

**IN THE SUPREME COURT OF CANADA  
(ON APPEAL FROM THE FEDERAL COURT OF APPEAL)**

BETWEEN:

**CANADIAN BROADCASTING CORPORATION/  
SOCIÉTÉ RADIO-CANADA**

Appellant

- and -

**SODRAC 2003 INC. AND SOCIÉTÉ DU DROIT DE REPRODUCTION DES AUTEURS,  
COMPOSITEURS ET ÉDITEURS AU CANADA (SODRAC) INC.**

Respondents

- and -

**CENTRE FOR INTELLECTUAL PROPERTY POLICY AND ARIEL KATZ,  
SAMUELSON-GLUSHKO CANADIAN INTERNET POLICY AND PUBLIC INTEREST  
CLINIC, CANADIAN MUSICAL REPRODUCTION RIGHTS AGENCY LTD.,  
CANADIAN MUSIC PUBLISHERS ASSOCIATION, AND  
INTERNATIONAL CONFEDERATION OF MUSIC PUBLISHERS, MUSIC CANADA,  
INTERNATIONAL FEDERATION OF THE PHONOGRAPHIC INDUSTRY,  
CANADIAN COUNCIL OF MUSIC INDUSTRY ASSOCIATIONS, CANADIAN  
INDEPENDENT MUSIC ASSOCIATION AND L'ASSOCIATION QUÉBÉCOISE DE  
L'INDUSTRIE DU DISQUE, DU SPECTACLE ET DE LA VIDÉO**

Interveners

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**FACTUM OF THE INTERVENERS CANADIAN MUSICAL REPRODUCTION  
RIGHTS AGENCY LTD., CANADIAN MUSIC PUBLISHERS ASSOCIATION, AND  
INTERNATIONAL CONFEDERATION OF MUSIC PUBLISHERS**

(Pursuant to the Order of Justice Rothstein dated February 11, 2015  
and Rule 42 of the *Rules of the Supreme Court of Canada*)

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## PART I – OVERVIEW

1. In this appeal, CBC argues that a technologically-neutral interpretation of the *Copyright Act*<sup>1</sup> means either that broadcast-incidental copies do not engage the reproduction right or that the right to make those copies is “implied” in existing synchronization licences.<sup>2</sup> In so doing, CBC also suggests that SODRAC members are “amply compensated” by royalties paid for synchronization rights and performance rights and therefore are not entitled to be compensated for the separate act of reproducing their musical works to facilitate broadcast.

2. CMRRA, CMPA, and ICMP (the “Interveners”) submit that CBC’s position is a direct attack on the inherent divisibility and flexibility of copyright. Both the language of the *Act* and this Court’s interpretation of it make clear that a copyright owner is entitled to divide and subdivide its exclusive rights and to license them separately, in whole or in part, whether directly or through one or more collective societies. This fundamental principle furthers the objectives of the *Act* by promoting the dissemination of works while ensuring a just reward for creators. It is also a hallmark of copyright law in foreign jurisdictions.

3. As this Court has held, technological neutrality, which dictates that the *Act* apply “equally between traditional and more technologically advanced forms of the same media,”<sup>3</sup> is “not a licence to override the rights of authors.”<sup>4</sup> Those rights include both the substantive rights conferred by subsection 3(1) of the *Act* and the right to deal with them as the *Act* permits. CBC, however, seeks to use technological neutrality precisely to override those rights, contrary to the jurisprudence of this Court. The Interveners respectfully submit that CBC’s position should be rejected and the protection of broadcast-incidental copies under the *Act* reaffirmed.

## PART II – POSITION ON THE ISSUES RAISED BY THE PARTIES

4. Regarding the first issue raised by CBC, whether broadcast-incidental copies require a separate licence under a technologically-neutral interpretation of the *Act*, the Interveners answer “yes”. They take no position on the other issues raised by the parties.

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<sup>1</sup> CBC Factum, at para 54.

<sup>2</sup> CBC Factum at paras 79 to 113.

<sup>3</sup> *Entertainment Software Association v. Society of Composers, Authors and Music Publishers of Canada*, [2012] 2 SCR 231 at para 5 [ESA].

<sup>4</sup> *Robertson v. Thomson*, [2006] 2 SCR 363 at para 49. See also paras 76, 97 [Robertson].

### PART III – ARGUMENT

#### A. Divisibility and Flexibility are Fundamental to Copyright Law

##### (i) The Express Language of the *Act* Provides for Divisibility of Copyright and Flexibility in Licensing

5. Subsection 3(1) of the *Act* defines “copyright” in a work as the sole right to produce or reproduce the work in any material form, to perform the work in public, or to publish an unpublished work. These core rights “include”, but are not limited to, the more specific rights listed in paras. 3(1)(a) through (i).<sup>5</sup>

6. As this Court explained in *Entertainment Software Association v. SOCAN* (“*ESA*”), the rights enumerated in paras. 3(1)(a) through (i) are not *sui generis*; rather, they are “illustrative” examples of the core rights conferred by s. 3(1).<sup>6</sup> For example, the broadcast-incidental copies at issue in this appeal are “contrivance[s] by means of which [musical works] may be mechanically reproduced or performed,” thus engaging the core reproduction right in s. 3(1) as exemplified by the more specific “illustrative” right in para. 3(1)(d).<sup>7</sup>

7. Section 3(1) also confers upon the copyright owner the exclusive right “to authorize any such acts”. That includes both the acts set out in the introductory paragraph of s. 3(1) *and* each of the additional, illustrative acts set out in the subparagraphs that follow.<sup>8</sup>

8. The right to authorize *any* act contemplated by s. 3(1) makes clear that a copyright owner is entitled to structure a licence – that is, “permission to do something that would otherwise amount to an infringement”<sup>9</sup> – as broadly or as narrowly as the owner wishes. In particular, the owner is entitled to authorize certain types of reproductions, performances, or publications but not others. For example, while the performing right includes both the right to perform a work live and the right to communicate it to the public by telecommunication (para. 3(1)(f)), a copyright owner may authorize a given licensee to do the former but not the latter. Similarly,

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<sup>5</sup> *Copyright Act*, RSC 1985, c C-42 at s 3(1)(a)-(i) [*Copyright Act*].

