

Copyright 101: Issues for Editors

Only one thing is impossible to
God: to find any sense in any
copyright law on the planet

- Mark Twain

What is Copyright?

Economic Rights

- “To reproduce the work ... in any material form whatever” (Copyright Act. S. 3)
 - Reproduction and distribution
 - Public performance
 - Broadcast
 - Adapt or translate
 - Authorize any of the above
- **No registration is required**

Moral Rights

- Three rights:
 - Integrity
 - Attribution
 - Association
- Cannot be **assigned** but can be **waived**

Balance

“Copyright laws give creators the **right to be compensated** for many uses of their works as well as the ability to control many uses of their works. However, those rights are limited in **time and scope**, in order to ensure that the public is able to access and re-use creative works in new and interesting ways.”

Limitations and User Rights

Limitations

Time

Scope

Fair Dealing

Library Exceptions

Perceptual Disabilities

Educational Exceptions

Bill C-11 (The Copyright Modernization Act) received Royal Assent on June 29, 2012.

This bill includes a number of new exceptions that expand the rights of users of copyrighted materials and makes the law more relevant in the digital age.



Image: I'm Just A Bill, Tom Yohe Original Sketch

Fair Dealing

In order to **use copyrighted works without permission** (using section 29 – Fair Dealing), you use (e.g., copying or communicating a work) must be for **one of the eight purposes** listed in the Act (research, private study, criticism, review, news reporting, **education, satire, or parody**) and also **must be fair**.

Determining what is fair

the **purpose** of the proposed copying, including whether it is for research, private study, review, criticism or news reporting, education, satire, or parody;

the **character** of the proposed copying, including whether it involves single or multiple copies, and whether the copy is destroyed after it is used for its specific intended purpose;

the **amount** or proportion of the work which is proposed to be copied and the importance of that work;

alternatives to copying the work, including whether there is a non-copyrighted equivalent available;

the **nature** of the work, including whether it is published or unpublished; and

the **effect** of the copying on the work, including whether the copy will compete with the commercial market of the original work.

Other highlights from Bill C-11

Education added as **an allowable purpose** under Fair Dealing

Other new education exceptions: Public Performance Rights **no longer required** for showing videos in class, educators can now **copy material publically available on the internet**

Other exceptions will also allow you to **create mash-ups using copyrighted works** and to make back up copies of media

New protections for materials locked down with **Technical Protection Measures**

User Rights

Most important SCC Copyright Decision:
CCH v. Law Society of Upper Canada

“The Fair Dealing Exception, like other exceptions in the Copyright Act, is a **user’s right**. In order to maintain the **proper balance** between the rights of a copyright owner and users’ interests, it must not be interpreted restrictively.”

- *CCH*

v. Law Society, Para 48.

User Rights

Alberta v. Access Copyright
(classroom copying) and SOCAN v. Bell
(music previews)

“An **unequivocal affirmation** that copyright exceptions such as fair dealing should be treated as users’ right”

- Supreme Court Shakes the Foundations of Canadian Copyright Law, Michael Geist

Technological Neutrality

Entertainment Software Assoc v. Society of Composers, Authors and Music Publishers of Canada

“The Internet is **simply a technological taxi** that delivers a durable copy of the same work to the end user.”

- *ESAC v. SOCAN*

Recap

Copyright exists **upon creation**.

You can only use copyrighted material if:

- a) You have permission from a copyright holder,
or
- b) Your use falls outside the scope of copyright law (public domain, insubstantial excerpts)
or
- c) Your use falls within one of the exceptions in the Act (Fair Dealing).

Other Considerations?

- Using third-party copyrighted materials on the open web (blogs, websites etc.)
 - Issues around linking (Crookes v. Newton)
- Music Copyright
- Smartphones and E-readers
- Issues around permission

Getting permission

- **Identify the rights** you will need
 - Send a permission request letter
 - Get a permission agreement (if you want digital rights, make sure that you include that information)
- What if you can't find a rights-holder? Do orphan works exist in Canada?

Questions?