

COPYRIGHTS

in the CEGEP environment

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on April 11, 2014*

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THE « ACTORS » INVOLVED

- THE AUTHOR
- THE COPYRIGHT HOLDER
- THE EDUCATIONAL INSTITUTION
- THE TEACHER
- THE STUDENT
- THE COLLECTIVE SOCIETIES/AGENCIES IN COPYRIGHT LICENSING (COPIBEC, SOPROQ...)



FOCUS OF THIS WORKSHOP

⇒ THE EDUCATIONAL INSTITUTION

AGENDA OF THE WORKSHOP

PART A (The basics):

- **Brief history review**
- **What is required to obtain copyright protection?**
- **What is eligible to copyright protection?**
- **What are the copyrights?**
- **What are the moral rights?**
- **Who owns copyright?**
- **What is the duration of a copyright?**

PART B:

- **The Hyperlinks in the Internet**
- **2012: major modifications of the Act for educational institutions**

PART C (Fair dealing exceptions):

- **Fair dealing (before November 2012)**
- **Fair dealing (after November 2012)**

PART D (*Exceptions only available for educational institution*):

- **What is an educational institution?**
- **Work for display, test or examination**
- **Work for public performances**
- **Copy of news or commentary program via telecommunication**
- **Copying work via broadcast**
- **Lesson by telecommunication**
- **Digital reproduction of works**
- **Photocopying work**
- **Work available through Internet**
- **Limited liability**
- **No motive of gain**



BRIEF HISTORY REVIEW

- The first Canadian Copyright Act was promulgated in 1921
- Numerous modifications: 1988, 1994, 1996, 1997, 2002, 2005, 2007
- Recent **major** modifications: 2012

What is required to obtain copyright protection ?

- The work must be fixe
- and
- The work must be original

What is required to obtain copyright?

- *The work must be fixe* -

(Par.8) Copyright law in Canada protects a wide range of works including every original literary, dramatic, musical and artistic work, computer programs, translations and compilations of works ...Copyright law protects the expression of ideas in these works; it does not protect ideas in and of themselves. Thorson P. explained it thus in *Moreau v. St. Vincent*, [1950] Ex. C.R. 198, at p. 203:

It is, I think, an elementary principle of copyright law that an author has no copyright in ideas but only in his expression of them. The law of copyright does not give him any monopoly in the use of the ideas with which he deals or any property in them, even if they are original. His copyright is confined to the literary work in which he has expressed them. The ideas are public property, the literary work is his own.

It flows from the fact that copyright only protects the expression of ideas that a work must also be in a fixed material form to attract copyright protection...

Chief Justice McLachlin in *CCH Canadian Ltd. v. Law Society of Upper Canada*, 2004, SCC 13, (2004) 1 SCR 339

What is required to obtain copyright?

- *The work must also be original* -

(Par.16) For a work to be “original” within the meaning of the *Copyright Act*, it must be more than a mere copy of another work. At the same time, it need not be creative, in the sense of being novel or unique. What is required to attract copyright protection in the expression of an idea is an exercise of skill and judgment. By skill, I mean the use of one’s knowledge, developed aptitude or practised ability in producing the work. By judgment, I mean the use of one’s capacity for discernment or ability to form an opinion or evaluation by comparing different possible options in producing the work. This exercise of skill and judgment will necessarily involve intellectual effort. The exercise of skill and judgment required to produce the work must not be so trivial that it could be characterized as a purely mechanical exercise.

Chief Justice McLachlin in *CCH Canadian Ltd. v. Law Society of Upper Canada*, 2004, SCC 13, (2004) 1 SCR 339



WHAT IS ELIGIBLE TO COPYRIGHT PROTECTION?

FOUR CATEGORIES:

- ARTISTIC WORK
- DRAMATIC WORK
- MUSICAL WORK
- LITERARY WORK

WHAT IS ELIGIBLE TO COPYRIGHT PROTECTION? - *ARTISTIC WORK* -

Section 2 of the Act:

"*artistic work*" includes paintings, drawings, maps, charts, plans, photographs, engravings, sculptures, works of artistic craftsmanship, architectural works, and compilations of artistic works;

- "*engravings*" includes etchings, lithographs, woodcuts, prints and other similar works, not being photographs;
- "*photograph*" includes photo-lithograph and any work expressed by any process analogous to photography;
- "*sculpture*" includes a cast or model;

WHAT IS ELIGIBLE TO COPYRIGHT PROTECTION?

- *DRAMATIC WORK* -

Section 2 of the Act:

"*dramatic work*" includes

- (a) any piece for recitation, choreographic work or mime, the scenic arrangement or acting form of which is fixed in writing or otherwise,
- (b) any cinematographic work, and
- (c) any compilation of dramatic works;

- "*lecture*" includes address, speech and sermon;
- "*choreographic work*" includes any work of choreography, whether or not it has any story line;
- "*cinematographic work*" includes any work expressed by any process analogous to cinematography, whether or not accompanied by a soundtrack;

WHAT IS ELIGIBLE TO COPYRIGHT PROTECTION? - *MUSICAL WORK* -

Section 2 of the Act:

"musical work" means any work of music or musical composition, with or without words, and includes any compilation thereof;

WHAT IS ELIGIBLE TO COPYRIGHT PROTECTION?