<sup>6</sup> *ESA*, *supra* note 3 at para 42; John S. McKeown, *Fox Canadian Law of Copyright and Industrial Designs* (Toronto: Thompson Reuters Canada Limited, 2012) at 19-1(e)(i) [McKeown]; Sunny Handa, *Copyright Law in Canada*, (Markham: Butterworths Canada, 2002) at p. 195 [Handa].

<sup>7</sup> *Bishop v. Stevens*, [1990] 2 SCR 467 at 484-485 [*Bishop*].

<sup>8</sup> Handa, *supra* note 6 at pp.195, 208.

<sup>9</sup> *Euro-Excellence Inc. v. Kraft Canada Inc.*, [2007] 3 SCR 20 at para 32 [*Euro-Excellence*].

while the reproduction right includes, at minimum, the acts enumerated in paras. 3(1)(a) through (e), a copyright owner may (and often will) authorize a recording of a musical work without also authorizing the translation of its lyrics (para. 3(1)(a)) or permit the adaptation of a literary work for the stage (para. 3(1)(c)) but not for film or TV (para. 3(1)(e)).

9. This flexible approach to licensing is underlined further by s. 13(4) of the *Act*. Section 13(4) permits copyright in a work to be assigned, either wholly or partially, and either generally or subject to a broad, non-exhaustive range of limitations, for the whole or any part of the term of copyright. It also permits the grant of “any interest in the right” – that is, wholly or partially and subject to any applicable limitations – “by licence.”<sup>10</sup>

10. It is widely accepted that the words “wholly or partially” in s. 13(4) permit a copyright owner to assign or license different rights, and different uses of the same right, separately.<sup>11</sup> In *Euro-Excellence*, Abella J., dissenting on other grounds, wrote that, pursuant to s. 13(4), “the owner of a copyright is free to divest itself of any interest in the copyright, in whole or in part, either by assignment or by licence.”<sup>12</sup> *Bouchet v. Kyriacopoulos*, cited by Abella J., held specifically that the *Act* “obviously provide[s] for the right of a copyright owner to divide his copyright as to the mode of reproduction of the work.”<sup>13</sup>

11. Parliament reaffirmed this principle in the 1997 amendments to the *Act*.<sup>14</sup> Until then, s. 13(4) mentioned only a territorial limitation on assignments and licences. The amendments added other examples and introduced the phrase “or other limitations”, making the list non-exhaustive.<sup>15</sup> An owner may therefore grant a limited licence for a part of the reproduction right in a musical work, for example. As Professor Vaver has noted, such a licence may be as specific

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<sup>10</sup> *Copyright Act* at s 13(4). Pursuant to s. 25 of the *Act*, the same applies to the rights of performers, sound recording makers, and broadcasters.

<sup>11</sup> See, e.g., David Vaver, *Intellectual Property Law*, 2d ed (Toronto: Irwin Law, 2011) at 558 (“The rights ... can be split up horizontally and vertically – by territory, time, market, and so on – and dealt with accordingly. The maximum extraction of rents is thus assured.”) See also McKeown, *supra* note 6 at 19-1(e)(i)-(ii); Normand Tamaro, *The 2015 Annotated Copyright Act* (Toronto: Carswell, 2015) at 257, 467; Handa, *supra* note 6 at 336; David Vaver, *Copyright Law* (Toronto: Irwin Law, 2000) at 228, 234 [Vaver, *Copyright*].

<sup>12</sup> *Euro-Excellence*, *supra* note 9 at para 117 (emphasis in original).

<sup>13</sup> *Bouchet v. Kyriacopoulos*, (1964), 45 CPR 265 at 276.

<sup>14</sup> *An Act to Amend the Copyright Act*, SC 1997, c 24, s 10(2).

<sup>15</sup> McKeown, *supra* note 6 at 19:1(a) & 19:1(e)(ii).

– and as narrow – as “an exclusive licence to reproduce a sheet music version [of the work] on slides for the educational market in Quebec to [a particular licensee] for fifty years.”<sup>16</sup>

12. Although the reference in s. 13(4) to the “grant of [an] interest” is often understood to refer to an exclusive licence, it follows from the wording of s. 3(1) – the right to authorize “any such acts” – that owners enjoy the same flexibility in relation to non-exclusive licences. Any other interpretation would have the absurd result of permitting an assignee to grant a non-exclusive license for a partial right, where that represents the entirety of the assignee’s interest, while preventing the copyright owner from doing the same. Parliament cannot have intended that outcome. Read together, ss. 3(1) and 13(4) clearly permit the owner to license any part of a given right, exclusively or otherwise.

**(ii) Divisibility and Flexibility Further the Objectives of the Act**

13. Copyright law seeks a balance between promoting the public interest in the encouragement and dissemination of works and obtaining a just reward for creators.<sup>17</sup> As Rothstein J. held in a recent decision, the *Act* is “concerned both with encouraging creativity and providing reasonable access to the fruits of creative endeavour.”<sup>18</sup> By “facilitat[ing] the efficient market exploitation of protected content,”<sup>19</sup> the divisibility of copyright promotes both goals.

14. In *Théberge*, Binnie J. stated that the fact that copyrights “can be bought or sold, either wholly or partially” is consistent with the conception of creative works as “essentially articles of commerce.”<sup>20</sup> In *Euro-Excellence*, Abella J. agreed that divisibility furthers the goals of the *Act*:

A copyright holder’s ability to alienate its interest either through licensing or assignment is perfectly consistent with the statutory scheme. ***Vertical and horizontal divisibility is, arguably, a hallmark of copyright***: see *Bouchet v. Kyriacopoulos* (1964), 45 C.P.R. 265 (Ex. Ct.). And, as

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<sup>16</sup> *Vaver, Copyright*, *supra* note 11 at 234.

<sup>17</sup> *Théberge v. Galerie d'Art du Petit Champlain Inc.*, [2002] 2 SCR 336 at para 30 [*Théberge*]; *ESA*, *supra* note 3 at paras 7-8; *SOCAN v. Bell Canada*, [2012] 2 SCR 326 at para 8; *Rogers Communications Inc. v. SOCAN*, [2012] 2 SCR 283 at para 40 [*Rogers*]; *SOCAN v. Canadian Assn. of Internet Providers*, [2004] 2 SCR 427 at para 40.

