



COPYRIGHT POLICY

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1.0 POLICY STATEMENT

- 1.1 It is Nova Scotia Archives and Records Management (NSARM) policy to provide for compliance with the federal *Copyright Act* (R.S.C. 1985, c. C-42) as amended and its attendant regulations, with respect to the institution's archival and library holdings.

2.0 POLICY OBJECTIVES

- 2.1 To provide a comprehensive scheme to ensure that NSARM is in compliance with the *Copyright Act* in carrying out its institutional functions.
- 2.2 To promote staff and researcher awareness of copyright compliance and attendant issues.

3.0 POLICY SCOPE

- 3.1 This policy applies to all archival and library materials held by NSARM.
- 3.2 This policy applies specifically to the reproduction and/or use of archival and library holdings held by NSARM.
- 3.3 This policy applies to all NSARM staff providing assistance to researchers in the reproduction and/or use of copyrighted archival and library holdings.
- 3.4 This policy applies to all researchers requesting reproduction of and/or permission to use material held by NSARM.
- 3.5 This policy applies to all independent contractors providing reproduction services for NSARM holdings.

4.0 POLICY DIRECTIVES

- 4.1 **Providing copies to researchers:**
 - 4.1.1 **published articles:** under the terms of Sections 30.2 (2) and 30.2 (4) of the *Copyright Act* [see Appendix], NSARM shall provide researchers with full copies of articles still under copyright protection and contained in scholarly, scientific or technical periodicals; and with full copies of articles still under copyright protection and contained in newspapers or periodicals

published more than one year before the copy was made.

- 4.1.2 **other published works:** for other published works still under copyright protection, NSARM shall exercise 'fair dealing' to provide copies of up to 10% of any single work.
- 4.1.3 **unpublished works:** under the terms of Sections 30.21 (1) - 30.21 (5) of the *Copyright Act* [see Appendix], NSARM shall provide full copies of unpublished works still under copyright protection, including those for which the copyright owner cannot be located.
- 4.1.4 under the terms of Sections 30.2 (4) and 30.21 (3) of the *Copyright Act* [see Appendix], NSARM shall provide **only a single copy of the work, on the understanding that use thereof is restricted to research and private study purposes only.**
- 4.2 Public notices regarding compliance with copyright legislation shall be prominently displayed in appropriate public areas of the Public Archives Building.
- 4.3 NSARM shall provide, whenever possible, consistent and up-to-date information to researchers regarding permission to reproduce and/or use material from the institution's archival and library holdings.
- 4.4 All NSARM forms governing access to, and reproduction and/or use of the institutional holdings, shall include appropriate wording to advise researchers that reproduction and/or use of said holdings may be governed by the *Copyright Act*. Forms provided by independent contractor services are also subject to this requirement.
- 4.5 A copy of each NSARM Reproduction Order Form (e.g., Photocopy Order Form, Photographic Reproduction Order Form) shall, upon delivery of the said order, be retained by NSARM for the period specified in the Regulations pursuant to Section 30.21 of the *Copyright Act* [see Appendix].
- 4.6 All NSARM stamps and labels normally affixed to reproductions provided by NSARM shall include appropriate wording to advise researchers that use of the said reproductions may be governed by the *Copyright Act*.
- 4.7 NSARM stamps and labels shall be affixed consistently to all reproductions, regardless of format, provided by NSARM in response to researcher requests. This requirement includes all NSARM stamping provided by independent contractor services.

- 4.8 NSARM shall retain an appropriate Cancopy licence to facilitate the reproduction of selected portions of published works still under copyright protection.
- 4.9 All Deeds of Gift or other instruments transferring ownership of material to NSARM shall include appropriate copyright provisions as required.
- 4.10 Under the terms of Section 30.1 of the *Copyright Act* [see Appendix], copyrighted material within NSARM archival and library holdings may and shall be copied as required, for the purpose of maintaining and managing said holdings, if the original is deteriorating, damaged, or at risk of deterioration. This includes transferring a record from one format to another if the original is in an obsolete format or if the technology required to use the original is unavailable.