- LITERARY WORK -

Section 2 of the Act:

"*literary work*" includes tables, computer programs, and compilations of literary works;

- "*computer program*" means a set of instructions or statements, expressed, fixed, embodied or stored in any manner, that is to be used directly or indirectly in a computer in order to bring about a specific result;
- "*book*" means a volume or a part or division of a volume, in printed form, but does not include
 - (a) a pamphlet,
 - (b) a newspaper, review, magazine or other periodical,
 - (c) a map, chart, plan or sheet music where the map, chart, plan or sheet music is separately published, and
 - (d) an instruction or repair manual that accompanies a product or that is supplied as an accessory to a service;
- "*collective work*" means
 - (a) an encyclopaedia, dictionary, year book or similar work,
 - (b) a newspaper, review, magazine or similar periodical, and
 - (c) any work written in distinct parts by different authors, or in which works or parts of works of different authors are incorporated;

WHAT ARE THE COPYRIGHTS?

Section 3.(1) of the Act:

For the purposes of this Act, "*copyright*", in relation to a work, mean the sole right to produce or reproduce the work or any substantial part thereof in any material form whatever, to perform the work or any substantial part thereof in public or, if the work is unpublished, to publish the work or any substantial part thereof, and includes the sole right

- (a) to produce, reproduce, perform or publish any translation of the work,
- (b) in the case of a dramatic work, to convert it into a novel or other non-dramatic work,
- (c) in the case of a novel or other non-dramatic work, or of an artistic work, to convert it into a dramatic work, by way of performance in public or otherwise,
- (d) in the case of a literary, dramatic or musical work, to make any sound recording, cinematograph film or other contrivance by means of which the work may be mechanically reproduced or performed,

next page ⇒

WHAT ARE THE COPYRIGHTS? (continued)

- (e) in the case of any literary, dramatic, musical or artistic work, to reproduce, adapt and publicly present the work as a cinematographic work,
- (f) in the case of any literary, dramatic, musical or artistic work, to communicate the work to the public by telecommunication,
- (g) to present at a public exhibition, for a purpose other than sale or hire, an artistic work created after June 7, 1988, other than a map, chart or plan,
- (h) in the case of a computer program that can be reproduced in the ordinary course of its use, other than by a reproduction during its execution in conjunction with a machine, device or computer, to rent out the computer program,
- (i) in the case of a musical work, to rent out a sound recording in which the work is embodied, and
- (j) in the case of a work that is in the form of a tangible object, to sell or otherwise transfer ownership of the tangible object, as long as that ownership has never previously been transferred in or outside Canada with the authorization of the copyright owner,

and to authorize any such acts.

WHAT ARE THE MORAL RIGHTS?

Section 14.1 (1)

The author of a work has, subject to [section 28.2](#), the right to the integrity of the work and, in connection with an act mentioned in [section 3](#), the right, where reasonable in the circumstances, to be associated with the work as its author by name or under a pseudonym and the right to remain anonymous.

Who owns copyright?

Section 13.(1) Subject to this Act, the author of a work shall be the first owner of the copyright therein.

Work made in the course of employment

Section 13.(3) Where the author of a work was in the employment of some other person under a contract of service or apprenticeship and the work was made in the course of his employment by that person, the person by whom the author was employed shall, in the absence of any agreement to the contrary, be the first owner of the copyright, but where the work is an article or other contribution to a newspaper, magazine or similar periodical, there shall, in the absence of any agreement to the contrary, be deemed to be reserved to the author a right to restrain the publication of the work, otherwise than as part of a newspaper, magazine or similar periodical.

- *Corp. de l'École des hautes études commerciales de Montréal c. 3178277 Canada Inc.*, J.E. 98-1680
- *Syndicat des chargées et chargés de cours de l'Université Laval (FNEEQ-CSN) c. Université Laval*, D.T.E. 2012T-210

next page ⇒

WHO OWNS COPYRIGHT? (continued)

Assignments and licences

Section 13.(4) The owner of the copyright in any work may assign the right, either wholly or partially, and either generally or subject to limitations relating to territory, medium or sector of the market or other limitations relating to the scope of the assignment, and either for the whole term of the copyright or for any other part thereof, and may grant any interest in the right by licence, but no assignment or grant is valid unless it is in writing signed by the owner of the right in respect of which the assignment or grant is made, or by the owner's duly authorized agent.

WHAT IS THE DURATION OF A COPYRIGHT?

Section 6.