<sup>18</sup> *Reference re Broadcasting Regulatory Policy CRTC 2010-167 and Broadcasting Order CRTC 2010-168*, [2012] 3 SCR 489 at para 36.

<sup>19</sup> Jeremy De Beer, “Copyright Royalty Stacking” in Michael Geist, ed, *The Copyright Pentology – How the Supreme Court of Canada Shook the Foundations of Canadian Copyright Law* (Ottawa: University of Ottawa Press, 2013) 335 at 342 [De Beer].

<sup>20</sup> *Théberge*, *supra* note 17, at para 12.

Binnie J. noted in *Théberge*, at para. 12, ***the economic objectives of copyright law are furthered through the transferability of either full or partial copyright interests.***<sup>21</sup>

15. As noted in *Fox on Copyright*, the divisibility of copyright allows “a considerable amount of flexibility to a copyright owner in the commercial exploitation of the rights in issue.”<sup>22</sup> In addition to ensuring a just reward for creators, this promotes reasonable access to works by permitting a prospective licensee to pay for only the territory that it requires, the sector of the market in which it does business, or the types of reproductions it makes. Indeed, in many cases, this sort of flexibility in licensing was first demanded by users.<sup>23</sup>

16. For example, a record label that makes sound recordings, but makes no other use of the reproduction right in musical works, requires only a licence to exercise so-called “mechanical rights”, a particular aspect of the reproduction right. To require labels to obtain broader reproduction rights than they need – for example, to acquire synchronization rights, even though the vast majority of sound recordings are not used in film or TV – would create obvious inefficiencies. Similarly, while mechanical licences cover the distribution of sound recordings in physical formats, music publishers issue separate licences to online music services to reproduce the musical works embodied in those recordings for the purpose of delivering them to users as downloads and streams. The right to reproduce a work on a CD does not imply a corresponding right to authorize its reproduction by an online service.<sup>24</sup>

17. The same principle applies to synchronization licences, which do not cover every conceivable use of the reproduction right in film or TV. For example, separate licences are generally issued for the use of a song in a film and for the “out of context” use of the same song in a trailer for the same film, partially because the producer may not wish to pay for rights that may prove unnecessary.<sup>25</sup> Likewise, the Copyright Board found in this proceeding that, since television producers do not actually make broadcast-incidental copies, producers in Quebec often

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<sup>21</sup> *Euro-Excellence*, *supra* note 9, at para 117 (Boldface emphasis added).

<sup>22</sup> McKeown, *supra* note 6 at 19-1(e)(ii).

<sup>23</sup> De Beer, *supra* note 19 at 342.

<sup>24</sup> Copyright Board Decision, *Statement of Royalties to be Collected by CMRRA/SODRAC Inc., for the Reproduction of Musical Works in Canada by Online Music Services (2005-2007)*, March 16, 2007, paras 111-118 [Online Music Services].

<sup>25</sup> Jeffrey Brabec & Todd Brabec, *Music, Money, and Success: The Insider's Guide to Making Money in the Music Business*, 7th ed (New York: Schirmer Trade Books, 2011) at 45.

opt for budgetary reasons to obtain synchronization licences that exclude the right to authorize broadcasters to make those copies.<sup>26</sup>

18. In each of these cases, divisibility and flexibility promote the goals of the *Act*. While a wider range of reproduction rights could in theory be granted in a single licence, Parliament has acknowledged through ss. 3(1) and 13(4) that the appropriate balance between the interests of owners and users may be realized by issuing separate licences, with different terms and conditions, for separate and distinct exercises of a particular right. No additional rights ought to be “implied” in licences that do not provide for them expressly or that expressly exclude them. Indeed, where different users along the same supply chain use similar rights in different ways, it is often more efficient for the copyright owner to license those different uses separately.<sup>27</sup>

**(iii) The Divisibility of Copyright in Musical Works is Well-Established in Canada**

19. As early as 1953, in *Muzak Corp. v. CAPAC*, this Court recognized that copyright in musical works is “distributed into a number of interests both ‘vertical’ and ‘horizontal,’”<sup>28</sup> including the rights to reproduce a song in printed form, to record it for mechanical performance, to adapt and present it publicly by cinematography or by radio communication, and to perform it in public. The Court rejected the argument that a party that makes and delivers sound recordings to another party authorizes their performance in public by that other party. If that were so, the “very distinction between the right to make a record and the right to give a public performance by means of it which ... the *Act* provides for, is wiped out.”<sup>29</sup>

20. In *Bishop v. Stevens*, this Court rejected a broadcaster’s argument that, because it had obtained a licence to broadcast a musical work, it did not require a separate licence to make copies of that work to facilitate the broadcast. Writing for a unanimous Court, McLachlin J. (as she then was) held that copying and broadcasting musical works were separate activities that engaged separate statutory rights and therefore required separate licences.<sup>30</sup> That conclusion has

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<sup>26</sup> *SODRAC v. CBC and SODRAC v. Astral* (2012), Copyright Board Files 70.2-2008-01, 70.2-2008.02 at paras 82-83.

<sup>27</sup> *Online Music Services*, *supra* note 24 at paras. 111-118

<sup>28</sup> *Muzak Corp. v. Composers, Authors & Publishers Assn. of Canada*, [1953] 2 SCR 182 at 188 [*Muzak*].

<sup>29</sup> *Ibid* at 189.

