

## Canada Federal Statutes

### → Copyright Act

An Act respecting copyright

R.S.C. 1985, c. C-42, as am. R.S.C. 1985, c. 1 (3rd Supp.); 1985, c. 10 (1st Supp.), s. 1; 1985, c. 10 (4th Supp.), ss. 1-16, 23-27; 1985, c. 41 (3rd Supp.), ss. 116, 117; S.C. 1988, c. 65, ss. 61-65, 149; 1990, c. 37, s. 33; 1992, c. 1, ss. 47-52; 1993, c. 15, ss. 2-11; 1993, c. 23, ss. 1-7; 1993, c. 44, ss. 52-80; 1994, c. 47, ss. 56-68; 1995, c. 1, s. 62; 1997, c. 24; 1997, c. 36, s. 205; 1999, c. 2, ss. 45, 46; 1999, c. 17, s. 119; 1999, c. 31, ss. 59-62; 2001, c. 27, ss. 235-241; 2001, c. 34, ss. 34, 35; 2002, c. 8, s. 131 (Fr.); 2002, c. 26; 2003, c. 22, ss. 154, 224(z.20), 225(s); 2004, c. 11, ss. 21, 25, 26; 2005, c. 38, ss. 139(b), 142(d), 145(2)(j).

### Short Title

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#### s 1. Short title

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

### Interpretation

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#### s 2. Definitions

In this Act,

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

**"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;

**"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 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;

**"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"**;

**"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);

**"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;

**"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;

"**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;

"**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;

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

"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*.

## s 2.1

### 2.1(1) Compilations

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.

### 2.1(2) Idem

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.

### s 2.11 Definition of "maker"

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.

## s 2.2

### 2.2(1) Definition of "publication"

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.

### 2.2(2) Issue of photographs and engravings

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.

### 2.2(3) Where no consent of copyright owner

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.

### 2.2(4) Unpublished works

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.

## s 2.3 Telecommunication

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.

## s 2.4

### 2.4(1) Communication to the public by telecommunication

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.

#### **2.4(1.1) Clarification**

For the purposes of this Act, communication of a work or other subject-matter to the public by telecommunication includes making it available to the public by telecommunication in a way that allows a member of the public to have access to it from a place and at a time individually chosen by that member of the public.

#### **2.4(2) Regulations**

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

#### **2.4(3) Exception**

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).

## s 2.5

### 2.5(1) What constitutes rental

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.

#### **2.5(2) Motive of gain**

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.

## s 2.6 Exclusive distributor

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

## s 2.7 Exclusive licence

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.

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## Part I -- Copyright and Moral Rights in Works

### Copyright

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## s 3.

### 3(1) Copyright in works

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,
- (i) in the case of a musical work, to rent out a sound recording in which the work is embodied, and
- (j) in the case of a work that is in the form of a tangible object, to sell or otherwise transfer ownership of the tangible object, as long as that ownership has never previously been transferred in or outside Canada with the authorization of the copyright owner.

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and to authorize any such acts.

#### 3(1.1) Simultaneous fixing

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

### Works in Which Copyright May Subsist

s 5.

#### 5(1) Conditions for subsistence of copyright

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.

#### 5(1.01) Protection for older works

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 WTO Member, as the case may be, at that date, subject to subsection (1.02) and sections 33 to 33.2.

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#### 5(1.02) Limitation

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.

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#### 5(1.03) Application of subsections (1.01) and (1.02)

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.

#### **5(1.1) First publication**

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 these two publications did not exceed thirty days.

#### **5(1.2) Idem**

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.

#### **5(2) Minister may extend copyright to other countries**

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.

#### **5(7) Reciprocity protection preserved**

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.

### **s 6. Term of copyright**

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.

#### **s 6.1 Anonymous and pseudonymous works**

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.

#### **s 6.2 Anonymous and pseudonymous works of joint ownership**

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.

### **s 7.**

#### **7(1) Term of copyright in posthumous works**

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.

#### **7(2) Application of subsection (1)**

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.

#### **7(3) Transitional provision**

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.

#### 7(4) Transitional provision

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 the 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.

s 9.

#### 9(1) Cases of joint authorship

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.

#### 9(2) Nationals of other countries

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.

### s 11.1 Cinematographic works

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.

### s 12. Where copyright belongs to Her Majesty

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.

## Ownership of Copyright

s 13.

#### 13(1) Ownership of copyright

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

#### 13(3) Work made in the course of employment

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.

#### 13(4) Assignment and licences

**Comment [AM1]:** The repeal of section 10 of the *Copyright Act* by section 6 does not have the effect of reviving copyright in any photograph in which, on the coming into force of that section 6, copyright had expired.

In any case in which, immediately before the coming into force of section 6, a corporation is deemed, by virtue of subsection 10(2) of the *Copyright Act* as it read before the coming into force of that section 6, 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).

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 section 6, the individual continues, after the coming into force of that section 6, to be the author of that photograph for the purposes of the *Copyright Act*.

Deleted: s 10.

Deleted: ¶  
¶  
**10(1) Term of copyright in photographs**

¶  
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.¶

¶  
**10(1.1) Where author majority shareholder**

¶  
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.¶

... [1]

**Comment [AM2]:** Subsection 13(2) of the *Copyright Act*, as it read immediately before the coming into force of section 7, 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 section 7.

Deleted: 13(2) Engraving, photograph or portrait

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¶  
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.¶  
¶



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.

#### **13(5) Ownership in case of partial assignment**

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.

#### **13(6) Assignment of right of action**

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.

#### **13(7) Exclusive licence**

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.

### **s 14.**

#### **14(1) Limitation where author is first owner of copyright**

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.

#### **14(2) Restriction**

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.

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### **Moral Rights**

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### **s 14.1**

#### **14.1(1) Moral rights**

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.

#### **14.1(2) No assignment of moral rights**

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

#### **14.1(3) No waiver by assignment**

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

#### **14.1(4) Effect of waiver**

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.

### **s 14.2**

#### **14.2(1) Term**

Moral rights in respect of a work subsist for the same term as the copyright in the work.

#### **14.2(2) Succession**

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.

#### **14.2(3) Subsequent succession**

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

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Part II -- Copyright in Performers' Performances, Sound Recordings and Communication Signals and Moral Rights in Performers' Performances

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Performers' Rights

Copyright

s 15.

**15(1) Copyright in performer's performance**

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.

**15(1.1) Copyright in performer's performance**

Subject to subsections (2.1) and (2.2), a performer's copyright in the performer's performance 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 make a sound recording of it available to the public by telecommunication in a way that allows a member of the public to have access to the sound recording from a place and at a time individually chosen by that member of the public and to communicate the sound recording to the public by telecommunication in that way; and
- (e) if it is fixed in a sound recording that is in the form of a tangible object, to sell or otherwise transfer ownership of the tangible object, as long as that ownership has never previously been transferred in or outside Canada with the authorization of the owner of the copyright in the performer's performance.

**15(2) Conditions**

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 had its headquarters in the country of broadcast.

#### **15(2.1) Conditions for copyright**

##### Subsection (1.1) applies if

- (a) the performer's performance takes place in Canada;
- (b) 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) 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.

#### **15(3) Publication**

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.

#### **15(4) Publication**

The first publication of a sound recording is deemed to have occurred in a WPPT country, despite an earlier publication elsewhere, if the interval between the publication in that WPPT country and the earlier publication does not exceed 30 days.

### **s 16. Contractual arrangements**

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.

### **s 17.**

#### **17(1) Cinematographic works**

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).

#### **17(2) Right to remuneration**

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.

#### **17(3) Application of subsection (2)**

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

#### **17(4) Exception**

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

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### 17.1

#### 17.1(1) Moral rights

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 section 19 — the right, if 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.

#### 17.1(2) No assignment of moral rights

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

#### 17.1(3) No waiver by assignment

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

#### 17.1(4) Effect of waiver

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

#### 17.2(1) Application and term

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.

#### 17.2(2) Succession

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.

#### 17.2(3) Subsequent succession

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

## Rights of Sound Recording Makers

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### s 18.

#### 18(1) Copyright in sound recordings

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.

#### 18(1.1) Copyright in sound recordings

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 make it available to the public by telecommunication in a way that allows a member of the public to have access to it from a place and at a time individually chosen by that member of the public and to communicate it to the public by telecommunication in that way; and
- (b) if it is in the form of a tangible object, to sell or otherwise transfer ownership of the tangible object, as long as that ownership has never previously been transferred in or outside Canada with the authorization of the owner of the

copyright in the sound recording.

