

# Yukon Archives Commercial Use of Archival Records Policy

## Scope

The *Yukon Archives Commercial Use of Archival Records Policy* applies to archival records that have been donated, bequeathed, purchased or otherwise acquired by Yukon Archives.

The *Policy* applies to commercial use of Yukon Archives archival records by governments, not-for profit agencies, individuals, and businesses located in the Yukon and throughout the world.

## Purpose

The purpose of the *Yukon Archives Commercial Use of Archival Records Policy* is to establish a framework for the commercial use of the records in its collections.

Yukon Archives adopts the position that works for which copyright has expired and/or over which it holds copyright are in the public domain. This means that Yukon Archives is the trusted and expert stewards of these materials on behalf of the public, rather than their owner per se. The implication is that Yukon Archives favours a liberal position for making these records available to members of the public for non-commercial and commercial uses. Yukon Archives does not impose additional and unnecessarily restrictive institutionally-defined restrictions on records over which creators (as per the *Copyright Act*) and donors (as per donor agreements) have previously ceded their rights.

The *Yukon Archives Commercial Use of Archival Records Policy* enables Yukon Archives to balance the interests of individual members of the public with the interests of the public at large. Requests for the commercial use of particular records by specific persons or agencies will, for example, need to be balanced by concerns for their preservation. In all cases, requests for commercial use of archival records will need to be considered in the context of the Archives mandate to acquire, preserve, and make accessible records of and about the Yukon and Yukoners.

The *Yukon Archives Commercial Use of Archival Records Policy* defines and applies the concept of commercial use for those records for which commercial use is allowed as per donor agreements and signed receipts. It also clarifies the interpretation and application of commercial use for not-for profit agencies, individuals, and businesses considering donating their records to Yukon Archives.

More specifically, the purpose of the *Yukon Archives Commercial Use of Archival Records Policy* is threefold:

- to define the Objectives for the commercial use of archival records (*what* Yukon Archives is attempting to achieve through allowing commercial use of archival records);
- to define the Principles that are weighed in allowing for commercial use of archival records (*why* Yukon Archives provides for the commercial use of archival records in the manner that it does); and
- to define the Criteria that are applied in providing for the commercial use of archival records (*how* Yukon Archives allows for the commercial use of archival records).

The *Yukon Archives Commercial Use of Archival Records Policy* does not detail the internal procedures through which requests for the commercial use of archival records are reviewed and processed.

Two corollaries of defining the Objectives, Principles, and Criteria for the commercial use of archival records are:

- it enables requests for the commercial use of archival records to be evaluated and responded to in a consistent manner, among requests from different applicants and over time; and
- it provides a basis for establishing client expectations of the approach and methodology of Yukon Archives for responding to requests for the commercial use of archival records.

## Definitions

### *Commercial Use*

The use of records from the Yukon Archives collections to create the value in a product or service that is sold for profit or that contributes to profit-making through advertising and promotion. Examples include the use of archival records for product labels, postcards, t-shirts, placemats.

The use of the archival record to create the value in a product or service means that the use of the archival record must constitute the primary or a significant reason why the product or service would likely be purchased. For example, the use of Yukon Archives photographs in a book solely consisting of Yukon Archives photographs would constitute commercial use; the use of one Yukon Archives photograph in a book that includes many photographs would not constitute commercial use.

The form in which the product or service is offered may be in tangible form (e.g. postcard) or it may be in a “virtual” form (e.g. image on an Internet-based catalogue).

## Commercial Use Objectives

The Objectives of the *Yukon Archives Commercial Use of Archival Records Policy* establish *what* Yukon Archives is attempting to do by providing for commercial use of its records in the form that it does.

Yukon Archives provides for commercial use of its records in order to:

- support product development and marketing initiatives of businesses and enterprises, in Yukon and throughout the world;
- Raise awareness of the Yukon, its history, and its peoples and cultures;
- Support scholarly study of the Yukon, its history, and its peoples and cultures; and
- Raise awareness of Yukon Archives and its collections.

## Commercial Use Principles

The Principles of the *Yukon Archives Commercial Use of Archival Records Policy* establish why Yukon Archives provides for the commercial use of its records and why it does so according to the framework established by this Policy.

Yukon Archives provides for the commercial use of archival records in order to...

1. *Satisfy demand* – There is a constant and steady demand from individuals and businesses proposing to use Yukon Archives records for commercial purposes. Yukon Archives chooses to respond to these requests by recognizing their benefits and engaging with their proponents in a positive manner.
2. *Responsibly manage public assets* – Yukon Archives is a publicly funded institution; the records in its care are acquired, preserved and made accessible through tax revenues received from citizens and businesses. These records should be available to be used by taxpayers with a minimum of institutionally-imposed restrictions.