<sup>30</sup> *Bishop*, *supra* note 7 at 484-485. See also *Compo Co. Ltd. v. Blue Crest Music et al.*, [1980] 1 S.C.R. 357 at 373.

since been affirmed by Parliament through Canada's accession to the 1971 Paris revisions to the *Berne Convention*.<sup>31</sup> Article 11bis of *Berne* states unequivocally that permission to broadcast a musical work "shall not imply permission to record, by means of instruments recording sounds or images, the work broadcast."<sup>32</sup>

21. In *ESA*, this Court reaffirmed its reasoning in *Bishop* while distinguishing the two cases on their facts. The Court explained that, in *Bishop*, the broadcaster engaged in two separate activities – the making of an ephemeral copy to facilitate the broadcast, and the actual broadcast – and therefore required two separate licences. Conversely, in *ESA*, there was only one activity, the digital download of a musical work, which engaged only one right and therefore required only one licence.<sup>33</sup>

22. Likewise, the making of synchronization copies and broadcast-incidental copies are separate and distinct activities. Producers make synchronization copies in order to produce programs for subsequent exploitation. Broadcasters make broadcast-incidental copies to facilitate broadcasts. The copies are made at different times, by different entities, and for different purposes. As such, they are separate exercises of the reproduction right and, consistent with ss. 3(1) and 13(4), it is both permissible and logical for copyright owners to license them accordingly. There is no reason to conclude that the right to make broadcast-incidental copies is, or should be, implied in the right to make synchronization copies.

**(iv) Foreign Jurisdictions Recognize the Inherent Divisibility and Flexibility of Copyright**

23. Much like in Canada, flexibility in licensing through fully divisible copyrights is a fundamental component of copyright law in foreign jurisdictions, including, among others, the United States, the United Kingdom, and Australia.

24. The Supreme Court of the United States has described the U.S. *Copyright Act* as constituting "a bundle of exclusive rights ... each of which may be transferred ... and owned

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<sup>31</sup> *Berne Convention for the Protection of Literary and Artistic Works*, September 9, 1886, as last revised at Paris on July 24, 1971, 1161 UNTS 30 [*Berne Convention*]. Canada ratified the 1971 version of the *Berne Convention* in 1998: see Vaver, *Copyright*, *supra* note 11 at 4.

<sup>32</sup> *Berne Convention*, s 11bis.

<sup>33</sup> *ESA*, *supra* note 3 at para 41.

separately.”<sup>34</sup> The owner of each exclusive right is entitled to license that right, or part of that right, separately from any other.

25. Similarly, the U.K. *Copyright Designs and Patents Act 1988*<sup>35</sup> “permit[s] partial assignments or licences by reference to one or more of the acts within the exclusive rights.”<sup>36</sup> A particular right may be therefore be subdivided to permit “different modes of exploitation” as well as “different purposes in relation to particular modes.”<sup>37</sup>

26. Australia’s *Copyright Act 1968* also enumerates a bundle of exclusive rights that subsist in a work,<sup>38</sup> and permits an assignment of copyright to be “limited in any way.”<sup>39</sup> This provision has been interpreted to mean that “an assignment *or licence* may be limited to apply to one or more of the acts that the copyright owner has the exclusive right to do.”<sup>40</sup>

## **B. Technological Neutrality Requires a Consistent Application of the Act**

27. Technological neutrality requires that, subject to Parliamentary intent to the contrary, the *Act* “should continue to apply in different media, including more technologically advanced ones,”<sup>41</sup> and “should be interpreted to extend to technologies that were not or could not have been contemplated at the time of its drafting.”<sup>42</sup> This is reflected in s. 3(1), which protects the reproduction of a work “in any material form whatever.”<sup>43</sup> However, there is no authority for CBC’s insistence that technological neutrality either precludes the recognition of a statutory right

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<sup>34</sup>*New York Times Co. v. Tasini*, 533 US 483 at 495-496 (2001), *U.S. Copyright Act*, 17 USC § 106 (granting exclusive rights to a copyright owner to do or authorize enumerated acts) and § 201(d)(2) (“any subdivision of any of the rights specified by section 106 may be transferred”).

<sup>35</sup> *Copyright, Designs and Patents Act 1998* (UK), c 48, ss 16(1), 90(2).

<sup>36</sup> Melville B. Nimmer and Paul Edward Geller, eds, *International Copyright Law and Practice*, loose-leaf (consulted on February 25, 2015), (San Francisco: Matthew Bender, 2011), Vol. 2 at UK-67 § 4[3][c] [Nimmer].

<sup>37</sup> Kevin Garnett, Jonathan Rayner James & Gillian Davies, eds, *Copinger and Skone James on Copyright*, 14th ed (London: Sweet & Maxwell, 1999) at 260. (Regarding the use of the word “acts” to describe the enumerated rights that comprise copyright at s 16 of the *Act*, compared to use of the narrower word “things” in the provision permitting partial assignments, s 90(2)(a).

<sup>38</sup> *Copyright Act 1968* (Cth), s 31(1).

<sup>39</sup> *Ibid*, s 196.

<sup>40</sup> Nimmer, *supra* note 36, Vol 1 at AUS-43, §4[2][a] (Emphasis added).

<sup>41</sup> *Robertson*, *supra* note 4 at para 49.

<sup>42</sup> *Rogers*, *supra* note 17 at para 39.

<sup>43</sup> *Copyright Act* at s 3(1); *ESA*, *supra* note 3 at para 5; *Robertson*, *supra* note 4 at para 76.

where it is engaged or limits the flexibility of copyright owners to license their exclusive rights as they see fit. As this Court has emphasized, technological neutrality “exists to protect the rights of authors and others as technology evolves.”<sup>44</sup> It is “not a licence to override the rights of authors.”<sup>45</sup>

28. Copyright owners are entitled under ss. 3(1) and 13(4) to license each of their exclusive rights separately, in whole or in part. They have done so for decades, long before the rise of digital technology.<sup>46</sup>

29. Consistent with that entitlement, broadcast-incidental copies have been recognized by this Court, and by Parliament, as distinct exercises of the reproduction right. As the decisions below confirm, such copying predates the adoption of digital technology and has been licensed by SODRAC separately from the right to broadcast.<sup>47</sup> The evidence also shows that the right to make broadcast-incidental copies has never been implied in synchronization licences issued by SODRAC or CMRRA; it has either been expressly *included* in the applicable licences<sup>48</sup> and associated fees or expressly *excluded* and licensed separately.<sup>49</sup> There is no principled reason to reduce or eliminate the protections afforded to these copies, including the right to license them separately from the right to broadcast, by reason only of a shift to digital technology.<sup>50</sup>

30. This case is also distinguishable from *ESA*, where this Court expressed concerns about “layering of rights”. In *ESA*, the Court held that the communication right was not engaged by the transmission of a video game over the Internet.<sup>51</sup> In this case, broadcasters engage the

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<sup>44</sup> *Robertson*, *supra* note 4 at para 49.

