

## **Information Bulletin #4 Copyright for Archivists**

### **Copying donated infringing copies**

When material is donated to an archive, it may include an infringing copy of a work. A question often asked is whether it is an infringement of copyright to make an otherwise legal copy of an illegal copy in the holdings of an archives.

An example might be: Someone makes a copy of an unpublished photograph for entertainment purposes. Making such a copy is not "legal" under fair dealing because it has not been made for one of the qualifying fair dealing purposes. It is made for entertainment, not research, private study etc. This illegal or infringing copy is later deposited into an archives. Under an exception in Section 30.2 the archives is permitted to make a copy of an unpublished work deposited in an archives for a patron's research and private study. The question is whether this exception permits copying of such an illegal or infringing copy?

There has been no judicial consideration of this question in Canada. The Canadian *Copyright Act* is also silent on this question. Some copyright legislation, for example in the United States, states that an exception applies only to "lawful copies." Without statutory or judicial guidance this remains a matter of policy and ethics for Canadian archives. However, using an exception to copy an infringing copy compounds an act that is copyright infringement in the first place.