

# Land Surveyors and The Photocopying Revolution

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Many problems plague the land surveyor in this day and age, and since the

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- equivalent grid cells to allow identification of identical points;
- symbology;
- positional accuracy of:
  - township fabric;
  - cadastral fabric;
  - map format.

The most basic level of compatibility would be provided if the two map series shares the same:-

- map projection; and
- scale.

It would then be possible to overlay the two maps to combine their information. If the maps did not cover precisely the same area, the lack of uniform grid cells would complicate (slightly) the process of aligning the two maps. Lack of positional accuracy could result in the same feature appearing in different positions. Different symbologies could make reading the maps difficult.

It should be noted that if maps are computerized, the question of scale is less important since automatic changes of scale are possible.

Positional accuracy will be the hardest attribute to provide. Provision of complete accuracy would require a multitude of decisions concerning the relative merits of conflicting sources of information. In many cases the L.R.O. data would be more accurate than OBM data and this could necessitate changing the OBM base. Ideally, accuracy would imply that each feature would be defined by one agency. Practical considerations may make this ideal impossible to achieve.

We are rapidly entering an era where new and very exciting technology will radically alter the manner in which we gather data and extract information that is required. We will be able to assemble large volumes of information in amazingly short periods of time in order to better manage our land and resources. ●

advent of photocopying machines, new problems have arrived on the scene.

One of them is akin to forgery, and should be of great concern to us all. A brief example will illustrate.

A plan of a property showing the building thereon, and an adjacent sidewalk encroaching upon the private property, became the subject of an investigation. An examination of the surveyor's field notes revealed ties to everything except the sidewalk. His original plan did not show the sidewalk.

Its position had been incorrectly added onto a print of the plan by some person unknown, and then a photocopy of the amended print had been made. On the subsequent copy, all lines appeared to have the same weight, and to have been drawn at the same time. The surveyor's signature had reproduced, of course, and it looked as though he had certified everything shown on the plan as being correct.

This revised plan, in effect, was a libel on the reputation of this surveyor.

The second problem does not appear to be taken very seriously by many, but it causes concern to me. Once again I submit an example.

An application to a local municipality for a change in zoning by Mr. Robert X, was accompanied by a survey plan of a property dated in 1967, and signed by a land surveyor. On the face of the plan had been typed the following:-

"This is Exhibit A to the Affidavit of Robert X, Sworn before me this third day of October, 1979.

Signed,

A Commissioner, etc.

The affidavit, also attached to the application, read in part as follows:-

I, Robert X,

DO SOLEMNLY DECLARE THAT

1. I am the owner of the above mentioned lands and premises and I have been the owner since 1972.

2. Now produced and shown to me and marked "Exhibit A" to this declaration is a true copy of a Surveyor's Certificate/Plan of Survey and dated 1967 wherein it is certified that there are no encroachments or visible easements on or with respect to the above mentioned lands and premises.

3. To the best of my knowledge and belief, there have been no physical changes or external alternations to the above described lands and premises since this date, and I am not aware of any changes that would affect the validity of the said Surveyor's Certificate/Plan of Survey. And I make this Solemn Declaration, etc., etc., etc.

The affidavit was duly notarized.

Obviously, Mr. X has come across a plan of survey for which he did not pay, and being in need of such a plan, ran off as many copies as suited his purpose.

What we have here, in my opinion, is a case of exploitation, infringement, and downright robbery. I agree with novelist Herman Wouk who was also quite specific, "Copying without compensation is piracy."

Mr. Wouk was referring to literary works, of course. We land surveyors, however, are in a much more dangerous and untenable position than any author. Whereas an author only has to submit to being copied, if we have a mistake in our work, we can be sued for damages as well. And by perfect strangers, no less!

This just isn't good enough, and what follows is a suggestion that may not be a cure-all, but should slow down the 'piracy', and in certain circumstances should give us a better position in court in the event that we are unfortunate enough to be on the receiving end of an action for damages.

The suggestion is that we retain ownership in all of our plans and sketches, indicate this by marking each plan and sketch with the international copy-

right symbol of the Universal Copyright Convention, and registering our ownership in the Canadian Copyright Office.

Normally, the author, or creator, owns the copyright in his work. This does not hold true if the creator was hired or employed by some other person to create the work. In this case the employer is the owner. However, if it can be expressly agreed with the employer at the time the contract, or whatever, is drawn up that ownership will remain with the creator, then copyright can still vest in the creator. Land surveyors should insist that ownership of survey plans remain with them.

A verbal agreement to retain ownership in a case such as this is not sufficient; the agreement must be in writing. A suitable place to put this is on the 'bill', and a typical wording would be as follows:-

"This survey and plan have been carried out and prepared in accordance with the understanding that copyright to the plan, and the ownership thereof, remains with Bob Plumb, Land Surveyor."