<sup>45</sup> *Ibid* at para 49. See also para 97, per Abella J: “[T]here is no loss of copyright by virtue of reproduction in digital storage form.”

<sup>46</sup> This was recognized by this Court as early as 1953, in *Muzak*, *supra* note 28 at 188.

<sup>47</sup> *Canadian Broadcasting Corporation v. Sodracs 2003 Inc.*, 2014 FCA 84 at para 18, citing *Bishop*, *supra* note 7.

<sup>48</sup> SODRAC Factum, paras 10-13, 90-93, 95. See the language of synchronization licences issued by CMRRA to CBC, e.g., AR Vol 4 at 151, 156, 169, 175, 178, 187-188, as well as in Vols 5 and 6: “... Licensor hereby grants to Licensee a non-exclusive licence to record the musical work in synchronization or timed relation with the visual elements of the production below, to make, distribute **and to authorize others to make and distribute copies thereof only according to and for the use(s) stipulated** in the description of use below” (emphasis added).

<sup>49</sup> SODRAC Factum, para 94.

<sup>50</sup> See, e.g., *Rogers*, *supra* note 17, at para 29, per Rothstein J.: “If the nature of the activity in both cases is the same, albeit accomplished through different technical means, there is no justification for distinguishing between the two for copyright purposes.”

<sup>51</sup> *ESA*, *supra* note 3 at para 5.

reproduction right whether they make broadcast-incidental copies in analog or digital format. There is no issue as to the addition of a new royalty based only on the technology used.

31. In short, CBC's position reflects the *opposite* of technological neutrality. To ignore the exercise of the reproduction right by reason only of a shift from analog to digital technology would unduly narrow the scope of s. 3(1), while to hold that the right to make broadcast-incidental copies must necessarily be granted or "implied" in synchronization licences would unduly limit the divisibility and flexibility of copyright as confirmed by ss. 3(1) and 13(4). Either outcome would "override the rights of authors," contrary to the jurisprudence of this Court.<sup>52</sup>

#### **PART IV – SUBMISSIONS ON COSTS**

32. The Interveners do not seek costs and ask that no costs be awarded against them.

#### **PART V – ORDER SOUGHT**

33. The Interveners respectfully request an order allowing them to present oral argument at the hearing of the appeal, not exceeding 10 minutes in total, and such further or other order as this Honourable Court may deem appropriate.

All of which is respectfully submitted this 2<sup>nd</sup> day of March, 2015.

  
as agent for  
**Cassels Brock & Blackwell LLP**

**Casey M. Chisick,  
Peter J. Henein  
Eric Mayzel**

**Counsel for the Interveners, CMRRA, CMPA, and ICMP**

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<sup>52</sup> *Robertson, supra* note 4 at para 49. See also paras 76, 97.

## PART VI – TABLE OF AUTHORITIES

Tab	Authority	Paragraph Reference in Argument
<b>Case Law (Domestic)</b>		
1.	<i>Bishop v. Stevens</i> , [1990] 2 SCR 467	6, 20, 21, 29
2.	<i>Bouchet v. Kyriacopoulos</i> , (1964), 45 CPR 265	10, 14
3.	<i>Canadian Broadcasting Corporation v. Sodrac 2003 Inc.</i> , 2014 FCA 84	29
4.	Copyright Board Decision, <i>Statement of Royalties to be Collected by CMRRA/SODRAC Inc., for the Reproduction of Musical Works in Canada by Online Music Services (2005-2007)</i> , March 16, 2007	16, 18
5.	<i>Compo Co. Ltd. v. Blue Crest Music et al.</i> , [1980] 1 S.C.R. 357	20
6.	<i>Entertainment Software Association v. Society of Composers, Authors and Music Publishers of Canada</i> , [2012] 2 SCR 231	3, 6, 13, 21, 27, 30
7.	<i>Euro-Excellence Inc. v. Kraft Canada Inc.</i> , [2007] 3 SCR 20	8, 10, 14
8.	<i>Muzak Corp. v. Composers, Authors &amp; Publishers Assn. of Canada</i> , [1953] 2 SCR 182	19, 28
9.	<i>Reference re Broadcasting Regulatory Policy CRTC 2010-167 and Broadcasting Order CRTC 2010-168</i> , [2012] 3 SCR 489	13
10.	<i>Robertson v. Thomson</i> , [2006] 2 SCR 363	3, 27, 31
11.	<i>Rogers Communications Inc. v. SOCAN</i> , [2012] 2 SCR 283	13, 27, 29
12.	<i>SOCAN v. Bell Canada</i> , [2012] 2 SCR 326	13
13.	<i>SOCAN v. Canadian Assn. of Internet Providers</i> , [2004] 2 SCR 427	13
14.	<i>SODRAC v. CBC and SODRAC v. Astral</i> (2012), Copyright Board Files 70.2-2008-01, 70.2-2008.02	17
15.	<i>Théberge v. Galerie d'Art du Petit Champlain Inc.</i> , [2002] 2 SCR 336	13, 14
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16.	<i>New York Times Co. v. Tasini</i> , 533 US 483	24
<b>Academic &amp; Secondary Sources</b>		
17.	David Vaver, <i>Copyright Law</i> (Toronto: Irwin Law, 2000)	10, 11, 20
18.	David Vaver, <i>Intellectual Property Law</i> , 2d ed (Toronto: Irwin Law, 2011)	10
19.	Jeffrey Brabec & Todd Brabec, <i>Music, Money, and Success: The Insider's Guide to Making Money in the Music Business</i> , 7th ed (New	17

