Court File No. 33922

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

BETWEEN:

ROGERS COMMUNICATIONS INC., ROGERS WIRELESS PARTNERSHIP, and SHAW CABLESYSTEMS G.P.

Appellants

- and -

SOCIETY OF COMPOSERS, AUTHORS AND MUSIC PUBLISHERS OF CANADA

Respondent

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TABLE OF CONTENTS

PART I - FACTS 1

A. OVERVIEW 1

i. Procedural Overview 1
ii. Overview of SOCAN's position on Appeal 2

B. SOCAN'S REPLY TO THE APPELLANTS ON THEIR OVERVIEW AND FACTS 5

C. BACKGROUND 7

D. KEY EVIDENCE BEFORE THE BOARD 10

i. The Internet Music Transmission Process 10
ii. Extent of Music Use 11
iii. Music Communication Rights in Foreign Jurisdictions 12

PART II - POINTS IN ISSUE 13

PART III - STATEMENT OF ARGUMENT 13

A. ISSUE 1: STANDARD OF REVIEW 13

B. ISSUE 2: IS THE INTERNET TRANSMISSION OF MUSICAL WORKS (EITHER AS FULL LENGTH TRACKS AND PREVIEWS OFFERED BY ONLINE MUSIC SERVICES, OR IN VIDEO GAMES OFFERED BY GAME SITES) A COMMUNICATION "TO THE PUBLIC" WITHIN THE MEANING OF PARAGRAPH 3(1)(F) OF THE ACT? 15

i. SOCAN's Position 15
ii. The Board's Tariff 24 *Ringtones* Decision 17
iii. The FCA's Comments on Tariff 24 19
iv. The Board's Tariff 22.A Decision 20
v. The FCA's Comments on the Tariff 22.A and 22.G Decisions 21

C. *TARIFF 22.A FCA* FOLLOWS AND IS CONSISTENT WITH *CCH* 21

D. OTHER IMPORTANT CONSIDERATIONS 25

i. Legislative History of Paragraph 3(1)(f) 25
ii. International Treaties 26
iii. International Jurisprudence 29
iv. Interpretative Principles 32

E. IMPLICATIONS OF THE APPELLANTS' POSITION 34

i. Loss of Copyright Protection for a Wide Array of Uses 34

ii. Technological Neutrality 36

F. CONCLUSION 37

PART IV – SUBMISSIONS ON COSTS 38

PART V – ORDER REQUESTED 38

PART VI – TABLE OF AUTHORITIES 39

PART VII – STATUTORY PROVISIONS 41

PART I - FACTS

A. Overview

1. This is SOCAN's response to the appeal by Canada's major telecommunication companies, Bell, Rogers, Shaw and Telus (the "Appellants") which seeks to overturn the Federal Court of Appeal's ("FCA") decision – and, by implication, six decisions of the Copyright Board and the FCA – that the Internet transmission of musical works constitutes "communication to the public by telecommunication" under paragraph 3(1)(f) of the *Copyright Act*.

2. SOCAN's membership consists of the songwriters and authors who create the musical works at issue. The *Copyright Act* secures to these authors and creators the exclusive right to communicate their works to the public by telecommunication. In order to do so, users such as the Appellants require a licence from the Respondent. The Appellants assert that they are entitled to profit from using the Respondent's musical works, but then claim that they have no obligation to obtain a licence to communicate those works to the public by telecommunication.

3. The Board and the FCA have held that the Internet music uses at issue give rise to copyright liability because, as a part of their commercial operations, the copyright users in question communicate (i.e., they transmit or convey) information (musical works or substantial parts of musical works) to the public (their customers) by telecommunication (Internet transmission technology) within the meaning of paragraph 3(1)(f). SOCAN agrees with these determinations.

i. Procedural Overview

4. This is one of two appeals dealing with this issue ordered by this Court to be heard on December 6, 2011. The second appeal (the "ESA Appeal") is the result of a related decision of the FCA, which also confirmed a

decision of the Board dealing with paragraph 3(1)(f). [1]

5. In both appeals, the central issue is whether there exists a valid statutory base for Tariffs 22.A and 22.G under the *Copyright Act* (the "*Act*"). More specifically, the question is whether the Internet activities of the appellants (i.e., the Internet transmission of full length musical works and music previews by Tariff 22.A online music services and of video games by Tariff 22.G game sites) constitute communications of SOCAN's musical works to the public by telecommunication, within the meaning of paragraph 3(1)(f) of the *Act*.

