

## COPYRIGHT AND EDUCATION

There are numerous stakeholders, organizations, practices, as well as legislation involved in the administration of Canadian copyright law. For the introductory purposes of these video tutorials, the principle four components in the application of Canadian copyright law are: the *Copyright Modernization Act* (2012), relevant case law, copyright collective societies, and the Copyright Board.

For an accessible introduction to copyright and education in Canada, see the following:

Murray, Laura J., and Samuel E. Trosow. *Canadian Copyright: A Citizen's Guide*. Second Edition. Toronto: Between the Lines, 2013. Print.

Dryden, Jean E. *Demystifying Copyright: A Researcher's Guide to Copyright in Canadian Libraries and Archives*. Ottawa: Canadian Library Association, 2014. Print.

## THE COPYRIGHT MODERNIZATION ACT

The *Copyright Modernization Act* of 2012, or Bill C-11, includes the most significant Canadian legislative reforms to copyright and education in decades. Most notable are the expansion of fair dealing purposes to include parody, satire, and education, the inclusion of educational internet use exceptions, and provisions for user-generated content.

To learn more about the *Copyright Modernization Act* and its educational exceptions to copyright, see the following:

Trosow, Samuel E. "Bill C-32 and the Educational Sector: Overcoming Impediments to Fair Dealing." *From "Radical Extremism" to "Balanced Copyright": Canadian Copyright and the Digital Agenda*. Ed. Michael Geist. Toronto: Irwin Law Inc., 2010. 541-568. Creative Commons BY-NC-ND.

<http://www.irwinlaw.com/sites/default/files/attached/CCDA%2018%20Trosow.pdf>

## COPYRIGHT CASE LAW

In addition to the *Copyright Modernization Act*, court decisions in copyright cases form an important backdrop for interpreting Canadian copyright legislation. The recent Supreme Court of Canada rulings in the following five cases have provided important precedents for copyright practices in education:

- [CCH Canada Limited v. Law Society of Upper Canada, \[2004\] 1 SCR 339,](#)
- [Alberta \(Education\) v. Canadian Copyright Agency \(Access Copyright\), \[2012\] SCC 37,](#)

- [Rogers Communications Inc. v. Society of Composers, Authors and Music Publishers of Canada, 2012 SCC 35,](#)
- [Re:Sound v. Motion Picture Theatre Associations of Canada, 2012 SCC 38,](#)
- [Society of Composers, Authors and Music Publishers of Canada v. Bell Canada, 2012 SCC 36.](#)

The cases elaborate on factors that affect fairness in fair dealing analysis, the scope and meaning of “research” in the context of fair dealing, and many other issues important to copyright and education.

For a detailed overview of the Supreme Court rulings in these five copyright cases, see:

Wilkinson, Margaret Ann. “The Context of the Supreme Court’s Copyright Cases.” *The Copyright Pentology: How the Supreme Court of Canada Shook the Foundations of Canadian Copyright Law*. Ed. Michael Geist. University of Ottawa Press Open Access Publications, 2013. Web. Oct. 2, 2014. <http://www.ruor.uottawa.ca/handle/10393/24103>

### **COPYRIGHT COLLECTIVE SOCIETIES**

**Copyright collectives** represent a variety of producers and rights holders of copyrighted works, across different media, and seek compensation for use of their works. Changes in copyright legislation, since the late 1980s, have encouraged the growth of copyright collectives.<sup>1</sup> Examples of copyright collectives include Access Copyright, AVLA, CARCC, AFC, SOCAN, Criterion Pictures, but there are many more; see the [complete list](#) provided the Copyright Board of Canada. By acting on behalf of copyright owners, copyright collectives represent the authors’ rights to the consumers who use their media products.<sup>2</sup> Section 3 of the [Canadian Copyright Act](#) outlines the authors’ rights protected by copyright law including performance, exhibition, reproduction, adaptation, translation, and conversion across media.

The reproduction of copyrighted works at educational institutions is often made possible via licence agreements with copyright collectives, agreements with individual rights holders, and the application of [fair dealing](#) and other [educational exceptions](#) in the *Canadian Copyright Act*.