## 18(2) Conditions for copyright

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).

### 18(2.1) Conditions for copyright

Subsection (1.1) applies 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, or
  - (ii) had its headquarters in Canada, 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 Canada.

### 18(2.2) Conditions for copyright

Subsection (1.1) also applies 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 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) the first publication of the sound recording in a quantity sufficient to satisfy the reasonable demands of the public occurred in a WPPT country.

## 18(3) Publication

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.

## 18(4) Publication

The first publication of a sound recording is deemed to have occurred in a WPPT country, despite an earlier publication elsewhere, if the interval between the publication in that WPPT country and the earlier publication does not exceed 30 days.

## Provisions Applicable to Both Performers and Sound Recording Makers

s 19.

## 19(1) Right to remuneration

If a sound recording has been published, the performer and maker are entitled, subject to subsection 20(1), 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) and any retransmission.

### 19(1.1) Right to remuneration – Rome Convention country

If a sound recording has been published, the performer and maker are entitled, subject to subsections 20(1.1) and (2), to be paid equitable remuneration for its performance in public or its communication to the public by telecommunication, except for any retransmission.

### 19(1.2) Right to remuneration – WPPT country

If a sound recording has been published, the performer and maker are entitled, subject to subsections 20(1.2) and (2.1), 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.

## 19(2) Royalties

Deleted: (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 ¶

Deleted: such

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For the purpose of providing the remuneration mentioned in this section, a person who performs a published sound recording in public or communicates it to the public by telecommunication is liable to pay royalties

Deleted: subsection (1)

- (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.

### 19(3) Division of royalties

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.

#### s 19.1 Deemed publication – Canada

Despite subsection 2.2(1), a sound recording that has been made available 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, or that has been communicated to the public by telecommunication in that way, is deemed to have been published for the purposes of subsection 19(1).

#### s 19.2 Deemed publication – WPPT country

Despite subsection 2.2(1), a sound recording that has been made available 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, or that has been communicated to the public by telecommunication in that way, is deemed to have been published for the purposes of subsection 19(1.2).

s 20.

### 20(1) Conditions

The right to remuneration conferred by subsection 19(1) 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 Canada; or
- (b) all the fixations done for the sound recording occurred in Canada.

Deleted: one of the foregoing countries

Deleted: or in a Rome Convention country

#### 20(1.1) Conditions – Rome Convention country

The right to remuneration conferred by subsection 19(1.1) applies only if

- (a) the maker was, at the date of the first fixation, a citizen or permanent resident of a Rome Convention country or, if a corporation, had its headquarters in a Rome Convention country; or
- (b) all the fixations done for the sound recording occurred in a Rome Convention country.

#### 20(1.2) Conditions – WPPT country

The right to remuneration conferred by subsection 19(1.2) applies only if

- (a) the maker was, at the date of the first fixation, a citizen or permanent resident of a WPPT country or, if a corporation, had its headquarters in a WPPT country; or
- (b) all the fixations done for the sound recording occurred in a WPPT country.

### 20(2) Exception – Rome Convention country

Despite subsection (1.1), 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 subsection 19(1.1), 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.

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#### 20(2.1) Exception – WPPT country

Despite subsection (1.2), if the Minister is of the opinion that a WPPT country does not grant a right to remuneration, similar in scope and duration to that provided by subsection 19(1.2), 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.

### 20(3) Exception

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 subsection 19(1.1) to performers or makers who

are nationals of that country and whose sound recordings embody dramatic or literary works.

#### 20(4) Application of section 19

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.

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### Rights of Broadcasters

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s 21.

#### 21(1) Copyright in communication signals

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).

#### 21(2) Conditions for copyright

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.

#### 21(3) Exception

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.

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### Reciprocity

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s 22.

#### 22(1) Reciprocity

~~If~~ the Minister is of the opinion that a country other than a Rome Convention country ~~or a WPPT country~~ grants or has undertaken to grant

Deleted: Where

- (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.

#### 22(2) Reciprocity

~~If~~ the Minister is of the opinion that a country other than a Rome Convention country ~~or a WPPT country~~ neither grants nor has undertaken to grant

Deleted: Where

- (a) to performers, and to makers of sound records, 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.

### 22(3) Application of Act

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, 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.

### 22(4) Application of Act

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).

## Term of Rights

s 23.

### 23(1) Term of ~~copyright~~ – performer's performance

~~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.~~

### 23(1.1) Term of copyright – sound recording

~~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.~~

### 23(1.2) Term of copyright – communication signal

~~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.~~

### 23(2) Term of right to remuneration

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).~~

### 23(3) Application of subsections (1) and (2)

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

### 23(4) Berne Convention countries, Rome Convention countries, WTO Members

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.

### 23(5) Where term of protection expired

Subsection (4) does not confer any protection in Canada where the term of protection in the country referred to in that subsection

Comment [AM3]: Subsections 23(1) to (2) of the *Copyright Act*, as enacted by section 17, 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.

#### Deleted: rights

Deleted: ¶  
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. ¶

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had expired before that country became a Berne Convention country, Rome Convention country or WTO Member, as the case may be.

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### Ownership of Copyright

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#### s 24. Ownership of copyright

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.

#### s 25. Assignment of rights

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.

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### Performers' Rights -- WTO Countries

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#### s 26.

##### 26(1) Performer's performance in WTO country

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.

##### 26(2) Where country joins WTO after Jan. 1, 1996

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.

##### 26(3) Performer's performances before Jan. 1, 1996

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).

##### 26(4) Where country joins WTO after Jan. 1, 1996

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.

##### 26(5) Term of performer's rights

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.

##### 26(6) Assignment of rights

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

##### 26(7) Limitation

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.

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## Part III -- Infringement of Copyright and Moral Rights and Exceptions to Infringement

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### Infringement of Copyright

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#### General

s 27.

#### 27(1) Infringement generally

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.

#### 27(2) Secondary infringement

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.

#### 27(2.1) Clarification

For greater certainty, a copy made outside Canada does not infringe copyright under subsection (2) if, had it been made in Canada, it would have been made under a limitation or exception under this Act.

#### 27(2.2) Secondary infringement related to lesson

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(6)(b), (c) or (d).

#### 27(2.3) Infringement – provision of services

It is an infringement of copyright for a person to provide, by means of the Internet or another digital network, a service that the person knows or should have known is designed primarily to enable acts of copyright infringement if an actual infringement of copyright occurs by means of the Internet or another digital network as a result of the use of that service.

#### 27(2.3) Factors

In determining whether a person has infringed copyright under subsection (2.3), the court may consider

- (a) whether the person expressly or implicitly marketed or promoted the service as one that could be used to enable acts of copyright infringement;
- (b) whether the person had knowledge that the service was used to enable a significant number of acts of copyright infringement;
- (c) whether the service has significant uses other than to enable acts of copyright infringement;
- (d) the person's ability, as part of providing the service, to limit acts of copyright infringement, and any action taken by the person to do so;
- (e) any benefits the person received as a result of enabling the acts of copyright infringement; and
- (f) the economic viability of the provision of the service if it were not used to enable acts of copyright infringement.

#### 27(3) Knowledge of importer

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.

#### 27(4) Plates

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.

#### 27(5) Public performance for profit

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.

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### Parallel Importation of Books

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#### s 27.1

##### 27.1(1) Importation of books

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.

##### 27.1(2) Secondary infringement

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).

##### 27.1(3) Limitation

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.

##### 27.1(4) Exclusive distributor

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.

##### 27.1(5) Notice

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.

##### 27.1(6) Regulations

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.

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### Moral Rights Infringement

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#### s 28.1 Infringement generally

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.

Deleted: by the author

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#### s 28.2

##### 28.2(1) Nature of right of integrity

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.

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Deleted: of the author

- (a) distorted, mutilated or otherwise modified; or
- (b) used in association with a product, service, cause or institution.

**28.2(2) Where prejudice deemed**

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.

**28.2(3) When work not distorted, etc.**

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.

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**Exceptions**

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**Fair Dealing**

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**s 29. Research or private study**

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

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**s 29.1 Criticism or review**

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

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- (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.

**s 29.2 News reporting**

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.