## Commercial Use Criteria

The Criteria of the *Yukon Archives Commercial Use of Archival Records Policy* document *how* the Yukon Archives assesses and responds to requests for use of its archival records for commercial purposes,

1. *Copyright* – Yukon Archives adheres to any relevant provisions of the Copyright Act when responding to requests for the commercial use of its archival records. In cases where the copyright holder cannot be identified or located a proposed commercial use will not be permitted. In cases where Yukon Archives owns the copyright or the copyright is in the public domain the tendency will be to favour commercial use (with due consideration given to the following criteria).
2. *Donor Restrictions* - Yukon Archives complies with any restrictions on commercial use that are imposed by the donor at the time the records are acquired by Yukon Archives and that are documented by Yukon Archives receipt and accessioning procedures.
3. *Sole Licensing* – Yukon Archives does not enter into agreements through which the use of a specific archival record by one requester will restrict its potential use by other and subsequent requesters.
4. *Service Level* – Yukon Archives treats all requests for commercial use of its records in a fair, equitable, and consistent manner.
5. *Cost Recovery* – Yukon Archives charges for reproduction products and services on a cost-recovery basis as per the Regulations established under the *Archives Act*. In other words, there is no separate cost regime to cover requests for records that are to be used for commercial use as distinct from the costs that are charged for records that are not to be used for commercial purposes. Yukon Archives does not seek to make a profit from any of its reproduction products and services or from any of its clients.
6. *First Nations Sensitivity* – Yukon Archives is sensitive to First Nations values and the potential reluctance of First Nations individuals to have records depicting themselves, their relatives, and their communities licensed for commercial use. In cases where First Nations individuals or groups are described in a record, the requester will contact the individuals or First Nations concerned to discuss the appropriateness of commercial use and provide written confirmation of acceptability to Yukon Archives.
7. *Community Sensitivity* – Yukon Archives is sensitive to the challenges of privacy that result from living in a small community where most people know or know of one another. In cases where readily identifiable individuals or groups are described in a record the requester will contact the persons and the groups concerned to discuss the appropriateness of commercial use and provide written confirmation of acceptability to Yukon Archives.
8. *Publicly Acceptable Uses* – Yukon Archives records must be used only for purposes that would not offend First Nations and Community sensitivities as detailed above. Also, any changes or modifications to a Yukon Archives record (e.g. cropping, shading) must be unlikely to offend First Nations and Community sensitivities as detailed above. Final decision as to whether a proposed commercial use of a Yukon Archives archival record is acceptable lies with the Territorial Archivist (i.e. not with the requester or donor).

## Commercial Use of Archival Records Methodologies

### Acquisition Processes

Yukon Archives staff discuss the *Yukon Archives Commercial Use of Archival Records Policy* with each and every potential donor in a consistent and comprehensive manner. This gives Yukon Archives the assurance that the donor understands the nature of possible commercial uses and that any such uses are agreed to. The nature of these allowable uses is reflected, in detail, on the Yukon Archives Receipt form.

### Donor Agreements

Yukon Archives negotiates with donors for the most open access to records that is possible; this openness includes unrestricted commercial access. It is recognized that some donors may not be comfortable with

such use and Yukon Archives will attempt to minimize these concerns. Excess and/or unrealistic restrictions may preclude a collection from being acquired by Yukon Archives.

### **Citations**

Each requester must cite the source (Yukon Archives) and fonds of each record on the commercial product that is produced. This citation must be as per the *Standards for the Citation of Yukon Archives Unpublished and Published Materials*.

If the copy of the record provided by Yukon Archives is modified in any way (e.g. cropping, toning, etc.) this must be noted with the citation.

### **Adding Value**

Yukon Archives does not consider the commercial availability of records from its collections as a threat to the continued accessibility and use of the original records. This is because Yukon Archives will focus on and continue to develop new ways of adding value to the records in its holdings, including...

- ◆ ensuring users know what records Yukon Archives has and that it is the preferred source for the best quality reproductions;
- ◆ adding and providing metadata for individual records; and
- ◆ facilitating understanding of the context of records creation and the interrelationships among records.

### **One-Time Use**

Yukon Archives will only approve *one-time* commercial use. This means that the requester to whom approval is given for use of a Yukon Archives record may use that record only for the specific purpose stated in the original application to Yukon Archives. Yukon Archives adopts this methodology not to unfairly limit use of its records but rather in order to ensure that the Objectives, Principles, and Criteria as outlined in this Policy are respected to the greatest possible extent. It is, of course, recognized that Yukon Archives has very little recourse if a requester uses a Yukon Archives record for a purpose different from the original stated purpose or uses it again for the same purpose.

## **Roles and Responsibilities**

### *Accessions Archivist / Government Records Archivist*

The Accessions Archivist discusses the *Yukon Archives Commercial Use of Archival Records Policy* with all potential donors. He or she ensures that the wishes of each donor pertaining to commercial use are documented on the Yukon Archives Receipt form.

### *Territorial Archivist*

The Territorial Archivist makes the final decision on whether a proposed commercial use of archival records is acceptable.

## **Review**

This Policy is reviewed annually by the Territorial Archivist, Government Records Archivists, Accessions Archivist, and Archives Librarian. The purpose of the review is to ensure that the *Yukon Archives Commercial Use of Archival Records Policy* continues to balance the needs of the Yukon Archives, its collections, and its stakeholders.

## **Related Policies**

*Yukon Archives Digitization Policy*

*Yukon Archives Public Photograph Reproduction Policy*

Original signed by Ian Burnett

Territorial Archivist

May 22, 2009

Date