both parties)
- the library must inform the person requesting the copy (by stamping or otherwise noting on the copy) that it is to be used solely for the purpose of research or private study, and that any other use may require the authorization of the copyright owner

## ***SELF-SERVICE PHOTOCOPYING***

### **LIMITATION OF LIABILITY:**

- a library is not liable for infringing copies made by patrons using self-service photocopy equipment, provided the following requirements are met:
  - the library has a licence agreement with a collective covering reprographic reproduction; or
  - the Copyright Board has fixed the royalties and terms and conditions of a licence; or
  - a tariff has been approved by the Copyright Board; or
  - a collective has filed a proposed tariff; or
  - the library has an agreement with the copyright owner respecting the specific work that has been copied; and
  - a notice warning of infringement of copyright has been posted as prescribed by regulation

### **REGULATIONS:**

- the library must affix a notice to, or within the immediate vicinity of, each self-service photocopier with the prescribed warning

## **WARNING!**

Works protected by copyright may be copied on this photocopier only if authorized by

- (a) the *Copyright Act* for the purpose of fair dealing or under specific exceptions set out in that Act;
- (b) the copyright owner; or
- (c) a licence agreement between this institution and a collective society or a tariff, if any.

*For details of authorized copying, please consult the licence agreement or the applicable tariff, if any, and other relevant information available from a staff member.*

*The Copyright Act provides for civil and criminal remedies for infringement of copyright.*

## **ASSISTING A PERSON WITH A PERCEPTUAL DISABILITY**

### **PURPOSE:**

- adapting a work to a format specially designed for a person with a perceptual disability

### **PERMITTED ADAPTATION:**

- making a copy of a work in a format specially designed for persons with perceptual disabilities
- making a sound recording of a work in a format specially designed for persons with perceptual disabilities
- translating, adapting, or reproducing a work in sign language in a format specially designed for persons with perceptual disabilities
- performing a work in public in sign language

### **RESTRICTIONS:**

- the exception does not permit the making of a large print book
- the exception does not apply if the work or sound recording is commercially available in a format specially designed to meet the needs of the person making the request

## **CHANGES RELATING TO UNPUBLISHED WORKS**

### **TERM OF PROTECTION:**

- a work is normally protected by copyright throughout the author's lifetime and for a period of fifty years following the author's death
- prior to an amendment that came into force December 31, 1998, a work that remained unpublished at the time of the author's death continued to be protected by copyright until it was published, and for a further period of fifty years following its first publication
- if the work remained unpublished, the term of protection continued indefinitely
- with the coming into force of the amendment (i.e., for works created after December 31, 1998), the normal term of protection (the lifetime of the author plus fifty years following the author's death) applies regardless of whether the work is published or not

### **TRANSITIONAL PROVISIONS:**

- for works created prior to the coming into force of the amendment on December 31, 1998, the following special provisions apply:
  - a work that remained unpublished at the time of the author's death but was published subsequent to the author's death and prior to December 31, 1998, is protected by copyright for a period of fifty years after the date of first publication
  - if the work remained unpublished as of December 31, 1998, and the author's death occurred between January 1, 1949 and December 31, 1998, the work is protected by copyright until December 31, 2048
  - if the work remained unpublished as of December 31, 1998, and the author's death occurred prior to January 1, 1949, the work is protected by copyright until December 31, 2003

### **PERMITTED COPYING:**

- an archive may make a copy of an unpublished work in its collection for a person requesting the use of the copy for research or private study

### **RESTRICTIONS:**

- in the case of an unpublished work deposited after the coming into force of the exception,
  - the archive must inform the person depositing the work that it may be copied subject to the following conditions:
    - copying has not been prohibited by any owner of copyright in the work;
    - the archive is satisfied that the person for whom the copy is made will use it only for purposes of research or private study; and
    - only one copy is made for the person requesting the copy
- in the case of a unpublished work still protected by copyright that was deposited before the coming into force of the exception, where the archive is unable to locate the owner of copyright in the work,