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**Non-commercial User-generated Content**

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**s. 29.21**

**29.21(1) Non-commercial User-generated Content**

It is not an infringement of copyright for an individual to use an existing work or other subject-matter or copy of one, which has been published or otherwise made available to the public, in the creation of a new work or other subject-matter in which copyright subsists and for the individual — or, with the individual's authorization, a member of their household — to use the new work or other subject-matter or to authorize an intermediary to disseminate it, if

- (a) the use of, or the authorization to disseminate, the new work or other subject-matter is done solely for non-commercial purposes;
- (b) the source — and, if given in the source, the name of the author, performer, maker or broadcaster — of the existing work or other subject-matter or copy of it are mentioned, if it is reasonable in the circumstances to do so;
- (c) the individual had reasonable grounds to believe that the existing work or other subject-matter or copy of it, as the case may be, was not infringing copyright; and

(d) the use of, or the authorization to disseminate, the new work or other subject-matter does not have a substantial adverse effect, financial or otherwise, on the exploitation or potential exploitation of the existing work or other subject-matter — or copy of it — or on an existing or potential market for it, including that the new work or other subject-matter is not a substitute for the existing one.

### **29.21(2) Definitions**

The following definitions apply in subsection (1).

“intermediary” means a person or entity who regularly provides space or means for works or other subject-matter to be enjoyed by the public.

“use” means to do anything that by this Act the owner of the copyright has the sole right to do, other than the right to authorize anything.

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### **Reproduction for private purposes**

#### **s. 29.22**

##### **29.22(1) Reproduction for private purposes**

It is not an infringement of copyright for an individual to reproduce a work or other subject-matter or any substantial part of a work or other subject-matter if

- (a) the copy of the work or other subject-matter from which the reproduction is made is not an infringing copy;
- (b) the individual legally obtained the copy of the work or other subject-matter from which the reproduction is made, other than by borrowing it or renting it, and owns or is authorized to use the medium or device on which it is reproduced;
- (c) the individual, in order to make the reproduction, did not circumvent, as defined in section 41, a technological protection measure, as defined in that section, or cause one to be circumvented;
- (d) the individual does not give the reproduction away; and
- (e) the reproduction is used only for private purposes.

##### **29.22(2) Meaning of “medium or device”**

For the purposes of paragraph (1)(b), a “medium or device” includes digital memory in which a work or subject-matter may be stored for the purpose of allowing the telecommunication of the work or other subject-matter through the Internet or other digital network.

##### **29.22(3) Limitation – audio recording medium**

In the case of a work or other subject-matter that is 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, subsection (1) does not apply if the reproduction is made onto an audio recording medium as defined in section 79.

##### **29.22(4) Limitation – destruction of reproduction**

Subsection (1) does not apply if the individual gives away, rents or sells the copy of the work or other subject-matter from which the reproduction is made without first destroying all reproductions of that copy that the individual has made under that subsection.

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### **Fixing Signals and Recording Programs for Later Listening or Viewing**

#### **s. 29.23**

##### **29.23(1) Reproduction for later listening or viewing**

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 viewing it later, if

- (a) the individual receives the program legally;
- (b) the individual, in order to record the program, did not circumvent, as defined in section 41, a technological protection measure, as defined in that section, or cause one to be circumvented;
- (c) the individual makes no more than one recording of the program;
- (d) the individual keeps the recording no longer than is reasonably necessary in order to listen to or view 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.

### **29.23(2) Limitation**

Subsection (1) does not apply if the individual receives the work, performer's performance or sound recording under an on-demand service.

### **29.23(3) Definitions**

The following definitions apply in this section.

"broadcast" means any transmission of a work or other subject-matter by telecommunication for reception by the public, but does not include a transmission that is made solely for performance in public.

"on-demand service" means a service that allows a person to receive works, performer's performances and sound recordings at times of their choosing.

## **Backup copies**

### **s. 29.24**

#### **29.24(1) Backup copies**

It is not an infringement of copyright in a work or other subject-matter for a person who owns — or has a licence to use — a copy of the work or subject-matter (in this section referred to as the "source copy") to reproduce the source copy if

- (a) the person does so solely for backup purposes in case the source copy is lost, damaged or otherwise rendered unusable;
- (b) the source copy is not an infringing copy;
- (c) the person, in order to make the reproduction, did not circumvent, as defined in section 41, a technological protection measure, as defined in that section, or cause one to be circumvented; and
- (d) the person does not give any of the reproductions away.

#### **29.24(2) Backup copy becomes source copy**

If the source copy is lost, damaged or otherwise rendered unusable, one of the reproductions made under subsection (1) becomes the source copy.

#### **29.24(3) Destruction**

The person shall immediately destroy all reproductions made under subsection (1) after the person ceases to own, or to have a licence to use, the source copy.

## **Acts Undertaken without Motive of Gain**

### **s 29.3**

#### **29.3(1) Motive of gain**

No action referred to in section 29.4, 29.5, 30.2 or 30.21 may be carried out with motive of gain.

#### **29.3(2) Cost recovery**

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.

## **Educational Institutions**

### **s 29.4**

#### **29.4(1) Reproduction for instruction**

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

#### **29.4(2) Reproduction for examinations, etc.**

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.

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(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.¶

### 29.4(3) Where work commercially available

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

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Deleted: paragraph or subsection, as the case may be

### s 29.5 Performances

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

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

Deleted: and

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

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

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### s 29.6

#### 29.6(1) News and commentary

It is not an infringement of copyright for an educational institution or a person acting under its authority to

Deleted: Subject to subsection (2) and section 29.9, i

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

Deleted: , at any time or times within one year after the making of a copy under paragraph (a),

### s 29.7

#### 29.7(1) Reproduction of broadcast

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.

Deleted: **29.6(2) Royalties for reproduction and performance**

¶ 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.¶

#### 29.7(2) Royalties for reproduction

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.

#### 29.7(3) Royalties for performance

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.

### s 29.8 Unlawful reception

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.

### s 29.9

#### 29.9(1) Records and marking

Where an educational institution or person acting under its authority

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

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

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.

#### 29.9(2) Regulations

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.

### s 30. Literary collections

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.

### s 30.01

#### 30.01(1) Meaning of "lesson"

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

#### 30.01(2) Application

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.

#### 30.01(3) Communication by telecommunication

Subject to subsection (6), it is not an infringement of copyright for an educational institution or a person acting under its authority

- (a) to communicate a lesson to the public by telecommunication for educational or training purposes, if that public consists only of students who are enrolled in a course of which the lesson forms a part or of other persons acting under the authority of the educational institution;
- (b) to make a fixation of the lesson for the purpose of the act referred to in paragraph (a); or
- (c) to do any other act that is necessary for the purpose of the acts referred to in paragraphs (a) and (b).

#### 30.01(4) Participation by telecommunication

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).

#### 30.01(5) Reproducing lessons

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

#### 30.01(6) Conditions

The educational institution and any person acting under its authority, except a student, shall

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

### s 30.02

#### 30.02(1) Exception – digital reproduction of works

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).

### **30.02(2) Exception**

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.

### **30.02(3) Conditions**

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.

### **30.02(4) Restriction**

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.

### **30.02(5) Restriction**

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).

### **30.02(6) Deeming provision**

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.

### **30.02(7) Maximum amount that may be recovered**

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.

### **30.02(8) No damages**

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).

## **s 30.03**

### **30.03(1) Royalties – digital reproduction agreement**

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).

### **30.03(2) Royalties – tariff**

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).

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## **s 30.04**

### **30.04(1) Works available through Internet**

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).

### 30.04(2) Conditions

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.

### 30.04(3) Non-application

Subsection (1) does not apply if the work or other subject-matter — or the Internet site where it is posted — is protected by a technological protection measure that restricts access to the work or other subject-matter or to the Internet site.

### 30.04(4) Non-application

Subsection (1) does not permit a person to do any act described in that subsection in respect of a work or other subject-matter if

- (a) that work or other subject-matter — or the Internet site where it is posted — is protected by a technological protection measure that restricts the doing of that act; or
- (b) a clearly visible notice — and not merely the copyright symbol — prohibiting that act is posted at the Internet site where the work or other subject-matter is posted or on the work or other subject-matter itself.

### 30.04(5) Non-application

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.

### 30.04(6) Regulations

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

### s 30.1

#### 30.1(1) Management and maintenance of collection

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 a 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;
- (d) for the purposes of internal record-keeping and cataloguing;
- (e) for insurance purposes or police investigations; or
- (f) if necessary for restoration.

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#### 30.1(2) Limitation

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).

#### 30.1(3) Destruction of intermediate copies

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.