The term for which copyright shall subsist shall, except as otherwise expressly provided by this Act, be the life of the author, the remainder of the calendar year in which the author dies, and a period of fifty years following the end of that calendar year.

The hyperlinks in the Internet

Crookes v. Newton, 2011 SCC 47, (2011) 3 SCR 269

[Par.27] ...Hyperlinks may be inserted with or without the knowledge of the operator of the site containing the secondary article. Because the content of the secondary article is often produced by someone other than the person who inserted the hyperlink in the primary article, the content on the other end of the link can be changed at any time by whoever controls the secondary page. Although the primary author controls whether there is a hyperlink and what article that word or phrase is linked to, inserting a hyperlink gives the primary author no control over the content in the secondary article to which he or she has linked.

[Par.30] Hyperlinks thus share the same relationship with the content to which they refer as do references. Both communicate that something exists, but do not, by themselves, communicate its content. And they both require some act on the part of a third party before he or she gains access to the content. The fact that access to that content is far easier with hyperlinks than with footnotes does not change the reality that a hyperlink, by itself, is content-neutral — it expresses no opinion, nor does it have any control over, the content to which it refers.

[Par.34] The Internet's capacity to disseminate information has been described by this Court as "one of the great innovations of the information age" whose "use should be facilitated rather than discouraged". Hyperlinks, in particular, are an indispensable part of its operation.

"Hyperlinks are the synapses connecting different parts of the world wide web. Without hyperlinks, the web would be like a library without a catalogue: full of information, but with no sure means of finding it."

[Par.36] The Internet cannot, in short, provide access to information without hyperlinks. Limiting their usefulness by subjecting them to the traditional publication rule would have the effect of seriously restricting the flow of information and, as a result, freedom of expression.

Judge Abella

Our underline

2012: Major modifications of the Copyright Act for the educational institution

- On June 29th, 2012, Bill C-11 (Copyright Modernization Act) was enacted by the Federal Government and came in full force (with some exceptions) on November 7th, 2012;
- Major modifications of the Copyright Act concerns educational institutions.

2012: Major modifications of the Copyright Act for the educational institution

PRESS RELEASE

Ottawa, June 29, 2012—Today, the Honourable Christian Paradis, Minister of Industry, and the Honourable James Moore, Minister of Canadian Heritage and Official Languages, announced that new legislation designed to modernize Canada's copyright laws has received Royal Assent.

"Our Government recognizes the critical role that modern copyright laws play in protecting and creating jobs in Canada's digital economy," said Minister Paradis. "We have delivered on our commitment to modernize Canada's copyright legislation and strike the right balance between the needs of creators and users"

(...)

Extracted from the web site of Industry Canada

2012: Major modifications of the Copyright Act for the educational institution

What the *Copyright Modernization Act* Means for Teachers and Students

(...)

The proposed Bill builds on the existing *Copyright Act* to grant a larger range of uses for copyrighted material by teachers, students and schools, as their pursuits promote the broader public good. In light of this contribution, the *Copyright Act* already recognizes certain uses by educational institutions that are permitted, in many cases, without payment to the copyright holder.

An important aspect of these changes is the addition of education as a purpose under Canada's fair dealing provisions. Fair dealing is not a blank cheque. It is a long standing feature of our copyright laws that permits individuals and businesses to make certain uses of copyright material in ways that do not unduly threaten the interests of copyright owners, but which could have significant social benefits — but only if they are fair. Extending this provision to education will reduce administrative and financial costs for users of copyrighted materials that enrich the educational environment.

The *Copyright Act* must adapt to new and emerging technologies. These changes will enhance the traditional classroom experience and facilitate new models for education outside of the physical classroom, reflecting an innovative Canadian approach to copyright in the digital age. The Bill reinforces and complements the Government of Canada's significant investments in Internet infrastructure, education and skills development.

As with all exceptions in the Bill, these activities are subject to clear common-sense rules to respect the interests of right holders, such as limitations on how long digital copies can be kept. These kinds of safeguards are an essential part of the balance between enabling uses and respecting the legitimate interests of copyright owners, and to maintain conformity with Canada's international obligations.

Extracted from: <http://balancedcopyright.gc.ca/eic/site/crp-prda.nsf/eng/rp01185.html>

Our underline

What is fair dealing?

(Par.52) The Copyright Act does not define what will be “fair”; whether something is fair is a question of fact and depends on the facts of each case. Lord Denning explained this eloquently in *Hubbard v. Vosper*, [1972] 1 All E.R. 1023 (C.A.), at p. 1027:

“It is impossible to define what is ‘fair dealing’. It must be a question of degree. You must consider first the number and extent of the quotations and extracts. Are they altogether too many and too long to be fair? Then you must consider the use made of them. If they are used as a basis for comment, criticism or review, that may be a fair dealing. If they are used to convey the same information as the author, for a rival purpose, that may be unfair. Next, you must consider the proportions. To take long extracts and attach short comments may be unfair. But, short extracts and long comments may be fair. Other considerations may come to mind also. But, after all is said and done, it must be a matter of impression. As with fair comment in the law of libel, so with fair dealing in the law of copyright. The tribunal of fact must decide.”