- the work may be copied under the following conditions:
    - copying is not prohibited by any owner of copyright in the work;
    - the archive is satisfied that the person for whom the copy is made will use it only for purposes of research or private study; and
    - only one copy is made for the person requesting the copy
- in the case of a unpublished work still protected by copyright that was deposited before the coming into force of the exception, where the author's death occurred before January 1, 1949,
  - the work may be copied under the following conditions:
    - copying is not prohibited by any owner of copyright in the work;
    - the archive is satisfied that the person for whom the copy is made will use it only for purposes of research or private study; and
    - only one copy is made for the person requesting the copy

#### **REGULATIONS:**

- when making a copy of an unpublished work still protected by copyright, where the owner of copyright in the work cannot be located,
  - the archive making the copy must record the following information:
    - the date of the request
    - the name of the person requesting the copy
    - the name of the archive transmitting the request (if the request is made through another archive)
    - information that is sufficient to identify the work
  - the information must be kept for at least three years
  - the information must be made available on request in writing by the author, the copyright owner, or a representative of the author or copyright owner
- the archive must inform the patron at the time of the request or at the time of registration that the information pertaining to the copying will be made available to authorized persons on request
- the archive must inform all patrons at the time of registration that any copy made of an unpublished work is to be used solely for the purpose of research or private study and that any other use may require the authorization of the copyright owner
- if the person requesting a copy is not a registered patron, the archive must inform the person that any copy made of an unpublished work is to be used solely for the purpose of research or private study and that any other use may require the authorization of the copyright owner
- the archive must inform the patron or other person requesting the copy (by stamping or otherwise noting on the copy) that it is to be used solely for the purpose of research or private study, and that any other use may require the authorization of the copyright owner

#### ***IMPORTING BOOKS DIRECTLY FROM FOREIGN SOURCES***



#### **NEW EXCLUSIVE DISTRIBUTION RIGHTS:**

- importing a book without the consent of the owner of the exclusive distribution rights for Canada is an infringement of copyright

#### **EXCEPTIONS:**

- an individual may import up to two copies of a book for their own use
- a federal or provincial government department may import copies for use by the department
- a library, archive, museum or educational institution may import one copy
- an educational institution may import copies of a used book (other than a textbook of a scientific, technical or scholarly nature) for use in a course of instruction
- customs officials may require the person or institution importing the book(s) to produce evidence that they are entitled to do so under the exceptions

#### **REGULATIONS:**

- in order to exercise the exclusive distribution right, the Canadian distributor must meet the following requirements:
  - the distributor must give notice that he is the exclusive distributor of the book through:
    - the *Canadian Telebook Agency Microfiche and Ordering System*
    - *R.R. Bowker's Books in Print on Disc -- Canadian edition*
    - a catalogue supplied by the exclusive distributor to the bookseller, library, etc.
    - the *Banque de titres de langue française*, or
    - delivery of a notice sent directly to the bookseller, library, etc. by mail, fax, or electronic means
  - the distributor must ship the order within a specified number of days, as follows:
    - within 5 days, for books in stock in Canada
    - within 15 days, for books imported from the U.S., not in stock in Canada
    - within 35 days, for books imported from Europe, not in stock in Canada
    - within 60 days, for books imported from other countries, not in stock in Canada
  - twelve months after the regulations have been in force, the specified number of days are reduced as follows:
    - within 3 days, for English-language books in stock in Canada
    - within 12 days, for books imported from the U.S., not in stock in Canada
    - within 30 days, for books imported from Europe, not in stock in Canada
    - within 50 days, for books imported from other countries, not in stock in Canada
  - the distributor must provide the book in the format requested, if the format exists

- the distributor must provide the book at a price no greater than
  - the list price in the U.S., plus the current exchange rate, plus 10% of the price after conversion, minus any applicable discounts, for books imported from the U.S.
  - the list price in the country of origin, plus the current exchange rate, plus 15% of the price after conversion, for books imported from Europe or another country
  
- if requested, the distributor must confirm whether the order can be filled, returning the confirmation
  - no later than 2 days after the order is placed, if the confirmation is made by telephone
  - no later than 5 days after the order is placed, if the confirmation is sent by mail or facsimile
  - no later than 2 days after the order is placed, if the confirmation is sent by other electronic means
  - no later than 1 day after the order is placed, if the confirmation is sent by other electronic means, after the regulations have been in force for 12 months
  
- for books imported from the U.S., the distributor must give a library discount based on the generally prevailing market conditions in North America