#### 30.1(4) Regulations

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

## s 30.2

### 30.2(1) Research or private study

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.

### 30.2(2) Copies of articles for research, etc.

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.

### 30.2(3) Restriction

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

### 30.2(4) Conditions

A library, archive or museum may ~~provide the person for whom the copy is made~~ under subsection (2) only on condition that

- ~~(a) the person is provided with a single copy of the work; and~~
- ~~(b) the library, archive or museum informs the person that the copy is to be used solely for research or private study and that any use of the copy for a purpose other than research or private study may require the authorization of the copyright owner of the work in question.~~

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### 30.2(5) Patrons of other libraries, etc.

~~Subject to subsection (5.02), 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) ~~that it is authorized by this section to do on behalf of a person who is one of its patrons.~~

#### 30.2(5.01) Deeming

~~For the purpose of subsection (5), the making of a copy of a work other than by reprographic reproduction is deemed to be a making of a copy of the work that may be done under subsection (2).~~

#### 30.2(5.02) Limitation regarding copies in digital form

~~A library, archive or museum, or a person acting under the authority of one, may, under subsection (5), provide a copy in digital form 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 from the day on which the person first uses it.~~

### 30.2(5.1) Destruction of intermediate copies

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.

### 30.2(6) Regulations

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.

## s 30.21

### 30.21(1) Copying works deposited in archive

~~Subject to subsections (3) and (3.1), it is not an infringement of copyright for an archive to make, for any person requesting to use the copy for research or private study, a copy of an unpublished work that is deposited in the archive and provide the person with it.~~

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### 30.21(2) Notice

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.

### 30.21(3) Conditions for copying of works

~~The archive may copy the work only on the condition that~~

- ~~(a) the person who deposited the work, if a copyright owner, did not, at the time the work was deposited, prohibit its copying; and~~
- ~~(b) copying has not been prohibited by any other owner of copyright in the work.~~

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### 30.21(3.1) Condition for providing copy

~~The archive may provide the person for whom a copy is made under subsection (1) with the copy only on the condition that~~

- ~~(a) the person is provided with a single copy of the work; and~~
- ~~(b) the archive informs the person that the copy is to be used solely for research or private study and that any use of the copy for a purpose other than research or private study may require the authorization of the copyright owner of the work in question.~~

### 30.21(4) Regulations

The Governor in Council may prescribe by regulation the manner and form in which the conditions set out in subsections (3) and (3.1) may be met.

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¶  
(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 a 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.

## Machines Installed in Educational Institutions, Libraries, Archives and Museums

### s 30.3

#### 30.3(1) No infringement by educational institution, etc.

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.

#### 30.3(2) Application

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.

#### 30.3(3) Order

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.

#### 30.3(4) Agreement with copyright owner

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.

#### 30.3(5) Regulations

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.

## Libraries, Archives and Museums in Educational Institutions

## s 30.4 Application to libraries, etc within educational institutions

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.

### Library and Archives of Canada

## s 30.5 Permitted acts

It is not an infringement of copyright for the Librarian and Archivist of Canada under the *Library and Archives of Canada Act*, to

- (a) make a copy of a work or other subject-matter in taking a representative sample for the purpose of preservation under subsection 8(2) of that Act;
- (b) effect the fixation of a copy of a publication, as defined in section 2 of that Act, that is provided by telecommunication in accordance with subsection 10(1) of that Act;
- (c) make a copy of a recording, as defined in subsection 11(2) of that Act, for the purposes of section 11 of that Act; or
- (d) at the time that a broadcasting undertaking, as defined in subsection 2(1) of the Broadcasting Act, communicates a work or other subject-matter to the public by telecommunication, make a copy of the work or other subject-matter that is included in that communication.

### Computer Programs

## s 30.6 Permitted acts

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, ~~or has a licence to use a copy of the computer program,~~ to

- (a) ~~reproduce~~ the copy by adapting, modifying or converting ~~it,~~ or translating it into another computer language if the person proves that the reproduced copy,
  - (i) ~~is~~ essential for the compatibility of the computer program with a particular computer,
  - (ii) ~~is~~ solely for the person's own use, and
  - (iii) ~~was~~ destroyed immediately after the person ceased ~~to be the owner of the copy of the computer program or to have a licence to use it;~~ or
- (b) ~~reproduce~~ for backup purposes ~~copy or a reproduced copy referred to in paragraph (a) if the person proves that the reproduction for backup purposes was destroyed immediately after the person ceased to be the owner of the copy of the computer program~~ ~~or to have a licence to use it.~~

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## s 30.61 Interoperability of computer programs

~~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, or has a licence to use a copy of the computer program, to reproduce the copy for the sole purpose of obtaining information that would allow the person to make the program and any other computer program interoperable.~~

### Encryption Research

## s 30.62 Encryption research

~~It is not an infringement of copyright for a person to reproduce a work or other subject-matter for the purposes of encryption research if~~

- ~~(a) it would not be practical to carry out the research without making the copy;~~
- ~~(b) the person has lawfully obtained the work or other subject-matter; and~~
- ~~(c) the person has informed the owner of the copyright in the work or other subject-matter.~~

### Security

## s 30.63 Security

~~It is not an infringement of copyright for a person to reproduce a work or other subject-matter for the sole purpose, with the consent of the owner or administrator of a computer, computer system or computer network, of assessing the vulnerability of the computer, system or network or of correcting any security flaws.~~

### Incidental Inclusion

## s 30.7 Incidental use

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.

### **Temporary Reproductions for Technological Processes**

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#### **s 30.71 Temporary reproductions**

It is not an infringement of copyright to make a reproduction of a work or other subject-matter if

- (a) the reproduction forms an essential part of a technological process;
- (b) the reproduction's only purpose is to facilitate a use that is not an infringement of copyright; and
- (c) the reproduction exists only for the duration of the technological process.

### **Ephemeral Recordings**

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#### **s 30.8**

##### **30.8(1) Ephemeral recordings**

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.

##### **30.8(2) Record keeping**

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.

##### **30.8(3) Right of access by copyright owners**

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.

##### **30.8(4) Destruction**

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).

##### **30.8(5) Royalties**

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

##### **30.8(6) Archive**

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.

##### **30.8(7) Definition of "official archive"**

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

##### **30.8(8) Application**

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.

##### **30.8(9) Telecommunications by networks**

A broadcast 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.

### 30.8(10) Limitations

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.

### 30.8(11) Definition of "programming undertaking"

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*, or be exempted from this requirement by the Canadian Radio-television and Telecommunications Commission.

## s 30.9

### 30.9(1) Ephemeral recordings – broadcasting undertaking

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 their 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, or has a licence to use the copy;
- (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.

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### 30.9(2) Record keeping

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.

### 30.9(3) Right of access by copyright owners

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.

### 30.9(4) Destruction

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 its licence to use the sound recording, performer's performance or work expires, or at the latest within 30 days after making the reproduction, unless the copyright owner authorizes the reproduction to be retained.

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### 30.9(5) Royalty

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

### 30.9(7) Definition of "broadcasting undertaking"

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.

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

## Retransmission

## s 31.

### 31(1) Interpretation

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.

### 31(2) Retransmission of local and distant signals

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).

### 31(3) Regulations

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.

## Network Services

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### s 31.1

#### 31.1(1) Network services

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.

#### 31.1(2) Exception

Subsection (1) does not apply in respect of a service provided by the person if the provision of that service constitutes an infringement of copyright under subsection 27(2.3).

#### 31.1(3) Incidental acts

Subject to subsection (4), a person referred to in subsection (1) who caches the work or other subject-matter, or does any similar act in relation to it, to make the telecommunication more efficient does not, by virtue of that act alone, infringe copyright in the work or other subject-matter.

#### 31.1(4) Conditions for application

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

- (a) does not modify it, other than for technical reasons;
- (b) ensures that any directions related to its caching or the doing of any similar act, as the case may be, 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.

#### 31.1(5) Hosting

Subject to subsection (6), 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.

#### 31.1(6) Condition for application

Subsection (5) 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.

s 32.

**32(1) Reproduction in alternate format**

It is not an infringement of copyright for a person with a perceptual disability, ~~for a person acting at the request of such a person~~ or for a non-profit organization acting for ~~the benefit of such a person~~, to

Deleted: , at the request of a person

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- (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.

**32(2) Limitation**

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

**32(3) Limitation**

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**".