Chief Justice McLachlin in CCH Canadian Ltd. v. Law Society of Upper Canada, 2004, SCC 13, (2004) 1 SCR 339

What is fair dealing?

The Supreme Court of Canada in *CCH Canadian Ltd v. Law Society of Upper Canada*, 2004 SCC 13, (2004) 1SCR 339, outlined 6 factors to be considered in assessing if the dealing involved was fair. They are:

1. The purpose of the dealing
2. The character of the dealing
3. The amount of the dealing
4. Alternatives to the dealing
5. The nature of the work
6. The effect of the dealing on the work.

Fair dealing

(before November 7th 2012)

Section 29. Fair dealing for the purpose of research or private study does not infringe copyright.

Section 29.1 Fair dealing for the purpose of criticism or review does not infringe copyright if the following are mentioned:

- (a) the source; and
- (b) if given in the source, the name of the
 - (i) author, in the case of a work,
 - (ii) performer, in the case of a performer's performance,
 - (iii) maker, in the case of a sound recording, or
 - (iv) broadcaster, in the case of a communication signal.

Fair dealing

(before November 7th 2012)

Interpretation and application by the Supreme Court in the CCH case concerning fair dealing:

(Par.48) The fair dealing exception, like other exceptions in the [Copyright Act](#), is a user's right. In order to maintain the proper balance between the rights of a copyright owner and users' interests, it must not be interpreted restrictively.

(Par.49) As an integral part of the scheme of copyright law, the [s. 29](#) fair dealing exception is always available. Simply put, a library can always attempt to prove that its dealings with a copyrighted work are fair under [s. 29](#) of the [Copyright Act](#). It is only if a library were unable to make out the fair dealing exception under [s. 29](#) that it would need to turn to [s. 30.2](#) of the [Copyright Act](#) to prove that it qualified for the library exemption.

(Par.50) In order to show that a dealing was fair under [s. 29](#) of the [Copyright Act](#), a defendant must prove: (1) that the dealing was for the purpose of either research or private study and (2) that it was fair.

(Par.51) "Research" must be given a large and liberal interpretation in order to ensure that users' rights are not unduly constrained.

next page ⇒

Fair dealing (continued)

(before November 7th 2012)

Interpretation and application by the Supreme Court in the CCH case concerning fair dealing:

(Par.70) The availability of a licence is not relevant to deciding whether a dealing has been fair. As discussed, fair dealing is an integral part of the scheme of copyright law in Canada. Any act falling within the fair dealing exception will not infringe copyright. If a copyright owner were allowed to license people to use its work and then point to a person's decision not to obtain a licence as proof that his or her dealings were not fair, this would extend the scope of the owner's monopoly over the use of his or her work in a manner that would not be consistent with the Copyright Act's balance between owner's rights and user's interests.

Fair dealing

(before November 7th 2012)

Interpretation and application by the Supreme Court case in Alberta (Education) v. Canadian Copyright Licensing Agency (Access Copyright), 2012 SCC 37, [2012] 2 SCR 345, concerning fair dealing:

(Par.23) Teachers have no ulterior motive when providing copies to students. Nor can teachers be characterized as having the completely separate purpose of “instruction”; they are there to facilitate the students’ research and private study. It seems to me to be axiomatic that most students lack the expertise to find or request the materials required for their own research and private study, and rely on the guidance of their teachers. They study what they are told to study, and the teacher’s purpose in providing copies is to enable the students to have the material they need for the purpose of studying. The teacher/copier therefore shares a symbiotic purpose with the student/user who is engaging in research or private study. Instruction and research/private study are, in the school context, tautological.

(Par.25) Similarly, photocopies made by a teacher and provided to primary and secondary school students are an essential element in the research and private study undertaken by those students. The fact that some copies were provided on request and others were not, did not change the significance of those copies for students engaged in research and private study.

next page ⇒

Fair dealing (continued) (before November 7th 2012)

(Par.27) With respect, the word “private” in “private study” should not be understood as requiring users to view copyrighted works in splendid isolation. Studying and learning are essentially personal endeavours, whether they are engaged in with others or in solitude.

(Par.29) ...teachers do not make multiple copies of the class set for their own use, they make them for the use of the *students*. Moreover, (...) the “amount” factor is not a quantitative assessment based on aggregate use, it is an examination of the proportion between the excerpted copy and the entire work, not the overall quantity of what is disseminated.

Fair dealing

(after November 7th 2012)

NEW

Section 29. Fair dealing for the purpose of research, private study, education, parody or satire does not infringe copyright.

