

Copyright Act

CHAPTER C-42

**As it would appear after amended by Bill C-61,
should that Bill pass and become law in the form it had on 2008-06-23.**

**This document is intended only as a convenience when analysing Bill C-61.
It was created by someone with no legal background and is by no means
guaranteed to be accurate or correct.**

This is version 1.00 of this document.

Compiler's Notes:

The person who compiled this document is Marcel "Felix" Giannelia of Victoria, BC, Canada. He can be reached at felix@skeena.net.

This document was compiled from the copied & pasted content of the current Copyright Act, found at the following address: <http://www.cb-cda.gc.ca/info/act-e.html> and Bill C-61, found at the following address: <http://www2.parl.gc.ca/HousePublications/Publication.aspx?Docid=3570473&file=4>.

The method used was to copy the Copyright Act into a new document in OpenOffice Writer, turn on change tracking (**Edit > Changes > Record**), and then sequentially apply the amendments listed in C-61, in order from top to bottom.

To switch between seeing the edits and seeing only the final version of the text (remember, this isn't law yet; it's just a bill...), select **Edit > Changes > Show** in OpenOffice (this functionality is not available in the PDF version). [Note: OpenOffice is freely available at <http://www.openoffice.org/>]

Extra Front Matter from C-61:

C-61

Second Session, Thirty-ninth Parliament,

56-57 Elizabeth II, 2007-2008

HOUSE OF COMMONS OF CANADA

BILL C-61

An Act to amend the Copyright Act

first reading, June 12, 2008

THE MINISTER OF INDUSTRY

90443

SUMMARY

This enactment amends the Copyright Act in order to

(a) update the rights and protections of copyright owners to better address the Internet, in line with international standards;

(b) clarify the liability of Internet service providers;

- (c) permit certain uses for educational and research purposes of Internet and other digital technologies to facilitate technology-enhanced learning, inter-library loans, the delivery of educational material and access to publicly available material on the Internet;
- (d) permit certain uses of copyright material for private purposes; and
- (e) amend provisions of the Act relating to photographs to give photographers the same rights as other creators.

Also available on the Parliament of Canada Web Site at the following address:

<http://www.parl.gc.ca>

2nd Session, 39th Parliament,

56-57 Elizabeth II, 2007-2008

house of commons of canada

BILL C-61

An Act to amend the Copyright Act

Whereas the Copyright Act is an important marketplace framework law and cultural policy instrument that, through clear, predictable and fair rules, supports creativity and innovation and affects many sectors of the knowledge economy;

Whereas advancements in and convergence of the information and communications technologies that link communities around the world present opportunities and challenges that are global in scope for the creation and use of copyright works or other subject-matter;

Whereas in the current digital era copyright protection is enhanced when countries adopt coordinated approaches, based on internationally recognized norms;

Whereas such norms are reflected in the World Intellectual Property Organization Copyright Treaty and the World Intellectual Property Organization Performances and Phonograms Treaty, adopted in Geneva in 1996;

Whereas such norms are not wholly reflected in the Copyright Act;

Whereas the exclusive rights in the Copyright Act provide rights holders with recognition, remuneration and the ability to assert their rights, and some limitations on these rights exist to further enhance users' access to copyright works or other subject-matter;

Whereas the Government of Canada is committed to enhancing the protection of copyright works or other subject-matter, including through the recognition of technological measures, in a manner that promotes culture and innovation, competition and investment in the Canadian economy;

And whereas Canada's ability to participate in a knowledge economy driven by innovation and network connectivity is fostered by encouraging the use of digital technologies for research and education;

Now, therefore, Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

Extra Tail Matter from C-61:

TRANSITIONAL PROVISIONS

I have inserted these in the following places:

Section 38 in C-61's numbering: immediately following section 10.

Section 39 in C-61's numbering: immediately following subsection 13(2).

Section 40 in C-61's numbering: immediately following subsection 23(2).

COMING INTO FORCE

41. The provisions of this Act come into force on a day or days to be fixed by order of the Governor in Council.

(Actual text of the Act begins here)

An Act respecting copyright

SHORT TITLE

1. This Act may be cited as the Copyright Act.

R.S., c. C-30, s. 1.

INTERPRETATION

2. In this Act,

"architectural work" means any building or structure or any model of a building or structure;

"architectural work of art" [Repealed, 1993, c. 44, s. 53]

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

"Berne Convention country" means a country that is a party to the Convention for the Protection of Literary and Artistic Works concluded at Berne on September 9, 1886, or any one of its revisions, including the Paris Act of 1971;

"Board" means the Copyright Board established by subsection 66(1);

"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;

"broadcaster" means a body that, in the course of operating a broadcasting undertaking, broadcasts a communication signal in accordance with the law of the country in which the broadcasting undertaking is carried on, but excludes a body whose primary activity in relation to communication signals is their retransmission;

"choreographic work" includes any work of choreography, whether or not it has any story line;

"cinematograph" [Repealed, 1997, c. 24, s. 1]

"cinematographic work" includes any work expressed by any process analogous to cinematography, whether or not accompanied by a soundtrack;

"collective society" means a society, association or corporation that carries on the business of collective administration of copyright or of the remuneration right conferred by section 19 or 81 for the benefit of those who, by assignment, grant of licence, appointment of it as their agent or otherwise, authorize it to act on their behalf in relation to that collective administration, and

(a) operates a licensing scheme, applicable in relation to a repertoire of works, performer's performances, sound recordings or communication signals of more than one author, performer, sound recording maker or broadcaster, pursuant to which the society, association or corporation sets out classes of uses that it agrees to authorize under this Act, and the royalties and terms and conditions on which it agrees to authorize those classes of uses, or

(b) carries on the business of collecting and distributing royalties or levies payable pursuant to this Act;

"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;

"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

(b) for which a licence to reproduce, perform in public or communicate to the public by telecommunication is available from a collective society within a reasonable time and for a reasonable price and may be located with reasonable effort;

"communication signal" means radio waves transmitted through space without any artificial guide, for reception by the public;

"compilation" means

(a) a work resulting from the selection or arrangement of literary, dramatic, musical or artistic works or of parts thereof, or

(b) a work resulting from the selection or arrangement of data;

"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;

"copyright" means the rights described in

(a) section 3, in the case of a work,

(b) sections 15 and 26, in the case of a performer's performance,

(c) section 18, in the case of a sound recording, or

(d) section 21, in the case of a communication signal;

"country" includes any territory;

"defendant" includes a respondent to an application;

"delivery" [Repealed, 1997, c. 24, s. 1]

"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;

"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;

"engravings" includes etchings, lithographs, woodcuts, prints and other similar works, not being photographs;

"every original literary, dramatic, musical and artistic work" includes every original production in the literary, scientific or artistic domain, whatever may be the mode or form of its expression, such as compilations, books, pamphlets and other writings, lectures, dramatic or dramatico-musical works, musical works, translations, illustrations, sketches and plastic works relative to geography, topography, architecture or science;

"exclusive distributor" means, in relation to a book, a person who

(a) has, before or after the coming into force of this definition, been appointed in writing, by the owner or exclusive licensee of the copyright in the book in Canada, as

(i) the only distributor of the book in Canada or any part of Canada, or

(ii) the only distributor of the book in Canada or any part of Canada in respect of a particular sector of the market, and

(b) meets the criteria established by regulations made under section 2.6,

and, for greater certainty, if there are no regulations made under section 2.6, then no person qualifies under this definition as an "exclusive distributor";

"Her Majesty's Realms and Territories" [Repealed, 1997, c. 24, s. 1]

"infringing" means

(a) in relation to a work in which copyright subsists, any copy, including any colourable imitation, made or dealt with in contravention of this Act,

(b) in relation to a performer's performance in respect of which copyright subsists, any fixation or copy of a fixation of it made or dealt with in contravention of this Act,

(c) in relation to a sound recording in respect of which copyright subsists, any copy of it made or dealt with in contravention of this Act, or

(d) in relation to a communication signal in respect of which copyright subsists, any fixation or copy of a fixation of it made or dealt with in contravention of this Act.

The definition includes a copy that is imported in the circumstances set out in paragraph 27(2)(e) and section 27.1 but does not otherwise include a copy made with the consent of the owner of the copyright in the country where the copy was made;

"lecture" includes address, speech and sermon;

"legal representatives" includes heirs, executors, administrators, successors and assigns, or agents or attorneys who are thereunto duly authorized in writing;

"library, archive or museum" means

(a) an institution, whether or not incorporated, that is not established or conducted for profit or that does not form a part of, or is not administered or directly or indirectly controlled by, a body that is established or conducted for profit, in which is held and maintained a collection of documents and other materials that is open to the public or to researchers, or

(b) any other non-profit institution prescribed by regulation;

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

"maker" means

(a) in relation to a cinematographic work, the person by whom the arrangements necessary for the making of the work are undertaken, or

(b) in relation to a sound recording, the person by whom the arrangements necessary for the first fixation of the sounds are undertaken;

"Minister", except in section 44.1, means the Minister of Industry;

~~"moral rights" means the rights described in subsections 14.1(1) and 17.1(1); "moral rights" means the rights described in subsection 14.1(1);~~

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

"perceptual disability" means a disability that prevents or inhibits a person from reading or hearing a literary, musical, dramatic or artistic work in its original format, and includes such a disability resulting from

(a) severe or total impairment of sight or hearing or the inability to focus or move one's eyes,

(b) the inability to hold or manipulate a book, or

(c) an impairment relating to comprehension;

"performance" means any acoustic or visual representation of a work, performer's performance, sound recording or communication signal, including a representation made by means of any mechanical instrument, radio receiving set or television receiving set;

"performer's performance" means any of the following when done by a performer:

(a) a performance of an artistic work, dramatic work or musical work, whether or not the work was previously fixed in any material form, and whether or not the work's term of copyright protection under this Act has expired,

(b) a recitation or reading of a literary work, whether or not the work's term of copyright protection under this Act has expired, or

(c) an improvisation of a dramatic work, musical work or literary work, whether or not the improvised work is based on a pre-existing work;

"photograph" includes photo-lithograph and any work expressed by any process analogous to

photography;

"plaintiff" includes an applicant;

"plate" includes

(a) any stereotype or other plate, stone, block, mould, matrix, transfer or negative used or intended to be used for printing or reproducing copies of any work, and

(b) any matrix or other appliance used or intended to be used for making or reproducing sound recordings, performer's performances or communication signals;

"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;

"receiving device" [Repealed, 1993, c. 44, s. 79]

"Rome Convention country" means a country that is a party to the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations, done at Rome on October 26, 1961;

"sculpture" includes a cast or model;

"sound recording" means a recording, fixed in any material form, consisting of sounds, whether or not of a performance of a work, but excludes any soundtrack of a cinematographic work where it accompanies the cinematographic work;

"telecommunication" means any transmission of signs, signals, writing, images or sounds or intelligence of any nature by wire, radio, visual, optical or other electromagnetic system;

"treaty country" means a Berne Convention country, UCC country, WCT country or WTO Member;
~~"treaty country" means a Berne Convention country, UCC country or WTO Member;~~

"UCC country" means a country that is a party to the Universal Copyright Convention, adopted on September 6, 1952 in Geneva, Switzerland, or to that Convention as revised in Paris, France on July 24, 1971;

"WCT country" means a country that is a party to the WIPO Copyright Treaty, adopted in Geneva on December 20, 1996;

"work" includes the title thereof when such title is original and distinctive;

"work of joint authorship" means a work produced by the collaboration of two or more authors in which the contribution of one author is not distinct from the contribution of the other author or authors;

"work of sculpture" [Repealed, 1997, c. 24, s. 1]

"WPPT country" means a country that is a party to the WIPO Performances and Phonograms Treaty, adopted in Geneva on December 20, 1996;

"WTO Member" means a Member of the World Trade Organization as defined in subsection 2(1) of the World Trade Organization Agreement Implementation Act.

R.S., 1985, c. C-42, s. 2; R.S., 1985, c. 10 (4th Supp.), s. 1; 1988, c. 65, s. 61; 1992, c. 1, s. 145(F); 1993, c. 23, s. 1, c. 44, ss. 53, 79; 1994, c. 47, s. 56; 1995, c. 1, s. 62; 1997, c. 24, s. 1.

2.1 (1) A compilation containing two or more of the categories of literary, dramatic, musical or artistic works shall be deemed to be a compilation of the category making up the most substantial part of the compilation.

(2) The mere fact that a work is included in a compilation does not increase, decrease or otherwise affect the protection conferred by this Act in respect of the copyright in the work or the moral rights in respect of the work.

1993, c. 44, s. 54.

2.11 For greater certainty, the arrangements referred to in paragraph (b) of the definition "maker" in section 2, as that term is used in section 19 and in the definition "eligible maker" in section 79, include arrangements for entering into contracts with performers, financial arrangements and technical arrangements required for the first fixation of the sounds for a sound recording.

1997, c. 24, s. 2.

2.2 (1) For the purposes of this Act, "publication" means

(a) in relation to works,

(i) making copies of a work available to the public,

(ii) the construction of an architectural work, and

(iii) the incorporation of an artistic work into an architectural work, and

(b) in relation to sound recordings, making copies of a sound recording available to the public,

but does not include

(c) the performance in public, or the communication to the public by telecommunication, of a literary, dramatic, musical or artistic work or a sound recording, or

(d) the exhibition in public of an artistic work.

(2) For the purpose of subsection (1), the issue of photographs and engravings of sculptures and architectural works is not deemed to be publication of those works.

(3) For the purposes of this Act, other than in respect of infringement of copyright, a work or other subject-matter is not deemed to be published or performed in public or communicated to the public by telecommunication if that act is done without the consent of the owner of the copyright.

(4) Where, in the case of an unpublished work, the making of the work is extended over a considerable period, the conditions of this Act conferring copyright are deemed to have been complied with if the author was, during any substantial part of that period, a subject or citizen of, or

a person ordinarily resident in, a country to which this Act extends.

1997, c. 24, s. 2.

2.3 A person who communicates a work or other subject-matter to the public by telecommunication does not by that act alone perform it in public, nor by that act alone is deemed to authorize its performance in public.

1997, c. 24, s. 2.

2.4 (1) For the purposes of communication to the public by telecommunication,

(a) persons who occupy apartments, hotel rooms or dwelling units situated in the same building are part of the public, and a communication intended to be received exclusively by such persons is a communication to the public;

(b) a person whose only act in respect of the communication of a work or other subject-matter to the public consists of providing the means of telecommunication necessary for another person to so communicate the work or other subject-matter does not communicate that work or other subject-matter to the public; and

(c) where a person, as part of

(i) a network, within the meaning of the Broadcasting Act, whose operations result in the communication of works or other subject-matter to the public, or

(ii) any programming undertaking whose operations result in the communication of works or other subject-matter to the public,

transmits by telecommunication a work or other subject-matter that is communicated to the public by another person who is not a retransmitter of a signal within the meaning of subsection 31(1), the transmission and communication of that work or other subject-matter by those persons constitute a single communication to the public for which those persons are jointly and severally liable.

(2) The Governor in Council may make regulations defining "programming undertaking" for the purpose of paragraph (1)(c).

(3) A work is not communicated in the manner described in paragraph (1)(c) or 3(1)(f) where a signal carrying the work is retransmitted to a person who is a retransmitter within the meaning of subsection 31(1).

1997, c. 24, s. 2; 2002, c. 26, s. 1.

2.5 (1) For the purposes of paragraphs 3(1)(h) and (i), 15(1)(c) and 18(1)(c), an arrangement, whatever its form, constitutes a rental of a computer program or sound recording if, and only if,

(a) it is in substance a rental, having regard to all the circumstances; and

(b) it is entered into with motive of gain in relation to the overall operations of the person who rents out the computer program or sound recording, as the case may be.

(2) For the purpose of paragraph (1)(b), a person who rents out a computer program or sound

recording with the intention of recovering no more than the costs, including overhead, associated with the rental operations does not by that act alone have a motive of gain in relation to the rental operations.

1997, c. 24, s. 2.

2.6 The Governor in Council may make regulations establishing distribution criteria for the purpose of paragraph (b) of the definition "exclusive distributor" in section 2.

1997, c. 24, s. 2.

2.7 For the purposes of this Act, an exclusive licence is an authorization to do any act that is subject to copyright to the exclusion of all others including the copyright owner, whether the authorization is granted by the owner or an exclusive licensee claiming under the owner.

1997, c. 24, s. 2.

PART I COPYRIGHT AND MORAL RIGHTS IN WORKS

Copyright

3. (1) For the purposes of this Act, "copyright", in relation to a work, means 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,

(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, and

(i) in the case of a musical work, to rent out a sound recording in which the work is embodied,

(j) in the case of a work that can be put into circulation as a tangible object, to sell or otherwise transfer ownership of the tangible object, as long as the ownership of that tangible object has never previously been transferred with the authorization of the author in or outside Canada,

and to authorize any such acts.

(1.1) A work that is communicated in the manner described in paragraph (1)(f) is fixed even if it is fixed simultaneously with its communication.

(1.2) to (4) [Repealed, 1997, c. 24, s. 3]

R.S., 1985, c. C-42, s. 3; R.S., 1985, c. 10 (4th Supp.), s. 2; 1988, c. 65, s. 62; 1993, c. 23, s. 2, c. 44, s. 55; 1997, c. 24, s. 3.

4. [Repealed, 1997, c. 24, s. 4]

Works in which Copyright may Subsist

5. (1) Subject to this Act, copyright shall subsist in Canada, for the term hereinafter mentioned, in every original literary, dramatic, musical and artistic work if any one of the following conditions is met:

(a) in the case of any work, whether published or unpublished, including a cinematographic work, the author was, at the date of the making of the work, a citizen or subject of, or a person ordinarily resident in, a treaty country;

(b) in the case of a cinematographic work, whether published or unpublished, the maker, at the date of the making of the cinematographic work,

(i) if a corporation, had its headquarters in a treaty country, or

(ii) if a natural person, was a citizen or subject of, or a person ordinarily resident in, a treaty country; or

(c) in the case of a published work, including a cinematographic work,

(i) in relation to subparagraph 2.2(1)(a)(i), the first publication in such a quantity as to satisfy the reasonable demands of the public, having regard to the nature of the work, occurred in a treaty country, or

(ii) in relation to subparagraph 2.2(1)(a)(ii) or (iii), the first publication occurred in a treaty country.

~~(1.01) For the purposes of subsection (1), a country that becomes a Berne Convention country or a WTO Member after the date of the making or publication of a work shall, as of becoming a Berne Convention country or WTO Member, as the case may be, be deemed to have been a Berne Convention country or WTO Member at the date of the making or publication of the work, subject to subsection (1.02) and section 33.~~
(1.01) For the purposes of subsection (1), a country that becomes a Berne Convention country, a WCT country or a WTO Member after the date of the making or publication of a work is deemed to have been a Berne Convention country, a WCT country or a WTO Member, as the case may be, at that date, subject to subsection (1.02) and sections 33 to 33.2.

~~(1.02) Subsection (1.01) does not confer copyright protection in Canada on a work whose term of copyright protection in the country referred to in that subsection had expired before that country became a Berne Convention country or WTO Member, as the case may be.~~ (1.02) Subsection (1.01) does not confer copyright protection in Canada on a work whose term of copyright protection in the country referred to in that subsection had expired before that country became a Berne Convention country, a WCT country or a WTO Member, as the case may be.

~~(1.03) Subsections (1.01) and (1.02) apply, and are deemed to have applied, regardless of whether the country in question became a Berne Convention country or a WTO Member before or after the coming into force of those subsections.~~ (1.03) Subsections (1.01) and (1.02) apply, and are deemed to have applied, regardless of whether the country in question became a Berne Convention country, a WCT country or a WTO Member before or after the coming into force of those subsections.

(1.1) The first publication described in subparagraph (1)(c)(i) or (ii) is deemed to have occurred in a treaty country notwithstanding that it in fact occurred previously elsewhere, if the interval between those two publications did not exceed thirty days.

(1.2) Copyright shall not subsist in Canada otherwise than as provided by subsection (1), except in so far as the protection conferred by this Act is extended as hereinafter provided to foreign countries to which this Act does not extend.

(2) Where the Minister certifies by notice, published in the Canada Gazette, that any country that is not a treaty country grants or has undertaken to grant, either by treaty, convention, agreement or law, to citizens of Canada, the benefit of copyright on substantially the same basis as to its own citizens or copyright protection substantially equal to that conferred by this Act, the country shall, for the purpose of the rights conferred by this Act, be treated as if it were a country to which this Act extends, and the Minister may give a certificate, notwithstanding that the remedies for enforcing the rights, or the restrictions on the importation of copies of works, under the law of such country, differ from those in this Act.

(2.1) [Repealed, 1994, c. 47, s. 57]

(3) to (6) [Repealed, 1997, c. 24, s. 5]

(7) For greater certainty, the protection to which a work is entitled by virtue of a notice published under subsection (2), or under that subsection as it read at any time before the coming into force of this subsection, is not affected by reason only of the country in question becoming a treaty country.

R.S., 1985, c. C-42, s. 5; 1993, c. 15, s. 2, c. 44, s. 57; 1994, c. 47, s. 57; 1997, c. 24, s. 5; 2001, c. 34, s. 34.

Term of Copyright

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.

R.S., 1985, c. C-42, s. 6; 1993, c. 44, s. 58.

6.1 Except as provided in section 6.2, where the identity of the author of a work is unknown, copyright in the work shall subsist for whichever of the following terms ends earlier:

(a) a term consisting of the remainder of the calendar year of the first publication of the work and a period of fifty years following the end of that calendar year, and

(b) a term consisting of the remainder of the calendar year of the making of the work and a period of seventy-five years following the end of that calendar year,

but where, during that term, the author's identity becomes commonly known, the term provided in section 6 applies.

1993, c. 44, s. 58.

6.2 Where the identity of all the authors of a work of joint authorship is unknown, copyright in the work shall subsist for whichever of the following terms ends earlier:

(a) a term consisting of the remainder of the calendar year of the first publication of the work and a period of fifty years following the end of that calendar year, and

(b) a term consisting of the remainder of the calendar year of the making of the work and a period of seventy-five years following the end of that calendar year,

but where, during that term, the identity of one or more of the authors becomes commonly known, copyright shall subsist for the life of whichever of those authors dies last, the remainder of the calendar year in which that author dies, and a period of fifty years following the end of that calendar year.

1993, c. 44, s. 58.

7. (1) Subject to subsection (2), in the case of a literary, dramatic or musical work, or an engraving, in which copyright subsists at the date of the death of the author or, in the case of a work of joint authorship, at or immediately before the date of the death of the author who dies last, but which has not been published or, in the case of a lecture or a dramatic or musical work, been performed in public or communicated to the public by telecommunication, before that date, copyright shall subsist until publication, or performance in public or communication to the public by telecommunication, whichever may first happen, for the remainder of the calendar year of the publication or of the performance in public or communication to the public by telecommunication, as the case may be, and for a period of fifty years following the end of that calendar year.

(2) Subsection (1) applies only where the work in question was published or performed in public or communicated to the public by telecommunication, as the case may be, before the coming into force of this section.

(3) Where

(a) a work has not, at the coming into force of this section, been published or performed in public or communicated to the public by telecommunication,

(b) subsection (1) would apply to that work if it had been published or performed in public or communicated to the public by telecommunication before the coming into force of this section, and

(c) the relevant death referred to in subsection (1) occurred during the period of fifty years immediately before the coming into force of this section,

copyright shall subsist in the work for the remainder of the calendar year in which this section comes into force and for a period of fifty years following the end of that calendar year, whether or not the work is published or performed in public or communicated to the public by telecommunication after the coming into force of this section.

(4) Where

(a) a work has not, at the coming into force of this section, been published or performed in public or communicated to the public by telecommunication,

(b) subsection (1) would apply to that work if it had been published or performed in public or communicated to the public by telecommunication before the coming into force of this section, and

(c) the relevant death referred to in subsection (1) occurred more than fifty years before the coming into force of this section,

copyright shall subsist in the work for the remainder of the calendar year in which this section comes into force and for a period of five years following the end of that calendar year, whether or not the work is published or performed in public or communicated to the public by telecommunication after the coming into force of this section.

R.S., 1985, c. C-42, s. 7; 1993, c. 44, s. 58; 1997, c. 24, s. 6.

8. [Repealed, 1993, c. 44, s. 59]

9. (1) In the case of a work of joint authorship, except as provided in section 6.2, copyright shall subsist during the life of the author who dies last, for the remainder of the calendar year of that author's death, and for a period of fifty years following the end of that calendar year, and references in this Act to the period after the expiration of any specified number of years from the end of the calendar year of the death of the author shall be construed as references to the period after the expiration of the like number of years from the end of the calendar year of the death of the author who dies last.

(2) Authors who are nationals of any country, other than a country that is a party to the North American Free Trade Agreement, that grants a term of protection shorter than that mentioned in subsection (1) are not entitled to claim a longer term of protection in Canada.

R.S., 1985, c. C-42, s. 9; 1993, c. 44, s. 60.