**s 32.01**

**32.01(1) Sending copies outside Canada**

Subject to this section, it is not an infringement of copyright for a non-profit organization acting for the benefit of persons with a print disability to make a copy, in a format specially designed for persons with a print disability, of a work and to send the copy to a non-profit organization in another country for use by persons with print disabilities in that country, if the author of the work that is reformatted is

- (a) a Canadian citizen or permanent resident within the meaning of subsection 2(1) of the Immigration and Refugee Protection Act; or
- (b) a citizen or permanent resident of the country to which the copy is sent.

**32.01(2) Limitation**

Subsection (1) does not authorize a large print book or a cinematographic work to be sent outside Canada.

**32.01(3) Work available in country**

Subsection (1) does not authorize a copy to be sent to a country if the organization knows or has reason to believe that the work, in the format specially designed for persons with a print disability, is available in that country within a reasonable time and for a reasonable price, and may be located in that country with reasonable effort.

**32.01(4) Royalty**

The organization making and sending the copy shall pay, in accordance with the regulations, any royalty established under the regulations to the copyright owner in the work.

**32.01(5) If copyright owner cannot be located**

If the organization cannot locate the copyright owner, despite making reasonable efforts to do so, the organization shall pay, in accordance with the regulations, any royalty established under the regulations to a collective society.

**32.01(6) Reports**

The organization making and sending the copy shall submit reports to an authority in accordance with the regulations on the organization's activities under this section.

**32.01(7) Regulations**

The Governor in Council may make regulations

- (a) requiring a non-profit organization that seeks to send a copy outside Canada to, before doing so, enter into a contract with the recipient non-profit organization with respect to the use of the copy;
- (b) respecting the form and content of such contracts;
- (c) respecting any royalties to be paid under subsections (4) and (5);
- (d) respecting to which collective society a royalty is payable in relation to works or classes of works for the purposes of subsection (5);

(e) respecting what constitutes reasonable efforts for the purposes of subsection (5); and

(f) respecting the reports to be made, and the authorities to which the reports are to be submitted, under subsection (6).

### **32.01(8) Meaning of “print disability”**

In this section, “print disability” means a disability that prevents or inhibits a person from reading a literary, musical or dramatic work in its original format, and includes such a disability resulting from

(a) severe or total impairment of sight 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.

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## **Statutory Obligations**

### **s 32.1**

#### **32.1(1) No infringement**

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.

#### **32.1(2) Limitation**

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.

#### **32.1(3) Destruction of fixation or copy**

Unless the *Broadcasting Act* otherwise provides, a person who makes a fixation or copy under (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.

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## **Miscellaneous**

### **s 32.2**

#### **32.2(1) Permitted acts**

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; Deleted: or
- (e) for any person to make or publish, for the purpose 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, or permit the use of for those 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. Deleted: .

#### **32.2(2) Further permitted acts**

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.

### **32.2(3) Further permitted acts**

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.

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## **Interpretation**

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### **s 32.3 No right to equitable remuneration**

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

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

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### **s 32.4**

#### **32.4(1) Certain rights and interests protected**

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 two 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).

#### **32.4(2) Compensation**

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.

#### **32.4(3) Limitation**

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

### **s 32.5**

#### **32.5(1) Certain rights and interests protected**

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).

### 32.5(2) Compensation

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.

### 32.5(3) Limitation

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

## s 32.6 Certain rights and interests protected

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 performer's 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 performer's performance or sound recording.

## Compensation for Acts Done Before Recognition of Copyright or Moral Rights

### s 33.

#### 33(1) Certain rights and interests protected

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 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.

#### 33(2) Compensation

Notwithstanding subsection (1), a person's right or interest that is protected by that subsection terminates, as against the copyright owner or the 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.

### s 33.1

#### 33.1(1) Certain rights and interests protected

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.

#### 33.1(2) Compensation

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.

### s 33.2

#### 33.2(1) Certain rights and interests protected

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.

#### 33.2(2) Compensation

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.

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Part IV -- Remedies

Civil Remedies

**Copyright Infringement**

s 34.

**34(1) Copyright**

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.

**34(2) Moral rights**

In any proceedings for an infringement of a moral right, 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.

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**34(3) Costs**

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.

**34(4) Summary proceedings**

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.

**34(5) Practice and procedure**

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.

**34(6) Actions**

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.

**34(7) Meaning of "application"**

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

s 34.1

**34.1(1) Presumptions respecting copyright and ownership**

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,

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- (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.

**34.1(2) Where no grant registered**

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.

s 35.

### 35(1) Liability for infringement

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.

### 35(2) Proof of profits

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.

s 38.

### 38(1) Recovery of possession of copies, plates

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.

### 38(2) Powers of court

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.

### 38(3) Notice to interested persons

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.

### 38(4) Circumstances court to consider

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.

### 38(5) Limitation

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

s 38.1

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¶  
36(1) Protection of separate rights¶  
¶  
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.¶  
¶  
36(2) Where copyright owner to be made party¶  
¶  
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.¶  
¶  
36(3) Owner's liability for costs¶  
¶  
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.¶  
¶  
36(4) Apportionment of damages, profits¶  
¶  
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.¶  
¶  
s 37. Concurrent jurisdiction of Federal Court¶  
¶  
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.¶  
¶

### 38.1(1) Statutory damages

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 which any one infringer is liable individually, or for which any two or more infringers are liable jointly and severally,

Deleted: for all infringements involved in the proceedings, with respect to any one work or other subject-matter,

(a) in a sum of not less than \$500 and not more than \$20,000 that the court considers just, with respect to all infringements involved in the proceedings for each work or other subject-matter, if the infringements are for commercial purposes;

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(b) in a sum of not less than \$100 and not more than \$5,000 that the court considers just, with respect to all infringements involved in the proceedings for all works or other subject-matter, if the infringements are for non-commercial purposes.

#### 38.1(1.1) Infringements not involved in the proceedings

If the copyright owner has made an election under subsection (1) with respect to a defendant's infringements that are for non-commercial purposes, they are barred from recovering statutory damages under this section from that defendant with respect to any other of the defendant's infringements that were done for non-commercial purposes before the institution of the proceedings in which the election was made.

#### 38.1(1.2) No other statutory damages

If a copyright owner has made an election under subsection (1) with respect to a defendant's infringements that are for non-commercial purposes, every other copyright owner is barred from electing to recover statutory damages under this section in respect of that defendant for any of the defendant's infringements that were done for non-commercial purposes before the institution of the proceedings in which the election was made.

### 38.1(2) If defendant unaware of infringement

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If 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 under paragraph (1)(a) to less than \$500, but not less than \$200.

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### 38.1(3) Special case

In awarding statutory damages under paragraph (1)(a) or subsection (2), the court may award, with respect to each work or other subject-matter, a lower amount than \$500 or \$200, as the case may be, that the court considers just, if

Deleted:

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

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

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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.

### 38.1(4) Collective societies

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.

### 38.1(5) Factors to consider

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;

Deleted: and

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

(d) in the case of infringements for non-commercial purposes, the need for an award to be proportionate to the infringements, in consideration of the hardship the award may cause to the defendant, whether the infringement was for private purposes or not, and the impact of the infringements on the plaintiff.

### 38.1(6) No award

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;

Deleted: 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) a person who infringes copyright under subsection 27(2.3); or



(e) 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).

### **38.1(7) Exemplary or punitive damages not affected**

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

## **s 38.2**

### **38.2(1) Maximum amount that may be recovered**

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.

### **38.2(2) Agreements with more than one collective society**

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.

### **38.2(3) Application**

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.

## **s 39.**

### **39(1) Injunction only remedy when defendant not aware of copyright**

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.

### **39(2) Exception where copyright registered**

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

## **s 39.1**

### **39.1(1) Wide injunction**

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.

### **39.1(2) Application of injunction**

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.

## **s 40.**

### **40(1) No injunction in case of a building**

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.

### **40(2) Certain remedies inapplicable**

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

## **s 41. Definitions**

The following definitions apply in this section and in sections 41.1 to 41.21.

**“circumvent”** means,

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

**“technological protection 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.

## **S 41.1**

### **41.1(1) Prohibition**

No person shall

- (a) circumvent a technological protection measure within the meaning of paragraph (a) of the definition “technological protection 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 protection 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 protection measure, or
  - (iii) the person markets those services as being for the purposes of circumventing a technological protection measure or acts in concert with another person in order to market those services as being for those purposes; or
- (c) manufacture, import, distribute, offer for sale or rental or provide — including by selling or renting — any technology, device or component if
  - (i) the technology, device or component is designed or produced primarily for the purposes of circumventing a technological protection 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 protection measure, or
  - (iii) the person markets the technology, device or component as being for the purposes of circumventing a technological protection measure or acts in concert with another person in order to market the technology, device or component as being for those purposes.