- York: Schirmer Trade Books, 2011)
20. Jeremy De Beer, “Copyright Royalty Stacking” in Michael Geist, ed, 13, 15  
*The Copyright Pentology – How the Supreme Court of Canada Shook the Foundations of Canadian Copyright Law* (Ottawa: University of Ottawa Press, 2013) 335
  21. John S. McKeown, *Fox Canadian Law of Copyright and Industrial Designs* (Toronto: Thompson Reuters Canada Limited, 2012) 6, 10, 11, 15
  22. Kevin Garnett, Jonathan Rayner James & Gillian Davies, eds, *Copinger and Skone James on Copyright*, 14th ed (London: Sweet & Maxwell, 1999) 25
  23. Melville B. Nimmer and Paul Edward Geller, eds, *International Copyright Law and Practice*, loose-leaf (consulted on February 25, 2015), (San Francisco: Matthew Bender, 2011) 25, 26
  24. Normand Tamaro, *The 2015 Annotated Copyright Act* (Toronto: Carswell, 2015) 10
  25. Sunny Handa, *Copyright Law in Canada*, (Markham: Butterworths Canada, 2002) 6, 7, 10
- Legislation (Domestic)**
26. *An Act to Amend the Copyright Act*, SC 1997, c 24, s 10(2) 11
  27. *Copyright Act*, RSC 1985, c C-42 ss. 3(1), 13(4), 25 5, 6, 7, 8, 9, 10, 12, 27
- Legislation (International)**
28. *Berne Convention for the Protection of Literary and Artistic Works*, September 9, 1886, as last revised at Paris on July 24, 1971, 1161 UNTS 30 20
  29. *Copyright Act 1968* (Cth), s 31(1) (Australia) 26
  30. *Copyright, Designs and Patents Act 1998* (UK), c 48, ss 16(1), 90(2) 25
  31. *U.S. Copyright Act*, 17 USC §§ 106, 201(d)(2) 24

**PART VII – LEGISLATION IN ISSUE**

*Copyright Act, RSC 1985, c C-42 at ss. 3(1), 13(4) & 25 are reproduced behind this tab.*



CANADA

CONSOLIDATION

CODIFICATION

# Copyright Act

# Loi sur le droit d'auteur

R.S.C., 1985, c. C-42

L.R.C. (1985), ch. C-42

Current to February 4, 2015

À jour au 4 février 2015

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OFFICIAL STATUS  
OF CONSOLIDATIONS

CARACTÈRE OFFICIEL  
DES CODIFICATIONS

Subsections 31(1) and (2) of the *Legislation Revision and Consolidation Act*, in force on June 1, 2009, provide as follows:

Les paragraphes 31(1) et (2) de la *Loi sur la révision et la codification des textes législatifs*, en vigueur le 1<sup>er</sup> juin 2009, prévoient ce qui suit :

Published consolidation is evidence

**31.** (1) Every copy of a consolidated statute or consolidated regulation published by the Minister under this Act in either print or electronic form is evidence of that statute or regulation and of its contents and every copy purporting to be published by the Minister is deemed to be so published, unless the contrary is shown.

**31.** (1) Tout exemplaire d'une loi codifiée ou d'un règlement codifié, publié par le ministre en vertu de la présente loi sur support papier ou sur support électronique, fait foi de cette loi ou de ce règlement et de son contenu. Tout exemplaire donné comme publié par le ministre est réputé avoir été ainsi publié, sauf preuve contraire.

Codifications comme élément de preuve

Inconsistencies in Acts

(2) In the event of an inconsistency between a consolidated statute published by the Minister under this Act and the original statute or a subsequent amendment as certified by the Clerk of the Parliaments under the *Publication of Statutes Act*, the original statute or amendment prevails to the extent of the inconsistency.

(2) Les dispositions de la loi d'origine avec ses modifications subséquentes par le greffier des Parlements en vertu de la *Loi sur la publication des lois* l'emportent sur les dispositions incompatibles de la loi codifiée publiée par le ministre en vertu de la présente loi.

Incompatibilité — lois

NOTE

This consolidation is current to February 4, 2015. The last amendments came into force on January 2, 2015. Any amendments that were not in force as of February 4, 2015 are set out at the end of this document under the heading "Amendments Not in Force".

NOTE

Cette codification est à jour au 4 février 2015. Les dernières modifications sont entrées en vigueur le 2 janvier 2015. Toutes modifications qui n'étaient pas en vigueur au 4 février 2015 sont énoncées à la fin de ce document sous le titre « Modifications non en vigueur ».

Copyright — February 4, 2015

PART I

COPYRIGHT AND MORAL RIGHTS IN  
WORKS

COPYRIGHT

Copyright in  
works

3. (1) For the purposes of this Act, “copyright”, in relation to a work, means the sole right to produce or reproduce the work or any substantial part thereof in any material form whatever, to perform the work or any substantial part thereof in public or, if the work is unpublished, to publish the work or any substantial part thereof, and includes the sole right

- (a) to produce, reproduce, perform or publish any translation of the work,
- (b) in the case of a dramatic work, to convert it into a novel or other non-dramatic work,
- (c) in the case of a novel or other non-dramatic work, or of an artistic work, to convert it into a dramatic work, by way of performance in public or otherwise,
- (d) in the case of a literary, dramatic or musical work, to make any sound recording, cinematograph film or other contrivance by means of which the work may be mechanically reproduced or performed,
- (e) in the case of any literary, dramatic, musical or artistic work, to reproduce, adapt and publicly present the work as a cinematographic work,
- (f) in the case of any literary, dramatic, musical or artistic work, to communicate the work to the public by telecommunication,
- (g) to present at a public exhibition, for a purpose other than sale or hire, an artistic work created after June 7, 1988, other than a map, chart or plan,
- (h) in the case of a computer program that can be reproduced in the ordinary course of its use, other than by a reproduction during its execution in conjunction with a machine, device or computer, to rent out the computer program,
- (i) in the case of a musical work, to rent out a sound recording in which the work is embodied, and

PARTIE I

DROIT D’AUTEUR ET DROITS MORAUX  
SUR LES OEUVRES

DROIT D’AUTEUR

Droit d’auteur  
sur l’oeuvre

3. (1) Le droit d’auteur sur l’oeuvre comporte le droit exclusif de produire ou reproduire la totalité ou une partie importante de l’oeuvre, sous une forme matérielle quelconque, d’en exécuter ou d’en représenter la totalité ou une partie importante en public et, si l’oeuvre n’est pas publiée, d’en publier la totalité ou une partie importante; ce droit comporte, en outre, le droit exclusif :