~~10. (1) Where the owner referred to in subsection (2) is a corporation, the term for which copyright subsists in a photograph shall be the remainder of the year of the making of the initial negative or plate from which the photograph was derived or, if there is no negative or plate, of the initial photograph, plus a period of fifty years.~~

~~(1.1) Where the owner is a corporation, the majority of the voting shares of which are owned by a natural person who would have qualified as the author of the photograph except for subsection (2), the term of copyright is the term set out in section 6.~~

~~(2) The person who~~

~~(a) was the owner of the initial negative or other plate at the time when that negative or other plate~~

~~was made, or~~

~~(b) was the owner of the initial photograph at the time when that photograph was made, where there was no negative or other plate;~~

~~is deemed to be the author of the photograph and, where that owner is a body corporate, the body corporate is deemed for the purposes of this Act to be ordinarily resident in a treaty country if it has established a place of business therein.~~ [Repealed]

Bill C-61 TRANSITIONAL PROVISIONS affecting this section:

38. (1) The repeal of section 10 of the Copyright Act by [C-61] section 4 does not have the effect of reviving copyright in any photograph in which, on the coming into force of that [C-61] section 4, copyright had expired.

(2) In any case in which, immediately before the coming into force of [C-61] section 4, a corporation is deemed, by virtue of subsection 10(2) of the Copyright Act as it read before the coming into force of that [C-61] section 4, to be the author of a photograph in which copyright subsists at that time, the copyright in that photograph continues to subsist for the term determined in accordance with sections 6, 6.1, 6.2, 9, 11.1 or 12 of the Copyright Act as if its author were the individual who would have been considered the author of the photograph apart from that subsection 10(2).

(3) In any case in which an individual is deemed to be the author of a photograph by virtue of subsection 10(2) of the Copyright Act as it read before the coming into force of [C-61] section 4, the individual continues, after the coming into force of that [C-61] section 4, to be the author of that photograph for the purposes of the Copyright Act.

R.S., 1985, c. C-42, s. 10; 1993, c. 44, s. 60; 1994, c. 47, s. 69(F); 1997, c. 24, s. 7.

11. [Repealed, 1997, c. 24, s. 8]

11.1 Except for cinematographic works in which the arrangement or acting form or the combination of incidents represented give the work a dramatic character, copyright in a cinematographic work or a compilation of cinematographic works shall subsist

(a) for the remainder of the calendar year of the first publication of the cinematographic work or of the compilation, and for a period of fifty years following the end of that calendar year; or

(b) if the cinematographic work or compilation is not published before the expiration of fifty years following the end of the calendar year of its making, for the remainder of that calendar year and for a period of fifty years following the end of that calendar year.

1993, c. 44, s. 60; 1997, c. 24, s. 9.

12. Without prejudice to any rights or privileges of the Crown, where any work is, or has been, prepared or published by or under the direction or control of Her Majesty or any government department, the copyright in the work shall, subject to any agreement with the author, belong to Her Majesty and in that case shall continue for the remainder of the calendar year of the first publication of the work and for a period of fifty years following the end of that calendar year.

R.S., 1985, c. C-42, s. 12; 1993, c. 44, s. 60.

Ownership of Copyright

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

(2) ~~[Repealed] Where, in the case of an engraving, photograph or portrait, the plate or other original was ordered by some other person and was made for valuable consideration, and the consideration was paid, in pursuance of that order, in the absence of any agreement to the contrary, the person by whom the plate or other original was ordered shall be the first owner of the copyright.~~

Bill C-61 TRANSITIONAL PROVISIONS affecting this section:

39. Subsection 13(2) of the Copyright Act, as it read immediately before the coming into force of [C-61] section 5, continues to apply with respect to any engraving, photograph or portrait the plate or original of which was commissioned before the coming into force of that [C-61] section 5.

(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.

(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.

(5) Where, under any partial assignment of copyright, the assignee becomes entitled to any right comprised in copyright, the assignee, with respect to the rights so assigned, and the assignor, with respect to the rights not assigned, shall be treated for the purposes of this Act as the owner of the copyright, and this Act has effect accordingly.

(6) For greater certainty, it is deemed always to have been the law that a right of action for infringement of copyright may be assigned in association with the assignment of the copyright or the grant of an interest in the copyright by licence.

(7) For greater certainty, it is deemed always to have been the law that a grant of an exclusive licence in a copyright constitutes the grant of an interest in the copyright by licence.

R.S., 1985, c. C-42, s. 13; 1997, c. 24, s. 10.

14. (1) Where the author of a work is the first owner of the copyright therein, no assignment of the copyright and no grant of any interest therein, made by him, otherwise than by will, after June 4, 1921, is operative to vest in the assignee or grantee any rights with respect to the copyright in the work beyond the expiration of twenty-five years from the death of the author, and the reversionary interest in the copyright expectant on the termination of that period shall, on the death of the author, notwithstanding any agreement to the contrary, devolve on his legal representatives as part of the estate of the author, and any agreement entered into by the author as to the disposition of such reversionary interest is void.

(2) Nothing in subsection (1) shall be construed as applying to the assignment of the copyright in a collective work or a licence to publish a work or part of a work as part of a collective work.

(3) [Repealed, 1997, c. 24, s. 11]

(4) [Repealed, R.S., 1985, c. 10 (4th Supp.), s. 3]

R.S., 1985, c. C-42, s. 14; R.S., 1985, c. 10 (4th Supp.), s. 3; 1997, c. 24, s. 11.

14.01 [Repealed, 1997, c. 24, s. 12]

Moral Rights

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.

(2) Moral rights may not be assigned but may be waived in whole or in part.

(3) An assignment of copyright in a work does not by that act alone constitute a waiver of any moral rights.

(4) Where a waiver of any moral right is made in favour of an owner or a licensee of copyright, it may be invoked by any person authorized by the owner or licensee to use the work, unless there is an indication to the contrary in the waiver.

R.S., 1985, c. 10 (4th Supp.), s. 4.

14.2 (1) Moral rights in respect of a work subsist for the same term as the copyright in the work.

(2) The moral rights in respect of a work pass, on the death of its author, to

(a) the person to whom those rights are specifically bequeathed;

(b) where there is no specific bequest of those moral rights and the author dies testate in respect of the copyright in the work, the person to whom that copyright is bequeathed; or

(c) where there is no person described in paragraph (a) or (b), the person entitled to any other property in respect of which the author dies intestate.

(3) Subsection (2) applies, with such modifications as the circumstances require, on the death of any person who holds moral rights.

R.S., 1985, c. 10 (4th Supp.), s. 4; 1997, c. 24, s. 13.

~~PART II~~

~~COPYRIGHT IN PERFORMER'S PERFORMANCES, SOUND RECORDINGS AND COMMUNICATION SIGNALS~~

~~Performers' Rights~~ PART II

COPYRIGHT IN PERFORMERS' PERFORMANCES, SOUND RECORDINGS AND COMMUNICATION SIGNALS AND MORAL RIGHTS IN PERFORMERS' PERFORMANCES

Performers' Rights

Copyright

15. (1) Subject to subsection (2), a performer has a copyright in the performer's performance, consisting of the sole right to do the following in relation to the performer's performance or any substantial part thereof:

(a) if it is not fixed,

(i) to communicate it to the public by telecommunication,

(ii) to perform it in public, where it is communicated to the public by telecommunication otherwise than by communication signal, and

(iii) to fix it in any material form,

(b) if it is fixed,

(i) to reproduce any fixation that was made without the performer's authorization,

(ii) where the performer authorized a fixation, to reproduce any reproduction of that fixation, if the reproduction being reproduced was made for a purpose other than that for which the performer's authorization was given, and

(iii) where a fixation was permitted under Part III or VIII, to reproduce any reproduction of that fixation, if the reproduction being reproduced was made for a purpose other than one permitted under Part III or VIII, and

(c) to rent out a sound recording of it,

and to authorize any such acts.

(1.1) Subject to subsections (2.1) and (2.2), a performer's copyright in the performer's performance also consists of the sole right to do the following acts in relation to the performer's performance or any substantial part of it and to authorize any of those acts:

(a) if it is not fixed,

(i) to communicate it to the public by telecommunication,

(ii) to perform it in public, if it is communicated to the public by telecommunication otherwise than by communication signal, and

(iii) to fix it in any material form;

(b) if it is fixed in a sound recording, to reproduce that fixation;

(c) to rent out a sound recording of it;

(d) to communicate to the public by telecommunication a sound recording of it in a way that allows a member of the public to access it from a place and at a time individually chosen by that member of the public; and

(e) to sell, or otherwise transfer ownership of, every sound recording of it that can be put into circulation as a tangible object and whose ownership has never previously been transferred with the authorization of the performer in or outside Canada.

(2) Subsection (1) applies only if the performer's performance

(a) takes place in Canada or in a Rome Convention country;

(b) is fixed in

(i) a sound recording whose maker, at the time of the first fixation,

(A) if a natural person, was a Canadian citizen or permanent resident within the meaning of subsection 2(1) of the Immigration and Refugee Protection Act, or a citizen or permanent resident of a Rome Convention country, or

(B) if a corporation, had its headquarters in Canada or in a Rome Convention country, or

(ii) a sound recording whose first publication in such a quantity as to satisfy the reasonable demands of the public occurred in Canada or in a Rome Convention country; or

(c) is transmitted at the time of the performer's performance by a communication signal broadcast from Canada or a Rome Convention country by a broadcaster that has its headquarters in the country of broadcast.

~~The first publication is deemed to have occurred in a country referred to in paragraph (2)(b) notwithstanding that it in fact occurred previously elsewhere, if the interval between those two publications does not exceed thirty days.~~ (3) (2.1) Subsection (1.1) applies in the following cases:

(a) if the performer's performance takes place in Canada;

(b) if the performer's performance is fixed in

(i) a sound recording whose maker, at the time of its first fixation,

(A) was a Canadian citizen or permanent resident as defined in subsection 2(1) of the Immigration and Refugee Protection Act, in the case of a natural person, or

(B) had its headquarters in Canada, in the case of a corporation, or

(ii) a sound recording whose first publication in a quantity sufficient to satisfy the reasonable demands of the public occurred in Canada; or

(c) if the performer's performance is transmitted at the time of its performance by a communication signal broadcast from Canada by a broadcaster that has its headquarters in Canada.

(2.2) Subsection (1.1) also applies in the following cases:

(a) if the performer's performance takes place in a WPPT country;

(b) if the performer's performance is fixed in

(i) a sound recording whose maker, at the time of its first fixation,

(A) was a citizen or permanent resident of a WPPT country, in the case of a natural person, or

(B) had its headquarters in a WPPT country, in the case of a corporation, or

(ii) a sound recording whose first publication in a quantity sufficient to satisfy the reasonable demands of the public occurred in a WPPT country; or

(c) if the performer's performance is transmitted at the time of its performance by a communication signal broadcast from a WPPT country by a broadcaster that has its headquarters in that country.

(3) The first publication of a sound recording in Canada, a Rome Convention country or a WPPT country is deemed to have occurred in that country, despite an earlier publication elsewhere, if the earlier publication took place no more than 30 days previously.

R.S., 1985, c. C-42, s. 15; 1993, c. 44, s. 61; 1997, c. 24, s. 14; 2001, c. 27, s. 235.

16. Nothing in section 15 prevents the performer from entering into a contract governing the use of the performer's performance for the purpose of broadcasting, fixation or retransmission.

R.S., 1985, c. C-42, s. 16; 1994, c. 47, s. 59; 1997, c. 24, s. 14.

17. (1) Where the performer authorizes the embodiment of the performer's performance in a cinematographic work, the performer may no longer exercise, in relation to the performance where embodied in that cinematographic work, the copyright referred to in subsection 15(1).

(2) Where there is an agreement governing the embodiment referred to in subsection (1) and that agreement provides for a right to remuneration for the reproduction, performance in public or communication to the public by telecommunication of the cinematographic work, the performer may enforce that right against

(a) the other party to the agreement or, if that party assigns the agreement, the assignee, and

(b) any other person who

(i) owns the copyright in the cinematographic work governing the reproduction of the cinematographic work, its performance in public or its communication to the public by telecommunication, and

(ii) reproduces the cinematographic work, performs it in public or communicates it to the public by telecommunication,

and persons referred to in paragraphs (a) and (b) are jointly and severally liable to the performer in respect of the remuneration relating to that copyright.

(3) Subsection (2) applies only if the performer's performance is embodied in a prescribed cinematographic work.

(4) If so requested by a country that is a party to the North American Free Trade Agreement, the Minister may, by a statement published in the Canada Gazette, grant the benefits conferred by this section, subject to any terms and conditions specified in the statement, to performers who are nationals of that country or another country that is a party to the Agreement or are Canadian citizens or permanent residents within the meaning of subsection 2(1) of the Immigration and Refugee Protection Act and whose performer's performances are embodied in works other than the prescribed cinematographic works referred to in subsection (3).

Moral Rights

17.1 (1) In the cases referred to in subsections 15(2.1) and (2.2), a performer of a live aural performance or a performance fixed in a sound recording has, subject to subsection 28.2(1), the right to the integrity of the performance, and — in connection with an act mentioned in subsection 15(1.1) or one for which the performer has a right to remuneration under subsection 19(1) — the right, when it is reasonable in the circumstances, to be associated with the performance as its performer by name or under a pseudonym and the right to remain anonymous.

(2) Moral rights may not be assigned but may be waived in whole or in part.

(3) An assignment of copyright in a performer's performance does not by itself constitute a waiver of any moral rights.

(4) If a waiver of any moral right is made in favour of an owner or a licensee of a copyright, it may be invoked by any person authorized by the owner or licensee to use the performer's performance, unless there is an indication to the contrary in the waiver.

17.2 (1) Subsection 17.1(1) applies only in respect of a performer's performance that occurs after the coming into force of that subsection. The moral rights subsist for the same term as the copyright in that performer's performance.

(2) The moral rights in respect of a performer's performance pass, on the performer's death, to

_____ (a) the person to whom those rights are specifically bequeathed;

_____ (b) if there is not a specific bequest of those moral rights and the performer dies testate in respect of the copyright in the performer's performance, the person to whom that copyright is bequeathed; or

_____ (c) if there is not a person as described in paragraph (a) or (b), the person entitled to any other property in respect of which the performer dies intestate.

(3) Subsection (2) applies, with any modifications that the circumstances require, on the death of any person who holds moral rights.

R.S., 1985, c. C-42, s. 17; 1994, c. 47, s. 59; 1997, c. 24, s. 14; 2001, c. 27, s. 236.

Rights of Sound Recording Makers

18. (1) Subject to subsection (2), the maker of a sound recording has a copyright in the sound recording, consisting of the sole right to do the following in relation to the sound recording or any substantial part thereof:

- (a) to publish it for the first time,
 - (b) to reproduce it in any material form, and
 - (c) to rent it out,
- and to authorize any such acts.

~~(2) Subsection (1) applies only if~~

~~(a) the maker of the sound recording was a Canadian citizen or permanent resident within the meaning of subsection 2(1) of the Immigration and Refugee Protection Act, or a citizen or permanent resident of a Berne Convention country, a Rome Convention country or a country that is a WTO Member, or, if a corporation, had its headquarters in one of the foregoing countries;~~

~~(i) at the date of the first fixation, or~~

~~(ii) if that first fixation was extended over a considerable period, during any substantial part of that period; or~~

~~(b) the first publication of the sound recording in such a quantity as to satisfy the reasonable demands of the public occurred in any country referred to in paragraph (a).~~

~~(3) The first publication is deemed to have occurred in a country referred to in paragraph (2)(a) notwithstanding that it in fact occurred previously elsewhere, if the interval between those two publications does not exceed thirty days.~~ (1.1) Subject to subsections (2.1) and (2.2), a sound recording maker's copyright in the sound recording also includes the sole right to do the following acts in relation to the sound recording or any substantial part of it and to authorize any of those acts:

~~_____ (a) to communicate it to the public by telecommunication in a way that allows a member of the public to access it from a place and at a time individually chosen by that member of the public; and~~

~~_____ (b) to sell or otherwise transfer ownership of it, in the case of a sound recording made by the sound recording maker that can be put into circulation as a tangible object and whose ownership has never previously been transferred with the authorization of the sound recording maker in or outside Canada.~~

~~(2) Subsection (1) applies only if~~

~~_____ (a) at the time of the first fixation or, if that first fixation was extended over a considerable period, during any substantial part of that period, the maker of the sound recording~~

~~_____ (i) was a Canadian citizen or permanent resident as defined in subsection 2(1) of the Immigration and Refugee Protection Act,~~

~~_____ (ii) was a citizen or permanent resident of a Berne Convention country, a Rome Convention country, a WPPT country or a country that is a WTO Member, or~~

(iii) had its headquarters in one of those countries, in the case of a corporation; or

(b) the first publication of the sound recording in a quantity sufficient to satisfy the reasonable demands of the public occurred in any country referred to in paragraph (a).

(2.1) Subsection (1.1) applies in the following cases:

(a) if at the time of the first fixation or, if that first fixation was extended over a considerable period, during any substantial part of that period, the maker of the sound recording

(i) was a Canadian citizen or permanent resident as defined in subsection 2(1) of the Immigration and Refugee Protection Act, or

(ii) had its headquarters in Canada, in the case of a corporation; or

(b) if the first publication of the sound recording in a quantity sufficient to satisfy the reasonable demands of the public occurred in Canada.

(2.2) Subsection (1.1) also applies in the following cases:

(a) if at the time of the first fixation or, if that first fixation was extended over a considerable period, during any substantial part of that period, the maker of the sound recording

(i) was a citizen or permanent resident of a WPPT country, or

(ii) had its headquarters in a WPPT country, in the case of a corporation; or

(b) if the first publication of the sound recording in a quantity sufficient to satisfy the reasonable demands of the public occurred in a WPPT country.

(3) The first publication of a sound recording in Canada, a Berne Convention country, a Rome Convention country, a WPPT country or a country that is a WTO Member is deemed to have occurred in that country, despite an earlier publication elsewhere, if the earlier publication took place no more than 30 days previously.

R.S., 1985, c. C-42, s. 18; R.S., 1985, c. 10 (4th Supp.), s. 17(F); 1994, c. 47, s. 59; 1997, c. 24, s. 14; 2001, c. 27, s. 237.

Provisions Applicable to both Performers and Sound Recording Makers

19. (1) If a sound recording has been published, the performer and maker are entitled, subject to section 20, to be paid equitable remuneration for its performance in public or its communication to the public by telecommunication, except for a communication in the circumstances referred to in paragraph 15(1.1)(d) or 18(1.1)(a) and any retransmission. (1) Where a sound recording has been published, the performer and maker are entitled, subject to section 20, to be paid equitable remuneration for its performance in public or its communication to the public by telecommunication, except for any retransmission.

(2) For the purpose of providing the remuneration mentioned in subsection (1), a person who performs a published sound recording in public or communicates it to the public by telecommunication is liable to pay royalties

(a) in the case of a sound recording of a musical work, to the collective society authorized under Part VII to collect them; or

(b) in the case of a sound recording of a literary work or dramatic work, to either the maker of the sound recording or the performer.

(3) The royalties, once paid pursuant to paragraph (2)(a) or (b), shall be divided so that

(a) the performer or performers receive in aggregate fifty per cent; and

(b) the maker or makers receive in aggregate fifty per cent.

R.S., 1985, c. C-42, s. 19; 1994, c. 47, s. 59; 1997, c. 24, s. 14.

20. (1) The right to remuneration conferred by section 19 applies only if

(a) the maker was, at the date of the first fixation, a Canadian citizen or permanent resident within the meaning of subsection 2(1) of the Immigration and Refugee Protection Act, or a citizen or permanent resident of a Rome Convention country, or, if a corporation, had its headquarters in one of the foregoing countries; or

(b) all the fixations done for the sound recording occurred in Canada or in a Rome Convention country.

(2) Notwithstanding subsection (1), if the Minister is of the opinion that a Rome Convention country does not grant a right to remuneration, similar in scope and duration to that provided by section 19, for the performance in public or the communication to the public of a sound recording whose maker, at the date of its first fixation, was a Canadian citizen or permanent resident within the meaning of subsection 2(1) of the Immigration and Refugee Protection Act or, if a corporation, had its headquarters in Canada, the Minister may, by a statement published in the Canada Gazette, limit the scope and duration of the protection for sound recordings whose first fixation is done by a maker who is a citizen or permanent resident of that country or, if a corporation, has its headquarters in that country.

(3) If so requested by a country that is a party to the North American Free Trade Agreement, the Minister may, by a statement published in the Canada Gazette, grant the right to remuneration conferred by section 19 to performers or makers who are nationals of that country and whose sound recordings embody dramatic or literary works.

(4) Where a statement is published under subsection (3), section 19 applies

(a) in respect of nationals of a country mentioned in that statement, as if they were citizens of Canada or, in the case of corporations, had their headquarters in Canada; and

(b) as if the fixations made for the purpose of their sound recordings had been made in Canada.

R.S., 1985, c. C-42, s. 20; 1994, c. 47, s. 59; 1997, c. 24, s. 14; 2001, c. 27, s. 238.

Rights of Broadcasters

21. (1) Subject to subsection (2), a broadcaster has a copyright in the communication signals that it

broadcasts, consisting of the sole right to do the following in relation to the communication signal or any substantial part thereof:

- (a) to fix it,
- (b) to reproduce any fixation of it that was made without the broadcaster's consent,
- (c) to authorize another broadcaster to retransmit it to the public simultaneously with its broadcast, and
- (d) in the case of a television communication signal, to perform it in a place open to the public on payment of an entrance fee,

and to authorize any act described in paragraph (a), (b) or (d).

(2) Subsection (1) applies only if the broadcaster

(a) at the time of the broadcast, had its headquarters in Canada, in a country that is a WTO Member or in a Rome Convention country; and

(b) broadcasts the communication signal from that country.

(3) Notwithstanding subsection (2), if the Minister is of the opinion that a Rome Convention country or a country that is a WTO Member does not grant the right mentioned in paragraph (1)(d), the Minister may, by a statement published in the Canada Gazette, declare that broadcasters that have their headquarters in that country are not entitled to that right.

R.S., 1985, c. C-42, s. 21; 1994, c. 47, s. 59; 1997, c. 24, s. 14.

Reciprocity

22. ~~(1) If the Minister is of the opinion that a country grants or has undertaken to grant (1) Where the Minister is of the opinion that a country other than a Rome Convention country grants or has undertaken to grant~~

(a) to performers and to makers of sound recordings, or

(b) to broadcasters

that are Canadian citizens or permanent residents within the meaning of subsection 2(1) of the Immigration and Refugee Protection Act or, if corporations, have their headquarters in Canada, as the case may be, whether by treaty, convention, agreement or law, benefits substantially equivalent to those conferred by this Part, the Minister may, by a statement published in the Canada Gazette,

(c) grant the benefits conferred by this Part

(i) to performers and to makers of sound recordings, or

(ii) to broadcasters

as the case may be, that are citizens, subjects or permanent residents of or, if corporations, have their headquarters in that country, and

(d) declare that that country shall, as regards those benefits, be treated as if it were a country to which this Part extends.

~~(2) If the Minister is of the opinion that a country neither grants nor has undertaken to grant (2) Where the Minister is of the opinion that a country other than a Rome Convention country neither grants nor has undertaken to grant~~

(a) to performers, and to makers of sound recordings, or

(b) to broadcasters

that are Canadian citizens or permanent residents within the meaning of subsection 2(1) of the Immigration and Refugee Protection Act or, if corporations, have their headquarters in Canada, as the case may be, whether by treaty, convention, agreement or law, benefits substantially equivalent to those conferred by this Part, the Minister may, by a statement published in the Canada Gazette,

(c) grant the benefits conferred by this Part to performers, makers of sound recordings or broadcasters that are citizens, subjects or permanent residents of or, if corporations, have their headquarters in that country, as the case may be, to the extent that that country grants that those benefits to performers, makers of sound recordings or broadcasters that are Canadian citizens or permanent residents within the meaning of subsection 2(1) of the Immigration and Refugee Protection Act or, if corporations, have their headquarters in Canada, and

(d) declare that that country shall, as regards those benefits, be treated as if it were a country to which this Part extends.

(3) Any provision of this Act that the Minister specifies in a statement referred to in subsection (1) or (2)

(a) (a) applies in respect of performers, makers of sound recordings or broadcasters covered by that statement, as if they were citizens of or, if corporations, had their headquarters in Canada; and

(b) applies in respect of a country covered by that statement, as if that country were Canada.

(4) Subject to any exceptions that the Minister may specify in a statement referred to in subsection (1) or (2), the other provisions of this Act also apply in the way described in subsection (3).

R.S., 1985, c. C-42, s. 22; 1994, c. 47, s. 59; 1997, c. 24, s. 14; 2001, c. 27, s. 239.