### **41.1(2) Circumvention of technological protection measure**

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 41.21, 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.

### **41.1(3) No statutory damages**

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.

### **41.1(4) Services, technology, device or component**

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 protection 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 41.21, 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).

## **s 41.11**

### **41.11(1) Law enforcement and national security**

Paragraph 41.1(1)(a) does not apply if a technological protection 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.

#### **41.11(2) Services**

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.

#### **41.11(3) Technology, device or component**

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.

### **s 41.12**

#### **41.12(1) Interoperability of computer programs**

Paragraph 41.1(1)(a) does not apply to a person who owns a computer program or a copy of one, or has a licence to use the program or copy, and who circumvents a technological protection 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.

#### **41.12(2) Services**

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 protection measure if the person does so for the purpose of making the computer program and any other computer program interoperable.

#### **41.12(3) Technology, device or component**

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 protection 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.

#### **41.12(4) Sharing of information**

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.

#### **41.12(5) Limitation**

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.

#### **41.12(6) Non-application**

However, a person is not entitled to benefit from the exceptions under subsections (1) to (3) or (5) 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.

#### **41.12(7) Non-application**

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.

### **s 41.13**

#### **41.13(1) Encryption research**

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

- (a) it would not be practical to carry out the research without circumventing the technological protection 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 protection 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 protection measure.

#### **41.13(2) Non-application**

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.

#### **41.13(3) Technology, device or component**

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 protection 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.

#### **s 41.14**

##### **41.14(1) Personal information**

Paragraph 41.1(1)(a) does not apply to a person who circumvents a technological protection measure if

(a) the work, performer's performance fixed in a sound recording or sound recording that is protected by the technological protection 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 protection measure is to verify whether it permits the collection or communication of personal information and, if it does, to prevent it.

##### **41.14(2) Services, technology, device or component**

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 protection measure in accordance with subsection (1), to the extent that the services, technology, device or component do not unduly impair the technological protection measure.

#### **s 41.15**

##### **41.15(1) Security**

Paragraph 41.1(1)(a) does not apply to a person who circumvents a technological protection 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.

##### **41.15(2) Services**

Paragraph 41.1(1)(b) does not apply if the services are provided to a person described in subsection (1).

##### **41.15(3) Technology, device or component**

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.

##### **41.15(4) Non-application**

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.

#### **s 41.16**

##### **41.16(1) Persons with perceptual disabilities**

Paragraph 41.1(1)(a) does not apply to a person with a perceptual disability, another person acting at their request or a nonprofit organization acting for their benefit if that person or organization circumvents a technological protection measure 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 a perceptual disability.

##### **41.16(2) Services, technology, device or component**

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 protection measure in accordance with that subsection, to the extent that the services, technology, device or component do not unduly impair the technological protection measure.

#### **s 41.17 Broadcasting undertakings**

Paragraph 41.1(1)(a) does not apply to a broadcasting undertaking that circumvents a technological protection 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 protection 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.

#### **s 41.18**

##### **41.18(1) Radio apparatus**

**Comment [AM4]:** Subsection 41(1) of the *Copyright Act*, as it read immediately before the coming into force of section 47, applies to proceedings with respect to an infringement that occurred before the coming into force of that section.

**Deleted:** s 41.

**Deleted:** ¶

¶ 41(1) Limitation period for civil remedies¶

¶ 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.¶

¶ 41(2) Restriction¶

¶ 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.¶

Paragraph 41.1(1)(a) does not apply to a person who circumvents a technological protection measure on a radio apparatus for the sole purpose of gaining access to a telecommunications service by means of the radio apparatus.

#### **41.18(2) Services or technology, device or component**

Paragraphs 41.1(1)(b) and (c) do not apply to a person who offers the services to the public or provides the services, or manufactures, imports or provides the technology, device or component, for the sole purpose of facilitating access to a telecommunications service by means of a radio apparatus.

#### **41.18(3) Definitions**

The following definitions apply in this section.

“radio apparatus” has the same meaning as in section 2 of the Radiocommunication Act.

“telecommunications service” has the same meaning as in subsection 2(1) of the Telecommunications Act.

#### **s 41.19 Reduction of damages**

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.

#### **s 41.2 Injunction only remedy**

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.

#### **s 41.21**

##### **41.21(1) Regulations**

The Governor in Council may make regulations excluding from the application of section 41.1 any technological protection 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 protection measures, if the Governor in Council considers that the application of that section to the technological protection measure or class of technological protection measures would unduly restrict competition in the aftermarket sector in which the technological protection measure is used.

##### **41.21(2) Regulations**

The Governor in Council may make regulations

- (a) prescribing additional circumstances in which paragraph 41.1(1)(a) does not apply, having regard to the following factors:
  - (i) whether not being permitted to circumvent a technological protection 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 protection measure that is subject to that paragraph could adversely affect criticism, review, news reporting, commentary, parody, satire, 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 protection 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 protection 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.

#### **s 41.22**

##### **41.22(1) Prohibition – rights management information**

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.

#### **41.22(2) Removal or alteration of rights management information**

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).

#### **41.22(3) Subsequent acts**

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.

#### **41.22(4) Definition of "rights management information"**

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**

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#### **s 41.23**

##### **41.23(1) Protection of separate rights**

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.

##### **41.23(2) Copyright owner to be made party**

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.

##### **41.23(3) Owner's liability for costs**

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.

##### **41.23(4) Apportionment of damages, profits**

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.

#### **s 41.4 Concurrent jurisdiction of Federal Court**

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.

### **PROVISIONS RESPECTING PROVIDERS OF NETWORK SERVICES OR INFORMATION LOCATION TOOLS**

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#### **s 41.25**

##### **41.25(1) Notice of claimed infringement**

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) for the purpose set out in subsection 31.1(5), the digital memory 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(5).

#### **41.25(2) Form and content of notice**

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.

### **s 41.26**

#### **41.26(1) Obligations related to notice**

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 electronically to the person to whom the electronic location identified by the location data specified in the notice belongs and inform the claimant of its forwarding or, if applicable, 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.

#### **41.26(2) Fees related to notices**

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.

#### **41.26(3) Damages related to notices**

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.

#### **41.26(4) Regulations – change of amounts**

The Governor in Council may, by regulation, increase or decrease the minimum or maximum amount of statutory damages set out in subsection (3).

### **s 41.27**

#### **41.27(1) Injunctive relief only – providers of information location tools**

In any proceedings for infringement of copyright, the owner of the copyright in a work or other subject-matter is not entitled to any remedy other than an injunction against a provider of an information location tool that is found to have infringed copyright by making a reproduction of the work or other subject-matter or by communicating that reproduction to the public by telecommunication.

#### **41.27(2) Conditions for application**

Subsection (1) applies only if the provider, in respect of the work or other subjectmatter,

- (a) makes and caches, or does any act similar to caching, 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, other than for technical reasons;
- (d) complies with any conditions relating to the making or caching, or doing of any act similar to caching, of reproductions of the work or other subject-matter, or to the communication of the reproductions 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; and

(e) does not interfere with the lawful use of technology to obtain data on the use of the work or other subject-matter.

#### **41.27(3) Limitation**

If the provider receives a notice of claimed infringement, relating to a work or other subject-matter, that complies with subsection 41.25(2) after the work or other subject-matter has been removed from the electronic location set out in the notice, then subsection (1) applies, with respect to reproductions made from that electronic location, only to infringements that occurred before the day that is 30 days — or the period that may be prescribed by regulation — after the day on which the provider receives the notice.

#### **41.27(4) Exception**

Subsection (1) does not apply to the provision of the information location tool if the provision of that tool constitutes an infringement of copyright under subsection 27(2.3).

#### **41.27(5) Meaning of “information location tool”**

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.

### **Criminal Remedies**

s 42.

#### **42(1) Offences and punishment**

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 an 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.

#### **42(2) Possession and performance offences and punishment**

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.

#### **42(3) Power of court to deal with copies or plates**

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.

#### **42(3.1) Circumvention of technological protection measure**

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.

#### 42(4) Limitation period

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.