5.0 RESPONSIBILITIES

- 5.1 The Manager, Public and Support Services Division, is responsible for monitoring institutional adherence to the Copyright Protection Policy.
- 5.2 Public and Support Services Staff are responsible for promoting researcher awareness of copyright protection issues, through the routine provision of researcher assistance.
- 5.3 Public and Support Services Staff are responsible for consistently affixing NSARM stamps and labels to all reproductions, regardless of format, provided by NSARM in response to researcher requests.
- 5.4 Independent contractors providing reproduction services for NSARM holdings are responsible for consistently affixing NSARM stamps and labels to all said reproductions.
- 5.5 Archivists in the Reference Services Section, PASS, are responsible as required, for identifying archival holdings protected by copyright, and for advising researchers on copyright compliance.
- 5.6 The NSARM Librarian, PASS (or designate) is responsible, as required, for identifying library holdings protected by copyright, and for advising researchers on copyright compliance.
- 5.7 **Obtaining authorization to copy whole works or substantial parts thereof, if still protected by copyright, or to otherwise reproduce and/or use such material (e.g., in another publication) remains the responsibility of the researcher.**

- 5.8 NSARM staff are not responsible for providing legal advice or legal interpretation to researchers, regarding copyright matters.

6.0 REFERENCES

- 6.1 *Copyright Act*, R.S.C. 1985, c. C-42 as amended, and *Exceptions for Educational Institutions, Libraries, Archives and Museums Regulations*, SOR/99-325
- 6.2 Wanda Noel and Elizabeth Hawkins, *The New Copyright Law and Archives* (Bureau of Canadian Archivists, 1999)
- 6.3 National Archives of Canada, *Staff Guide to Copyright* (Ottawa: National Archives, 1999)
- 6.4 Lesley Ann Harris, *Canadian Copyright Law*, 2nd ed. (Toronto: McGraw Hill, 1995)

7.0 MONITORING AND REVIEW

- 7.1 This policy will be reviewed as and when revisions are made to the federal *Copyright Act*, as relevant sections are proclaimed, or as additional pertinent regulations come into force.

8.0 ENQUIRIES

- 8.1 Enquiries concerning this policy should be directed in the first instance to the Senior Reference Archivist, PASS (for archival holdings) or to the NSARM Librarian, PASS (or designate: for library holdings); otherwise to the Manager, Public and Support Services Division.

9.0 GLOSSARY

<i>Archival holdings</i>	Unpublished holdings in all media formats, in the custody or control of NSARM.
<i>Copyright Act</i>	The <i>Copyright Act</i> (R.S.C. 1985, c. C-42) is a federal law which provides legal protection for creators of things the law refers to as ‘works’: literary, dramatic, musical and artistic works, sound

recordings, communication signals and performances. The law provides creators of these ‘works’ with a number of legal rights. These rights enable creators to be paid for and to control the use of their works. There are some uses of works which are permitted without the payment of royalties or the permission of the copyright owner. These are called ‘exceptions’. Copyright protection is for a limited time. After the time elapses, protection ends. This is referred to as work falling into the ‘public domain’. (Noel and Hawkins, *The New Copyright Law and Archives*)

- Fair dealing* ‘Fair dealing’ is referred to in the *Copyright Act* (“fair dealing for the purpose of research or private study does not infringe copyright”), but is not defined. It can be described as the strictly limited copying of published works for the purposes of private study, research, criticism, review or newspaper summary; from a legal perspective, it is unclear whether ‘fair dealing’ may be applied to unpublished works. ‘Fair dealing’ with a work does not require the permission of the copyright owner, nor does it require the payment of royalties. ‘Fair dealing’ can be raised as a defence to copyright infringement; however, the line between what constitutes fair dealing and what is infringement is a fine one.
- Library holdings* Published works in all media formats, in the custody or control of NSARM, including those housed at present within the archival holdings.
- Reproduction* Within the context of this document, reproduction is understood to mean the provision of a duplicate copy of a published work, an unpublished work, or portions thereof, via technical means (e.g., photostatic copy, microfilm print-out, photo-reproduction, sound or moving-image dub); but, under the terms of Section 30.2 (5) of the *Copyright Law*, to exclude the provision of duplicate copies in digital form.
- Use* Within the context of this document, taken to mean the use or uses to which archival or library material is intended to be put by a researcher, subsequent to access to that material being provided by the custodial institution. ‘Use’ may include, but is not limited to, the following: reproduce, perform in public, publish, adapt, broadcast, exhibit (an artistic work), rent a computer program or sound recording, or otherwise obtain authorization for specific use from the copyright holder.