Term of Rights

~~23. (1) Subject to this Act, the rights conferred by sections 15, 18 and 21 terminate fifty years after the end of the calendar year in which~~

~~(a) in the case of a performer's performance;~~

~~(i) its first fixation in a sound recording, or~~

~~(ii) its performance, if it is not fixed in a sound recording;~~

~~occurred;~~

~~(b) in the case of a sound recording, the first fixation occurred; or~~

~~(c) in the case of a communication signal, it was broadcast.~~

~~(2) The rights to remuneration conferred on performers and makers by section 19 have the same terms, respectively, as those provided by paragraphs (1)(a) and (b).~~

~~(3) Subsections (1) and (2) apply whether the fixation, performance or broadcast occurred before or after the coming into force of this Part.~~

23. (1) Subject to this Act, copyright in a performer's performance subsists until the end of 50 years after the end of the calendar year in which the performance occurs. However,

(a) if the performance is fixed in a sound recording before the copyright expires, the copyright continues until the end of 50 years after the end of the calendar year in which the first fixation of the performance in a sound recording occurs; and

(b) if a sound recording in which the performance is fixed is published before the copyright expires, the copyright continues until the earlier of the end of 50 years after the end of the calendar year in which the first publication of the sound recording occurs and the end of 99 years after the end of the calendar year in which the performance occurs.

(1.1) Subject to this Act, copyright in a sound recording subsists until the end of 50 years after the end of the calendar year in which the first fixation of the sound recording occurs. However, if the sound recording is published before the copyright expires, the copyright continues until the end of 50 years after the end of the calendar year in which the first publication of the sound recording occurs.

(1.2) Subject to this Act, copyright in a communication signal subsists until the end of 50 years after the end of the calendar year in which the communication signal is broadcast.

(2) The rights to remuneration conferred on performers and makers by section 19 have the same terms, respectively, as those provided by subsections (1) and (1.1).

(3) Subsections (1) to (2) apply whether the fixation, performance or broadcast occurred before or after the coming into force of this section.

Bill C-61 TRANSITIONAL PROVISIONS affecting this section:

40. Subsections 23(1) to (2) of the Copyright Act, as enacted by [C-61] section 12, do not have the effect of reviving the copyright, or a right to remuneration, in any performer's performance or sound recording in which the copyright or the right to remuneration had expired on the coming into force of those subsections.

(4) Where the performer's performance, sound recording or communication signal meets the requirements set out in section 15, 18 or 21, as the case may be, a country that becomes a Berne Convention country, a Rome Convention country or a WTO Member after the date of the fixation, performance or broadcast is, as of becoming a Berne Convention country, Rome Convention country or WTO Member, as the case may be, deemed to have been such at the date of the fixation, performance or broadcast.

(5) Subsection (4) does not confer any protection in Canada where the term of protection in the country referred to in that subsection had expired before that country became a Berne Convention country, Rome Convention country or WTO Member, as the case may be.

R.S., 1985, c. C-42, s. 23; 1994, c. 47, s. 59; 1997, c. 24, s. 14.

Ownership of Copyright

24. The first owner of the copyright

- (a) in a performer's performance, is the performer;
- (b) in a sound recording, is the maker; or
- (c) in a communication signal, is the broadcaster that broadcasts it.

R.S., 1985, c. C-42, s. 24; 1994, c. 47, s. 59; 1997, c. 24, s. 14.

25. Subsections 13(4) to (7) apply, with such modifications as the circumstances require, in respect of the rights conferred by this Part on performers, makers of sound recordings and broadcasters.

R.S., 1985, c. C-42, s. 25; 1993, c. 44, s. 62; 1994, c. 47, s. 59; 1997, c. 24, s. 14.

Performers' Rights -- WTO Countries

26. (1) Where a performer's performance takes place on or after January 1, 1996 in a country that is a WTO Member, the performer has, as of the date of the performer's performance, a copyright in the performer's performance, consisting of the sole right to do the following in relation to the performer's performance or any substantial part thereof:

- (a) if it is not fixed, to communicate it to the public by telecommunication and to fix it in a sound recording, and
- (b) if it has been fixed in a sound recording without the performer's authorization, to reproduce the fixation or any substantial part thereof,

and to authorize any such acts.

(2) Where a performer's performance takes place on or after January 1, 1996 in a country that becomes a WTO Member after the date of the performer's performance, the performer has the copyright described in subsection (1) as of the date the country becomes a WTO Member.

(3) Where a performer's performance takes place before January 1, 1996 in a country that is a WTO Member, the performer has, as of January 1, 1996, the sole right to do and to authorize the act described in paragraph (1)(b).

(4) Where a performer's performance takes place before January 1, 1996 in a country that becomes a WTO Member on or after January 1, 1996, the performer has the right described in subsection (3) as of the date the country becomes a WTO Member.

(5) The rights conferred by this section subsist for the remainder of the calendar year in which the

performer's performance takes place and a period of fifty years following the end of that calendar year.

(6) Subsections 13(4) to (7) apply, with such modifications as the circumstances require, in respect of a performer's rights conferred by this section.

(7) Notwithstanding an assignment of a performer's right conferred by this section, the performer, as well as the assignee, may

(a) prevent the reproduction of

(i) any fixation of the performer's performance, or

(ii) any substantial part of such a fixation,

where the fixation was made without the performer's consent or the assignee's consent; and

(b) prevent the importation of any fixation of the performer's performance, or any reproduction of such a fixation, that the importer knows or ought to have known was made without the performer's consent or the assignee's consent.

R.S., 1985, c. C-42, s. 26; R.S., 1985, c. 10 (4th Supp.), s. 17(F); 1993, c. 44, s. 63; 1994, c. 47, s. 59; 1997, c. 24, s. 14.

PART III

~~INFRINGEMENT OF COPYRIGHT AND MORAL RIGHTS AND EXCEPTIONS TO~~ ~~INFRINGEMENT~~ INFRINGEMENT OF COPYRIGHT AND OTHER RIGHTS, AND EXCEPTIONS

Infringement of Copyright

General

27. (1) It is an infringement of copyright for any person to do, without the consent of the owner of the copyright, anything that by this Act only the owner of the copyright has the right to do.

(2) It is an infringement of copyright for any person to

(a) sell or rent out,

(b) distribute to such an extent as to affect prejudicially the owner of the copyright,

(c) by way of trade distribute, expose or offer for sale or rental, or exhibit in public,

(d) possess for the purpose of doing anything referred to in paragraphs (a) to (c), or

(e) import into Canada for the purpose of doing anything referred to in paragraphs (a) to (c),

a copy of a work, sound recording or fixation of a performer's performance or of a communication signal that the person knows or should have known infringes copyright or would infringe copyright if it had been made in Canada by the person who made it.

(2.1) It is an infringement of copyright for any person to do any of the following acts with respect to anything that the person knows or should have known is a lesson, as defined in subsection 30.01(1), or a fixation of one:

(a) to sell it or to rent it out;

(b) to distribute it to an extent that the owner of the copyright in the work or other subject-matter that is included in the lesson is prejudicially affected;

(c) by way of trade, to distribute it, expose or offer it for sale or rental or exhibit it in public;

(d) to possess it for the purpose of doing anything referred to in any of paragraphs (a) to (c);

(e) to communicate it by telecommunication to any person other than a person referred to in paragraph 30.01(3)(a); or

(f) to circumvent or contravene any measure taken in conformity with paragraph 30.01(5)(b), (c) or (d).

(3) In determining whether there is an infringement under subsection (2) in the case of an activity referred to in any of paragraphs (2)(a) to (d) in relation to a copy that was imported in the circumstances referred to in paragraph (2)(e), it is irrelevant whether the importer knew or should have known that the importation of the copy infringed copyright.

(4) It is an infringement of copyright for any person to make or possess a plate that has been specifically designed or adapted for the purpose of making infringing copies of a work or other subject-matter.

(5) It is an infringement of copyright for any person, for profit, to permit a theatre or other place of entertainment to be used for the performance in public of a work or other subject-matter without the consent of the owner of the copyright unless that person was not aware, and had no reasonable ground for suspecting, that the performance would be an infringement of copyright.

R.S., 1985, c. C-42, s. 27; R.S., 1985, c. 1 (3rd Supp.), s. 13, c. 10 (4th Supp.), s. 5; 1993, c. 44, s. 64; 1997, c. 24, s. 15.

Parallel Importation of Books

27.1 (1) Subject to any regulations made under subsection (6), it is an infringement of copyright in a book for any person to import the book where

(a) copies of the book were made with the consent of the owner of the copyright in the book in the country where the copies were made, but were imported without the consent of the owner of the copyright in the book in Canada; and

(b) the person knows or should have known that the book would infringe copyright if it was made in Canada by the importer.

(2) Subject to any regulations made under subsection (6), where the circumstances described in paragraph (1)(a) exist, it is an infringement of copyright in an imported book for any person who

knew or should have known that the book would infringe copyright if it was made in Canada by the importer to

(a) sell or rent out the book;

(b) by way of trade, distribute, expose or offer for sale or rental, or exhibit in public, the book; or

(c) possess the book for the purpose of any of the activities referred to in paragraph (a) or (b).

(3) Subsections (1) and (2) only apply where there is an exclusive distributor of the book and the acts described in those subsections take place in the part of Canada or in respect of the particular sector of the market for which the person is the exclusive distributor.

(4) An exclusive distributor is deemed, for the purposes of entitlement to any of the remedies under Part IV in relation to an infringement under this section, to derive an interest in the copyright in question by licence.

(5) No exclusive distributor, copyright owner or exclusive licensee is entitled to a remedy under Part IV in relation to an infringement under this section unless, before the infringement occurred, notice has been given within the prescribed time and in the prescribed manner to the person referred to in subsection (1) or (2), as the case may be, that there is an exclusive distributor of the book.

(6) The Governor in Council may, by regulation, establish terms and conditions for the importation of certain categories of books, including remaindered books, books intended solely for re-export and books imported by special order.

1997, c. 24, s. 15.

28. [Repealed, 1997, c. 24, s. 15]

28.01 [Repealed, 1997, c. 24, s. 16]

28.02 and 28.03 [Repealed, 1997, c. 24, s. 17]

Moral Rights Infringement

28.1 ~~Any act or omission that is contrary to any of the moral rights of the author of a work or of the performer of a performer's performance is, in the absence of the author's or performer's consent, an infringement of those rights. Any act or omission that is contrary to any of the moral rights of the author of a work is, in the absence of consent by the author, an infringement of the moral rights.~~

R.S., 1985, c. 10 (4th Supp.), s. 6.

28.2 (1) ~~The author's right to the integrity of a work is infringed only if the work is, to the prejudice of the honour or reputation of the author, The author's or performer's right to the integrity of a work or performer's performance is infringed only if the work or the performance is, to the prejudice of its author's or performer's honour or reputation,~~

(a) distorted, mutilated or otherwise modified; or

(b) used in association with a product, service, cause or institution.

(2) In the case of a painting, sculpture or engraving, the prejudice referred to in subsection (1) shall be deemed to have occurred as a result of any distortion, mutilation or other modification of the work.

(3) For the purposes of this section,

(a) a change in the location of a work, the physical means by which a work is exposed or the physical structure containing a work, or

(b) steps taken in good faith to restore or preserve the work

shall not, by that act alone, constitute a distortion, mutilation or other modification of the work.

R.S., 1985, c. 10 (4th Supp.), s. 6.

Exceptions

Fair Dealing

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

R.S., 1985, c. C-42, s. 29; R.S., 1985, c. 10 (4th Supp.), s. 7; 1994, c. 47, s. 61; 1997, c. 24, s. 18.

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.

1997, c. 24, s. 18.

29.2 Fair dealing for the purpose of news reporting 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.

29.21 (1) It is not an infringement of copyright for an individual to reproduce a work or other subject-matter that is a photograph or is contained in a book, newspaper, periodical or videocassette, or any substantial part of such a work or other subject-matter, onto another medium or device, if the following conditions are met:

_____ (a) the copy of the work or other subject-matter of which the reproduction is made is not an infringing copy;

_____ (b) the individual legally obtained the photograph, book, newspaper, periodical or videocassette, otherwise than by borrowing it or renting it, and owns the medium or device on which it is reproduced;

_____ (c) the individual, in order to make the reproduction, did not circumvent a technological measure or cause one to be circumvented, within the meanings of the definitions “circumvent” and “technological measure” in section 41;

_____ (d) the individual

_____ (i) reproduces the work or other subject-matter no more than once for each device that the individual owns, whether the reproduction is made directly onto the device or is made onto a medium that is to be used with the device, and

_____ (ii) prints no more than one copy of the work, if the work is in digital form;

_____ (e) the individual does not give the reproduction away; and

_____ (f) the reproduction is used only for private purposes.

(2) If the individual has downloaded the work or other subject-matter from the Internet and is bound by a contract that governs the extent to which the individual may reproduce the work or other subject-matter, the contract prevails over subsection (1) to the extent of any inconsistency between them.

(3) Subsection (1) does not apply if the individual gives away, rents or sells the photograph, book, newspaper, periodical or videocassette without first destroying all reproductions of the work or other subject-matter that the individual has made under that subsection.

(4) Subsection (1) does not apply if the reproduction is made for the purpose of doing any of the following in relation to the work or other subject-matter:

_____ (a) selling or renting out, or by way of trade exposing or offering for sale or rental;

_____ (b) distributing, whether or not for the purpose of trade;

_____ (c) communicating to the public by telecommunication; or

_____ (d) performing, or causing to be performed, in public.

29.22 (1) It is not an infringement of copyright for an individual to reproduce onto a medium or

device a musical work embodied in a sound recording, a performer's performance of a musical work embodied in a sound recording, or a sound recording in which a musical work or a performer's performance of a musical work is embodied, or any substantial part of such a work or other subject-matter, if the following conditions are met:

(a) the sound recording is not an infringing copy;

(b) the individual legally obtained the sound recording, otherwise than by borrowing it or renting it, and owns the medium or device on which it is reproduced;

(c) the individual, in order to make the reproduction, did not circumvent a technological measure or cause one to be circumvented, within the meanings of the definitions "circumvent" and "technological measure" in section 41;

(d) the individual reproduces the sound recording no more than once for each device that the individual owns, whether the reproduction is made directly onto the device or is made onto a medium that is to be used with the device;

(e) the individual does not give the reproduction away; and

(f) the reproduction is used only for private purposes.

(2) If the individual has downloaded the sound recording from the Internet and is bound by a contract that governs the extent to which the individual may reproduce the sound recording, the contract prevails over subsection (1) to the extent of any inconsistency between them.

(3) Subsection (1) does not apply if the reproduction is made onto a medium that is governed by Part VIII.

(4) Subsection (1) does not apply if the individual gives away, rents or sells the sound recording without first destroying all reproductions of it that the individual has made under that subsection.

(5) Subsection (1) does not apply if the reproduction is made for the purpose of doing any of the following in relation to the musical work, performer's performance or sound recording:

(a) selling or renting out, or by way of trade exposing or offering for sale or rental;

(b) distributing, whether or not for the purpose of trade;

(c) communicating to the public by telecommunication; or

(d) performing, or causing to be performed, in public.

Fixing Signals and Recording Programs for Later Listening or Viewing

29.23 (1) It is not an infringement of copyright for an individual to fix a communication signal, to reproduce a work or sound recording that is being broadcast or to fix or reproduce a performer's performance that is being broadcast, in order to record a program for the purpose of listening to or watching it later, if the following conditions are met:

(a) the individual receives the program legally;

(b) the individual, in order to record the program, did not illegally circumvent a technological measure or cause one to be illegally circumvented, within the meanings of the definitions “circumvent” and “technological measure” in section 41;

(c) the individual makes no more than one recording of the program;

(d) the individual keeps the recording no longer than necessary in order to listen to or watch the program at a more convenient time;

(e) the individual does not give the recording away; and

(f) the recording is used only for private purposes.

(2) If the individual receives the program under a video-on-demand service and is bound by a contract that governs the extent to which the individual may record it, the contract prevails over subsection (1) to the extent of any inconsistency between them.

(3) Subsection (1) does not apply to the recording of a program that is communicated over the Internet, unless it is communicated simultaneously via radio or television.

(4) Subsection (1) does not apply if the program is recorded for the purpose of doing any of the following in relation to the program:

(a) selling or renting out, or by way of trade exposing or offering for sale or rental;

(b) distributing, whether or not for the purpose of trade;

(c) communicating to the public by telecommunication; or

(d) performing, or causing to be performed, in public.

(5) Nothing in subsection (1) authorizes the recording of programs under a network personal video recorder service.

(6) The following definitions apply in this section.

“broadcast” has the same meaning as in the definition “broadcasting” in subsection 2(1) of the Broadcasting Act.

“network personal video recorder service” means a service that allows a person to store recordings of programs in a service provider’s networked facility in order to access them at any time.

“video-on-demand service” means a service that allows a person to receive programs at times of his or her choosing.

1997, c. 24, s. 18.

Acts Undertaken without Motive of Gain

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.

1997, c. 24, s. 18.

Educational Institutions

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

(a) to make a manual reproduction of a work onto a dry-erase board, flip chart or other similar surface intended for displaying handwritten material, or

(b) to make a copy of a work to be used to project an image of that copy using an overhead projector or similar device

for the purposes of education or training on the premises of an educational institution.

(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.

(3) Except in the case of manual reproduction, the exemption from copyright infringement provided by paragraph (1)(b) and subsection (2) does not apply if the work or other subject-matter is commercially available in a medium that is appropriate for the purpose referred to in that paragraph or subsection, as the case may be.

1997, c. 24, s. 18.

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; and

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

1997, c. 24, s. 18.

29.6 (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, 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, at any time or times within one year after the making of a copy under paragraph (a), before an audience consisting primarily of students of the educational institution on its premises for educational or training purposes.

(2) The educational institution must

(a) on the expiration of one year after making a copy under paragraph (1)(a), pay the royalties and comply with any terms and conditions fixed under this Act for the making of the copy or destroy the copy; and

(b) where it has paid the royalties referred to in paragraph (a), pay the royalties and comply with any terms and conditions fixed under this Act for any performance in public of the copy after the expiration of that year.

1997, c. 24, s. 18.

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.

1997, c. 24, s. 18.

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.

1997, c. 24, s. 18.

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

(a) makes a copy of a news program or a news commentary program and performs it pursuant to section 29.6, or

(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.

(2) The Board may, with the approval of the Governor in Council, make regulations

(a) prescribing the information in relation to the making, destruction, performance and marking of copies that must be kept under subsection (1),

(b) prescribing the manner and form in which records referred to in that subsection must be kept and copies destroyed or marked, and

(c) respecting the sending of information to collective societies referred to in section 71.

1997, c. 24, s. 18.

30. The publication in a collection, mainly composed of non-copyright matter, intended for the use of educational institutions, and so described in the title and in any advertisements issued by the publisher, of short passages from published literary works in which copyright subsists and not themselves published for the use of educational institutions, does not infringe copyright in those published literary works if

(a) not more than two passages from works by the same author are published by the same publisher within five years;

(b) the source from which the passages are taken is acknowledged; and

(c) the name of the author, if given in the source, is mentioned.

R.S., 1985, c. C-42, s. 30; R.S., 1985, c. 10 (4th Supp.), s. 7; 1997, c. 24, s. 18.

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 any of sections 29.4 to 29.6 and subsection 29.7(3).

(2) This section does not apply so as to permit any act referred to in paragraph (3)(a), (b) or (c) with respect to a work or other subject-matter whose use in the lesson constitutes an infringement of copyright or for whose use in the lesson the consent of the copyright owner is required.

(3) Subject to subsection (5), 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).

(4) For the purposes of sections 29.4 to 29.6 and subsection 29.7(3), 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) 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 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 or reproducing the lesson, or communicating it 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 that is applicable in the circumstances.

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; and

(d) take any measure prescribed by regulation that is applicable in the circumstances.

(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;

(b) there is a tariff certified under section 70.15 that is applicable to the digital reproduction of the work, to the communication of the digital reproduction by telecommunication to persons acting under the authority of the institution and to the printing by those persons of at least one copy of the work; or

(c) the institution has been informed by the collective society that is authorized to enter into reprographic agreements with respect to the work that the owner of the copyright in the work has informed it, under subsection (5), that the owner refuses to authorize the collective society to enter into a digital reproduction agreement with respect to the work.

(5) If the owner of the copyright in a work informs the collective society that is authorized to enter into reprographic agreements with respect to the work that the owner refuses to authorize it to enter into digital reproduction agreements with respect to the work, the collective society shall inform the educational institutions with which it has entered into reprographic reproduction agreements with respect to the work that they are not permitted to make digital reproductions under subsection (1).

(6) The owner of the copyright in a work who, in respect of the work, has authorized a collective society to enter into a reprographic reproduction agreement with an educational institution is deemed to have authorized the society to enter into a digital reproduction agreement with the institution — subject to the same restrictions as a reprographic reproduction agreement — unless the owner has refused to give this authorization under subsection (5) or has authorized another collective society to enter into a digital reproduction agreement with respect to the work.

(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).

30.03 (1) If an educational institution has paid royalties to a collective society for the digital reproduction of a work under paragraph 30.02(3)(a) and afterwards the institution enters into a digital reproduction agreement described in paragraph 30.02(4)(a) with any collective society,

(a) in the case where the institution would — under that digital reproduction agreement — pay a greater amount of royalties for the digital reproduction of that work than what was payable under paragraph 30.02(3)(a), the institution shall pay to the collective society to which it paid royalties under that paragraph the difference between

(i) the amount of royalties that the institution would have had to pay for the digital reproduction of that work if the agreement had been entered into on the day on which the institution first made a digital reproduction under paragraph 30.02(1)(a), and

(ii) the amount of royalties that the institution paid to the society under paragraph 30.02(3)(a) for the digital reproduction of that work from the day on which that paragraph comes into force until the day on which they enter into the digital reproduction agreement; and

(b) in the case where the institution would — under that digital reproduction agreement — pay a lesser amount of royalties for the digital reproduction of that work than what was payable under paragraph 30.02(3)(a), the collective society to which the institution paid royalties under that paragraph shall pay to the institution the difference between

(i) the amount of royalties that the institution paid to the society under paragraph 30.02(3)(a) for the digital reproduction of that work from the day on which that paragraph comes into force until the day on which they enter into the digital reproduction agreement, and

(ii) the amount of royalties that the institution would have had to pay for the digital reproduction of that work if the agreement had been entered into on the day on which the institution first made a digital reproduction under paragraph 30.02(1)(a).

(2) If an educational institution has paid royalties to a collective society for the digital reproduction of a work under paragraph 30.02(3)(a) and afterwards a tariff applies to the digital reproduction of that work under paragraph 30.02(4)(b),

(a) in the case where the institution would — under the tariff — pay a greater amount of royalties for the digital reproduction of that work than what was payable under paragraph 30.02(3)(a), the institution shall pay to the collective society to which it paid royalties under that paragraph the difference between

(i) the amount of royalties that the institution would have had to pay for the digital reproduction of that work if the tariff had been certified on the day on which the institution first made a digital reproduction under paragraph 30.02(1)(a), and

(ii) the amount of royalties that the institution paid to the society under paragraph 30.02(3)(a) for the digital reproduction of that work from the day on which that paragraph comes into force until the day on which the tariff is certified; and

(b) in the case where the institution would — under the tariff — pay a lesser amount of royalties for the digital reproduction of that work than what was payable under paragraph 30.02(3)(a), the collective society to which the institution paid royalties under that paragraph shall pay to the institution the difference between

(i) the amount of royalties that the institution paid to the society under paragraph 30.02(3)(a) for the digital reproduction of that work from the day on which that paragraph comes into force until the day on which the tariff is certified, and

(ii) the amount of royalties that the institution would have had to pay for the digital reproduction of that work if the tariff had been certified on the day on which the institution first made a digital reproduction under paragraph 30.02(1)(a).

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).

(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.

(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 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 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.

(6) The Governor in Council may make regulations for the purposes of paragraph (4)(b) prescribing what constitutes a clearly visible notice.

Libraries, Archives and Museums

30.1 (1) It is not an infringement of copyright for a library, archive or museum or a person acting under the authority of a library, archive or museum to make, for the maintenance or management of its permanent collection or the permanent collection of another library, archive or museum, a copy of a work or other subject-matter, whether published or unpublished, in its permanent collection

(a) if the original is rare or unpublished and is

(i) deteriorating, damaged or lost, or

(ii) at risk of deterioration or becoming damaged or lost;

(b) for the purposes of on-site consultation if the original cannot be viewed, handled or listened to because of its condition or because of the atmospheric conditions in which it must be kept;

(c) in an alternative format if the library, archive or museum or a person acting under the authority of the library, archive or museum considers that the original is currently in a format that is obsolete or is becoming obsolete, or that the technology required to use the original is unavailable or is becoming unavailable;
~~(e) in an alternative format if the original is currently in an obsolete format or the technology required to use the original is unavailable;~~

(d) for the purposes of internal record-keeping and cataloguing;

(e) for insurance purposes or police investigations; or

(f) if necessary for restoration.