**Access Copyright** is one among many of such collectives seeking royalties and tariffs from users of copyrighted works, but this collective is specifically focused on uses of literary works in secondary and post-secondary educational institutions. A debate between Howard Knopf and Roanie Levy, recorded at the *Copyright and the Modern Academic: Congress 2014 Debate Series*, entitled “Debating Access Copyright: Friend or foe?,” attests to the long-standing tension

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<sup>1</sup> Wilkinson, “Copyright, Collectives, and Contracts: New Math for Educational Institutions and Libraries,” 508.

<sup>2</sup> Murray and Trosow, *Canadian Copyright: A Citizen’s Guide*, 87.

between Access Copyright and the proponents of a robust application of fair dealing and educational exceptions to copyright.

To learn more about copyright collective societies, see the following:

Hayes, Mark, Kathleen Simmons and Gabriel van Loon. "The Perils of Collective Administration – Finding a Better Way Forward in the Digital Economy." *The Copyright Board of Canada: Bridging Law and Economics for Twenty Years*. Canadian Literary and Artistic Association. Cowansville, Québec: Éditions Y. Blais, 2011. 167-180. Print.

Sinacore-Guinn, D. *Collective Administration of Copyright and Neighbourings Rights*. Boston: Little, Brown, 1993. Print.

Wilkinson, Margaret Ann. "Copyright, Collectives, and Contracts: New Math for Educational Institutions and Libraries." *From "Radical Extremism" to "Balanced Copyright": Canadian Copyright and the Digital Agenda*. Ed. Michael Geist. Toronto: Irwin Law Inc., 2010. 503-540. Creative Commons BY-NC-ND.  
<http://www.irwinlaw.com/sites/default/files/attached/CCDA%2017%20Wilkinson.pdf>

### **THE COPYRIGHT BOARD**

The Copyright Board is an administrative tribunal set up by the Canadian government to act as an arbiter between the consumers of copyrighted works and the copyright collectives. The mandate of the Copyright Board is to balance the rights and interests of consumers and creators. The Copyright Board certifies tariffs or blanket licences that must be paid by individual users and/or institutions to copyright collectives for different uses of copyrighted works.

To view the Copyright Board's latest interpretation of fair dealing, see the May 22<sup>nd</sup> 2015 decision regarding the tariff for copying by employees of provincial governments  
<http://www.cb-cda.gc.ca/decisions/2015/DEC-2015-03-22.pdf>, pages 52 to 101.

To learn more about the recent history of Copyright Board tariffs in the education sector, see the following:

Canadian Literary and Artistic Association and International Literary and Artistic Association.  
*The Copyright Board of Canada: Bridging Law and Economics for Twenty Years*.  
Cowansville, Québec: Éditions Y. Blais, 2011.

Copyright Board of Canada website: <http://www.cb-cda.gc.ca/home-accueil-e.html>

Gervais, Daniel J. "A Uniquely Canadian Institution: The Copyright Board of Canada." *An Emerging Intellectual Property Paradigm: Perspectives from Canada*. Eds. Ysolde Gendreau and E. Elgar. Vanderbilt Public Law Research Paper No. 09-02. January 31, 2009. Web. Nov. 3, 2014. [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1335948](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1335948)

Knopf, Howard. "The Access Copyright Post-Secondary Hearing – the Narrowing Space Twixt the Rock and Hard Place." *Excess Copyright*. Oct. 16, 2014. Web. Nov. 3, 2014.

<http://excesscopyright.blogspot.ca/2014/10/the-access-copyright-post-secondary.html>

Reynolds, Graham. "Of Reasonableness, Fairness and the Public Interest: Judicial Review of Copyright Board Decisions in Canada's Copyright Pentalogy." *The Copyright Pentalogy: How the Supreme Court of Canada Shook the Foundations of Canadian Copyright Law*. Ed. Michael Geist. University of Ottawa Press Open Access Publications, 2013. Web. Oct. 2, 2014. <http://www.ruor.uottawa.ca/handle/10393/24103>