10.0 PROCEDURES

10.1 Providing information to researchers re copyright clearance (i.e., permission to reproduce in full, and/or to otherwise use NSARM archival or library holdings still protected by copyright):

- if NSARM holds the copyright, the request is forwarded to the appropriate Division Manager or designate.
- if NSARM does not hold the copyright, and the material in question is part of the archival holdings, Archivists in the Reference Services Section will advise the researcher whenever possible concerning the latest address of the copyright holder, donor or contact person; or will provide appropriate alternate procedures to obtain copyright clearance (via printed information hand-out).
- if NSARM does not hold the copyright, and the material in question is part of the library holdings ('Published Works' category), the Librarian or designate will advise the researcher whenever possible of appropriate procedures to obtain copyright clearance (via printed information hand-out).
- otherwise, NSARM staff are not responsible for providing legal advice or legal interpretation to researchers, regarding copyright matters.

11.0 APPENDIX

Sections from the *Copyright Act* (R.S.C. 1985, c. C-42) as amended and *Regulations (Exceptions for Educational Institutions, Libraries, Archives and Museums Regulations, SOR/99-325)* specific to the NSARM Copyright Policy (other sections of the *Act* also apply, as appropriate)

Sections from the *Copyright Act*:

- 30.1 (1) It is not an infringement of copyright for a library, archives or museum or a person acting under the authority of a library, archive or museum to make, in accordance with the regulations made under subsection (4), for the maintenance or management of its permanent collection or the permanent collection of another library, archive or museum, a copy of a work or other subject-matter, whether published or unpublished, in its permanent collection
- a) if the original is rare or unpublished and is
 - (i) deteriorating, damaged or lost, or
 - (ii) at risk of deterioration or becoming damaged or lost;
 - b) for the purposes of on-site consultation if the original cannot be viewed, handled or listened to because of its condition or because of the atmospheric conditions in which it must be kept;
 - c) in an alternative format if the original is currently in an obsolete format or the technology required to use the original is unavailable;
 - d) for the purposes of internal record-keeping and cataloguing;
 - e) for insurance purposes or police investigations; or
 - f) if necessary for restoration.

[...]

- 30.2 (2) It is not an infringement of copyright for a library, archive or museum or a person acting under the authority of a library, archive or museum to make, by reprographic reproduction, for any person requesting to use the copy for research or private study, a copy of a work that is, or that is contained in, an article published in
- a) a scholarly, scientific or technical periodical; or
 - b) a newspaper or periodical, if the newspaper or periodical was published more than one year before the copy is made

30.2 (3) Paragraph (2) (b) does not apply in respect of a work of fiction or poetry or a dramatic or musical work.

30.2 (4) A library, archive or museum may make a copy under subsection (2) only on condition that

- a) the person for whom the copy will be made has satisfied the library, archive or museum that the person will not use the copy for a purpose other than research or private study; and
- b) the person is provided with a single copy of the work

30.2 (5) A library, archive or museum or a person acting under the authority of a library, archive or museum may do, on behalf of a person who is a patron of another library, archive or museum, anything under subsection (1) or (2) in relation to printed matter that is authorized by this section [...] but the copy given to the patron must not be in digital form.

[...]

30.21 (1) It is not an infringement of copyright for an archive to make a copy, in accordance with subsection (3), of an unpublished work that is deposited in the archive after the coming into force of this section.

30.21 (2) When a person deposits a work in an archive, the archive must give the person notice that it may copy the work in accordance with this section.

30.21 (3) The archive may only copy the work if

- a) the person who deposited the work, if a copyright owner, does not prohibit copying;
- b) copying has not been prohibited by any other owner of copyright in the work; and
- c) the archive is satisfied that the person for whom it is made will use the copy only for purposes of research or private study and makes only one copy for that person.

30.21 (4) The Governor in Council may prescribe the manner and form in which the conditions in subsection (3) may be met.

30.21 (5) Where an archive requires the consent of the copyright owner to copy an unpublished work deposited in the archive before the coming into force of this section but is unable to locate the owner, the archive may copy the work in accordance with subsection (3).

[...]