(2) Paragraphs (1)(a) to (c) do not apply where an appropriate copy is commercially available in a medium and of a quality that is appropriate for the purposes of subsection (1).

(3) If a person must make an intermediate copy in order to make a copy under subsection (1), the person must destroy the intermediate copy as soon as it is no longer needed.

(4) The Governor in Council may make regulations with respect to the procedure for making copies under subsection (1).

1997, c. 24, s. 18; 1999, c. 31, s. 59(E).

30.2 (1) It is not an infringement of copyright for a library, archive or museum or a person acting under its authority to do anything on behalf of any person that the person may do personally under section 29 or 29.1.

(2) It is not an infringement of copyright for a library, archive or museum or a person acting under the authority of a library, archive or museum to make, by reprographic reproduction, for any person requesting to use the copy for research or private study, a copy of a work that is, or that is contained in, an article published in

(a) a scholarly, scientific or technical periodical; or

(b) a newspaper or periodical, other than a scholarly, scientific or technical periodical, if the newspaper or periodical was published more than one year before the copy is made.

(3) Paragraph (2)(b) does not apply in respect of a work of fiction or poetry or a dramatic or musical work.

(4) A library, archive or museum may make a copy under subsection (2) only on condition that

(a) the person for whom the copy will be made has satisfied the library, archive or museum that the person will not use the copy for a purpose other than research or private study; and

(b) the person is provided with a single copy of the work.

~~(5) A library, archive or museum, or a person acting under the authority of one, may do, on behalf of a patron of another library, archive or museum, anything under subsection (1) or (2) in relation to printed matter that it is authorized by this section to do on behalf of one of its own patrons. (5) A library, archive or museum or a person acting under the authority of a library, archive or museum may do, on behalf of a person who is a patron of another library, archive or museum, anything under subsection (1) or (2) in relation to printed matter that it is authorized by this section to do on behalf of a person who is one of its patrons, but the copy given to the patron must not be in digital form.~~

(5.01) A library, archive or museum, or a person acting under the authority of one, may, under subsection (5), make a copy of printed matter in digital form and provide it to a person who has requested it through another library, archive or museum if the providing library, archive or museum or person takes measures to prevent the person who has requested it from

(a) making any reproduction of the digital copy, including any paper copies, other than printing one copy of it;

(b) communicating the digital copy to any other person; and

(c) using the digital copy for more than five business days.

(5.1) Where an intermediate copy is made in order to copy a work referred to in subsection (5), once the copy is given to the patron, the intermediate copy must be destroyed.

(6) The Governor in Council may, for the purposes of this section, make regulations

(a) defining "newspaper" and "periodical";

(b) defining scholarly, scientific and technical periodicals;

(c) prescribing the information to be recorded about any action taken under subsection (1) or (5) and the manner and form in which the information is to be kept; ~~and~~

(d) prescribing the manner and form in which the conditions set out in subsection (4) are to be met; ~~and~~

(e) prescribing the manner and form in which the measures referred to in subsection (5.01) are to be taken.

1997, c. 24, s. 18.

30.21 (1) It is not an infringement of copyright for an archive to make a copy, in accordance with subsection (3), of an unpublished work that is deposited in the archive.

(2) When a person deposits a work in an archive, the archive must give the person notice that it may copy the work in accordance with this section.

(3) The archive may only copy the work if

(a) the person who deposited the work, if a copyright owner, did not, at the time the work was deposited, prohibit its copying;

(b) copying has not been prohibited by any other owner of copyright in the work; and

(c) the archive is satisfied that the person for whom it is made will use the copy only for purposes of research or private study and makes only one copy for that person.

(4) The Governor in Council may prescribe the manner and form in which the conditions in subsection (3) may be met.

(5) to (7) [Repealed, 2004, c. 11, s. 21]

1997, c. 24, s. 18; 1999, c. 31, s. 60(E); 2004, c. 11, s. 21.

Machines Installed in Educational Institutions, Libraries, Archives and Museums

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.

(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;

(b) the Board has, in accordance with section 70.2, fixed the royalties and related terms and conditions in respect of a licence;

(c) a tariff has been approved in accordance with section 70.15; or

(d) a collective society has filed a proposed tariff in accordance with section 70.13.

(3) Where a collective society offers to negotiate or has begun to negotiate an agreement referred to in paragraph (2)(a), the Board may, at the request of either party, order that the educational institution, library, archive or museum be treated as an institution to which subsection (1) applies, during the period specified in the order.

(4) Where an educational institution, library, archive or museum has entered into an agreement with a copyright owner other than a collective society respecting reprographic reproduction, subsection (1) applies only in respect of the works of the copyright owner that are covered by the agreement.

(5) The Governor in Council may, for the purposes of paragraph 1(c), prescribe by regulation the manner of affixing and location of notices and the dimensions, form and contents of notices.

1997, c. 24, s. 18.

Libraries, Archives and Museums in Educational Institutions

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.

1997, c. 24, s. 18.

National Archives of Canada

30.5 The National Archives of Canada may

(a) make a copy of a recording, as defined in section 8 of the National Archives Act, for the

purposes of that section; and

(b) at the time that a broadcasting undertaking, within the meaning of subsection 2(1) of the Broadcasting Act, communicates a work or other subject-matter to the public by telecommunication, make a copy for archival purposes of the work or other subject-matter that is included in that communication.

1997, c. 24, s. 18.

Computer Programs

30.6 It is not an infringement of copyright in a computer program for a person who owns a copy of the computer program that is authorized by the owner of the copyright to

(a) make a single reproduction of the copy by adapting, modifying or converting the computer program or translating it into another computer language if the person proves that the reproduced copy is

(i) essential for the compatibility of the computer program with a particular computer,

(ii) solely for the person's own use, and

(iii) destroyed immediately after the person ceases to be the owner of the copy; or

(b) make a single reproduction for backup purposes of the copy or of a reproduced copy referred to in paragraph (a) if the person proves that the reproduction for backup purposes is destroyed immediately when the person ceases to be the owner of the copy of the computer program.

1997, c. 24, s. 18.

Incidental Inclusion

30.7 It is not an infringement of copyright to incidentally and not deliberately

(a) include a work or other subject-matter in another work or other subject-matter; or

(b) do any act in relation to a work or other subject-matter that is incidentally and not deliberately included in another work or other subject-matter.

1997, c. 24, s. 18.

Ephemeral Recordings

30.8 (1) It is not an infringement of copyright for a programming undertaking to fix or reproduce in accordance with this section a performer's performance or work, other than a cinematographic work, that is performed live or a sound recording that is performed at the same time as the performer's performance or work, if the undertaking

(a) is authorized to communicate the performer's performance, work or sound recording to the public by telecommunication;

(b) makes the fixation or the reproduction itself, for its own broadcasts;

(c) does not synchronize the fixation or reproduction with all or part of another recording, performer's performance or work; and

(d) does not cause the fixation or reproduction to be used in an advertisement intended to sell or promote, as the case may be, a product, service, cause or institution.

(2) The programming undertaking must record the dates of the making and destruction of all fixations and reproductions and any other prescribed information about the fixation or reproduction, and keep the record current.

(3) The programming undertaking must make the record referred to in subsection (2) available to owners of copyright in the works, sound recordings or performer's performances, or their representatives, within twenty-four hours after receiving a request.

(4) The programming undertaking must destroy the fixation or reproduction within thirty days after making it, unless

(a) the copyright owner authorizes its retention; or

(b) it is deposited in an archive, in accordance with subsection (6).

(5) Where the copyright owner authorizes the fixation or reproduction to be retained after the thirty days, the programming undertaking must pay any applicable royalty.

(6) Where the programming undertaking considers a fixation or reproduction to be of an exceptional documentary character, the undertaking may, with the consent of an official archive, deposit it in the official archive and must notify the copyright owner, within thirty days, of the deposit of the fixation or reproduction.

(7) In subsection (6), "official archive" means the National Archives of Canada or any archive established under the law of a province for the preservation of the official archives of the province.

(8) This section does not apply where a licence is available from a collective society to make the fixation or reproduction of the performer's performance, work or sound recording.

(9) A broadcasting undertaking, as defined in the Broadcasting Act, may make a single reproduction of a fixation or reproduction made by a programming undertaking and communicate it to the public by telecommunication, within the period referred to in subsection (4), if the broadcasting undertaking meets the conditions set out in subsection (1) and is part of a prescribed network that includes the programming undertaking.

(10) The reproduction and communication to the public by telecommunication must be made

(a) in accordance with subsections (2) to (6); and

(b) within thirty days after the day on which the programming undertaking made the fixation or reproduction.

(11) In this section, "programming undertaking" means

(a) a programming undertaking as defined in subsection 2(1) of the Broadcasting Act;

(b) a programming undertaking described in paragraph (a) that originates programs within a network, as defined in subsection 2(1) of the Broadcasting Act; or

(c) a distribution undertaking as defined in subsection 2(1) of the Broadcasting Act, in respect of the programs that it originates.

The undertaking must hold a broadcasting licence issued by the Canadian Radio-television and Telecommunications Commission under the Broadcasting Act.

1997, c. 24, s. 18.

30.9 (1) It is not an infringement of copyright for a broadcasting undertaking to reproduce in accordance with this section a sound recording, or a performer's performance or work that is embodied in a sound recording, solely for the purpose of transferring it to a format appropriate for broadcasting, if the undertaking

(a) owns the copy of the sound recording, performer's performance or work and that copy is authorized by the owner of the copyright;

(b) is authorized to communicate the sound recording, performer's performance or work to the public by telecommunication;

(c) makes the reproduction itself, for its own broadcasts;

(d) does not synchronize the reproduction with all or part of another recording, performer's performance or work; and

(e) does not cause the reproduction to be used in an advertisement intended to sell or promote, as the case may be, a product, service, cause or institution.

(2) The broadcasting undertaking must record the dates of the making and destruction of all reproductions and any other prescribed information about the reproduction, and keep the record current.

(3) The broadcasting undertaking must make the record referred to in subsection (2) available to owners of copyright in the sound recordings, performer's performances or works, or their representatives, within twenty-four hours after receiving a request.

(4) The broadcasting undertaking must destroy the reproduction when it no longer possesses the sound recording or performer's performance or work embodied in the sound recording, or at the latest within thirty days after making the reproduction, unless the copyright owner authorizes the reproduction to be retained.

(5) If the copyright owner authorizes the reproduction to be retained, the broadcasting undertaking must pay any applicable royalty.

(6) This section does not apply if a licence is available from a collective society to reproduce the sound recording, performer's performance or work.

(7) In this section, "broadcasting undertaking" means a broadcasting undertaking as defined in subsection 2(1) of the Broadcasting Act that holds a broadcasting licence issued by the Canadian

Radio-television and Telecommunications Commission under that Act.

1997, c. 24, s. 18.

Retransmission

31. (1) In this section,

"new media retransmitter" means a person whose retransmission is lawful under the Broadcasting Act only by reason of the Exemption Order for New Media Broadcasting Undertakings issued by the Canadian Radio-television and Telecommunications Commission as Appendix A to Public Notice CRTC 1999-197, as amended from time to time;

"retransmitter" means a person who performs a function comparable to that of a cable retransmission system, but does not include a new media retransmitter;

"signal" means a signal that carries a literary, dramatic, musical or artistic work and is transmitted for free reception by the public by a terrestrial radio or terrestrial television station.

(2) It is not an infringement of copyright for a retransmitter to communicate to the public by telecommunication any literary, dramatic, musical or artistic work if

(a) the communication is a retransmission of a local or distant signal;

(b) the retransmission is lawful under the Broadcasting Act;

(c) the signal is retransmitted simultaneously and without alteration, except as otherwise required or permitted by or under the laws of Canada;

(d) in the case of the retransmission of a distant signal, the retransmitter has paid any royalties, and complied with any terms and conditions, fixed under this Act; and

(e) the retransmitter complies with the applicable conditions, if any, referred to in paragraph (3)(b).

(3) The Governor in Council may make regulations

(a) defining "local signal" and "distant signal" for the purposes of subsection (2); and

(b) prescribing conditions for the purposes of paragraph (2)(e), and specifying whether any such condition applies to all retransmitters or only to a class of retransmitter.

R.S., 1985, c. C-42, s. 31; R.S., 1985, c. 10 (4th Supp.), s. 7; 1988, c. 65, s. 63; 1997, c. 24, ss. 16, 52(F); 2002, c. 26, s. 2.

Network Services

31.1 (1) A person who, in providing services related to the operation of the Internet or another digital network, provides any means for the telecommunication or the reproduction of a work or other subject-matter through the Internet or that other network does not, solely by reason of providing those means, infringe copyright in that work or other subject-matter.

(2) Subject to subsection (3), a person referred to in subsection (1) who caches the work or other

subject-matter to make the telecommunication more efficient does not, by virtue of that act alone, infringe copyright in the work or other subject-matter.

(3) Subsection (2) does not apply unless the person, in respect of the work or other subject-matter,

_____ (a) does not modify it;

_____ (b) ensures that any directions related to its caching that are established by whoever made it available for telecommunication through the Internet or another digital network, and that lend themselves to automated reading and execution, are read and executed; and

_____ (c) does not interfere with the lawful use of technology to obtain data on its use.

(4) Subject to subsection (5), a person who, for the purpose of allowing the telecommunication of a work or other subject-matter through the Internet or another digital network, provides digital memory in which another person stores the work or other subject-matter does not, by virtue of that act alone, infringe copyright in the work or other subject-matter.

(5) Subsection (4) does not apply in respect of a work or other subject-matter if the person providing the digital memory knows of a decision of a court of competent jurisdiction to the effect that the person who has stored the work or other subject-matter in the digital memory infringes copyright by making the copy of the work or other subject-matter that is stored or by the way in which he or she uses the work or other subject-matter.

Persons with Perceptual Disabilities

32. (1) It is not an infringement of copyright for a person, at the request of a person with a perceptual disability, or for a non-profit organization acting for his or her benefit, to

(a) make a copy or sound recording of a literary, musical, artistic or dramatic work, other than a cinematographic work, in a format specially designed for persons with a perceptual disability;

(b) translate, adapt or reproduce in sign language a literary or dramatic work, other than a cinematographic work, in a format specially designed for persons with a perceptual disability; or

(c) perform in public a literary or dramatic work, other than a cinematographic work, in sign language, either live or in a format specially designed for persons with a perceptual disability.

(2) Subsection (1) does not authorize the making of a large print book.

(3) Subsection (1) does not apply where the work or sound recording is commercially available in a format specially designed to meet the needs of any person referred to in that subsection, within the meaning of paragraph (a) of the definition "commercially available".

R.S., 1985, c. C-42, s. 32; R.S., 1985, c. 10 (4th Supp.), s. 7; 1997, c. 24, s. 19.

Statutory Obligations

32.1 (1) It is not an infringement of copyright for any person

(a) to disclose, pursuant to the Access to Information Act, a record within the meaning of that Act, or to disclose, pursuant to any like Act of the legislature of a province, like material;

(b) to disclose, pursuant to the Privacy Act, personal information within the meaning of that Act, or to disclose, pursuant to any like Act of the legislature of a province, like information;

(c) to make a copy of an object referred to in section 14 of the Cultural Property Export and Import Act, for deposit in an institution pursuant to a direction under that section; and

(d) to make a fixation or copy of a work or other subject-matter in order to comply with the Broadcasting Act or any rule, regulation or other instrument made under it.

(2) Nothing in paragraph (1)(a) or (b) authorizes a person to whom a record or information is disclosed to do anything that, by this Act, only the owner of the copyright in the record, personal information or like information, as the case may be, has a right to do.

(3) Unless the Broadcasting Act otherwise provides, a person who makes a fixation or copy under paragraph (1)(d) shall destroy it immediately on the expiration of the period for which it must be kept pursuant to that Act, rule, regulation or other instrument.

1997, c. 24, s. 19.

Miscellaneous

32.2 (1) It is not an infringement of copyright

(a) for an author of an artistic work who is not the owner of the copyright in the work to use any mould, cast, sketch, plan, model or study made by the author for the purpose of the work, if the author does not thereby repeat or imitate the main design of the work;

(b) for any person to reproduce, in a painting, drawing, engraving, photograph or cinematographic work

(i) an architectural work, provided the copy is not in the nature of an architectural drawing or plan, or

(ii) a sculpture or work of artistic craftsmanship or a cast or model of a sculpture or work of artistic craftsmanship, that is permanently situated in a public place or building;

(c) for any person to make or publish, for the purposes of news reporting or news summary, a report of a lecture given in public, unless the report is prohibited by conspicuous written or printed notice affixed before and maintained during the lecture at or about the main entrance of the building in which the lecture is given, and, except while the building is being used for public worship, in a position near the lecturer;

(d) for any person to read or recite in public a reasonable extract from a published work; ~~or~~

(e) for any person to make or publish, for the purposes of news reporting or news summary, a report of an address of a political nature given at a public meeting; or

(f) for an individual to use for private or non-commercial purposes a photograph or portrait that was commissioned by the individual for personal purposes and made for valuable consideration, unless the individual and the owner of the copyright in the photograph or portrait have agreed otherwise.

(2) It is not an infringement of copyright for a person to do any of the following acts without motive of gain at any agricultural or agricultural-industrial exhibition or fair that receives a grant from or is held by its directors under federal, provincial or municipal authority:

(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.

(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.

1997, c. 24, s. 19.

Interpretation

32.3 For the purposes of sections 29 to 32.2, an act that does not infringe copyright does not give rise to a right to remuneration conferred by section 19.

1997, c. 24, s. 19.

Compensation for Acts Done Before Recognition of Copyright of Performers and Broadcasters

32.4 (1) Notwithstanding section 27, where a person has, before the later of January 1, 1996 and the day on which a country becomes a WTO member, incurred an expenditure or liability in connection with, or in preparation for, the doing of an act that would have infringed copyright under section 26 commencing on the later of those days, had that country been a WTO member, any right or interest of that person that

(a) arises from or in connection with the doing of that act, and

(b) is subsisting and valuable on the later of those days

is not prejudiced or diminished by reason only that that country has become a WTO member, except

as provided by an order of the Board made under subsection 78(3).

(2) Notwithstanding subsection (1), a person's right or interest that is protected by that subsection terminates if and when the owner of the copyright pays that person such compensation as is agreed to between the parties or, failing agreement, as is determined by the Board in accordance with section 78.

(3) Nothing in subsections (1) and (2) affects any right of a performer available in law or equity.

1997, c. 24, s. 19.

32.5 (1) Notwithstanding section 27, where a person has, before the later of the coming into force of Part II and the day on which a country becomes a Rome Convention country, incurred an expenditure or liability in connection with, or in preparation for, the doing of an act that would have infringed copyright under section 15 or 21 commencing on the later of those days, had Part II been in force or had that country been a Rome Convention country, any right or interest of that person that

(a) arises from or in connection with the doing of that act, and

(b) is subsisting and valuable on the later of those days

is not prejudiced or diminished by reason only that Part II has come into force or that the country has become a Rome Convention country, except as provided by an order of the Board made under subsection 78(3).

(2) Notwithstanding subsection (1), a person's right or interest that is protected by that subsection terminates if and when the owner of the copyright pays that person such compensation as is agreed to between the parties or, failing agreement, as is determined by the Board in accordance with section 78.

(3) Nothing in subsections (1) and (2) affects any right of a performer available in law or equity.

32.6 Despite sections 27, 28.1 and 28.2, if a person has, before the day on which subsection 15(1.1), 17.1(1) or 18(1.1) applies in respect of a particular performers' performance or sound recording, incurred an expenditure or a liability in connection with, or in preparation for, the doing of an act that would, if done after that day, have infringed rights under that subsection, any right or interest of that person that arises from, or in connection with, the doing of that act and that is subsisting and valuable on that day is not, for two years after the day on which this section comes into force, prejudiced or diminished by reason only of the subsequent application of that subsection in respect of the performers' performance or sound recording.

1997, c. 24, s. 19.

Compensation for Acts Done Before Recognition of Copyright or Moral Rights

~~33. (1) Notwithstanding subsections 27(1), (2) and (4) and sections 27.1, 28.1 and 28.2, where a person has, before the later of January 1, 1996 and the day on which a country becomes a treaty country, incurred an expenditure or liability in connection with, or in preparation for, the doing of an act that would have infringed a copyright owner's copyright or an author's moral rights had that country been a treaty country, any right or interest of that person that~~

~~(a) arises from or in connection with the doing of that act, and~~

~~(b) is subsisting and valuable on the latest of those days~~

~~is not prejudiced or diminished by reason only that that country has become a treaty country, except as provided by an order of the Board made under subsection 78(3). Despite subsections 27(1), (2) and (4) and sections 27.1, 28.1 and 28.2, if a person has, before the later of January 1, 1996 and the day on which a country becomes a treaty country other than a WCT country, incurred an expenditure or liability in connection with, or in preparation for, the doing of an act that, if that country had been such a treaty country, would have infringed copyright in a work or moral rights in respect of a work, any right or interest of that person that arises from, or in connection with, the doing of that act and that is subsisting and valuable on the later of those days is not, except as provided by an order of the Board made under subsection 78(3), prejudiced or diminished by reason only of that country having become such a treaty country.~~

(2) Notwithstanding subsection (1), a person's right or interest that is protected by that subsection terminates, as against the copyright owner or author, if and when that copyright owner or the author, as the case may be, pays that person such compensation as is agreed to between the parties or, failing agreement, as is determined by the Board in accordance with section 78.

R.S., 1985, c. C-42, s. 33; R.S., 1985, c. 10 (4th Supp.), s. 7; 1997, c. 24, s. 19.

~~33.1 (1) Despite subsections 27(1), (2) and (4) and sections 27.1, 28.1 and 28.2, if a person has, before the later of the day on which this section comes into force and the day on which a country that is a treaty country but not a WCT country becomes a WCT country, incurred an expenditure or liability in connection with, or in preparation for, the doing of an act that, if that country had been a WCT country, would have infringed a right under paragraph 3(1)(j), any right or interest of that person that arises from, or in connection with, the doing of that act and that is subsisting and valuable on the later of those days is not, except as provided by an order of the Board made under subsection 78(3), prejudiced or diminished by reason only of that country having become a WCT country.~~

~~(2) Despite subsection (1), a person's right or interest that is protected by that subsection terminates as against the copyright owner if and when the owner pays the person any compensation that is agreed to between the parties or, failing agreement, that is determined by the Board in accordance with section 78.~~

~~33.2 (1) Despite subsections 27(1), (2) and (4) and sections 27.1, 28.1 and 28.2, if a person has, before the later of the day on which this section comes into force and the day on which a country that is not a treaty country becomes a WCT country, incurred an expenditure or a liability in connection with, or in preparation for, the doing of an act that, if that country had been a WCT country, would have infringed copyright in a work or moral rights in respect of a work, any right or interest of that person that arises from, or in connection with, the doing of that act and that is subsisting and valuable on the later of those days is not, except as provided by an order of the Board made under subsection 78(3), prejudiced or diminished by reason only of that country having become a WCT country.~~

~~(2) Despite subsection (1), a person's right or interest that is protected by that subsection terminates as against the copyright owner if and when that owner pays the person any compensation that is agreed to between the parties or, failing agreement, that is determined by the Board in accordance with section 78.~~

PART IV
REMEDIES

Civil Remedies

Copyright Infringement

34. (1) Where copyright has been infringed, the owner of the copyright is, subject to this Act, entitled to all remedies by way of injunction, damages, accounts, delivery up and otherwise that are or may be conferred by law for the infringement of a right.

~~(2) In any proceedings for an infringement of a moral right of an author, the court may grant to the author or to the person who holds the moral rights by virtue of subsection 14.2(2) or (3), as the case may be, all remedies by way of injunction, damages, accounts, delivery up and otherwise that are or may be conferred by law for the infringement of a right. In any proceedings for an infringement of moral rights, the court may grant to the holder of those rights all remedies by way of injunction, damages, accounts, delivery up and otherwise that are or may be conferred by law for the infringement of a right.~~

(3) The costs of all parties in any proceedings in respect of the infringement of a right conferred by this Act shall be in the discretion of the court.

(4) The following proceedings may be commenced or proceeded with by way of application or action and shall, in the case of an application, be heard and determined without delay and in a summary way:

(a) proceedings for infringement of copyright or moral rights;

(b) proceedings taken under section 44.1, 44.2 or 44.4; and

(c) proceedings taken in respect of

(i) a tariff certified by the Board under Part VII or VIII, or

(ii) agreements referred to in section 70.12.

(5) The rules of practice and procedure, in civil matters, of the court in which proceedings are commenced by way of application apply to those proceedings, but where those rules do not provide for the proceedings to be heard and determined without delay and in a summary way, the court may give such directions as it considers necessary in order to so provide.

(6) The court in which proceedings are instituted by way of application may, where it considers it appropriate, direct that the proceeding be proceeded with as an action.

(7) In this section, "application" means a proceeding that is commenced other than by way of a writ or statement of claim.