Copyright in Canada is automatically acquired upon creation of an original work. So long as a surveyor has a written agreement with his client with regard to the retention of ownership, nothing else needs to be done for him to get basic protection.

If he wishes to retain copyright protection under the provisions of the Universal Copyright Convention in other countries, it is necessary that all copies of the work be marked with a small c in a circle, the name of the copyright owner, and the year of first publication, for example:-

© Bob Plumb, 1980.

The place the notice should occupy is not prescribed in the act, but it must be placed in such a manner and location as to give reasonable notice of the claim of copyright.

Most people are familiar with the international symbol shown, but I would say that many are not so familiar with the fact that a plan of survey, or any other similar work, is privately owned. Therefore, while it is a bit academic to take steps to prevent someone in Europe from copying a legal survey plan of a property in Manitoba, for example, I submit that even though it is not really necessary to do so, it would be a good idea to so mark our plans. This would be more for the benefit of people in this country who may be inclined to copy, rather than for any others living abroad.

A further safeguard would be to include this on the plan as well:-

"No one may copy, reproduce, distribute or sell this plan without the written permission of Bob Plumb, Land Surveyor."

In addition to the basic protection already mentioned, there is a voluntary system under which works can be registered in the Copyright Office. Certain advantages accrue with registration.

If an unregistered work is being copied, or otherwise infringed upon, and a request to cease and desist is ignored, then an action must be begun in the courts. In court, it is necessary to prove that the work being copied is owned by the person bringing the action. If this can be done, then the court is limited to issuing an injunction to stop the infringement.

If the work is registered, however, then the certificate issued by the Copyright Office is evidence that copyright exists in the work, and that the person registered is the owner of the copyright in the work. Additionally, it also enables the court to award costs and damages, which in these situations can be heavy. Apparently, very few of these cases end up in court; settlements are usually made outside.

Each filing fee today costs \$25.00. At this price it would not be practical to register each plan separately. The provision does exist though, to simply bind many plans into one or more volumes, and then the single volume or volumes may be registered as one work for the one \$25.00 fee.

As most infringements seem to occur on older plans, it would appear that if a surveyor's plans were to be bound and registered on an annual basis, then this would give him most of the protection that he requires.

It is not necessary to send the bound volume or volumes to the Copyright Office when an application is filed. As mentioned before, an owner is protected as soon as he creates his work. An application merely adds to this protection by giving him a certificate that can be used as proof of ownership of the rights that are protected in a court of law. Therefore, a copy of the work would not affect the protection already enjoyed.

Once registration has been completed, no further fees are required to keep the copyright in force. Generally speaking, in Canada, copyright endures for fifty years from the year of the owners death.

Reproduction of parts of a work can be made by others under certain con-

ditions, and this is described as 'Fair Use.' 'Fair Use' has not been defined in the statutes, and in every case, the decision of whether copying is 'fair' or 'unfair' has been judged on its merits by the courts. Though no absolute guidelines exist, several factors have been valuable in determining the nature of the law in so far as literary works are concerned:-

1. Whether the use is in direct competition with the copyright owner,
2. The extent and relative importance of the part used,
3. The nature of the copyright work, and
4. The user's reasons for taking the work and not seeking permission.

As I see it, we surveyors are in need of protection from two main sources. Those clients who have paid for a plan, and then change it, so that it no longer truly represents the survey as carried out by the surveyor, and those who copy a plan from another person without in any way compensating the surveyor, and who, under certain circumstances and in the event of loss, can claim against the surveyor.

I think you will all agree that we are not entitled to protection from our regular clients for errors and omissions incurred by us, and this note is not to suggest that we should be so protected.

I'm not sure exactly what protection the copyright may afford if an error on a plan were to result in an action by a stranger, but it should muddy the issue enough to give us more of a fighting chance against the action than we presently have. I recommend that all land surveyors implement the above procedures forthwith. I would even go so far as to suggest that reference plans in Ontario be copyrighted. Their use in subsequent legal descriptions would be 'fair'. The use of copies outside of the Land Registry Offices without due compensation to the surveyor should be 'unfair', and actionable.

I will close by presenting another view of this problem, by paraphrasing a speech by Macaulay to the British House of Commons in 1841: "It is desirable that this country should have a supply of good surveyors; we cannot have such a supply unless men so educated are liberally remunerated; and it appears to me that one of the least objectionable ways of remunerating them is by copyright".

I wish to acknowledge the assistance given to me by Mr. Mottadelli of the Canadian Copyright Office in the preparation of this paper. His helpful suggestions and advice are greatly appreciated.