NO CHANGE FOR 29.1

Section 29.1 Fair dealing for the purpose of criticism or review does not infringe copyright if the following are mentioned:

- (a) the source; and
- (b) if given in the source, the name of the
 - (i) author, in the case of a work,
 - (ii) performer, in the case of a performer's performance,
 - (iii) maker, in the case of a sound recording, or
 - (iv) broadcaster, in the case of a communication signal.

What is an educational institution?

Section 2 :

"educational institution" means

- (a) a non-profit institution licensed or recognized by or under an Act of Parliament or the legislature of a province to provide pre-school, elementary, secondary or post-secondary education,
- (b) a non-profit institution that is directed or controlled by a board of education regulated by or under an Act of the legislature of a province and that provides continuing, professional or vocational education or training,
- (c) a department or agency of any order of government, or any non-profit body, that controls or supervises education or training referred to in paragraph (a) or (b), or
- (d) any other non-profit institution prescribed by regulation;

"premises" means, in relation to an educational institution, a place where education or training referred to in the definition "educational institution" is provided, controlled or supervised by the educational institution;

EXCEPTION FOR EDUCATIONAL INSTITUTIONS

Section 29.4 - WORK FOR DISPLAY, TEST OR EXAMINATION

Section 29.4 (1) It is not an infringement of copyright for an educational institution or a person acting under its authority for the purposes of education or training on its premises to reproduce a work, or do any other necessary act, in order to display it.

- (2) It is not an infringement of copyright for an educational institution or a person acting under its authority to
- (a) reproduce, translate or perform in public on the premises of the educational institution, or
 - (b) communicate by telecommunication to the public situated on the premises of the educational institution
- a work or other subject-matter as required for a test or examination.

CONDITION

- (3) Except in the case of manual reproduction, the exemption from copyright infringement provided by subsections (1) and (2) does not apply if the work or other subject-matter is commercially available, within the meaning of paragraph (a) of the definition "*commercially available*" in [section 2](#), in a medium that is appropriate for the purposes referred to in those subsections.

Section 2 "*commercially available*" means, in relation to a work or other subject-matter,

- (a) available on the Canadian market within a reasonable time and for a reasonable price and may be located with reasonable effort, or (...)

EXCEPTION FOR EDUCATIONAL INSTITUTIONS

Section 29.5 - WORK OF PERFORMANCE IN PUBLIC

Section 29.5 : It is not an infringement of copyright for an educational institution or a person acting under its authority to do the following acts if they are done on the premises of an educational institution for educational or training purposes and not for profit, before an audience consisting primarily of students of the educational institution, instructors acting under the authority of the educational institution or any person who is directly responsible for setting a curriculum for the educational institution:

(a) the live performance in public, primarily by students of the educational institution, of a work;

(b) the performance in public of a sound recording, or of a work or performer's performance that is embodied in a sound recording, as long as the sound recording is not an infringing copy or the person responsible for the performance has no reasonable grounds to believe that it is an infringing copy;

(c) the performance in public of a work or other subject-matter at the time of its communication to the public by telecommunication; and

(d) the performance in public of a cinematographic work, as long as the work is not an infringing copy or the person responsible for the performance has no reasonable grounds to believe that it is an infringing copy.

CONDITION

Section 29.8 : The exceptions to infringement of copyright provided for under [sections 29.5](#) to [29.7](#) do not apply where the communication to the public by telecommunication was received by unlawful means.

EXCEPTION FOR EDUCATIONAL INSTITUTIONS

Section 29.6 – COPYING NEWS OR COMMENTARY PROGRAM VIA TELECOMMUNICATION

Section 29.6 (1) It is not an infringement of copyright for an educational institution or a person acting under its authority to

- (a) make, at the time of its communication to the public by telecommunication, a single copy of a news program or a news commentary program, excluding documentaries, for the purposes of performing the copy for the students of the educational institution for educational or training purposes; and
- (b) perform the copy in public before an audience consisting primarily of students of the educational institution on its premises for educational or training purposes.

CONDITION

Section 29.8 The exceptions to infringement of copyright provided for under [sections 29.5](#) to [29.7](#) do not apply where the communication to the public by telecommunication was received by unlawful means.

EXCEPTION FOR EDUCATIONAL INSTITUTIONS

Section 29.7 – COPYING WORK VIA TELECOMMUNICATION

Section 29.7 (1) Subject to subsection (2) and [section 29.9](#), it is not an infringement of copyright for an educational institution or a person acting under its authority to

- (a) make a single copy of a work or other subject-matter at the time that it is communicated to the public by telecommunication; and
- (b) keep the copy for up to thirty days to decide whether to perform the copy for educational or training purposes.

(2) An educational institution that has not destroyed the copy by the expiration of the thirty days infringes copyright in the work or other subject-matter unless it pays any royalties, and complies with any terms and conditions, fixed under this Act for the making of the copy.