R.S., 1985, c. C-42, s. 34; R.S., 1985, c. 10 (4th Supp.), s. 8; 1993, c. 15, s. 3(E), c. 44, s. 65; 1994, c. 47, s. 62; 1997, c. 24, s. 20.

~~34.1 (1) In any proceedings for infringement of copyright in which the defendant puts in issue either the existence of the copyright or the title of the plaintiff thereto, In any civil proceedings taken under~~

this Act in which the defendant puts in issue either the existence of the copyright or the title of the plaintiff to it.

(a) copyright shall be presumed, unless the contrary is proved, to subsist in the work, performer's performance, sound recording or communication signal, as the case may be; and

(b) the author, performer, maker or broadcaster, as the case may be, shall, unless the contrary is proved, be presumed to be the owner of the copyright.

(2) Where any matter referred to in subsection (1) is at issue and no assignment of the copyright, or licence granting an interest in the copyright, has been registered under this Act,

(a) if a name purporting to be that of

(i) the author of the work,

(ii) the performer of the performer's performance,

(iii) the maker of the sound recording, or

(iv) the broadcaster of the communication signal

is printed or otherwise indicated thereon in the usual manner, the person whose name is so printed or indicated shall, unless the contrary is proved, be presumed to be the author, performer, maker or broadcaster;

(b) if

(i) no name is so printed or indicated, or if the name so printed or indicated is not the true name of the author, performer, maker or broadcaster or the name by which that person is commonly known, and

(ii) a name purporting to be that of the publisher or owner of the work, performer's performance, sound recording or communication signal is printed or otherwise indicated thereon in the usual manner,

the person whose name is printed or indicated as described in subparagraph (ii) shall, unless the contrary is proved, be presumed to be the owner of the copyright in question; and

(c) if, on a cinematographic work, a name purporting to be that of the maker of the cinematographic work appears in the usual manner, the person so named shall, unless the contrary is proved, be presumed to be the maker of the cinematographic work.

1997, c. 24, s. 20.

35. (1) Where a person infringes copyright, the person is liable to pay such damages to the owner of the copyright as the owner has suffered due to the infringement and, in addition to those damages, such part of the profits that the infringer has made from the infringement and that were not taken into account in calculating the damages as the court considers just.

(2) In proving profits,

- (a) the plaintiff shall be required to prove only receipts or revenues derived from the infringement;
and
- (b) the defendant shall be required to prove every element of cost that the defendant claims.

R.S., 1985, c. C-42, s. 35; 1997, c. 24, s. 20.

~~36. [Repealed](1) Subject to this section, the owner of any copyright, or any person or persons deriving any right, title or interest by assignment or grant in writing from the owner, may individually for himself or herself, as a party to the proceedings in his or her own name, protect and enforce any right that he or she holds, and, to the extent of that right, title and interest, is entitled to the remedies provided by this Act.~~

~~(2) Where proceedings referred to in subsection (1) are taken by a person other than the copyright owner, the copyright owner must be made a party to those proceedings, except~~

~~(a) in respect of proceedings taken under section 44.1, 44.2 or 44.4;~~

~~(b) in respect of interlocutory proceedings unless the court is of the opinion that the interests of justice require the copyright owner to be a party; and~~

~~(c) in any other case, if the court is of the opinion that the interests of justice do not require the copyright owner to be a party.~~

~~(3) A copyright owner who is made a party to proceedings pursuant to subsection (2) is not liable for any costs unless the copyright owner takes part in the proceedings.~~

~~(4) Where a copyright owner is made a party to proceedings pursuant to subsection (2), the court, in awarding damages or profits, shall, subject to any agreement between the person who took the proceedings and the copyright owner, apportion the damages or profits referred to in subsection 35(1) between them as the court considers appropriate.~~

R.S., 1985, c. C-42, s. 36; 1994, c. 47, s. 63; 1997, c. 24, s. 20.

~~37. The Federal Court has concurrent jurisdiction with provincial courts to hear and determine all proceedings, other than the prosecution of offences under section 42 and 43, for the enforcement of a provision of this Act or of the civil remedies provided by this Act. [Repealed]~~

R.S., 1985, c. C-42, s. 37; 1997, c. 24, s. 20.

38. (1) Subject to subsection (2), the owner of the copyright in a work or other subject-matter may

(a) recover possession of all infringing copies of that work or other subject-matter, and of all plates used or intended to be used for the production of infringing copies, and

(b) take proceedings for seizure of those copies or plates before judgment if, under the law of Canada or of the province in which those proceedings are taken, a person is entitled to take such proceedings,

as if those copies or plates were the property of the copyright owner.

~~(2) On application by~~

~~(a) a person from whom the copyright owner has recovered possession of copies or plates referred to in subsection (1);~~

~~(b) a person against whom proceedings for seizure before judgment of copies or plates referred to in subsection (1) have been taken, or~~

~~(c) any other person who has an interest in those copies or plates;~~

~~a court may order that those copies or plates be destroyed, or may make any other order that it considers appropriate in the circumstances:~~

~~(1.1) If a copyright owner has made an election under subsection (1), a defendant who is an individual is liable for statutory damages of \$500 in respect of all the defendant's infringements that were done for the defendant's private purposes and that are involved in the proceedings.~~

~~(1.2) However, the copyright owner may not recover statutory damages from a defendant referred to in subsection (1.1) in respect of the defendant's infringements that~~

~~_____ (a) were done for the defendant's private purposes before the institution of the proceedings in which the election was made; and~~

~~_____ (b) are not involved in those proceedings.~~

~~(1.3) If a copyright owner has made an election under subsection (1) in respect of a defendant referred to in subsection (1.1), no other copyright owner may elect statutory damages in respect of that defendant for the defendant's infringements that were done for the defendant's private purposes before the institution of the proceedings in which the election was made.~~

~~(1.4) Subsections (1.1) to (1.3) do not apply with respect to infringements that were made possible because the defendant circumvented or caused to be circumvented a technological measure that protected the work or other subject-matter, within the meanings of the definitions "circumvent" and "technological measure" in section 41.~~

~~(2) If subsection (1.1) does not apply and the defendant satisfies the court that the defendant was not aware and had no reasonable grounds to believe that the defendant had infringed copyright, the court may reduce the amount of an award under subsection (1) to less than \$500, but not less than \$200.~~

(3) Before making an order under subsection (2), the court shall direct that notice be given to any person who has an interest in the copies or plates in question, unless the court is of the opinion that the interests of justice do not require such notice to be given.

(4) In making an order under subsection (2), the court shall have regard to all the circumstances, including

(a) the proportion, importance and value of the infringing copy or plate, as compared to the substrate or carrier embodying it; and

(b) the extent to which the infringing copy or plate is severable from, or a distinct part of, the substrate or carrier embodying it.

(5) Nothing in this Act entitles the copyright owner to damages in respect of the possession or conversion of the infringing copies or plates.

R.S., 1985, c. C-42, s. 38; 1997, c. 24, s. 20.

38.1 (1) Subject to this section, a copyright owner may elect, at any time before final judgment is rendered, to recover, instead of damages and profits referred to in subsection 35(1), an award of statutory damages for all infringements involved in the proceedings, with respect to any one work or other subject-matter, for which any one infringer is liable individually, or for which any two or more infringers are liable jointly and severally, in a sum of not less than \$500 or more than \$20,000 as the court considers just.

(2) Where a copyright owner has made an election under subsection (1) and the defendant satisfies the court that the defendant was not aware and had no reasonable grounds to believe that the defendant had infringed copyright, the court may reduce the amount of the award to less than \$500, but not less than \$200.

(3) Where

(a) there is more than one work or other subject-matter in a single medium, and

(b) the awarding of even the minimum amount referred to in subsection (1) or (2) would result in a total award that, in the court's opinion, is grossly out of proportion to the infringement,

the court may award, with respect to each work or other subject-matter, such lower amount than \$500 or \$200, as the case may be, as the court considers just.

(4) Where the defendant has not paid applicable royalties, a collective society referred to in section 67 may only make an election under this section to recover, in lieu of any other remedy of a monetary nature provided by this Act, an award of statutory damages in a sum of not less than three and not more than ten times the amount of the applicable royalties, as the court considers just.

(5) In exercising its discretion under subsections (1) and (2) to (4), the court shall consider all relevant factors, including ~~In exercising its discretion under subsections (1) to (4), the court shall consider all relevant factors, including~~

(a) the good faith or bad faith of the defendant;

(b) the conduct of the parties before and during the proceedings; and

(c) the need to deter other infringements of the copyright in question.

(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; ~~or~~

(c) a person who infringes copyright under paragraph 27(2)(e) or section 27.1, where the copy in

question was made with the consent of the copyright owner in the country where the copy was made; or-

(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).

(7) An election under subsection (1) does not affect any right that the copyright owner may have to exemplary or punitive damages.

1997, c. 24, s. 20.

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.

(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.

1997, c. 24, s. 20.

39. (1) Subject to subsection (2), in any proceedings for infringement of copyright, the plaintiff is not entitled to any remedy other than an injunction in respect of the infringement if the defendant proves that, at the date of the infringement, the defendant was not aware and had no reasonable ground for suspecting that copyright subsisted in the work or other subject-matter in question.

(2) Subsection (1) does not apply if, at the date of the infringement, the copyright was duly registered under this Act.

R.S., 1985, c. C-42, s. 39; 1997, c. 24, s. 20.

39.1 (1) When granting an injunction in respect of an infringement of copyright in a work or other subject-matter, the court may further enjoin the defendant from infringing the copyright in any other work or subject-matter if

(a) the plaintiff is the owner of the copyright or the person to whom an interest in the copyright has been granted by licence; and

(b) the plaintiff satisfies the court that the defendant will likely infringe the copyright in those other works or subject-matter unless enjoined by the court from doing so.

(2) An injunction granted under subsection (1) may extend to works or other subject-matter

(a) in respect of which the plaintiff was not, at the time the proceedings were commenced, the owner of the copyright or the person to whom an interest in the copyright has been granted by licence; or

(b) that did not exist at the time the proceedings were commenced.

1997, c. 24, s. 20.

40. (1) Where the construction of a building or other structure that infringes or that, if completed, would infringe the copyright in some other work has been commenced, the owner of the copyright is not entitled to obtain an injunction in respect of the construction of that building or structure or to order its demolition.

(2) Sections 38 and 42 do not apply in any case in respect of which subsection (1) applies.

R.S., 1985, c. C-42, s. 40; 1997, c. 24, s. 21.

~~41. (1) Subject to subsection (2), a court may not award a remedy in relation to an infringement unless~~

~~(a) in the case where the plaintiff knew, or could reasonably have been expected to know, of the infringement at the time it occurred, the proceedings for infringement are commenced within three years after the infringement occurred; or~~

~~(b) in the case where the plaintiff did not know, and could not reasonably have been expected to know, of the infringement at the time it occurred, the proceedings for infringement are commenced within three years after the time when the plaintiff first knew, or could reasonably have been expected to know, of the infringement.~~

~~(2) The court shall apply the limitation period set out in paragraph (1)(a) or (b) only in respect of a party who pleads a limitation period.~~

Technological Measures and Rights Management Information

41. The following definitions apply in this section and in sections 41.1 to 41.2.

“circumvent” means,

(a) in respect of a technological measure within the meaning of paragraph (a) of the definition “technological measure”, to descramble a scrambled work or decrypt an encrypted work or to otherwise avoid, bypass, remove, deactivate or impair the technological measure, unless done with the authority of the copyright owner; and

(b) in respect of a technological measure within the meaning of paragraph (b) of the definition “technological measure”, to avoid, bypass, remove, deactivate or impair the technological measure.

“technological measure” means any effective technology, device or component that, in the ordinary course of its operation,

(a) controls access to a work, to a performer’s performance fixed in a sound recording or to a sound recording and whose use is authorized by the copyright owner; or

(b) restricts the doing — with respect to a work, to a performer’s performance fixed in a sound recording or to a sound recording — of any act referred to in section 3, 15 or 18 and any act for which remuneration is payable under section 19.

41.1 (1) No person shall

(a) circumvent a technological measure within the meaning of paragraph (a) of the definition “technological measure” in section 41;

(b) offer services to the public or provide services if

(i) the services are offered or provided primarily for the purposes of circumventing a technological measure,

(ii) the uses or purposes of those services are not commercially significant other than when they are offered or provided for the purposes of circumventing a technological measure, or

(iii) the person markets those services as being for the purposes of circumventing a technological measure or acts in concert with another person in order to market those services as being for those purposes; or

(c) manufacture, import, provide — including by selling or renting — offer for sale or rental or distribute any technology, device or component if

(i) the technology, device or component is designed or produced primarily for the purposes of circumventing a technological measure,

(ii) the uses or purposes of the technology, device or component are not commercially significant other than when it is used for the purposes of circumventing a technological measure, or

(iii) the person markets the technology, device or component as being for the purposes of circumventing a technological measure or acts in concert with another person in order to market the technology, device or component as being for those purposes.

(2) The owner of the copyright in a work, a performer’s performance fixed in a sound recording or a sound recording in respect of which paragraph (1)(a) has been contravened is, subject to this Act and any regulations made under section 41.2, entitled to all remedies — by way of injunction, damages, accounts, delivery up and otherwise — that are or may be conferred by law for the infringement of copyright against the person who contravened that paragraph.

(3) The owner of the copyright in a work, a performer’s performance fixed in a sound recording or a sound recording in respect of which paragraph (1)(a) has been contravened may not elect under section 38.1 to recover statutory damages from an individual who contravened that paragraph only for his or her own private purposes.

(4) Every owner of the copyright in a work, a performer's performance fixed in a sound recording or a sound recording in respect of which a technological measure has been or could be circumvented as a result of the contravention of paragraph (1)(b) or (c) is, subject to this Act and any regulations made under section 41.2, entitled to all remedies — by way of injunction, damages, accounts, delivery up and otherwise — that are or may be conferred by law for the infringement of copyright against the person who contravened paragraph (1)(b) or (c).

41.11 (1) Paragraph 41.1(1)(a) does not apply if a technological measure is circumvented for the purposes of an investigation related to the enforcement of any Act of Parliament or any Act of the legislature of a province, or for the purposes of activities related to the protection of national security.

(2) Paragraph 41.1(1)(b) does not apply if the services are provided by or for the persons responsible for carrying out such an investigation or such activities.

(3) Paragraph 41.1(1)(c) does not apply if the technology, device or component is manufactured, imported or provided by the persons responsible for carrying out such an investigation or such activities, or is manufactured, imported, provided or offered for sale or rental as a service provided to those persons.

41.12 (1) Paragraph 41.1(1)(a) does not apply to a person who owns a computer program or a copy of it, or has a licence to use the program or copy, and who circumvents a technological measure that protects that program or copy for the sole purpose of obtaining information that would allow the person to make the program and any other computer program interoperable.

(2) Paragraph 41.1(1)(b) does not apply to a person who offers services to the public or provides services for the purposes of circumventing a technological measure if the person does so for the purpose of making the computer program and any other computer program interoperable.

(3) Paragraph 41.1(1)(c) does not apply to a person who manufactures, imports or provides a technology, device or component for the purposes of circumventing a technological measure if the person does so for the purpose of making the computer program and any other computer program interoperable and

_____ (a) uses that technology, device or component only for that purpose; or

_____ (b) provides that technology, device or component to another person only for that purpose.

(4) A person referred to in subsection (1) may communicate the information obtained under that subsection to another person for the purposes of allowing that person to make the computer program and any other computer program interoperable.

(5) A person to whom the technology, device or component referred to in subsection (3) is provided or to whom the information referred to in subsection (4) is communicated may use it only for the purpose of making the computer program and any other computer program interoperable.

(5) A person to whom the technology, device or component referred to in subsection (3) is provided or to whom the information referred to in subsection (4) is communicated may use it only for the purpose of making the computer program and any other computer program interoperable.

(7) Furthermore, a person is not entitled to benefit from the exception under subsection (4) if, for

the purposes of making the computer program and any other computer program interoperable, the person does an act that constitutes an infringement of copyright or an act that contravenes any Act of Parliament or any Act of the legislature of a province.

41.13 (1) Paragraph 41.1(1)(a) does not apply to a person who, for the purposes of encryption research, circumvents a technological measure by means of decryption if

_____ (a) it would not be practical to carry out the research without circumventing the techno- logical measure;

_____ (b) the person has lawfully obtained the work, the performer's performance fixed in a sound recording or the sound recording that is protected by the technological measure; and

_____ (c) the person has informed the owner of the copyright in the work, the performer's performance fixed in a sound recording or the sound recording who has applied the technological measure.

(2) However, a person acting in the circumstances referred to in subsection (1) is not entitled to benefit from the exception under that subsection if the person does an act that constitutes an infringement of copyright or an act that contravenes any Act of Parliament or any Act of the legislature of a province.

(3) Paragraph 41.1(1)(c) does not apply to a person referred to in subsection (1) who manufactures a technology, device or component for the purposes of circumventing a technological measure that is subject to paragraph 41.1(1)(a) if the person does so for the purpose of encryption research and

_____ (a) uses that technology, device or component only for that purpose; or

_____ (b) provides that technology, device or component only for that purpose to another person who is collaborating with the person.

41.14 (1) Paragraph 41.1(1)(a) does not apply to a person who circumvents a technolog- ical measure if

_____ (a) the work, performer's performance fixed in a sound recording or sound recording that is protected by the technological measure is not accompanied by a notice indicating that its use will permit a third party to collect and communicate personal information relating to the user or, in the case where it is accompanied by such a notice, the user is not provided with the option to prevent the collection and communication of personal information without the user's use of it being restricted; and

_____ (b) the only purpose of circumventing the technological measure is to verify whether it permits the collection or communication of personal information and, if it does, to prevent it.

(2) Paragraphs 41.1(1)(b) and (c) do not apply to a person who offers services to the public or provides services, or manufactures, imports or provides a technology, device or component, for the purposes of circumventing a technological measure in accordance with subsection (1), to the extent that the services, technology, device or component do not unduly impair the technological measure.

41.15 (1) Paragraph 41.1(1)(a) does not apply to a person who circumvents a techno- logical measure that is subject to that paragraph for the sole purpose of, with the consent of the owner or administrator of a computer, computer system or computer network, assessing the vulnerability of

the computer, system or network or correcting any security flaws.

(2) Paragraph 41.1(1)(b) does not apply if the services are provided to a person described in subsection (1).

(3) Paragraph 41.1(1)(c) does not apply if the technology, device or component is manufactured or imported by a person described in subsection (1), or is manufactured, imported, provided — including by selling or renting — offered for sale or rental or distributed as a service provided to that person.

(4) A person acting in the circumstances referred to in subsection (1) is not entitled to benefit from the exception under that subsection if the person does an act that constitutes an infringement of copyright or an act that contravenes any Act of Parliament or any Act of the legislature of a province.

41.16 (1) Paragraph 41.1(1)(a) does not apply to

(a) a person with a perceptual disability who circumvents a technological measure for the sole purpose of making a work, a performer's performance fixed in a sound recording or a sound recording perceptible to that person;

(b) a person who circumvents a technological measure at the request of a person with a perceptual disability for the sole purpose of making a work, a performer's performance fixed in a sound recording or a sound recording perceptible to the person with the perceptual disability; or

(c) a non-profit organization acting for the benefit of a person with a perceptual disability that circumvents a technological measure for the sole purpose of making a work, a performer's performance fixed in a sound recording or a sound recording perceptible to that person.

(2) Paragraphs 41.1(1)(b) and (c) do not apply to a person who offers or provides services to persons or organizations referred to in subsection (1), or manufactures, imports or provides a technology, device or component, for the purposes of enabling those persons or organizations to circumvent a technological measure in accordance with that subsection, to the extent that the services, technology, device or component do not unduly impair the technological measure.

41.17 Paragraph 41.1(1)(a) does not apply to a broadcasting undertaking that circumvents a technological measure for the sole purpose of making an ephemeral reproduction of a work, a performer's performance fixed in a sound recording or a sound recording in accordance with section 30.9, unless the owner of the copyright in the work, the performer's performance fixed in a sound recording or the sound recording that is protected by the technological measure makes available the necessary means to enable the making of such a reproduction in a timely manner in light of the broadcasting undertaking's business requirements.

41.18 A court may reduce or remit the amount of damages it awards in the circumstances described in subsection 41.1(1) if the defendant satisfies the court that the defendant was not aware, and had no reasonable grounds to believe, that the defendant's acts constituted a contravention of that subsection.

41.19 If a court finds that a defendant that is a library, archive or museum or an educational institution has contravened subsection 41.1(1) and the defendant satisfies the court that it was not aware, and had no reasonable grounds to believe, that its actions constituted a contravention of that subsection, the plaintiff is not entitled to any remedy other than an injunction.

41.2 (1) The Governor in Council may make regulations excluding from the application of section 41.1 any technological measure that protects a work, a performer's performance fixed in a sound recording or a sound recording, or classes of them, or any class of such technological measures, if the Governor in Council considers that the application of that section to the technological measure or class of technological measures would unduly restrict competition in the aftermarket sector in which the technological measure is used.

(2) The Governor in Council may make regulations

(a) prescribing additional circumstances in which paragraph 41.1(1)(a) does not apply, after taking into consideration the following factors:

(i) whether not being permitted to circumvent a technological measure that is subject to that paragraph could adversely affect the use a person may make of a work, a performer's performance fixed in a sound recording or a sound recording when that use is authorized,

(ii) whether the work, the performer's performance fixed in a sound recording or the sound recording is commercially available,

(iii) whether not being permitted to circumvent a technological measure that is subject to that paragraph could adversely affect criticism, review, news reporting, commentary, teaching, scholarship or research that could be made or done in respect of the work, the performer's performance fixed in a sound recording or the sound recording,

(iv) whether being permitted to circumvent a technological measure that is subject to that paragraph could adversely affect the market for the work, the performer's performance fixed in a sound recording or the sound recording or its market value,

(v) whether the work, the performer's performance fixed in a sound recording or the sound recording is commercially available in a medium and in a quality that is appropriate for non-profit archival, preservation or educational uses, and

(vi) any other relevant factor; and

(b) requiring the owner of the copyright in a work, a performer's performance fixed in a sound recording or a sound recording that is protected by a technological measure to provide access to the work, performer's performance fixed in a sound recording or sound recording to persons who are entitled to the benefit of any of the limitations on the application of paragraph 41.1(1)(a) prescribed under paragraph (a). The regulations may prescribe the manner in which, and the time within which, access is to be provided, as well as any conditions that the owner of the copyright is to comply with.

41.21 (1) No person shall knowingly remove or alter any rights management information in electronic form without the consent of the owner of the copyright in the work, the performer's performance or the sound recording, if the person knows or should have known that the removal or alteration will facilitate or conceal any infringement of the owner's copyright or adversely affect the owner's right to remuneration under section 19.

(2) The owner of the copyright in a work, a performer's performance fixed in a sound recording or a sound recording is, subject to this Act, entitled to all remedies — by way of injunction, damages, accounts, delivery up and otherwise — that are or may be conferred by law for the infringement of

copyright against a person who contravenes subsection (1).

(3) The copyright owner referred to in subsection (2) has the same remedies against a person who, without the owner's consent, knowingly does any of the following acts with respect to any material form of the work, the performer's performance fixed in a sound recording or the sound recording and knows or should have known that the rights management information has been removed or altered in a way that would give rise to a remedy under that subsection:

(a) sells it or rents it out;

(b) distributes it to an extent that the copyright owner is prejudicially affected;

(c) by way of trade, distributes it, exposes or offers it for sale or rental or exhibits it in public;

(d) imports it into Canada for the purpose of doing anything referred to in any of paragraphs (a) to (c); or

(e) communicates it to the public by telecommunication.

(4) In this section, "rights management information" means information that

(a) is attached to or embodied in a copy of a work, a performer's performance fixed in a sound recording, or a sound recording, or appears in connection with its communication to the public by telecommunication; and

(b) identifies or permits the identification of the work or its author, the performance or its performer, the sound recording or its maker or the holder of any rights in the work, the performance or the sound recording, or concerns the terms or conditions of the work's, performance's or sound recording's use.

General Provisions

41.22 (1) Subject to this section, the owner of any copyright, or any person or persons deriving any right, title or interest by assignment or grant in writing from the owner, may individually for himself or herself, as a party to the proceedings in his or her own name, protect and enforce any right that he or she holds, and, to the extent of that right, title and interest, is entitled to the remedies provided by this Act.

(2) If proceedings under subsection (1) are taken by a person other than the copyright owner, the copyright owner shall be made a party to those proceedings, except

(a) in the case of proceedings taken under section 44.1, 44.2 or 44.4;

(b) in the case of interlocutory proceedings, unless the court is of the opinion that the interests of justice require the copyright owner to be a party; and

(c) in any other case in which the court is of the opinion that the interests of justice do not require the copyright owner to be a party.

(3) A copyright owner who is made a party to proceedings under subsection (2) is not liable for any costs unless the copyright owner takes part in the proceedings.