#### 42(5) Parallel importation of books

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.

s 43.

#### 43(1) Infringement in case of dramatic, operatic or musical work

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.

#### 43(2) Change or suppression of title or author's name

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.

s 43.1

#### 43.1(1) Limitation or prescription period for civil remedies

Subject to subsection (2), a court may award a remedy for any act or omission that has been done contrary to this Act only if

(a) the proceedings for the act or omission 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 act or omission at the time it occurred; or

(b) the proceedings for the act or omission 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 act or omission at the time it occurred.

#### 43.1(2) Restriction

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.

Comment [AM5]: Subsection 43.1(1) of the *Copyright Act*, as enacted by section 49, applies only to proceedings with respect to an act or omission that occurred after the coming into force of that section.

### Importation

#### s 44. Importation of certain copyright works prohibited

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 Border Services 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.

s 44.1

#### 44.1(1) Definitions

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 Public Safety and Emergency Preparedness;

"**release**" has the same meaning as in the *Customs Act*.

#### 44.1(2) Power of court

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.

#### **44.1(2.1) Who may apply**

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.

#### **44.1(3) Order of court**

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.

#### **44.1(4) How application made**

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.

#### **44.1(5) Court may require security**

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.

#### **44.1(6) Application for directions**

The Minister may apply to the court for directions in implementing an order made under subsection (2).

#### **44.1(7) Minister may allow inspection**

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.

#### **44.1(8) Where applicant fails to commence an action**

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).

#### **44.1(9) Where court finds in plaintiff's favour**

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.

#### **44.1(10) Other remedies not affected**

For greater certainty, nothing in this section affects any remedy available under any other provision of this Act or any other Act of Parliament.

### **s 44.2**

#### **44.2(1) Importation of books**

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.

#### **44.2(2) Who may apply**

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.

#### **44.2(3) Limitation**

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.

#### **44.2(4) Application of certain provisions**

Subsections 44.1(3) to (10) apply, with such modifications as the circumstances require, in respect of an order made under subsection (1).

#### **s 44.3 Limitation**

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.

#### **s 44.4 Importation of other subject-matter**

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.

#### **s 45.**

##### **45(1) Exceptions**

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.

##### **45(2) Satisfactory evidence**

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.

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## **Part V -- Administration**

**s 46. Copyright Office**

The Copyright Office shall be attached to the Patent Office.

**s 47. Powers of Commissioner and Registrar**

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.

**s 48. Registrar**

There shall be a Registrar of Copyrights.

**s 49. Registrar of Copyrights, certificates and certified copies**

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.

**s 50. Other duties of Registrar**

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.

**s 52. Control of business and officials**

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.

**s 53.**

**53(1) Register to be evidence**

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.

**53(2) Owner of copyright**

A certificate of registration of copyright is evidence that the copyright subsists and that the person registered is the owner of the copyright.

**53(2.1) Assignee**

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.

**53(2.2) Licensee**

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.

**53(3) Admissibility**

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.

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**Registration**

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**s 54.**

**54(1) Register of Copyrights**

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.

**54(3) Single entry sufficient**

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.

#### **54(4) Indices**

There shall also be kept at the Copyright Office such indices of the Register established under this section as may be prescribed by regulation.

#### **54(5) Inspection and extracts**

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.

#### **54(6) Former registration effective**

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.

#### **54(7) Subsisting copyright**

Any work in which copyright, operative in Canada, subsisted immediately before January 1, 1924 is registrable under this Act.

### **s 55.**

#### **55(1) Copyright in works**

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.

#### **55(2) Application for registration**

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.

### **s 56.**

#### **56(1) Copyright in subject-matter other than works**

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.

#### **56(2) Application for registration**

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.

#### **s 56.1 Recovery of damages**

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.

s 57.

**57(1) Registration of assignment or licence**

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.

**57(3) When assignment or licence is void**

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.

**57(4) Rectification of Register by the Court**

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.

s 58.

**58(1) Execution of instruments**

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, ~~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 thereto or impresses ~~on,~~ on, ~~the assignment or licence~~ their official seal or the seal of the court of which they are ~~a~~ judge.

- Deleted: or
- Deleted: mortgagor
- Deleted: perform notarial acts
- Deleted: thereon
- Deleted: such

**58(2) Execution of instruments**

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.

**58(3) Seals to be evidence**

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.

**58(4) Other testimony**

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.

**Fees**

**s 59. Fees regulations**

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.

**Part VI -- Miscellaneous Provisions**

**Substituted Right**

s 60.

#### 60(1) Subsistence of substituted right

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.

#### 60(2) Where author has assigned the right

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*.

#### 60(3) Definition of "author"

For the purposes of this section, "author" includes the legal representatives of a deceased author.

#### 60(4) Works made before this Act in force

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.

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### Clerical Errors

#### s 61. Clerical errors do not invalidate

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.

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### Regulations

s 62.

#### 62(1) Regulations

The Governor in Council may make regulations

- (a) ~~for the purposes of paragraph 30.01(6)(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.~~

Deleted: prescribing anything that by this Act is to be prescribed by regulation; and

Deleted: (b) generally for carrying out the purposes and provisions of this Act.

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#### 62(2) Rights saved

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.

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### Industrial Designs and Topographies

s 64.

## 64(1) Interpretation

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.

## 64(2) Non-infringement re certain designs

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.

## 64(3) Exception

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.

## 64(4) Idem

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.

## s 64.1

### 64.1(1) Non-infringement re useful article features

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.

### 64.1(2) Exception

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.

**s 64.2**

**64.2(1) Application of Act to topographies**

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.

**64.2(2) Computer programs**

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.

**64.2(3) Definitions**

In this section, "**topography**" and "**integrated circuit product**" have the same meaning as in the *Integrated Circuit Topography Act*.

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**Part VII -- Copyright Board and Collective Administration of Copyright**

**Copyright Board**

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**s 66.**

**66(1) Establishment**

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.

**66(2) Service**

The members of the Board shall be appointed to serve either full-time or part-time.

**66(3) Chairman**

The chairman must be a judge, either sitting or retired, of a superior, county or district court.

**66(4) Tenure**

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.

**66(5) Re-appointment**

A member of the Board is eligible to be re-appointed once only.

**66(6) Prohibition**

A member of the Board shall not be employed in the public service within the meaning of the *Public Service Labour Relations Act* during the member's term of office.

**66(7) Members deemed public service employees**

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 federal public administration for the purposes of any regulations made pursuant to section 9 of the Aeronautics Act.

**s 66.1**

**66.1(1) Duties of chairman**

The chairman shall direct the work of the Board and apportion its work among the members of the Board.

**66.1(2) Absence or incapacity of chairman**

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.

**66.1(3) Duties of vice-chairman**

The vice-chairman is the chief executive officer of the Board and has supervision over and direction of the Board and its staff.

**s 66.2 Remuneration and expenses**

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.

## **s 66.3**

### **66.3(1) Conflict of interest prohibited**

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.

### **66.3(2) Termination of conflict of interest**

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.

## **s 66.4**

### **66.4(1) Staff**

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*.

### **66.4(2) Idem**

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*.

### **66.4(3) Technical assistance**

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.

## **s 66.5**

### **66.5(1) Concluding matters after membership expires**

A member of the Board whose term expires may conclude the matters that the member has begun to consider.

### **66.5(2) Decisions**

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.

## **s 66.51 Interim decisions**

The Board may, on application, make an interim decision.

## **s 66.52 Variation of decisions**

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 [sic] 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.

## **s 66.6**

### **66.6(1) Regulations**

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.

### **66.6(2) Publication of proposed regulations**

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.

### **66.6(3) Exception**

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.

## **s 66.7**

#### **66.7(1) General powers, etc.**

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.

#### **66.7(2) Enforcement of decisions**

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.

#### **66.7(3) Procedure**

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.

#### **66.7(4) Effect of variation of decision**

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.

#### **s 66.71 Distribution, publication of notices**

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.

#### **s 66.8 Studies**

The Board shall conduct such studies with respect to the exercise of its powers as are requested by the Minister.

#### **s 66.9**

##### **66.9(1) Report**

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.

##### **66.9(2) Tabling**

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.

#### **s 66.91 Regulations**

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.

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### **Collective Administration of Performing Rights and of Communication Rights**

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#### **s 67. Public access to repertoires**

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.

#### **s 67.1**

##### **67.1(1) Filing of proposed tariffs**

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.

##### **67.1(2) Where no previous tariff**

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.