(3) It is not an infringement of copyright for the educational institution or a person acting under its authority to perform the copy in public for educational or training purposes on the premises of the educational institution before an audience consisting primarily of students of the educational institution if the educational institution pays the royalties and complies with any terms and conditions fixed under this Act for the performance in public.

CONDITIONS

Section 29.8 The exceptions to infringement of copyright provided for under [sections 29.5](#) to [29.7](#) do not apply where the communication to the public by telecommunication was received by unlawful means.

Section 29.9 (1) Where an educational institution or person acting under its authority

- (b) makes a copy of a work or other subject-matter communicated to the public by telecommunication and performs it pursuant to [section 29.7](#),

the educational institution shall keep a record of the information prescribed by regulation in relation to the making of the copy, the destruction of it or any performance in public of it for which royalties are payable under this Act and shall, in addition, mark the copy in the manner prescribed by regulation.

EXCEPTION FOR EDUCATIONAL INSTITUTIONS

Section 30.1 – LESSON BY TELECOMMUNICATION

DEFINITION

Section 30.01 (1) For the purposes of this section, "*lesson*" means a lesson, test or examination, or part of one, in which, or during the course of which, an act is done in respect of a work or other subject-matter by an educational institution or a person acting under its authority that would otherwise be an infringement of copyright but is permitted under a limitation or exception under this Act.

THE EXCEPTION

- (3) Subject to subsection (6), it is not an infringement of copyright for an educational institution or a person acting under its authority
- (a) to communicate a lesson to the public by telecommunication for educational or training purposes, if that public consists only of students who are enrolled in a course of which the lesson forms a part or of other persons acting under the authority of the educational institution;
 - (b) to make a fixation of the lesson for the purpose of the act referred to in paragraph(a); or
 - (c) to do any other act that is necessary for the purpose of the acts referred to in paragraphs (a) and (b).

next page ⇒

EXCEPTION FOR EDUCATIONAL INSTITUTIONS

Section 30.1 – LESSON BY TELECOMMUNICATION

CONDITIONS

- (6) The educational institution and any person acting under its authority, except a student, shall
 - (a) destroy any fixation of the lesson within 30 days after the day on which the students who are enrolled in the course to which the lesson relates have received their final course evaluations;
 - (b) take measures that can reasonably be expected to limit the communication by telecommunication of the lesson to the persons referred to in paragraph (3)(a);
 - (c) take, in relation to the communication by telecommunication of the lesson in digital form, measures that can reasonably be expected to prevent the students from fixing, reproducing or communicating the lesson other than as they may do under this section; and
 - (d) take, in relation to a communication by telecommunication in digital form, any measure prescribed by regulation.

THE STUDENT

- (4) A student who is enrolled in a course of which the lesson forms a part is deemed to be a person on the premises of the educational institution when the student participates in or receives the lesson by means of communication by telecommunication under paragraph (3)(a).
- (5) It is not an infringement of copyright for a student who has received a lesson by means of communication by telecommunication under paragraph (3)(a) to reproduce the lesson in order to be able to listen to or view it at a more convenient time. However, the student shall destroy the reproduction within 30 days after the day on which the students who are enrolled in the course to which the lesson relates have received their final course evaluations.

EXCEPTION FOR EDUCATIONAL INSTITUTIONS

Section 30.02 – DIGITAL REPRODUCTION OF WORKS

Section 30.02 (1) Subject to subsections (3) to (5), it is not an infringement of copyright for an educational institution that has a reprographic reproduction licence under which the institution is authorized to make reprographic reproductions of works in a collective society's repertoire for an educational or training purpose

- (a) to make a digital reproduction — of the same general nature and extent as the reprographic reproduction authorized under the licence — of a paper form of any of those works;
- (b) to communicate the digital reproduction by telecommunication for an educational or training purpose to persons acting under the authority of the institution; or
- (c) to do any other act that is necessary for the purpose of the acts referred to in paragraphs (a) and (b).

(2) Subject to subsections (3) to (5), it is not an infringement of copyright for a person acting under the authority of the educational institution to whom the work has been communicated under paragraph (1)(b) to print one copy of the work.

(3) An educational institution that makes a digital reproduction of a work under paragraph (1)(a) shall

- (a) pay to the collective society, with respect to all the persons to whom the digital reproduction is communicated by the institution under paragraph (1)(b), the royalties that would be payable if one reprographic reproduction were distributed by the institution to each of those persons, and comply with the licence terms and conditions applicable to a reprographic reproduction to the extent that they are reasonably applicable to a digital reproduction;
- (b) take measures to prevent the digital reproduction from being communicated by telecommunication to any persons who are not acting under the authority of the institution;
- (c) take measures to prevent a person to whom the work has been communicated under paragraph (1)(b) from printing more than one copy, and to prevent any other reproduction or communication of the digital reproduction;

(4) An educational institution may not make a digital reproduction of a work under paragraph (1)(a) if

- (a) the institution has entered into a digital reproduction agreement respecting the work with a collective society under which the institution may make a digital reproduction of the work, may communicate the digital reproduction by telecommunication to persons acting under the authority of the institution and may permit those persons to print at least one copy of the work;

EXCEPTION FOR EDUCATIONAL INSTITUTIONS

Section 30.03 – PHOTOCOPYING OF WORKS

Section 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.