(4) If a copyright owner is made a party to proceedings under subsection (2), the court, in awarding damages or profits, shall, subject to any agreement between the person who took the proceedings and the copyright owner, apportion the damages or profits referred to in subsection 35(1) between them as the court considers appropriate.

41.23 The Federal Court has concurrent jurisdiction with provincial courts to hear and determine all proceedings, other than the prosecution of offences under sections 42 and 43, for the enforcement of a provision of this Act or of the civil remedies provided by this Act.

41.24 (1) Subject to subsection (2), a court may not award a remedy provided by this Part unless

_____ (a) the proceedings for the infringement or the act giving rise to a remedy are commenced within three years after it occurred, in the case where the plaintiff knew, or could reasonably have been expected to know, of the infringement or act at the time it occurred; or

_____ (b) the proceedings for the infringement or the act giving rise to a remedy are commenced within three years after the time when the plaintiff first knew of it or could reasonably have been expected to know of it, in the case where the plaintiff did not know, and could not reasonably have been expected to know, of the infringement or act at the time it occurred.

(2) The court shall apply the limitation or prescription period set out in paragraph (1)(a) or (b) only in respect of a party who pleads a limitation period.

PROVISIONS RESPECTING PROVIDERS OF NETWORK SERVICES OR INFORMATION LOCATION TOOLS

41.25 (1) An owner of the copyright in a work or other subject-matter may send a notice of claimed infringement to a person who provides

_____ (a) the means, in the course of providing services related to the operation of the Internet or another digital network, of telecommunication through which the electronic location that is the subject of the claim of infringement is connected to the Internet or another digital network;

_____ (b) the digital memory referred to in subsection 31.1(4) that is used for the electronic location to which the claim of infringement relates; or

_____ (c) an information location tool as defined in subsection 41.27(3).

(2) A notice of claimed infringement shall be in writing in the form, if any, prescribed by regulation and shall

_____ (a) state the claimant's name and address and any other particulars prescribed by regulation that enable communication with the claimant;

_____ (b) identify the work or other subject-matter to which the claimed infringement relates;

_____ (c) state the claimant's interest or right with respect to the copyright in the work or other subject-matter;

_____ (d) specify the location data for the electronic location to which the claimed infringement relates;

(e) specify the infringement that is claimed;

(f) specify the date and time of the commission of the claimed infringement; and

(g) contain any other information that may be prescribed by regulation.

41.26 (1) A person described in paragraph 41.25(1)(a) or (b) who receives a notice of claimed infringement that complies with subsection 41.25(2) shall, on being paid any fee that the person has lawfully charged for doing so,

(a) without delay forward the notice elec- tronically to the person that the electronic location identified by the location data specified in the notice belongs to and inform the claimant of its forwarding or, if appli- cable, of the reason why it was not possible to forward it; and

(b) retain records that will allow the identity of the person to whom the electronic location belongs to be determined, and do so for six months beginning on the day on which the notice of claimed infringement is received or, if the claimant commences proceedings relating to the claimed infringement and so notifies the person before the end of those six months, for one year after the day on which the person receives the notice of claimed infringement.

(2) The Minister may, by regulation, fix the maximum fee that a person may charge for performing his or her obligations under subsection (1). If no maximum is fixed by regulation, the person may not charge any amount under that subsection.

(3) A claimant's only remedy against a person who fails to perform his or her obligations under subsection (1) is statutory damages in an amount that the court considers just, but not less than \$5,000 and not more than \$10,000.

(4) The Governor in Council may, by regulation, increase or decrease the minimum or maximum amount of statutory damages set out in subsection (3).

41.27 (1) In any proceedings for infringement of copyright, the owner of the copyright in a work or other subject-matter is not entitled, against a provider of an information location tool who makes a reproduction of the work or other subject-matter or communicates that reproduction to the public by telecommunication, to any remedy other than an injunction.

(2) Subsection (1) applies only if the provid- er, in respect of the work or other subject-matter,

(a) makes and caches the reproduction in an automated manner for the purpose of providing the information location tool;

(b) communicates that reproduction to the public by telecommunication for the purpose of providing the information that has been located by the information location tool;

(c) does not modify the reproduction;

(d) complies with any conditions relating to the making or caching of reproductions of the work or other subject-matter, or to the communication of the reproduction to the public by telecommunication, that were established by whoever made the work or other subject-matter available through the Internet or another digital network and that lend themselves to automated reading and execution;

(e) does not interfere with the lawful use of technology to obtain data on the use of the work or other subject-matter; and

(f) has not received a notice of claimed infringement relating to the work or other subject-matter that complies with subsection 41.25(2).

(3) In this section, “information location tool” means any tool that makes it possible to locate information that is available through the Internet or another digital network.

R.S., 1985, c. C-42, s. 41; R.S., 1985, c. 10 (4th Supp.), s. 9; 1997, c. 24, s. 22.

Criminal Remedies

42. (1) Every person who knowingly

(a) makes for sale or rental an infringing copy of a work or other subject-matter in which copyright subsists,

(b) sells or rents out, or by way of trade exposes or offers for sale or rental, an infringing copy of a work or other subject-matter in which copyright subsists,

(c) distributes infringing copies of a work or other subject-matter in which copyright subsists, either for the purpose of trade or to such an extent as to affect prejudicially the owner of the copyright,

(d) by way of trade exhibits in public an infringing copy of a work or other subject-matter in which copyright subsists, or

(e) imports for sale or rental into Canada any infringing copy of a work or other subject-matter in which copyright subsists

is guilty of an offence and liable

(f) on summary conviction, to a fine not exceeding twenty-five thousand dollars or to imprisonment for a term not exceeding six months or to both, or

(g) on conviction on indictment, to a fine not exceeding one million dollars or to imprisonment for a term not exceeding five years or to both.

(2) Every person who knowingly

(a) makes or possesses any plate that is specifically designed or adapted for the purpose of making infringing copies of any work or other subject-matter in which copyright subsists, or

(b) for private profit causes to be performed in public, without the consent of the owner of the copyright, any work or other subject-matter in which copyright subsists

is guilty of an offence and liable

(c) on summary conviction, to a fine not exceeding twenty-five thousand dollars or to imprisonment for a term not exceeding six months or to both, or

(d) on conviction on indictment, to a fine not exceeding one million dollars or to imprisonment for a term not exceeding five years or to both.

(3) The court before which any proceedings under this section are taken may, on conviction, order that all copies of the work or other subject-matter that appear to it to be infringing copies, or all plates in the possession of the offender predominantly used for making infringing copies, be destroyed or delivered up to the owner of the copyright or otherwise dealt with as the court may think fit.

(3.1) Every person, except a person who is acting on behalf of a library, archive or museum or an educational institution, is guilty of an offence who knowingly and for commercial purposes contravenes section 41.1 and is liable

_____ (a) on conviction on indictment, to a fine not exceeding \$1,000,000 or to imprisonment for a term not exceeding five years or to both; or

_____ (b) on summary conviction, to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding six months or to both.

(4) Proceedings by summary conviction in respect of an offence under this section may be instituted at any time within, but not later than, two years after the time when the offence was committed.

(5) No person may be prosecuted under this section for importing a book or dealing with an imported book in the manner described in section 27.1.

R.S., 1985, c. C-42, s. 42; R.S., 1985, c. 10 (4th Supp.), s. 10; 1997, c. 24, s. 24.

43. (1) Any person who, without the written consent of the owner of the copyright or of the legal representative of the owner, knowingly performs or causes to be performed in public and for private profit the whole or any part, constituting an infringement, of any dramatic or operatic work or musical composition in which copyright subsists in Canada is guilty of an offence and liable on summary conviction to a fine not exceeding two hundred and fifty dollars and, in the case of a second or subsequent offence, either to that fine or to imprisonment for a term not exceeding two months or to both.

(2) Any person who makes or causes to be made any change in or suppression of the title, or the name of the author, of any dramatic or operatic work or musical composition in which copyright subsists in Canada, or who makes or causes to be made any change in the work or composition itself without the written consent of the author or of his legal representative, in order that the work or composition may be performed in whole or in part in public for private profit, is guilty of an offence and liable on summary conviction to a fine not exceeding five hundred dollars and, in the case of a second or subsequent offence, either to that fine or to imprisonment for a term not exceeding four months or to both.

R.S., c. C-30, s. 26.

43.1 [Repealed, 1997, c. 24, s. 25]

Importation

44. Copies made out of Canada of any work in which copyright subsists that if made in Canada would infringe copyright and as to which the owner of the copyright gives notice in writing to the

Canada Customs and Revenue Agency that the owner desires that the copies not be so imported into Canada, shall not be so imported and are deemed to be included in tariff item No. 9897.00.00 in the List of Tariff Provisions set out in the schedule to the Customs Tariff, and section 136 of that Act applies accordingly.

R.S., 1985, c. C-42, s. 44; R.S., 1985, c. 41 (3rd Supp.), s. 116; 1997, c. 36, s. 205; 1999, c. 17, s. 119.

44.1 (1) In this section and sections 44.2 and 44.3,

"court" means the Federal Court or the superior court of a province;

"duties" has the same meaning as in the Customs Act;

"Minister" means the Minister of National Revenue;

"release" has the same meaning as in the Customs Act.

(2) A court may make an order described in subsection (3) where the court is satisfied that

(a) copies of the work are about to be imported into Canada, or have been imported into Canada but have not yet been released;

(b) either

(i) copies of the work were made without the consent of the person who then owned the copyright in the country where the copies were made, or

(ii) the copies were made elsewhere than in a country to which this Act extends; and

(c) the copies would infringe copyright if they were made in Canada by the importer and the importer knows or should have known this.

(2.1) A court may make an order described in subsection (3) on application by the owner or exclusive licensee of copyright in a work in Canada.

(3) The order referred to in subsection (2) is an order

(a) directing the Minister

(i) to take reasonable measures, on the basis of information reasonably required by the Minister and provided by the applicant, to detain the work, and

(ii) to notify the applicant and the importer, forthwith after detaining the work, of the detention and the reasons therefor; and

(b) providing for such other matters as the court considers appropriate.

(4) An application for an order made under subsection (2) may be made in an action or otherwise, and either on notice or ex parte, except that it must always be made on notice to the Minister.

(5) Before making an order under subsection (2), the court may require the applicant to furnish

security, in an amount fixed by the court,

(a) to cover duties, storage and handling charges, and any other amount that may become chargeable against the work; and

(b) to answer any damages that may by reason of the order be incurred by the owner, importer or consignee of the work.

(6) The Minister may apply to the court for directions in implementing an order made under subsection (2).

(7) The Minister may give the applicant or the importer an opportunity to inspect the detained work for the purpose of substantiating or refuting, as the case may be, the applicant's claim.

(8) Unless an order made under subsection (2) provides otherwise, the Minister shall, subject to the Customs Act and to any other Act of Parliament that prohibits, controls or regulates the importation or exportation of goods, release the copies of the work without further notice to the applicant if, two weeks after the applicant has been notified under subparagraph (3)(a)(ii), the applicant has not notified the Minister that the applicant has commenced a proceeding for a final determination by the court of the issues referred to in paragraphs (2)(b) and (c).

(9) Where, in a proceeding commenced under this section, the court finds that the circumstances referred to in paragraphs (2)(b) and (c) existed, the court may make any order that it considers appropriate in the circumstances, including an order that the copies of the work be destroyed, or that they be delivered up to the plaintiff as the plaintiff's property absolutely.

(10) For greater certainty, nothing in this section affects any remedy available under any other provision of this Act or any other Act of Parliament.

1993, c. 44, s. 66; 1997, c. 24, s. 27.

44.2 (1) A court may, subject to this section, make an order described in subsection 44.1(3) in relation to a book where the court is satisfied that

(a) copies of the book are about to be imported into Canada, or have been imported into Canada but have not yet been released;

(b) copies of the book were made with the consent of the owner of the copyright in the book in the country where the copies were made, but were imported without the consent of the owner in Canada of the copyright in the book; and

(c) the copies would infringe copyright if they were made in Canada by the importer and the importer knows or should have known this.

(2) A court may make an order described in subsection 44.1(3) in relation to a book on application by

(a) the owner of the copyright in the book in Canada;

(b) the exclusive licensee of the copyright in the book in Canada; or

(c) the exclusive distributor of the book.

(3) Subsections (1) and (2) only apply where there is an exclusive distributor of the book and the acts described in those subsections take place in the part of Canada or in respect of the particular sector of the market for which the person is the exclusive distributor.

(4) Subsections 44.1(3) to (10) apply, with such modifications as the circumstances require, in respect of an order made under subsection (1).

1994, c. 47, s. 66; 1997, c. 24, s. 28.

44.3 No exclusive licensee of the copyright in a book in Canada, and no exclusive distributor of a book, may obtain an order under section 44.2 against another exclusive licensee of the copyright in that book in Canada or against another exclusive distributor of that book.

1997, c. 24, s. 28.

44.4 Section 44.1 applies, with such modifications as the circumstances require, in respect of a sound recording, performer's performance or communication signal, where a fixation or a reproduction of a fixation of it

(a) is about to be imported into Canada, or has been imported into Canada but has not yet been released;

(b) either

(i) was made without the consent of the person who then owned the copyright in the sound recording, performer's performance or communication signal, as the case may be, in the country where the fixation or reproduction was made, or

(ii) was made elsewhere than in a country to which Part II extends; and

(c) would infringe the right of the owner of copyright in the sound recording, performer's performance or communication signal if it was made in Canada by the importer and the importer knows or should have known this.

1997, c. 24, s. 28.

45. (1) Notwithstanding anything in this Act, it is lawful for a person

(a) to import for their own use not more than two copies of a work or other subject-matter made with the consent of the owner of the copyright in the country where it was made;

(b) to import for use by a department of the Government of Canada or a province copies of a work or other subject-matter made with the consent of the owner of the copyright in the country where it was made;

(c) at any time before copies of a work or other subject-matter are made in Canada, to import any copies, except copies of a book, made with the consent of the owner of the copyright in the country where the copies were made, that are required for the use of a library, archive, museum or educational institution;

(d) to import, for the use of a library, archive, museum or educational institution, not more than one

copy of a book that is made with the consent of the owner of the copyright in the country where the book was made; and

(e) to import copies, made with the consent of the owner of the copyright in the country where they were made, of any used books, except textbooks of a scientific, technical or scholarly nature for use within an educational institution in a course of instruction.

(2) An officer of customs may, in the officer's discretion, require a person seeking to import a copy of a work or other subject-matter under this section to produce satisfactory evidence of the facts necessary to establish the person's right to import the copy.

R.S., 1985, c. C-42, s. 45; R.S., 1985, c. 41 (3rd Supp.), s. 117; 1993, c. 44, s. 67; 1994, c. 47, s. 67; 1997, c. 24, s. 28.

PART V ADMINISTRATION

Copyright Office

46. The Copyright Office shall be attached to the Patent Office.

R.S., c. C-30, s. 29.

47. The Commissioner of Patents shall exercise the powers conferred and perform the duties imposed on him by this Act under the direction of the Minister, and, in the absence of the Commissioner of Patents or if the Commissioner is unable to act, the Registrar of Copyrights or other officer temporarily appointed by the Minister may, as Acting Commissioner, exercise those powers and perform those duties under the direction of the Minister.

R.S., c. C-30, s. 30.

48. There shall be a Registrar of Copyrights.

R.S., c. C-30, s. 31.

49. The Commissioner of Patents, the Registrar of Copyrights or an officer, clerk or employee of the Copyright Office may sign certificates and certified copies of the Register of Copyrights.

R.S., 1985, c. C-42, s. 49; 1992, c. 1, s. 47; 1993, c. 15, s. 4.

50. The Registrar of Copyrights shall perform such other duties in connection with the administration of this Act as may be assigned to him by the Commissioner of Patents.

R.S., c. C-30, s. 33.

51. [Repealed, 1992, c. 1, s. 48]

52. The Commissioner of Patents shall, subject to the Minister, oversee and direct the officers, clerks and employees of the Copyright Office, have general control of the business thereof and perform such other duties as are assigned to him by the Governor in Council.

R.S., c. C-30, s. 35.

53. (1) The Register of Copyrights is evidence of the particulars entered in it, and a copy of an entry in the Register is evidence of the particulars of the entry if it is certified by the Commissioner of Patents, the Registrar of Copyrights or an officer, clerk or employee of the Copyright Office as a true copy.

(2) A certificate of registration of copyright is evidence that the copyright subsists and that the person registered is the owner of the copyright.

(2.1) A certificate of registration of an assignment of copyright is evidence that the right recorded on the certificate has been assigned and that the assignee registered is the owner of that right.

(2.2) A certificate of registration of a licence granting an interest in a copyright is evidence that the interest recorded on the certificate has been granted and that the licensee registered is the holder of that interest.

(3) A certified copy or certificate appearing to have been issued under this section is admissible in all courts without proof of the signature or official character of the person appearing to have signed it.

R.S., 1985, c. C-42, s. 53; 1992, c. 1, s. 49; 1993, c. 15, s. 5; 1997, c. 24, s. 30.

Registration

54. (1) The Minister shall cause to be kept at the Copyright Office a register to be called the Register of Copyrights in which may be entered

(a) the names or titles of works and of other subject-matter in which copyright subsists;

(b) the names and addresses of authors, performers, makers of sound recordings, broadcasters, owners of copyright, assignees of copyright, and persons to whom an interest in copyright has been granted by licence; and

(c) such other particulars as may be prescribed by regulation.

(2) [Repealed, 1997, c. 24, s. 31]

(3) In the case of an encyclopaedia, newspaper, review, magazine or other periodical work, or work published in a series of books or parts, it is not necessary to make a separate entry for each number or part, but a single entry for the whole work is sufficient.

(4) There shall also be kept at the Copyright Office such indices of the Register established under this section as may be prescribed by regulation.

(5) The Register and indices established under this section shall at all reasonable times be open to inspection, and any person is entitled to make copies of or take extracts from the Register.

(6) Any registration made under the Copyright Act, chapter 70 of the Revised Statutes of Canada, 1906, has the same force and effect as if made under this Act.

(7) Any work in which copyright, operative in Canada, subsisted immediately before January 1, 1924 is registrable under this Act.

R.S., 1985, c. C-42, s. 54; 1992, c. 1, s. 50; 1997, c. 24, s. 31.

55. (1) Application for the registration of a copyright in a work may be made by or on behalf of the author of the work, the owner of the copyright in the work, an assignee of the copyright, or a person to whom an interest in the copyright has been granted by licence.

(2) An application under subsection (1) must be filed with the Copyright Office, be accompanied by the fee prescribed by or determined under the regulations, and contain the following information:

- (a) the name and address of the owner of the copyright in the work;
- (b) a declaration that the applicant is the author of the work, the owner of the copyright in the work, an assignee of the copyright, or a person to whom an interest in the copyright has been granted by licence;
- (c) the category of the work;
- (d) the title of the work;
- (e) the name of the author and, if the author is dead, the date of the author's death, if known;
- (f) in the case of a published work, the date and place of the first publication; and
- (g) any additional information prescribed by regulation.

R.S., 1985, c. C-42, s. 55; 1997, c. 24, s. 32.

56. (1) Application for the registration of a copyright in subject-matter other than a work may be made by or on behalf of the owner of the copyright in the subject-matter, an assignee of the copyright, or a person to whom an interest in the copyright has been granted by licence.

(2) An application under subsection (1) must be filed with the Copyright Office, be accompanied by the fee prescribed by or determined under the regulations, and contain the following information:

- (a) the name and address of the owner of the copyright in the subject-matter;
- (b) a declaration that the applicant is the owner of the copyright in the subject-matter, an assignee of the copyright, or a person to whom an interest in the copyright has been granted by licence;
- (c) whether the subject-matter is a performer's performance, a sound recording or a communication signal;
- (d) the title, if any, of the subject-matter;
- (e) the date of
 - (i) in the case of a performer's performance, its first fixation in a sound recording or, if it is not fixed in a sound recording, its first performance,
 - (ii) in the case of a sound recording, the first fixation, or

(iii) in the case of a communication signal, its broadcast; and

(f) any additional information prescribed by regulation.

R.S., 1985, c. C-42, s. 56; 1993, c. 15, s. 6; 1997, c. 24, s. 32.

56.1 Where a person purports to have the authority to apply for the registration of a copyright under section 55 or 56 on behalf of another person, any damage caused by a fraudulent or erroneous assumption of such authority is recoverable in any court of competent jurisdiction.

1997, c. 24, s. 32.

57. (1) The Registrar of Copyrights shall register an assignment of copyright, or a licence granting an interest in a copyright, on being furnished with

(a) the original instrument or a certified copy of it, or other evidence satisfactory to the Registrar of the assignment or licence; and

(b) the fee prescribed by or determined under the regulations.

(2) [Repealed, 1992, c. 1, s. 51]

(3) Any assignment of copyright, or any licence granting an interest in a copyright, shall be adjudged void against any subsequent assignee or licensee for valuable consideration without actual notice, unless the prior assignment or licence is registered in the manner prescribed by this Act before the registering of the instrument under which the subsequent assignee or licensee claims.

(4) The Federal Court may, on application of the Registrar of Copyrights or of any interested person, order the rectification of the Register of Copyrights by

(a) the making of any entry wrongly omitted to be made in the Register,

(b) the expunging of any entry wrongly made in or remaining on the Register, or

(c) the correction of any error or defect in the Register,

and any rectification of the Register under this subsection shall be retroactive from such date as the Court may order.

R.S., 1985, c. C-42, s. 57; 1992, c. 1, s. 51; 1993, c. 15, s. 7; 1997, c. 24, s. 33.

58. (1) ~~Any assignment of copyright, or any licence granting an interest in a copyright, may be executed, subscribed or acknowledged at any place in a treaty country or a Rome Convention country by the assignor, licensor or mortgagor, before any notary public, commissioner or other official or the judge of any court, who is authorized by law to administer oaths or perform notarial acts in that place, and who also subscribes their signature and affixes thereto or impresses thereon their official seal or the seal of the court of which they are such judge. Any assignment of a copyright, or any licence granting an interest in a copyright, may be executed, subscribed or acknowledged at any place in a treaty country, a Rome Convention country or a WPPT country by the assignor, licensor or secured or hypothecary debtor, before any notary public, commissioner or other official, or the judge of any court, who is authorized by law to administer oaths or certify documents in that place and who also subscribes their signature and affixes to, or impresses on, the~~

assignment or licence their official seal or the seal of the court of which they are a judge.

(2) Any assignment of copyright, or any licence granting an interest in a copyright, may be executed, subscribed or acknowledged by the assignor, licensor or mortgagor, in any other foreign country before any notary public, commissioner or other official or the judge of any court of the foreign country, who is authorized to administer oaths or perform notarial acts in that foreign country and whose authority shall be proved by the certificate of a diplomatic or consular officer of Canada performing their functions in that foreign country.

(3) The official seal or seal of the court or the certificate of a diplomatic or consular officer is evidence of the execution of the instrument, and the instrument with the seal or certificate affixed or attached thereto is admissible as evidence in any action or proceeding brought under this Act without further proof.

(4) The provisions of subsections (1) and (2) shall be deemed to be permissive only, and the execution of any assignment of copyright, or any licence granting an interest in a copyright, may in any case be proved in accordance with the applicable rules of evidence.

R.S., 1985, c. C-42, s. 58; 1997, c. 24, s. 34.

Fees

59. The Governor in Council may make regulations

(a) prescribing fees, or the manner of determining fees, to be paid for anything required or authorized to be done in the administration of this Act; and

(b) prescribing the time and manner in which the fees must be paid.

R.S., 1985, c. C-42, s. 59; 1993, c. 15, s. 8.

PART VI MISCELLANEOUS PROVISIONS

Substituted Right

60. (1) Where any person is immediately before January 1, 1924 entitled to any right in any work that is set out in column I of Schedule I, or to any interest in such a right, he is, as from that date, entitled to the substituted right set out in column II of that Schedule, or to the same interest in the substituted right, and to no other right or interest, and the substituted right shall subsist for the term for which it would have subsisted if this Act had been in force at the date when the work was made, and the work had been one entitled to copyright thereunder.

(2) Where the author of any work in which any right that is set out in column I of Schedule I subsists on January 1, 1924 has, before that date, assigned the right or granted any interest therein for the whole term of the right, then at the date when, but for the passing of this Act, the right would have expired, the substituted right conferred by this section shall, in the absence of express agreement, pass to the author of the work, and any interest therein created before January 1, 1924 and then subsisting shall determine, but the person who immediately before the date at which the right would have expired was the owner of the right or interest is entitled at his option either

(a) on giving such notice as is hereinafter mentioned, to an assignment of the right or the grant of a

similar interest therein for the remainder of the term of the right for such consideration as, failing agreement, may be determined by arbitration, or

(b) without any assignment or grant, to continue to reproduce or perform the work in like manner as theretofore subject to the payment, if demanded by the author within three years after the date at which the right would have expired, of such royalties to the author as, failing agreement, may be determined by arbitration, or, where the work is incorporated in a collective work and the owner of the right or interest is the proprietor of that collective work, without any payment,

and the notice referred to in paragraph (a) must be given not more than one year or less than six months before the date at which the right would have expired, and must be sent by registered post to the author, or, if he cannot with reasonable diligence be found, advertised in the Canada Gazette.