30.3 (1) An educational institution or a library, archive or museum does not infringe copyright where

- a) a copy of a work is made using a machine for the making, by reprographic reproduction, of copies of works in printed form;

- b) the machine is installed by or with the approval of the educational institution, library, archive or museum on its premises for use by students, instructors or staff at the educational institution or by persons using the library, archive or museum; and
- c) there is affixed in the prescribed manner and location a notice warning of infringement of copyright.

[...]

Sections from the Regulations:

- 4. (1) Subject to subsection (2), a library, an archive or a museum, or a person acting under the authority of one, shall record the following information with respect to a copy of a work that is made under section 30.2 of the *Act* [**i.e., published articles**]:
 - a) the name of the library, archive or museum making the copy;
 - b) if the request for a copy is made by a library, archive or museum on behalf of a person who is a patron of the library, archive or museum, the name of the library, archive or museum making the request;
 - c) the date of the request; and
 - d) information that is sufficient to identify the work, such as
 - i) the title,
 - ii) the International Standard Book Number,
 - iii) the International Standard Serial Number,
 - iv) the name of the newspaper, the periodical or the scholarly, scientific or technical periodical in which the work is found, if the work was published in a newspaper, a periodical or a scholarly, scientific or technical periodical;
 - v) the date or volume and number of the newspaper or periodical, if the work was published in a newspaper or periodical,
 - vi) the date or volume and number of the scholarly, scientific or technical periodical, if the work was published in a scholarly, scientific or technical periodical, and
 - vii) the numbers of the copied pages.
- 4. (2) A library, an archive or a museum, or a person acting under the authority of one, does not have to record the information referred to in subsection (1) if the copy of the work is made under subsection 30.2 (1) of the *Act* after December 31, 2003. [**'Sunset' clause, for published articles only**].
- 4. (3) A library, an archive or a museum, or a person acting under the authority of one, shall keep the information referred to in subsection (1)
 - a) by retaining the copy request form; or

- b) in any other manner that is capable of reproducing the information in intelligible written form within a reasonable time.
4. (4) A library, an archive or a museum, or a person acting under the authority of one, shall keep the information referred to in subsection (1) with respect to copies made of a work for at least three years.

[...]

5. (1) An archive, or a person acting under the authority of one, shall record the following information with respect to a copy of a work that is made under subsection 30.21 (5) of the *Act* [**i.e., unpublished works**]:
- a) the name of the archive making the copy;
 - b) the name of the person requesting the copy or, if the request for a copy is made by another archive on behalf of a person who is a patron of the other archive, the name of the patron and the archive making the request;
 - c) the date of the request; and
 - d) information that is sufficient to identify the work copied.
5. (2) An archive, or a person acting under the authority of one, shall keep the information referred to in subsection (1)
- a) in a record maintained by the archive of the names of all individuals who have had access to the work in question;
 - b) by retaining the copy request form; or
 - c) in any other manner that is capable of reproducing the information in intelligible written form within a reasonable time.
5. (3) An archive, or a person acting under the authority of one, shall keep the information referred to in subsection (1) with respect to copies made of a work for at least three years.

[...]

6. (1) If a person requests a copy of a work from an archive under section 30.21 of the *Act* and the person has registered as a patron of the archive, the archive shall inform the patron in writing at the time of registration
- a) that any copy is to be used solely for the purpose of research or private study; and
 - b) that any use of a copy for a purpose other than research or private study may require the authorization of the copyright owner of the work in question.
6. (2) If a person requests a copy of a work from an archive under section 30.21 of the *Act* and the person has not registered as a patron of the archive, the archive shall

inform the patron in writing at the time of the request

- a) that any copy is to be used solely for the purpose of research or private study; and
- b) that any use of a copy for a purpose other than research or private study may require the authorization of the copyright owner of the work in question.

7. A library, archive or museum, or a person acting under the authority of one, that makes a copy of a work under section 30.2 or 30.21 of the Act shall inform the person requesting the copy, by means of text printed on the copy or a stamp applied to the copy, if the copy is in printed format, or by other appropriate means, if the copy is made in another format,

- a) that the copy is to be used solely for the purpose of research or private study; and
- b) that any use of the copy for a purpose other than research or private study may require the authorization of the copyright owner of the work in question.

8. An educational institution, a library, an archive or a museum in respect of which subsection 30.3 (2), (3) or (4) of the *Act* applies shall ensure that a notice ... is affixed to, or within the immediate vicinity of, every photocopier in a place and manner that is readily visible and legible to persons using the photocopier [...].