CONDITIONS

- (2) Subsection (1) only applies if, in respect of a reprographic reproduction,
- (a) the educational institution, library, archive or museum has entered into an agreement with a collective society that is authorized by copyright owners to grant licences on their behalf;

PROTECTION OF LIBRARIES AS PART OF EDUCATIONAL INSTITUTIONS

Section 30.4 For greater certainty, the exceptions to infringement of copyright provided for under [sections 29.4 to 30.3](#) and [45](#) also apply in respect of a library, archive or museum that forms part of an educational institution.

EXCEPTION FOR EDUCATIONAL INSTITUTIONS

Section 30.03 – PHOTOCOPYING OF WORKS - (COPIBEC) -

From the COPIBEC licence:

3.6 En contrepartie du paiement des redevances prévues aux articles 8.1 et 8.2 de la convention, les Usagers sont autorisés à reproduire le moindre de vingt-cinq (25) pages ou de dix pour cent (10 %) du nombre de pages total de l'oeuvre pour un même groupe cours. Toutefois, les Usagers sont autorisés à reproduire, pour un même groupe cours, la totalité d'un chapitre, d'un conte, d'une courte nouvelle ou d'un poème compris dans un recueil ou la totalité d'un article d'une publication périodique, d'un journal ou d'une encyclopédie à la condition que la totalité ne représente pas plus du moindre de vingt-cinq (25) pages ou de dix pour cent (10 %) du nombre de pages total de la publication. Les Usagers peuvent aussi reproduire le texte d'une chanson tirée d'un livret accompagnant une oeuvre musicale.

1.1 « Groupe cours » : Locution désignant un nombre déterminé d'étudiants inscrits à un cours qui porte généralement les caractéristiques suivantes : un sigle, un numéro, un titre, un descriptif;

EXCEPTION FOR EDUCATIONAL INSTITUTIONS

Section 30.03 – PHOTOCOPYING OF WORKS

- The Notice -

Exceptions for Educational Institutions, Libraries, Archives and Museums Regulations, SOR/99-325

- 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 that contains at least the following information 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:

“WARNING!

Works protected by copyright may be copied on this photocopier only if authorized by

- (a) the [Copyright Act](#) for the purpose of fair dealing or under specific exceptions set out in that Act;
- (b) the copyright owner; or
- (c) a licence agreement between this institution and a collective society or a tariff, if any.

For details of authorized copying, please consult the licence agreement or the applicable tariff, if any, and other relevant information available from a staff member.

The [Copyright Act](#) provides for civil and criminal remedies for infringement of copyright.”

EXCEPTION FOR EDUCATIONAL INSTITUTIONS

Section 30.04 – WORK AVAILABLE THROUGH INTERNET

Section 30.04 (1) Subject to subsections (2) to (5), it is not an infringement of copyright for an educational institution, or a person acting under the authority of one, to do any of the following acts for educational or training purposes in respect of a work or other subject-matter that is available through the Internet:

- (a) reproduce it;
- (b) communicate it to the public by telecommunication, if that public primarily consists of students of the educational institution or other persons acting under its authority;
- (c) perform it in public, if that public primarily consists of students of the educational institution or other persons acting under its authority; or
- (d) do any other act that is necessary for the purpose of the acts referred to in paragraphs (a) to (c).

next page ⇒

EXCEPTION FOR EDUCATIONAL INSTITUTIONS

Section 30.04 – WORK AVAILABLE THROUGH INTERNET

- CONDITIONS -

CONDITIONS

(2) Subsection (1) does not apply unless the educational institution or person acting under its authority, in doing any of the acts described in that subsection in respect of the work or other subject-matter, mentions the following:

(a) the source; and

(b) if given in the source, the name of

(i) the author, in the case of a work,

(ii) the performer, in the case of a performer's performance,

(iii) the maker, in the case of a sound recording, and

(iv) the broadcaster, in the case of a communication signal.

next page ⇒

EXCEPTION FOR EDUCATIONAL INSTITUTIONS

Section 30.04 – WORK AVAILABLE THROUGH INTERNET

- EXCLUSIONS -

EXCLUSIONS

- (3) Subsection (1) does not apply if the work or other subject-matter — or the Internet site where it is posted — is protected by a technological protection measure that restricts access to the work or other subject-matter or to the Internet site.
- (4) Subsection (1) does not permit a person to do any act described in that subsection in respect of a work or other subject-matter if
- (a) that work or other subject-matter — or the Internet site where it is posted — is protected by a technological protection measure that restricts the doing of that act; or
 - (b) a clearly visible notice — and not merely the copyright symbol — prohibiting that act is posted at the Internet site where the work or other subject-matter is posted or on the work or other subject-matter itself.
- (5) Subsection (1) does not apply if the educational institution or person acting under its authority knows or should have known that the work or other subject-matter was made available through the Internet without the consent of the copyright owner.