(3) For the purposes of this section, "author" includes the legal representatives of a deceased author.

(4) Subject to this Act, copyright shall not subsist in any work made before January 1, 1924 otherwise than under and in accordance with the provisions of this section.

R.S., 1985, c. C-42, s. 60; R.S., 1985, c. 10 (4th Supp.), s. 17(F); 1997, c. 24, s. 52(F).

Clerical Errors

61. Clerical errors in any instrument of record in the Copyright Office do not invalidate the instrument, but they may be corrected under the authority of the Registrar of Copyrights.

R.S., 1985, c. C-42, s. 61; 1992, c. 1, s. 52; 1993, c. 15, s. 10.

Regulations

62. (1) The Governor in Council may make regulations

~~(a) prescribing anything that by this Act is to be prescribed by regulation; and~~

~~(b) generally for carrying out the purposes and provisions of this Act.~~

(a) for the purposes of paragraph 30.01(5)(d), respecting measures, which may vary according to circumstances specified in the regulations;

(b) for the purposes of paragraph 30.02(3)(d), respecting measures, which may vary according to circumstances specified in the regulations;

(c) prescribing the form of a notice of claimed infringement referred to in subsection 41.25(2) and prescribing information to be contained in it;

(d) prescribing anything that by this Act is to be prescribed by regulation; and

(e) generally for carrying out the purposes and provisions of this Act.

(2) The Governor in Council may make orders for altering, revoking or varying any order in council made under this Act, but any order made under this section does not affect prejudicially any rights or interests acquired or accrued at the date when the order comes into operation, and shall provide for the protection of those rights and interests.

R.S., 1985, c. C-42, s. 62; 1997, c. 24, s. 37.

Industrial Designs and Topographies

63. [Repealed, 1997, c. 24, s. 38]

64. (1) In this section and section 64.1,

"article" means any thing that is made by hand, tool or machine;

"design" means features of shape, configuration, pattern or ornament and any combination of those features that, in a finished article, appeal to and are judged solely by the eye;

"useful article" means an article that has a utilitarian function and includes a model of any such article;

"utilitarian function", in respect of an article, means a function other than merely serving as a substrate or carrier for artistic or literary matter.

(2) Where copyright subsists in a design applied to a useful article or in an artistic work from which the design is derived and, by or under the authority of any person who owns the copyright in Canada or who owns the copyright elsewhere,

(a) the article is reproduced in a quantity of more than fifty, or

(b) where the article is a plate, engraving or cast, the article is used for producing more than fifty useful articles,

it shall not thereafter be an infringement of the copyright or the moral rights for anyone

(c) to reproduce the design of the article or a design not differing substantially from the design of the article by

(i) making the article, or

(ii) making a drawing or other reproduction in any material form of the article, or

(d) to do with an article, drawing or reproduction that is made as described in paragraph (c) anything that the owner of the copyright has the sole right to do with the design or artistic work in which the copyright subsists.

(3) Subsection (2) does not apply in respect of the copyright or the moral rights in an artistic work in so far as the work is used as or for

(a) a graphic or photographic representation that is applied to the face of an article;

(b) a trade-mark or a representation thereof or a label;

(c) material that has a woven or knitted pattern or that is suitable for piece goods or surface coverings or for making wearing apparel;

- (d) an architectural work that is a building or a model of a building;
- (e) a representation of a real or fictitious being, event or place that is applied to an article as a feature of shape, configuration, pattern or ornament;
- (f) articles that are sold as a set, unless more than fifty sets are made; or
- (g) such other work or article as may be prescribed by regulation.

(4) Subsections (2) and (3) apply only in respect of designs created after the coming into force of this subsection, and section 64 of this Act and the Industrial Design Act, as they read immediately before the coming into force of this subsection, as well as the rules made under them, continue to apply in respect of designs created before that coming into force.

R.S., 1985, c. C-42, s. 64; R.S., 1985, c. 10 (4th Supp.), s. 11; 1993, c. 44, s. 68; 1997, c. 24, s. 39.

64.1 (1) The following acts do not constitute an infringement of the copyright or moral rights in a work:

- (a) applying to a useful article features that are dictated solely by a utilitarian function of the article;
- (b) by reference solely to a useful article, making a drawing or other reproduction in any material form of any features of the article that are dictated solely by a utilitarian function of the article;
- (c) doing with a useful article having only features described in paragraph (a), or with a drawing or reproduction made as described in paragraph (b), anything that the owner of the copyright has the sole right to do with the work; and
- (d) using any method or principle of manufacture or construction.

(2) Nothing in subsection (1) affects

- (a) the copyright, or
- (b) the moral rights, if any,

in any sound recording, cinematograph film or other contrivance by means of which a work may be mechanically reproduced or performed.

R.S., 1985, c. 10 (4th Supp.), s. 11; 1997, c. 24, s. 40.

64.2 (1) This Act does not apply, and shall be deemed never to have applied, to any topography or to any design, however expressed, that is intended to generate all or part of a topography.

(2) For greater certainty, the incorporation of a computer program into an integrated circuit product or the incorporation of a work into such a computer program may constitute an infringement of the copyright or moral rights in a work.

(3) In this section, "topography" and "integrated circuit product" have the same meaning as in the Integrated Circuit Topography Act.

1990, c. 37, s. 33.

65. [Repealed, 1993, c. 44, s. 69]

PART VII

COPYRIGHT BOARD AND COLLECTIVE ADMINISTRATION OF COPYRIGHT

Copyright Board

66. (1) There is hereby established a Board, to be known as the Copyright Board, consisting of not more than five members, including a chairman and a vice-chairman, to be appointed by the Governor in Council.

(2) The members of the Board shall be appointed to serve either full-time or part-time.

(3) The chairman must be a judge, either sitting or retired, of a superior, county or district court.

(4) Each member of the Board shall hold office during good behaviour for a term not exceeding five years, but may be removed at any time by the Governor in Council for cause.

(5) A member of the Board is eligible to be re-appointed once only.

(6) A member of the Board shall not be employed in the Public Service within the meaning of the Public Service Staff Relations Act during the member's term of office.

(7) A full-time member of the Board, other than the chairman, shall be deemed to be employed in

(a) the Public Service for the purposes of the Public Service Superannuation Act; and

(b) the public service of Canada for the purposes of any regulations made pursuant to section 9 of the Aeronautics Act.

R.S., 1985, c. C-42, s. 66; R.S., 1985, c. 10 (1st Supp.), s. 1, c. 10 (4th Supp.), s. 12.

66.1 (1) The chairman shall direct the work of the Board and apportion its work among the members of the Board.

(2) If the chairman is absent or incapacitated or if the office of chairman is vacant, the vice-chairman has all the powers and functions of the chairman during the absence, incapacity or vacancy.

(3) The vice-chairman is the chief executive officer of the Board and has supervision over and direction of the Board and its staff.

R.S., 1985, c. 10 (4th Supp.), s. 12.

66.2 The members of the Board shall be paid such remuneration as may be fixed by the Governor in Council and are entitled to be paid reasonable travel and living expenses incurred by them in the course of their duties under this Act while absent from their ordinary place of residence.

R.S., 1985, c. 10 (4th Supp.), s. 12.

66.3 (1) A member of the Board shall not, directly or indirectly, engage in any activity, have any

interest in a business or accept or engage in any office or employment that is inconsistent with the member's duties.

(2) Where a member of the Board becomes aware that he is in a conflict of interest contrary to subsection (1), the member shall, within one hundred and twenty days, terminate the conflict or resign.

R.S., 1985, c. 10 (4th Supp.), s. 12.

66.4 (1) Such officers and employees as are necessary for the proper conduct of the work of the Board shall be appointed in accordance with the Public Service Employment Act.

(2) The officers and employees referred to in subsection (1) shall be deemed to be employed in the Public Service for the purposes of the Public Service Superannuation Act.

(3) The Board may engage on a temporary basis the services of persons having technical or specialized knowledge to advise and assist in the performance of its duties and the Board may, in accordance with Treasury Board directives, fix and pay the remuneration and expenses of those persons.

R.S., 1985, c. 10 (4th Supp.), s. 12.

66.5 (1) A member of the Board whose term expires may conclude the matters that the member has begun to consider.

(2) Matters before the Board shall be decided by a majority of the members of the Board and the presiding member shall have a second vote in the case of a tie.

R.S., 1985, c. 10 (4th Supp.), s. 12.

66.51 The Board may, on application, make an interim decision.

R.S., 1985, c. 10 (4th Supp.), s. 12.

66.52 A decision of the Board respecting royalties or their related terms and conditions that is made under subsection 68(3), sections 68.1 or 70.15 or or subsections 70.2(2), 70.6(1), 73(1) or 83(8) may, on application, be varied by the Board if, in its opinion, there has been a material change in circumstances since the decision was made.

R.S., 1985, c. 10 (4th Supp.), s. 12; 1988, c. 65, s. 64; 1997, c. 24, s. 42.

66.6 (1) The Board may, with the approval of the Governor in Council, make regulations governing

(a) the practice and procedure in respect of the Board's hearings, including the number of members of the Board that constitutes a quorum;

(b) the time and manner in which applications and notices must be made or given;

(c) the establishment of forms for the making or giving of applications and notices; and

(d) the carrying out of the work of the Board, the management of its internal affairs and the duties of its officers and employees.

(2) A copy of each regulation that the Board proposes to make under subsection (1) shall be published in the Canada Gazette at least sixty days before the proposed effective date thereof and a reasonable opportunity shall be given to interested persons to make representations with respect thereto.

(3) No proposed regulation that has been published pursuant to subsection (2) need again be published under that subsection, whether or not it has been altered as a result of representations made with respect thereto.

R.S., 1985, c. 10 (4th Supp.), s. 12.

66.7 (1) The Board has, with respect to the attendance, swearing and examination of witnesses, the production and inspection of documents, the enforcement of its decisions and other matters necessary or proper for the due exercise of its jurisdiction, all such powers, rights and privileges as are vested in a superior court of record.

(2) Any decision of the Board may, for the purposes of its enforcement, be made an order of the Federal Court or of any superior court and is enforceable in the same manner as an order thereof.

(3) To make a decision of the Board an order of a court, the usual practice and procedure of the court in such matters may be followed or a certified copy of the decision may be filed with the registrar of the court and thereupon the decision becomes an order of the court.

(4) Where a decision of the Board that has been made an order of a court is varied by a subsequent decision of the Board, the order of the court shall be deemed to have been varied accordingly and the subsequent decision may, in the same manner, be made an order of the court.

R.S., 1985, c. 10 (4th Supp.), s. 12; 2002, c. 8, s. 131(F).

66.71 Independently of any other provision of this Act relating to the distribution or publication of information or documents by the Board, the Board may at any time cause to be distributed or published, in any manner and on any terms and conditions that it sees fit, any notice that it sees fit to be distributed or published.

1997, c. 24, s. 43.

66.8 The Board shall conduct such studies with respect to the exercise of its powers as are requested by the Minister.

R.S., 1985, c. 10 (4th Supp.), s. 12.

66.9 (1) The Board shall, not later than August 31 in each year, submit to the Governor in Council through the Minister an annual report on the Board's activities for the preceding year describing briefly the applications made to the Board, the Board's decisions and any other matter that the Board considers relevant.

(2) The Minister shall cause a copy of each annual report to be laid before each House of Parliament on any of the first fifteen days on which that House is sitting after the Minister receives the report.

R.S., 1985, c. 10 (4th Supp.), s. 12.

66.91 The Governor in Council may make regulations issuing policy directions to the Board and establishing general criteria to be applied by the Board or to which the Board must have regard

- (a) in establishing fair and equitable royalties to be paid pursuant to this Act; and
- (b) in rendering its decisions in any matter within its jurisdiction.

1997, c. 24, s. 44.

Collective Administration of Performing Rights and of Communication Rights

67. Each collective society that carries on

- (a) the business of granting licences or collecting royalties for the performance in public of musical works, dramatico-musical works, performer's performances of such works, or sound recordings embodying such works, or
- (b) the business of granting licences or collecting royalties for the communication to the public by telecommunication of musical works, dramatico-musical works, performer's performances of such works, or sound recordings embodying such works, other than the communication of musical works or dramatico-musical works in a manner described in subsection 31(2),

must answer within a reasonable time all reasonable requests from the public for information about its repertoire of works, performer's performances or sound recordings, that are in current use.

R.S., 1985, c. C-42, s. 67; R.S., 1985, c. 10 (1st Supp.), s. 1, c. 10 (4th Supp.), s. 12; 1993, c. 23, s. 3; 1997, c. 24, s. 45.

67.1 (1) Each collective society referred to in section 67 shall, on or before the March 31 immediately before the date when its last tariff approved pursuant to subsection 68(3) expires, file with the Board a proposed tariff, in both official languages, of all royalties to be collected by the collective society.

(2) A collective society referred to in subsection (1) in respect of which no tariff has been approved pursuant to subsection 68(3) shall file with the Board its proposed tariff, in both official languages, of all royalties to be collected by it, on or before the March 31 immediately before its proposed effective date.

(3) A proposed tariff must provide that the royalties are to be effective for periods of one or more calendar years.

~~(4) Where a proposed tariff is not filed with respect to the work, performer's performance or sound recording in question, no action may be commenced, without the written consent of the Minister, for~~

~~(a) the infringement of the rights, referred to in section 3, to perform a work in public or to communicate it to the public by telecommunication; or~~

~~(b) the recovery of royalties referred to in section 19.~~ (4) If a proposed tariff is not filed with respect to the work, performer's performance or sound recording in question, no action may be commenced, without the written consent of the Minister, for

(a) the infringement of the rights, referred to in section 3, to perform a work in public or to communicate it to the public by telecommunication;

(b) the infringement of the rights referred to in paragraph 15(1.1)(d) or 18(1.1)(a); or

(c) the recovery of royalties referred to in section 19.

(5) As soon as practicable after the receipt of a proposed tariff filed pursuant to subsection (1), the Board shall publish it in the Canada Gazette and shall give notice that, within sixty days after the publication of the tariff, prospective users or their representatives may file written objections to the tariff with the Board.

R.S., 1985, c. 10 (4th Supp.), s. 12; 1997, c. 24, s. 45; 2001, c. 34, s. 35(E).

67.2 and 67.3 [Repealed, 1997, c. 24, s. 45]

68. (1) The Board shall, as soon as practicable, consider a proposed tariff and any objections thereto referred to in subsection 67.1(5) or raised by the Board, and

(a) send to the collective society concerned a copy of the objections so as to permit it to reply; and

(b) send to the persons who filed the objections a copy of any reply thereto.

(2) In examining a proposed tariff for the performance in public or the communication to the public by telecommunication of performer's performances of musical works, or of sound recordings embodying such performer's performances, the Board

(a) shall ensure that

(i) the tariff applies in respect of performer's performances and sound recordings only in the situations referred to in subsections 20(1) and (2),

(ii) the tariff does not, because of linguistic and content requirements of Canada's broadcasting policy set out in section 3 of the Broadcasting Act, place some users that are subject to that Act at a greater financial disadvantage than others, and

(iii) the payment of royalties by users pursuant to section 19 will be made in a single payment; and

(b) may take into account any factor that it considers appropriate.

(3) The Board shall certify the tariffs as approved, with such alterations to the royalties and to the terms and conditions related thereto as the Board considers necessary, having regard to

(a) any objections to the tariffs under subsection 67.1(5); and

(b) the matters referred to in subsection (2).

(4) The Board shall

(a) publish the approved tariffs in the Canada Gazette as soon as practicable; and

(b) send a copy of each approved tariff, together with the reasons for the Board's decision, to each

collective society that filed a proposed tariff and to any person who filed an objection.

R.S., 1985, c. C-42, s. 68; R.S., 1985, c. 10 (4th Supp.), s. 13; 1993, c. 23, s. 5; 1997, c. 24, s. 45.

68.1 (1) Notwithstanding the tariffs approved by the Board under subsection 68(3) for the performance in public or the communication to the public by telecommunication of performer's performances of musical works, or of sound recordings embodying such performer's performances,

(a) wireless transmission systems, except community systems and public transmission systems, shall pay royalties as follows:

(i) in respect of each year, \$100 on the first 1.25 million dollars of annual advertising revenues, and

(ii) on any portion of annual advertising revenues exceeding 1.25 million dollars,

(A) for the first year following the coming into force of this section, thirty-three and one third per cent of the royalties set out in the approved tariff for that year,

(B) for the second year following the coming into force of this section, sixty-six and two thirds per cent of the royalties set out in the approved tariff for that year, and

(C) for the third year following the coming into force of this section, one hundred per cent of the royalties set out in the approved tariff for that year;

(b) community systems shall pay royalties of \$100 in respect of each year; and

(c) public transmission systems shall pay royalties, in respect of each of the first three years following the coming into force of this section, as follows:

(i) for the first year following the coming into force of this section, thirty-three and one third per cent of the royalties set out in the approved tariff for that year,

(ii) for the second year following the coming into force of this section, sixty-six and two thirds per cent of the royalties set out in the approved tariff for that year, and

(iii) for the third year following the coming into force of this section, one hundred per cent of the royalties set out in the approved tariff for that year.

(2) The payment of the royalties set out in subsection (1) fully discharges all liabilities of the system in question in respect of the approved tariffs.

(3) The Board may, by regulation, define "advertising revenues" for the purposes of subsection (1).

(4) The Board shall, in certifying a tariff as approved under subsection 68(3), ensure that there is a preferential royalty rate for small cable transmission systems.

(5) The Governor in Council may make regulations defining "small cable transmission system", "community system", "public transmission system" and "wireless transmission system" for the purposes of this section.

1997, c. 24, s. 45.

68.2 (1) Without prejudice to any other remedies available to it, a collective society may, for the period specified in its approved tariff, collect the royalties specified in the tariff and, in default of their payment, recover them in a court of competent jurisdiction.

~~(2) No proceedings may be brought for~~

~~(a) the infringement of the right to perform in public or the right to communicate to the public by telecommunication, referred to in section 3, or~~

~~(b) the recovery of royalties referred to in section 19~~(2) No proceedings may be brought against a person who has paid or offered to pay the royalties specified in an approved tariff for

(a) the infringement of the right to perform in public or the right to communicate to the public by telecommunication, referred to in section 3;

(b) the infringement of the rights referred to in paragraph 15(1.1)(d) or 18(1.1)(a); or

(c) the recovery of royalties referred to in section 19.

against a person who has paid or offered to pay the royalties specified in an approved tariff.

(3) Where a collective society files a proposed tariff in accordance with subsection 67.1(1),

(a) any person entitled to perform in public or communicate to the public by telecommunication those works, performer's performances or sound recordings pursuant to the previous tariff may do so, even though the royalties set out therein have ceased to be in effect, and

(b) the collective society may collect the royalties in accordance with the previous tariff,

until the proposed tariff is approved.

1997, c. 24, s. 45.

Public Performances in Places Other Than Theatres

69. (1) [Repealed, R.S., 1985, c. 10 (4th Supp.), s. 14]

(2) In respect of public performances by means of any radio receiving set in any place other than a theatre that is ordinarily and regularly used for entertainments to which an admission charge is made, no royalties shall be collectable from the owner or user of the radio receiving set, but the Board shall, in so far as possible, provide for the collection in advance from radio broadcasting stations of royalties appropriate to the conditions produced by the provisions of this subsection and shall fix the amount of the same.

(3) In fixing royalties pursuant to subsection (2), the Board shall take into account all expenses of collection and other outlays, if any, saved or savable by, for or on behalf of the owner of the copyright or performing right concerned or his agents, in consequence of subsection (2).

(4) [Repealed, R.S., 1985, c. 10 (4th Supp.), s. 14]

R.S., 1985, c. C-42, s. 69; R.S., 1985, c. 10 (4th Supp.), s. 14; 1993, c. 44, s. 73; 1997, c. 24, s. 52(F).

70. [Repealed, R.S., 1985, c. 10 (4th Supp.), s. 15]

Collective Administration in Relation to Rights under Sections 3, 15, 18 and 21

Collective Societies

70.1 Sections 70.11 to 70.6 apply in respect of a collective society that operates

(a) a licensing scheme, applicable in relation to a repertoire of works of more than one author, pursuant to which the society sets out the classes of uses for which and the royalties and terms and conditions on which it agrees to authorize the doing of an act mentioned in section 3 in respect of those works;

(a.1) a licensing scheme, applicable in relation to a repertoire of performer's performances of more than one performer, pursuant to which the society sets out the classes of uses for which and the royalties and terms and conditions on which it agrees to authorize the doing of an act mentioned in section 15 in respect of those performer's performances;

(b) a licensing scheme, applicable in relation to a repertoire of sound recordings of more than one maker, pursuant to which the society sets out the classes of uses for which and the royalties and terms and conditions on which it agrees to authorize the doing of an act mentioned in section 18 in respect of those sound recordings; or

(c) a licensing scheme, applicable in relation to a repertoire of communication signals of more than one broadcaster, pursuant to which the society sets out the classes of uses for which and the royalties and terms and conditions on which it agrees to authorize the doing of an act mentioned in section 21 in respect of those communication signals.

R.S., 1985, c. 10 (4th Supp.), s. 16; 1997, c. 24, s. 46.

70.11 A collective society referred to in section 70.1 must answer within a reasonable time all reasonable requests from the public for information about its repertoire of works, performer's performances, sound recordings or communication signals.

1997, c. 24, s. 46.

70.12 A collective society may, for the purpose of setting out by licence the royalties and terms and conditions relating to classes of uses,

(a) file a proposed tariff with the Board; or

(b) enter into agreements with users.

1997, c. 24, s. 46.

Tariffs

70.13 (1) Each collective society referred to in section 70.1 may, on or before the March 31 immediately before the date when its last tariff approved pursuant to subsection 70.15(1) expires, file with the Board a proposed tariff, in both official languages, of royalties to be collected by the collective society for issuing licences.

(2) A collective society referred to in subsection (1) in respect of which no tariff has been approved pursuant to subsection 70.15(1) shall file with the Board its proposed tariff, in both official languages, of all royalties to be collected by it for issuing licences, on or before the March 31 immediately before its proposed effective date.

1997, c. 24, s. 46.

70.14 Where a proposed tariff is filed under section 70.13, subsections 67.1(3) and (5) and subsection 68(1) apply, with such modifications as the circumstances require.

1997, c. 24, s. 46.

70.15 (1) The Board shall certify the tariffs as approved, with such alterations to the royalties and to the terms and conditions related thereto as the Board considers necessary, having regard to any objections to the tariffs.

(2) Where a tariff is approved under subsection (1), subsections 68(4) and 68.2(1) apply, with such modifications as the circumstances require.

1997, c. 24, s. 46.

70.16 Independently of any other provision of this Act relating to the distribution or publication of information or documents by the Board, the Board shall notify persons affected by a proposed tariff, by

(a) distributing or publishing a notice, or

(b) directing another person or body to distribute or publish a notice,

in such manner and on such terms and conditions as the Board sees fit.

1997, c. 24, s. 46.

70.17 Subject to section 70.19, no proceedings may be brought for the infringement of a right referred to in section 3, 15, 18 or 21 against a person who has paid or offered to pay the royalties specified in an approved tariff.

1997, c. 24, s. 46.

70.18 Subject to section 70.19, where a collective society files a proposed tariff in accordance with section 70.13,

(a) any person authorized by the collective society to do an act referred to in section 3, 15, 18 or 21, as the case may be, pursuant to the previous tariff may do so, even though the royalties set out therein have ceased to be in effect, and

(b) the collective society may collect the royalties in accordance with the previous tariff,

until the proposed tariff is approved.

1997, c. 24, s. 46.

70.19 If there is an agreement mentioned in paragraph 70.12(b), sections 70.17 and 70.18 do not apply in respect of the matters covered by the agreement.

1997, c. 24, s. 46.

70.191 An approved tariff does not apply where there is an agreement between a collective society and a person authorized to do an act mentioned in section 3, 15, 18 or 21, as the case may be, if the agreement is in effect during the period covered by the approved tariff.

1997, c. 24, s. 46.

Fixing of Royalties in Individual Cases

70.2 (1) Where a collective society and any person not otherwise authorized to do an act mentioned in section 3, 15, 18 or 21, as the case may be, in respect of the works, sound recordings or communication signals included in the collective society's repertoire are unable to agree on the royalties to be paid for the right to do the act or on their related terms and conditions, either of them or a representative of either may, after giving notice to the other, apply to the Board to fix the royalties and their related terms and conditions.

(2) The Board may fix the royalties and their related terms and conditions in respect of a licence during such period of not less than one year as the Board may specify and, as soon as practicable after rendering its decision, the Board shall send a copy thereof, together with the reasons therefor, to the collective society and the person concerned or that person's representative.