- a) de produire, reproduire, représenter ou publier une traduction de l’oeuvre;
- b) s’il s’agit d’une oeuvre dramatique, de la transformer en un roman ou en une autre oeuvre non dramatique;
- c) s’il s’agit d’un roman ou d’une autre oeuvre non dramatique, ou d’une oeuvre artistique, de transformer cette oeuvre en une oeuvre dramatique, par voie de représentation publique ou autrement;
- d) s’il s’agit d’une oeuvre littéraire, dramatique ou musicale, d’en faire un enregistrement sonore, film cinématographique ou autre support, à l’aide desquels l’oeuvre peut être reproduite, représentée ou exécutée mécaniquement;
- e) s’il s’agit d’une oeuvre littéraire, dramatique, musicale ou artistique, de reproduire, d’adapter et de présenter publiquement l’oeuvre en tant qu’oeuvre cinématographique;
- f) de communiquer au public, par télécommunication, une oeuvre littéraire, dramatique, musicale ou artistique;
- g) de présenter au public lors d’une exposition, à des fins autres que la vente ou la location, une oeuvre artistique — autre qu’une carte géographique ou marine, un plan ou un graphique — créée après le 7 juin 1988;
- h) de louer un programme d’ordinateur qui peut être reproduit dans le cadre normal de son utilisation, sauf la reproduction effectuée pendant son exécution avec un ordinateur ou autre machine ou appareil;

*Droit d'auteur — 4 février 2015*

(j) in the case of a work that is in the form of a tangible object, to sell or otherwise transfer ownership of the tangible object, as long as that ownership has never previously been transferred in or outside Canada with the authorization of the copyright owner,

and to authorize any such acts.

i) s'il s'agit d'une oeuvre musicale, d'en louer tout enregistrement sonore;

j) s'il s'agit d'une oeuvre sous forme d'un objet tangible, d'effectuer le transfert de propriété, notamment par vente, de l'objet, dans la mesure où la propriété de celui-ci n'a jamais été transférée au Canada ou à l'étranger avec l'autorisation du titulaire du droit d'auteur.

Est inclus dans la présente définition le droit exclusif d'autoriser ces actes.

Simultaneous fixing

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

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

R.S., 1985, c. C-42, s. 3; R.S., 1985, c. 10 (4th Supp.), s. 2; 1988, c. 65, s. 62; 1993, c. 23, s. 2, c. 44, s. 55; 1997, c. 24, s. 3; 2012, c. 20, s. 4.

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

WORKS IN WHICH COPYRIGHT MAY SUBSIST

Conditions for subsistence of copyright

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

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

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

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

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

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

(i) in relation to subparagraph 2.2(1)(a) (i), the first publication in such a quantity as to satisfy the reasonable demands of the

Fixation

(1.1) Dans le cadre d'une communication effectuée au titre de l'alinéa (1)f), une oeuvre est fixée même si sa fixation se fait au moment de sa communication.

(1.2) à (4) [Abrogés, 1997, ch. 24, art. 3]

L.R. (1985), ch. C-42, art. 3; L.R. (1985), ch. 10 (4<sup>e</sup> suppl.), art. 2; 1988, ch. 65, art. 62; 1993, ch. 23, art. 2, ch. 44, art. 55; 1997, ch. 24, art. 3; 2012, ch. 20, art. 4.

4. [Abrogé, 1997, ch. 24, art. 4]

OEUVRES SUSCEPTIBLES DE FAIRE L'OBJET D'UN DROIT D'AUTEUR

Conditions d'obtention du droit d'auteur

5. (1) Sous réserve des autres dispositions de la présente loi, le droit d'auteur existe au Canada, pendant la durée mentionnée ci-après, sur toute oeuvre littéraire, dramatique, musicale ou artistique originale si l'une des conditions suivantes est réalisée :

a) pour toute oeuvre publiée ou non, y compris une oeuvre cinématographique, l'auteur était, à la date de sa création, citoyen, sujet ou résident habituel d'un pays signataire;

b) dans le cas d'une oeuvre cinématographique — publiée ou non —, à la date de sa création, le producteur était citoyen, sujet ou résident habituel d'un pays signataire ou avait son siège social dans un tel pays;

c) s'il s'agit d'une oeuvre publiée, y compris une oeuvre cinématographique, selon le cas :

(i) la mise à la disposition du public d'exemplaires de l'oeuvre en quantité suffisante pour satisfaire la demande raisonnable du public, compte tenu de la nature de l'oeuvre, a eu lieu pour la première fois dans un pays signataire,

(ii) l'édification d'une oeuvre architecturale ou l'incorporation d'une oeuvre artis-

Copyright — February 4, 2015

dar year of the death of the author who dies last.

Nationals of other countries

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

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

10. [Repealed, 2012, c. 20, s. 6]

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

Cinematographic works

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

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

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

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

Where copyright belongs to Her Majesty

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

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

OWNERSHIP OF COPYRIGHT

Ownership of copyright

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

(2) [Repealed, 2012, c. 20, s. 7]

(2) Les auteurs ressortissants d'un pays — autre qu'un pays partie à l'Accord de libre-échange nord-américain — qui accorde une durée de protection plus courte que celle qui est indiquée au paragraphe (1) ne sont pas admis à réclamer une plus longue durée de protection au Canada.

L.R. (1985), ch. C-42, art. 9; 1993, ch. 44, art. 60.

10. [Abrogé, 2012, ch. 20, art. 6]

11. [Abrogé, 1997, ch. 24, art. 8]

Auteurs étrangers

11.1 Sauf dans le cas d'oeuvres cinématographiques auxquelles les dispositifs de la mise en scène ou les combinaisons des incidents représentés donnent un caractère dramatique, le droit d'auteur sur une oeuvre cinématographique ou une compilation d'oeuvres cinématographiques subsiste :

a) soit jusqu'à la fin de la cinquantième année suivant celle de sa première publication;

b) soit jusqu'à la fin de la cinquantième année suivant celle de sa création, dans le cas où elle n'a pas été publiée avant la fin de cette période.

1993, ch. 44, art. 60; 1997, ch. 24, art. 9.