#### 67.1(3) Effective period of tariffs

A proposed tariff must provide that the royalties are to be effective for periods of one or more calendar years.

#### 67.1(4) Prohibition of enforcement

~~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~~

Deleted: Where

(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 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.~~

Deleted: b

#### 67.1(5) Publication of proposed tariffs

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.

s 68.

#### 68(1) Board to consider proposed tariffs and objections

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.

#### 68(2) Criteria and factors

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 ~~the provisions of section 20 other than subsections 20(3) and (4),~~
  - (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.

Deleted: subsections 20(1) and (2)

#### 68(3) Certification

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).

#### 68(4) Publication of approved tariffs

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.

s 68.1

#### 68.1(1) Special and transitional royalty rates

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.

#### 68.1(2) Effect of paying royalties

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.

#### 68.1(3) Definition of "advertising revenues"

The Board may, by regulation, define "advertising revenues" for the purposes of subsection (1).

#### 68.1(4) Preferential royalty rates

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.

#### 68.1(5) Regulations

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.

### s 68.2

#### 68.2(1) Effect of fixing royalties

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.

#### 68.2(2) Proceedings barred if royalties tendered or paid

No proceedings may be brought ~~against a person who has paid or offered to pay the royalties specified in an approved tariff for~~

Deleted: 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, ~~▼~~

Deleted: or

~~(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.~~

Deleted: b

#### 68.2(3) Continuation of rights

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.

Deleted: against a person who has paid or offered to pay the royalties specified in an approved tariff. ¶

### Public Performances in Places Other than Theatres

### s 69.

#### 69(2) Radio performances in places other than theatres

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.

### **69(3) Expenses to be taken into account**

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).

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## **Collective Administration in Relation to Rights under Sections 3, 15, 18, and 21**

### **Collective Societies**

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#### **s 70.1 Collective societies**

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.

#### **s 70.11 Public information**

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.

#### **s 70.12 Tariff or agreement**

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.

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### **Tariffs**

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#### **s 70.13**

##### **70.13(1) Filing of proposed tariffs**

Each collective society referred to in section 70.1 may, on or before 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.

##### **70.13(2) Where no previous tariff**

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.

#### **s 70.14 Application of certain provisions**

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.

#### **s 70.15**

##### **70.15(1) Certification**

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.

##### **70.15(2) Application of certain provisions**

Where a tariff is approved under subsection (1), subsections 68(4) and 68.2(1) apply, with such modifications as the circumstances require.

#### **s 70.16 Distribution, publication of notices**

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.

#### **s 70.17 Prohibition of enforcement**

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.

#### **s 70.18 Continuation of rights**

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.

#### **s 70.19 Where agreement exists**

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.

#### **s 70.191 Agreement**

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.

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### **Fixing of Royalties in Individual Cases**

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#### **s 70.2**

##### **70.2(1) Application to fix amount of royalty, etc.**

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.

##### **70.2(2) Fixing royalties, etc.**

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.

#### **s 70.3**

##### **70.3(1) Agreement**

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.

##### **70.3(2) Idem**

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).

#### **s 70.4 Effect of Board decision**

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.

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### **Examination of Agreements**

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s 70.5

**70.5(1) Definition of "Commissioner"**

For the purposes of this section and section 70.6, "**Commissioner**" means the Commissioner of Competition appointed under the *Competition Act*.

**70.5(2) Filing agreement with the Board**

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.

**70.5(3) Idem**

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).

**70.5(4) Access by Commissioner**

The Commissioner may have access to the copy of an agreement filed in accordance with subsection (2).

**70.5(5) Request for examination**

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.

s 70.6

**70.6(1) Examination and fixing of royalty**

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.

**70.6(2) Idem**

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.

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**Royalties in Particular Cases**

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s 71.

**71(1) Filing of proposed tariffs**

Each collective society that carries on the business of collecting royalties referred to in subsection 29.7(2) or (3) or paragraph 31(2)(d) shall file with the Board a proposed tariff, but no other person may file such a tariff.

Deleted: 29.6(2),

Deleted: any

**71(2) Times for filing**

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.

**71(3) Where no previous tariff**

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.

**71(4) Effective period of tariffs**

A proposed tariff must provide that the royalties are to be effective for periods of one or more calendar years.

s 72.

**72(1) Publication of proposed tariffs**

As soon as practicable after 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

**72(2) Board to consider proposed tariffs and objections**

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.

s 73.

#### 73(1) Certification

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.

#### 73(2) No discrimination

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.

#### 73(3) Publication of approved tariffs

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 collecting society that filed a proposed tariff and to any person who filed an objection.

s 74.

#### 74(1) Special case

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.

#### 74(2) Regulations

The Governor in Council may make regulations defining "**small retransmission systems**" for the purpose of subsection (1).

s 75. Effect of fixing royalties

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.

s 76.

#### 76(1) Claims by non-members

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.

#### 76(2) Royalties that may be recovered

An owner of copyright who does not authorize a collective society to collect, for that person's benefit, royalties referred to in subsection 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.

Deleted: 29.6(2) or

#### 76(3) Exclusion of remedies

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 copy or sound recording or performance in public, as the case may be.

#### 76(4) Regulations

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

- (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.

Deleted: (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,¶  
¶

#### Owners Who Cannot be Located

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#### s 77.

##### 77(1) Circumstances in which licence may be issued by Board

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.

##### 77(2) Conditions of licence

A licence issued under subsection (1) is non-exclusive and is subject to such terms and conditions as the Board may establish.

##### 77(3) Payment to owner

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.

##### 77(4) Regulations

The Copyright Board may make regulations governing the issuance of licences under subsection (1).

#### Compensation for Acts Done Before Recognition of Copyright or Moral Rights

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#### s 78.

##### 78(1) Board may determine compensation

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).

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##### 78(2) Limitation

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.

##### 78(3) Interim orders

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).

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### Part VIII – Private Copying

#### Interpretation

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#### s 79. Definitions

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.

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### Copying for Private Use

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s 80.

#### 80(1) Where no infringement of copyright

Subject to subsection (2), the act of reproducing all or part of 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.

#### 80(2) Limitation

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.

s 81.

**81(1) Right of remuneration**

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.

**81(2) Assignment of rights**

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.

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**Levy on Blank Audio Recording Media**

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s 82.

**82(1) Liability to pay levy**

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.

**82(2) No levy for exports**

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.

s 83.

**83(1) Filing of proposed tariffs**

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.

**83(2) Collective body**

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.

**83(3) Times for filing**

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.

**83(4) Where no previous tariff**

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.

**83(5) Effective period of levies**

A proposed tariff must provide that the levies are to be effective for periods of one or more calendar years.

**83(6) Publication of proposed tariff**

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.

**83(7) Board to consider proposed tariffs and objections**

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.

### **83(8) Duties of Board**

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.

### **83(9) Factors Board to consider**

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.

### **83(10) Publication of approved tariffs**

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.

### **83(11) Authors, etc., not represented by collective society**

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.

### **83(12) Exclusion of other remedies**

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.

### **83(13) Powers of Board**

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.

### **83(14) Single proposed tariff**

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.

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## **Distribution of Levies Paid**

### **s 84. Distribution by collecting body**

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.

s 85.

#### 85(1) Reciprocity

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.

#### 85(2) Reciprocity

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.

#### 85(3) Application of Act

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.

#### 85(4) Application of Act

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).

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### Exemption from Levy

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s 86.

#### 86(1) Where no levy payable

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.

#### 86(2) Refunds

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.

#### 86(3) If registration system exists

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.

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### Regulations

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s 87. Regulations

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.

## Civil Remedies

s 88.

### 88(1) Right of recovery

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.

### 88(2) Failure to pay royalties

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.

### 88(3) Order directing compliance

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.

### 88(4) Factors to consider

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.

## Part IX -- General Provisions

### s 89. No copyright, etc., except by statute

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.

### s 90. Interpretation

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.

### s 91. Adherence to Berne and Rome Conventions

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.

### s 92. Review of Act

Five years after the day on which this section comes into force and at the end of each subsequent period of five years, a committee of the Senate, of the House of Commons or of both Houses of Parliament is to be designated or established for the purpose of reviewing this Act.

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Deleted: 92(2) Reference to parliamentary committee¶

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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.¶

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### **10(1) Term of copyright in photographs**

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.

#### **10(1.1) Where author majority shareholder**

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.

#### **10(2) Author of photograph**

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.