R.S., 1985, c. 10 (4th Supp.), s. 16; 1997, c. 24, s. 46.

70.3 (1) The Board shall not proceed with an application under section 70.2 where a notice is filed with the Board that an agreement touching the matters in issue has been reached.

(2) An agreement referred to in subsection (1) is effective during the year following the expiration of the previous agreement, if any, or of the last period specified under subsection 70.2(2).

R.S., 1985, c. 10 (4th Supp.), s. 16.

70.4 Where any royalties are fixed for a period pursuant to subsection 70.2(2), the person concerned may, during the period, subject to the related terms and conditions fixed by the Board and to the terms and conditions set out in the scheme and on paying or offering to pay the royalties, do the act with respect to which the royalties and their related terms and conditions are fixed and the collective society may, without prejudice to any other remedies available to it, collect the royalties or, in default of their payment, recover them in a court of competent jurisdiction.

R.S., 1985, c. 10 (4th Supp.), s. 16; 1997, c. 24, s. 47.

Examination of Agreements

70.5 (1) For the purposes of this section and section 70.6, "Commissioner" means the Commissioner of Competition appointed under the Competition Act.

(2) Where a collective society concludes an agreement to grant a licence authorizing a person to do an act mentioned in section 3, 15, 18 or 21, as the case may be, the collective society or the person

may file a copy of the agreement with the Board within fifteen days after it is concluded.

(3) Section 45 of the Competition Act does not apply in respect of any royalties or related terms and conditions arising under an agreement filed in accordance with subsection (2).

(4) The Commissioner may have access to the copy of an agreement filed in accordance with subsection (2).

(5) Where the Commissioner considers that an agreement filed in accordance with subsection (2) is contrary to the public interest, the Commissioner may, after advising the parties concerned, request the Board to examine the agreement.

R.S., 1985, c. 10 (4th Supp.), s. 16; 1997, c. 24, s. 48; 1999, c. 2, ss. 45, 46.

70.6 (1) The Board shall, as soon as practicable, consider a request by the Commissioner to examine an agreement and the Board may, after giving the Commissioner and the parties concerned an opportunity to present their arguments, alter the royalties and any related terms and conditions arising under the agreement, in which case section 70.4 applies with such modifications as the circumstances require.

(2) As soon as practicable after rendering its decision, the Board shall send a copy thereof, together with the reasons therefor, to the parties concerned and to the Commissioner.

R.S., 1985, c. 10 (4th Supp.), s. 16; 1997, c. 24, s. 49(F); 1999, c. 2, s. 46.

70.61 to 70.8 [Repealed, 1997, c. 24, s. 50]

Royalties in Particular Cases

71. (1) Each collective society that carries on the business of collecting royalties referred to in subsection 29.6(2), 29.7(2) or (3) or paragraph 31(2)(d) shall file with the Board a proposed tariff, but no other person may file any such tariff.

(2) A proposed tariff must be

(a) in both official languages; and

(b) filed on or before the March 31 immediately before the date that the approved tariff ceases to be effective.

(3) A collective society in respect of which no proposed tariff has been certified pursuant to paragraph 73(1)(d) shall file its proposed tariff on or before the March 31 immediately before its proposed effective date.

(4) A proposed tariff must provide that the royalties are to be effective for periods of one or more calendar years.

R.S., 1985, c. C-42, s. 71; 1997, c. 24, s. 50.

72. (1) As soon as practicable after the receipt of a proposed tariff filed pursuant to section 71, the Board shall publish it in the Canada Gazette and shall give notice that, within sixty days after the publication of the tariff, educational institutions or prospective retransmitters within the meaning of

subsection 31(1), or their representatives, may file written objections to the tariff with the Board.

(2) The Board shall, as soon as practicable, consider a proposed tariff and any objections thereto referred to in subsection (1) or raised by the Board, and

(a) send to the collective society concerned a copy of the objections so as to permit it to reply; and

(b) send to the persons who filed the objections a copy of any reply thereto.

1997, c. 24, s. 50; 1999, c. 31, s. 61; 2002, c. 26, s. 3.

73. (1) On the conclusion of its consideration of proposed tariffs, the Board shall

(a) establish

(i) a manner of determining the royalties to be paid by educational institutions and by retransmitters within the meaning of subsection 31(1), and

(ii) such terms and conditions related to those royalties as the Board considers appropriate;

(b) determine the portion of the royalties referred to in paragraph (a) that is to be paid to each collective society;

(c) vary the tariffs accordingly; and

(d) certify the tariffs as the approved tariffs, whereupon the tariffs become for the purposes of this Act the approved tariffs.

(2) For greater certainty, the Board, in establishing a manner of determining royalties under paragraph (1)(a) or in apportioning them under paragraph (1)(b), may not discriminate between owners of copyright on the ground of their nationality or residence.

(3) The Board shall publish the approved tariffs in the Canada Gazette as soon as practicable and send a copy of each approved tariff, together with the reasons for the Board's decision, to each collective society that filed a proposed tariff and to any person who filed an objection.

1997, c. 24, s. 50; 1999, c. 31, s. 62; 2002, c. 26, s. 4.

74. (1) The Board shall, in establishing a manner of determining royalties under paragraph 73(1)(a), ensure that there is a preferential rate for small retransmission systems.

(2) The Governor in Council may make regulations defining "small retransmission systems" for the purpose of subsection (1).

1997, c. 24, s. 50.

75. Without prejudice to any other remedies available to it, a collective society may, for the period specified in its approved tariff, collect the royalties specified in the tariff and, in default of their payment, recover them in a court of competent jurisdiction.

1997, c. 24, s. 50.

76. (1) An owner of copyright who does not authorize a collective society to collect, for that person's benefit, royalties referred to in paragraph 31(2)(d) is, if the work is communicated to the public by telecommunication during a period when an approved tariff that is applicable to that kind of work is effective, entitled to be paid those royalties by the collective society that is designated by the Board, of its own motion or on application, subject to the same conditions as those to which a person who has so authorized that collective society is subject.

(2) An owner of copyright who does not authorize a collective society to collect, for that person's benefit, royalties referred to in subsection 29.6(2) or 29.7(2) or (3) is, if such royalties are payable during a period when an approved tariff that is applicable to that kind of work or other subject-matter is effective, entitled to be paid those royalties by the collective society that is designated by the Board, of its own motion or on application, subject to the same conditions as those to which a person who has so authorized that collective society is subject.

(3) The entitlement referred to in subsections (1) and (2) is the only remedy of the owner of the copyright for the payment of royalties for the communication, making of the copy or sound recording or performance in public, as the case may be.

(4) The Board may, for the purposes of this section,

(a) require a collective society to file with the Board information relating to payments of royalties collected by it to the persons who have authorized it to collect those royalties; and

(b) by regulation, establish periods of not less than twelve months within which the entitlements referred to in subsections (1) and (2) must be exercised, in the case of royalties referred to in

(i) paragraph 29.6(2)(a), beginning on the expiration of the year during which no royalties are payable under that paragraph,

(ii) paragraph 29.6(2)(b), beginning on the performance in public,

(iii) subsection 29.7(2), beginning on the making of the copy,

(iv) subsection 29.7(3), beginning on the performance in public, or

(v) paragraph 31(2)(d), beginning on the communication to the public by telecommunication.

1997, c. 24, s. 50.

Owners Who Cannot be Located

77. (1) Where, on application to the Board by a person who wishes to obtain a licence to use

(a) a published work,

(b) a fixation of a performer's performance,

(c) a published sound recording, or

(d) a fixation of a communication signal

in which copyright subsists, the Board is satisfied that the applicant has made reasonable efforts to

locate the owner of the copyright and that the owner cannot be located, the Board may issue to the applicant a licence to do an act mentioned in section 3, 15, 18 or 21, as the case may be.

(2) A licence issued under subsection (1) is non-exclusive and is subject to such terms and conditions as the Board may establish.

(3) The owner of a copyright may, not later than five years after the expiration of a licence issued pursuant to subsection (1) in respect of the copyright, collect the royalties fixed in the licence or, in default of their payment, commence an action to recover them in a court of competent jurisdiction.

(4) The Copyright Board may make regulations governing the issuance of licences under subsection (1).

1997, c. 24, s. 50.

Compensation for Acts Done Before Recognition of Copyright or Moral Rights

~~78. (1) Subject to subsection (2), for the purposes of subsections 32.4(2), 32.5(2) and 33(2), the Board may, on application by any of the parties referred to in one of those provisions, determine the amount of the compensation referred to in that provision that the Board considers reasonable, having regard to all the circumstances, including any judgment of a court in an action between the parties for the enforcement of a right mentioned in subsection 32.4(3) or 32.5(3). Subject to subsection (2), for the purposes of subsections 32.4(2), 32.5(2), 33(2), 33.1(2) and 33.2(2), the Board may, on application by any of the parties referred to in one of those provisions, determine the amount of the compensation referred to in that provision that the Board considers reasonable, having regard to all the circumstances, including any judgment of a court in an action between the parties for the enforcement of a right mentioned in subsection 32.4(3) or 32.5(3).~~

(2) The Board shall not

(a) proceed with an application under subsection (1) where a notice is filed with the Board that an agreement regarding the matters in issue has been reached; or

(b) where a court action between the parties for enforcement of a right referred to in subsection 32.4(3) or 32.5(3), as the case may be, has been commenced, continue with an application under subsection (1) until the court action is finally concluded.

(3) Where the Board proceeds with an application under subsection (1), it may, for the purpose of avoiding serious prejudice to any party, make an interim order requiring a party to refrain from doing any act described in the order until the determination of compensation is made under subsection (1).

1997, c. 24, s. 50.

PART VIII PRIVATE COPYING

Interpretation

79. In this Part,

"audio recording medium" means a recording medium, regardless of its material form, onto which a

sound recording may be reproduced and that is of a kind ordinarily used by individual consumers for that purpose, excluding any prescribed kind of recording medium;

"blank audio recording medium" means

(a) an audio recording medium onto which no sounds have ever been fixed, and

(b) any other prescribed audio recording medium;

"collecting body" means the collective society, or other society, association or corporation, that is designated as the collecting body under subsection 83(8);

"eligible author" means an author of a musical work, whether created before or after the coming into force of this Part, that is embodied in a sound recording, whether made before or after the coming into force of this Part, if copyright subsists in Canada in that musical work;

"eligible maker" means a maker of a sound recording that embodies a musical work, whether the first fixation of the sound recording occurred before or after the coming into force of this Part, if

(a) both the following two conditions are met:

(i) the maker, at the date of that first fixation, if a corporation, had its headquarters in Canada or, if a natural person, was a Canadian citizen or permanent resident within the meaning of subsection 2(1) of the Immigration and Refugee Protection Act, and

(ii) copyright subsists in Canada in the sound recording, or

(b) the maker, at the date of that first fixation, if a corporation, had its headquarters in a country referred to in a statement published under section 85 or, if a natural person, was a citizen, subject or permanent resident of such a country;

"eligible performer" means the performer of a performer's performance of a musical work, whether it took place before or after the coming into force of this Part, if the performer's performance is embodied in a sound recording and

(a) both the following two conditions are met:

(i) the performer was, at the date of the first fixation of the sound recording, a Canadian citizen or permanent resident within the meaning of subsection 2(1) of the Immigration and Refugee Protection Act, and

(ii) copyright subsists in Canada in the performer's performance, or

(b) the performer was, at the date of the first fixation of the sound recording, a citizen, subject or permanent resident of a country referred to in a statement published under section 85;

"prescribed" means prescribed by regulations made under this Part.

1997, c. 24, s. 50; 2001, c. 27, s. 240.

Copying for Private Use

80. (1) Subject to subsection (2), the act of reproducing all or any substantial part of

(a) a musical work embodied in a sound recording,

(b) a performer's performance of a musical work embodied in a sound recording, or

(c) a sound recording in which a musical work, or a performer's performance of a musical work, is embodied

onto an audio recording medium for the private use of the person who makes the copy does not constitute an infringement of the copyright in the musical work, the performer's performance or the sound recording.

(2) Subsection (1) does not apply if the act described in that subsection is done for the purpose of doing any of the following in relation to any of the things referred to in paragraphs (1)(a) to (c):

(a) selling or renting out, or by way of trade exposing or offering for sale or rental;

(b) distributing, whether or not for the purpose of trade;

(c) communicating to the public by telecommunication; or

(d) performing, or causing to be performed, in public.

1997, c. 24, s. 50.

Right of Remuneration

81. (1) Subject to and in accordance with this Part, eligible authors, eligible performers and eligible makers have a right to receive remuneration from manufacturers and importers of blank audio recording media in respect of the reproduction for private use of

(a) a musical work embodied in a sound recording;

(b) a performer's performance of a musical work embodied in a sound recording; or

(c) a sound recording in which a musical work, or a performer's performance of a musical work, is embodied.

(2) Subsections 13(4) to (7) apply, with such modifications as the circumstances require, in respect of the rights conferred by subsection (1) on eligible authors, performers and makers.

1997, c. 24, s. 50.

Levy on Blank Audio Recording Media

82. (1) Every person who, for the purpose of trade, manufactures a blank audio recording medium in Canada or imports a blank audio recording medium into Canada

(a) is liable, subject to subsection (2) and section 86, to pay a levy to the collecting body on selling or otherwise disposing of those blank audio recording media in Canada; and

(b) shall, in accordance with subsection 83(8), keep statements of account of the activities referred to in paragraph (a), as well as of exports of those blank audio recording media, and shall furnish those statements to the collecting body.

(2) No levy is payable where it is a term of the sale or other disposition of the blank audio recording medium that the medium is to be exported from Canada, and it is exported from Canada.

1997, c. 24, s. 50.

83. (1) Subject to subsection (14), each collective society may file with the Board a proposed tariff for the benefit of those eligible authors, eligible performers and eligible makers who, by assignment, grant of licence, appointment of the society as their agent or otherwise, authorize it to act on their behalf for that purpose, but no person other than a collective society may file any such tariff.

(2) Without limiting the generality of what may be included in a proposed tariff, the tariff may include a suggestion as to whom the Board should designate under paragraph (8)(d) as the collecting body.

(3) Proposed tariffs must be in both official languages and must be filed on or before the March 31 immediately before the date when the approved tariffs cease to be effective.

(4) A collective society in respect of which no proposed tariff has been certified pursuant to paragraph (8)(c) shall file its proposed tariff on or before the March 31 immediately before its proposed effective date.

(5) A proposed tariff must provide that the levies are to be effective for periods of one or more calendar years.

(6) As soon as practicable after the receipt of a proposed tariff filed pursuant to subsection (1), the Board shall publish it in the Canada Gazette and shall give notice that, within sixty days after the publication of the tariff, any person may file written objections to the tariff with the Board.

(7) The Board shall, as soon as practicable, consider a proposed tariff and any objections thereto referred to in subsection (6) or raised by the Board, and

(a) send to the collective society concerned a copy of the objections so as to permit it to reply; and

(b) send to the persons who filed the objections a copy of any reply thereto.

(8) On the conclusion of its consideration of the proposed tariff, the Board shall

(a) establish, in accordance with subsection (9),

(i) the manner of determining the levies, and

(ii) such terms and conditions related to those levies as the Board considers appropriate, including, without limiting the generality of the foregoing, the form, content and frequency of the statements of account mentioned in subsection 82(1), measures for the protection of confidential information contained in those statements, and the times at which the levies are payable,

(b) vary the tariff accordingly,

(c) certify the tariff as the approved tariff, whereupon that tariff becomes for the purposes of this Part the approved tariff, and

(d) designate as the collecting body the collective society or other society, association or corporation that, in the Board's opinion, will best fulfil the objects of sections 82, 84 and 86,

but the Board is not obligated to exercise its power under paragraph (d) if it has previously done so, and a designation under that paragraph remains in effect until the Board makes another designation, which it may do at any time whatsoever, on application.

(9) In exercising its power under paragraph (8)(a), the Board shall satisfy itself that the levies are fair and equitable, having regard to any prescribed criteria.

(10) The Board shall publish the approved tariffs in the Canada Gazette as soon as practicable and shall send a copy of each approved tariff, together with the reasons for the Board's decision, to the collecting body, to each collective society that filed a proposed tariff, and to any person who filed an objection.

(11) An eligible author, eligible performer or eligible maker who does not authorize a collective society to file a proposed tariff under subsection (1) is entitled, in relation to

(a) a musical work,

(b) a performer's performance of a musical work, or

(c) a sound recording in which a musical work, or a performer's performance of a musical work, is embodied,

as the case may be, to be paid by the collective society that is designated by the Board, of the Board's own motion or on application, the remuneration referred to in section 81 if such remuneration is payable during a period when an approved tariff that is applicable to that kind of work, performer's performance or sound recording is effective, subject to the same conditions as those to which a person who has so authorized that collective society is subject.

(12) The entitlement referred to in subsection (11) is the only remedy of the eligible author, eligible performer or eligible maker referred to in that subsection in respect of the reproducing of sound recordings for private use.

(13) The Board may, for the purposes of subsections (11) and (12),

(a) require a collective society to file with the Board information relating to payments of moneys received by the society pursuant to section 84 to the persons who have authorized it to file a tariff under subsection (1); and

(b) by regulation, establish the periods, which shall not be less than twelve months, beginning when the applicable approved tariff ceases to be effective, within which the entitlement referred to in subsection (11) must be exercised.

(14) Where all the collective societies that intend to file a proposed tariff authorize a particular person or body to file a single proposed tariff on their behalf, that person or body may do so, and in that case this section applies, with such modifications as the circumstances require, in respect of

that proposed tariff.

1997, c. 24, s. 50.

Distribution of Levies Paid

84. As soon as practicable after receiving the levies paid to it, the collecting body shall distribute the levies to the collective societies representing eligible authors, eligible performers and eligible makers, in the proportions fixed by the Board.

1997, c. 24, s. 50.

85. (1) Where the Minister is of the opinion that another country grants or has undertaken to grant to performers and makers of sound recordings that are Canadian citizens or permanent residents within the meaning of subsection 2(1) of the Immigration and Refugee Protection Act or, if corporations, have their headquarters in Canada, as the case may be, whether by treaty, convention, agreement or law, benefits substantially equivalent to those conferred by this Part, the Minister may, by a statement published in the Canada Gazette,

(a) grant the benefits conferred by this Part to performers or makers of sound recordings that are citizens, subjects or permanent residents of or, if corporations, have their headquarters in that country; and

(b) declare that that country shall, as regards those benefits, be treated as if it were a country to which this Part extends.

(2) Where the Minister is of the opinion that another country neither grants nor has undertaken to grant to performers or makers of sound recordings that are Canadian citizens or permanent residents within the meaning of subsection 2(1) of the Immigration and Refugee Protection Act or, if corporations, have their headquarters in Canada, as the case may be, whether by treaty, convention, agreement or law, benefits substantially equivalent to those conferred by this Part, the Minister may, by a statement published in the Canada Gazette,

(a) grant the benefits conferred by this Part to performers or makers of sound recordings that are citizens, subjects or permanent residents of or, if corporations, have their headquarters in that country, as the case may be, to the extent that that country grants those benefits to performers or makers of sound recordings that are Canadian citizens or permanent residents within the meaning of subsection 2(1) of the Immigration and Refugee Protection Act or, if corporations, have their headquarters in Canada; and

(b) declare that that country shall, as regards those benefits, be treated as if it were a country to which this Part extends.

(3) Any provision of this Act that the Minister specifies in a statement referred to in subsection (1) or (2)

(a) applies in respect of performers or makers of sound recordings covered by that statement, as if they were citizens of or, if corporations, had their headquarters in Canada; and

(b) applies in respect of a country covered by that statement, as if that country were Canada.

(4) Subject to any exceptions that the Minister may specify in a statement referred to in subsection

(1) or (2), the other provisions of this Act also apply in the way described in subsection (3).

1997, c. 24, s. 50; 2001, c. 27, s. 241.

Exemption from Levy

86. (1) No levy is payable under this Part where the manufacturer or importer of a blank audio recording medium sells or otherwise disposes of it to a society, association or corporation that represents persons with a perceptual disability.

(2) Where a society, association or corporation referred to in subsection (1)

(a) purchases a blank audio recording medium in Canada from a person other than the manufacturer or importer, and

(b) provides the collecting body with proof of that purchase, on or before June 30 in the calendar year following the calendar year in which the purchase was made,

the collecting body is liable to pay forthwith to the society, association or corporation an amount equal to the amount of the levy paid in respect of the blank audio recording medium purchased.

(3) If regulations made under paragraph 87(a) provide for the registration of societies, associations or corporations that represent persons with a perceptual disability, subsections (1) and (2) shall be read as referring to societies, associations or corporations that are so registered.

1997, c. 24, s. 50.

Regulations

87. The Governor in Council may make regulations

(a) respecting the exemptions and refunds provided for in section 86, including, without limiting the generality of the foregoing,

(i) regulations respecting procedures governing those exemptions and refunds,

(ii) regulations respecting applications for those exemptions and refunds, and

(iii) regulations for the registration of societies, associations or corporations that represent persons with a perceptual disability;

(b) prescribing anything that by this Part is to be prescribed; and

(c) generally for carrying out the purposes and provisions of this Part.

1997, c. 24, s. 50.

Civil Remedies

88. (1) Without prejudice to any other remedies available to it, the collecting body may, for the period specified in an approved tariff, collect the levies due to it under the tariff and, in default of their payment, recover them in a court of competent jurisdiction.

(2) The court may order a person who fails to pay any levy due under this Part to pay an amount not exceeding five times the amount of the levy to the collecting body. The collecting body must distribute the payment in the manner set out in section 84.

(3) Where any obligation imposed by this Part is not complied with, the collecting body may, in addition to any other remedy available, apply to a court of competent jurisdiction for an order directing compliance with that obligation.

(4) Before making an order under subsection (2), the court must take into account

(a) whether the person who failed to pay the levy acted in good faith or bad faith;

(b) the conduct of the parties before and during the proceedings; and

(c) the need to deter persons from failing to pay levies.

1997, c. 24, s. 50.

PART IX GENERAL PROVISIONS

89. No person is entitled to copyright otherwise than under and in accordance with this Act or any other Act of Parliament, but nothing in this section shall be construed as abrogating any right or jurisdiction in respect of a breach of trust or confidence.

1997, c. 24, s. 50.

90. No provision of this Act relating to

(a) copyright in performer's performances, sound recordings or communication signals, or

(b) the right of performers or makers to remuneration

shall be construed as prejudicing any rights conferred by Part I or, in and of itself, as prejudicing the amount of royalties that the Board may fix in respect of those rights.

1997, c. 24, s. 50.

91. The Governor in Council shall take such measures as are necessary to secure the adherence of Canada to

(a) the Convention for the Protection of Literary and Artistic Works concluded at Berne on September 9, 1886, as revised by the Paris Act of 1971; and

(b) the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations, done at Rome on October 26, 1961.

1997, c. 24, s. 50.

92. (1) Within five years after the coming into force of this section, the Minister shall cause to be laid before both Houses of Parliament a report on the provisions and operation of this Act, including

any recommendations for amendments to this Act.

(2) The report stands referred to the committee of the House of Commons, or of both Houses of Parliament, that is designated or established for that purpose, which shall

(a) as soon as possible thereafter, review the report and undertake a comprehensive review of the provisions and operation of this Act; and

(b) report to the House of Commons, or to both Houses of Parliament, within one year after the laying of the report of the Minister or any further time that the House of Commons, or both Houses of Parliament, may authorize.

1997, c. 24, s. 50.

SCHEDULE I

(Section 60)

EXISTING RIGHTSColumn I

Existing RightColumn II

Substituted Right

Works other than Dramatic and Musical Works

Copyright Copyright as defined by this Act¹.

Musical and Dramatic Works

Both copyright and performing right Copyright as defined by this Act.

Copyright, but not performing right Copyright as defined by this Act, except the sole right to perform the work or any substantial part thereof in public.

Performing right, but not copyright The sole right to perform the work in public, but none of the other rights comprised in copyright as defined by this Act.

For the purposes of this Schedule the following expressions, where used in column I thereof, have the following meanings:

"Copyright" in the case of a work that according to the law in force immediately before January 1, 1924 has not been published before that date and statutory copyright wherein depends on publication, includes the right at common law, if any, to restrain publication or other dealing with the work;

"Performing right", in the case of a work that has not been performed in public before January 1, 1924, includes the right at common law, if any, to restrain the performance thereof in public.

1 In the case of an essay, article or portion forming part of and first published in a review, magazine or other periodical or work of a like nature, the right shall be subject to any right of publishing the essay, article or portion in a separate form to which the author is entitled on January 1, 1924 or would if this Act had not been passed have become entitled under section 18 of An Act to amend the Law of Copyright, being chapter 45 of the Statutes of the United Kingdom, 1842.

R.S., c. C-30, Sch. I; 1976-77, c. 28, s. 10.

SCHEDULE II

[Repealed, 1993, c. 44, s. 74]
SCHEDULE III

[Repealed, 1997, c. 24, s. 51]