Oeuvre cinématographique

12. Sous réserve de tous les droits ou privilèges de la Couronne, le droit d'auteur sur les oeuvres préparées ou publiées par l'entremise, sous la direction ou la surveillance de Sa Majesté ou d'un ministère du gouvernement, appartient, sauf stipulation conclue avec l'auteur, à Sa Majesté et, dans ce cas, il subsiste jusqu'à la fin de la cinquantième année suivant celle de la première publication de l'oeuvre.

L.R. (1985), ch. C-42, art. 12; 1993, ch. 44, art. 60.

Quand le droit d'auteur appartient à Sa Majesté

POSSESSION DU DROIT D'AUTEUR

13. (1) Sous réserve des autres dispositions de la présente loi, l'auteur d'une oeuvre est le premier titulaire du droit d'auteur sur cette oeuvre.

(2) [Abrogé, 2012, ch. 20, art. 7]

Possession du droit d'auteur

*Droit d'auteur — 4 février 2015*

Work made in the course of employment

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

(3) Lorsque l'auteur est employé par une autre personne en vertu d'un contrat de louage de service ou d'apprentissage, et que l'oeuvre est exécutée dans l'exercice de cet emploi, l'employeur est, à moins de stipulation contraire, le premier titulaire du droit d'auteur; mais lorsque l'oeuvre est un article ou une autre contribution, à un journal, à une revue ou à un périodique du même genre, l'auteur, en l'absence de convention contraire, est réputé posséder le droit d'interdire la publication de cette oeuvre ailleurs que dans un journal, une revue ou un périodique semblable.

Oeuvre exécutée dans l'exercice d'un emploi

Assignments and licences

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

(4) Le titulaire du droit d'auteur sur une oeuvre peut céder ce droit, en totalité ou en partie, d'une façon générale ou avec des restrictions relatives au territoire, au support matériel, au secteur du marché ou à la portée de la cession, pour la durée complète ou partielle de la protection; il peut également concéder, par une licence, un intérêt quelconque dans ce droit; mais la cession ou la concession n'est valable que si elle est rédigée par écrit et signée par le titulaire du droit qui en fait l'objet, ou par son agent dûment autorisé.

Cession et licences

Ownership in case of partial assignment

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

(5) Lorsque, en vertu d'une cession partielle du droit d'auteur, le cessionnaire est investi d'un droit quelconque compris dans le droit d'auteur, sont traités comme titulaires du droit d'auteur, pour l'application de la présente loi, le cessionnaire, en ce qui concerne les droits cédés, et le cédant, en ce qui concerne les droits non cédés, les dispositions de la présente loi recevant leur application en conséquence.

Possession dans le cas de cession partielle

Assignment of right of action

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

(6) Il est entendu que la cession du droit d'action pour violation du droit d'auteur est réputée avoir toujours pu se faire en relation avec la cession du droit d'auteur ou la concession par licence de l'intérêt dans celui-ci.

Cession d'un droit de recours

Exclusive licence

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

(7) Il est entendu que la concession d'une licence exclusive sur un droit d'auteur est réputée toujours avoir valu concession par licence d'un intérêt dans ce droit d'auteur.

Licence exclusive

R.S., 1985, c. C-42, s. 13; 1997, c. 24, s. 10; 2012, c. 20, s. 7.

L.R. (1985), ch. C-42, art. 13; 1997, ch. 24, art. 10; 2012, ch. 20, art. 7.

Copyright — February 4, 2015

Application of subsections (1) to (2)

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

ducteur, une durée identique à celle prévue au paragraphe (1.1).

(3) Les paragraphes (1) à (2) s'appliquent même si la fixation, l'exécution ou l'émission a eu lieu avant la date d'entrée en vigueur du présent article.

Application des paragraphes (1) à (2)

Berne Convention countries, Rome Convention countries, WTO Members

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

(4) Lorsque la prestation, l'enregistrement sonore ou le signal de communication répondent respectivement aux conditions énoncées aux articles 15, 18 ou 21, selon le cas, le pays qui devient partie à la Convention de Berne ou à la Convention de Rome ou membre de l'OMC après la date de la fixation, de l'exécution ou de l'émission, selon le cas, est dès lors réputé l'avoir été à cette date.

Pays partie à la Convention de Berne ou à la Convention de Rome ou membre de l'OMC

Where term of protection expired

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

(5) Le paragraphe (4) ne confère aucune protection au Canada lorsque la durée de protection accordée par le pays visé a expiré avant son adhésion à la Convention de Berne, à la Convention de Rome ou à l'OMC, selon le cas.

Droit de protection expiré

R.S., 1985, c. C-42, s. 23; 1994, c. 47, s. 59; 1997, c. 24, s. 14; 2012, c. 20, s. 17.

L.R. (1985), ch. C-42, art. 23; 1994, ch. 47, art. 59; 1997, ch. 24, art. 14; 2012, ch. 20, art. 17.

OWNERSHIP OF COPYRIGHT

TITULARITÉ

Ownership of copyright

24. The first owner of the copyright

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

24. Sont respectivement les premiers titulaires du droit d'auteur :

- a) sur sa prestation, l'artiste-interprète;
- b) sur l'enregistrement sonore, le producteur;
- c) sur le signal de communication qu'il émet, le radiodiffuseur.

Titularité

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

L.R. (1985), ch. C-42, art. 24; 1994, ch. 47, art. 59; 1997, ch. 24, art. 14.

Assignment of rights

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

25. Les paragraphes 13(4) à (7) s'appliquent, avec les adaptations nécessaires, aux droits conférés par la présente partie à l'artiste-interprète, au producteur d'enregistrement sonore et au radiodiffuseur.

Cession

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

L.R. (1985), ch. C-42, art. 25; 1993, ch. 44, art. 62; 1994, ch. 47, art. 59; 1997, ch. 24, art. 14.

PERFORMERS' RIGHTS — WTO COUNTRIES

DROITS DES ARTISTES-INTERPRÈTES — PAYS OMC

Performer's performance in WTO country

26. (1) Where a performer's performance takes place on or after January 1, 1996 in a country that is a WTO Member, the performer has, as of the date of the performer's perfor-

26. (1) L'artiste-interprète dont la prestation a lieu après le 31 décembre 1995 dans un pays membre de l'OMC a, à compter de la date de la prestation, un droit d'auteur qui comporte le

Prestation dans un pays membre de l'OMC