EXCEPTION FOR EDUCATIONAL INSTITUTIONS - LIMITED LIABILITY -

Section 30.02 (7) In proceedings against an educational institution for making a digital reproduction of a paper form of a work, or for communicating such a reproduction by telecommunication for an educational or training purpose to persons acting under the authority of the institution, the owner of the copyright in the work may not recover an amount more than

(a) in the case where there is a digital reproduction licence that meets the conditions described in paragraph (4)(a) in respect of the work — or, if none exists in respect of the work, in respect of a work of the same category — the amount of royalties that would be payable under that licence in respect of those acts or, if there is more than one applicable licence, the greatest amount of royalties payable under any of those licences; and

(b) in the case where there is no licence described in paragraph (a) but there is a reprographic reproduction licence in respect of the work — or, if none exists in respect of the work, in respect of a work of the same category — the amount of royalties that would be payable under that licence in respect of those acts or, if there is more than one applicable licence, the greatest amount of royalties payable under any of those licences.

(8) The owner of the copyright in a work may not recover any damages against a person acting under the authority of the educational institution who, in respect of a digital reproduction of the work that is communicated to the person by telecommunication, prints one copy of the work if, at the time of the printing, it was reasonable for the person to believe that the communication was made in accordance with paragraph (1)(b).

EXCEPTION FOR EDUCATIONAL INSTITUTIONS - LIMITED LIABILITY -

Section 32.2 (3) No religious organization or institution, educational institution and no charitable or fraternal organization shall be held liable to pay any compensation for doing any of the following acts in furtherance of a religious, educational or charitable object:

- (a) the live performance in public of a musical work;
- (b) the performance in public of a sound recording embodying a musical work or a performer's performance of a musical work; or
- (c) the performance in public of a communication signal carrying
 - (i) the live performance in public of a musical work, or
 - (ii) a sound recording embodying a musical work or a performer's performance of a musical work.

next page ⇒

EXCEPTION FOR EDUCATIONAL INSTITUTIONS - LIMITED LIABILITY -

Section 38.1 (6) No statutory damages may be awarded against

- (a) an educational institution or a person acting under its authority that has committed an act referred to in [section 29.6](#) or [29.7](#) and has not paid any royalties or complied with any terms and conditions fixed under this Act in relation to the commission of the act;
- (b) an educational institution, library, archive or museum that is sued in the circumstances referred to in [section 38.2](#);
- (d) an educational institution that is sued in the circumstances referred to in [subsection 30.02\(7\)](#) or a person acting under its authority who is sued in the circumstances referred to in [subsection 30.02\(8\)](#).

next page ⇒

EXCEPTION FOR EDUCATIONAL INSTITUTIONS - LIMITED LIABILITY -

Section 38.2 (1) An owner of copyright in a work who has not authorized a collective society to authorize its reprographic reproduction may recover, in proceedings against an educational institution, library, archive or museum that has reproduced the work, a maximum amount equal to the amount of royalties that would have been payable to the society in respect of the reprographic reproduction, if it were authorized, either

- (a) under any agreement entered into with the collective society; or
- (b) under a tariff certified by the Board pursuant to [section 70.15](#).

(2) Where agreements respecting reprographic reproduction have been signed with more than one collective society or where more than one tariff applies or where both agreements and tariffs apply, the maximum amount that the copyright owner may recover is the largest amount of the royalties provided for in any of those agreements or tariffs.

CONDITIONS

(3) Subsections (1) and (2) apply only where

- (a) the collective society is entitled to authorize, or the tariff provides for the payment of royalties in respect of, the reprographic reproduction of that category of work; and
- (b) copying of that general nature and extent is covered by the agreement or tariff.

EXCEPTION FOR EDUCATIONAL INSTITUTIONS - *NO MOTIVE OF GAIN* -

Section 29.3 (1) No action referred to in [section 29.4](#), [29.5](#), [30.2](#) or [30.21](#) may be carried out with motive of gain.

(2) An educational institution, library, archive or museum, or person acting under its authority does not have a motive of gain where it or the person acting under its authority, does anything referred to in [section 29.4](#), [29.5](#), [30.2](#) or [30.21](#) and recovers no more than the costs, including overhead costs, associated with doing that act.

29.4 ⇒ Exception pertaining display, test and examination

29.5 ⇒ Exception pertaining work of performance in public

30.2 ⇒ Exception pertaining digital reproduction of work

30.21 ⇒ Not applicable to educational institution



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in the CEGEP environment

QUESTIONS ?