6. In this appeal, the Appellants have focused on the "to the public" issue, while the appellants in the ESA Appeal have focused on the "communication" aspect of paragraph 3(1)(f).

ii. Overview of SOCAN's position on Appeal

7. The Board and the FCA have repeatedly concluded that there is a valid statutory base for SOCAN's Internet tariffs, including Tariffs 22.A and 22.G. The Board did so in four separate decisions, while the FCA reached the same conclusion on three separate occasions, including its decision in *Canadian Wireless Telecommunications Association v. Society of Composers, Authors and Music Publishers of Canada*, for which an application for leave to appeal to this Court was dismissed.

8. As noted, the Board and the FCA have both held that the Internet music uses at issue give rise to copyright liability because, as part of their commercial operations, the copyright users in question communicate (i.e., they transmit or convey) information (musical works or substantial parts of musical works in the form of electronic data packets) to the public (their customers) by telecommunication (Internet transmission technology) within the meaning of paragraph 3(1)(f). SOCAN agrees with these

[1] A third appeal on the issue of Internet music previews and "fair dealing" is also scheduled to be heard on December 6, 2011.

determinations.

9. In the present appeal, the Appellants challenge the legal validity of Tariff 22.A by claiming that the operators of Online Music Services do not communicate musical works (or substantial parts thereof) "to the public" within the meaning of paragraph 3(1)(f) when they download or stream full-length musical works and/or music previews to their customers. SOCAN notes that the Appellants in the present appeal have not challenged the conclusion of the Board and FCA that the Internet transmission of full-length musical works constitutes "communication" within the meaning of paragraph 3(1)(f).

10. SOCAN submits that this appeal should be dismissed for the following reasons:

(a) The Appellants' interpretation of the *Act* is incorrect. Specifically, their interpretation is counter to:

(i) the intention of Parliament, particularly as expressed in 1988 and 1993 amendments to the *Act*, which broadened very significantly the scope of paragraph 3(1)(f) in the specific context of the communication of musical works;

(ii) the proper interpretation of international copyright conventions as they relate to Canadian legislation and foreign legislation applicable to the Internet transmission of musical works in other countries; and

(iii) jurisprudence correctly interpreting the meaning of the right of "communication to the public by telecommunication".

(b) By relying on an interpretation of "to the public" that requires simultaneity of transmission, the Appellants misapply the copyright

concept of technological neutrality to paragraph 3(1)(f).

(c) The Appellants rely primarily upon the decision of this Court and of the FCA in *CCH Canadian Ltd. v. Law Society of Upper Canada*, 2004 SCC 13 ("*CCH*"). However, they misinterpret or overlook key passages in that case and totally ignore the decision in *CWTA*. SOCAN submits that, in effect, the Appellants are seeking to appeal the FCA's decision in *CWTA*, as well as this Court's decision to dismiss their application for leave to appeal from it. For this and other reasons discussed herein, the present appeal should also be dismissed on the basis of the *CWTA* decision.

11. In the context of the Internet, the Appellants' interpretation would remove from the realm of copyright protection under paragraph 3(1)(f) not only musical works in downloads and on-demand streams, but also a much greater body of musical, literary, artistic and dramatic works, in a manner that Parliament could simply not have intended.

12. Such works would include:

(a) the musical works exploited commercially by major online music services on the Internet, including iTunes, Puretracks and Napster;

(b) a very broad range of other downloadable content containing music, including ringtones, Internet television programs and other types of audio-visual files, all of which are intended to be covered by other SOCAN tariffs applicable to Internet activities, such as Tariff 22 items B to G and Tariff 24;

(c) musical works forming part of video-on-demand services provided by traditional cable and other distribution undertakings (which have been paying communication right royalties to SOCAN for years pursuant to Tariff 17 for the music in such services);

(d) an endless array of computer programs and other audio-visual works which contain musical works; and

(e) other types of copyright-protected works which do not contain music, but are distributed to the public through multiple point-to-point communications, such as ebooks, news articles, photographs, computer programs and apps for mobile devices.

13. As held by the FCA, the Appellants' interpretation of the *Copyright Act* challenges common sense, and, if accepted, would result in unexpected and clearly untenable consequences that would require urgent remedial action by Parliament. It would also overturn existing licensing agreements entered into in good faith between the commercial entities to this appeal, not to mention jeopardizing millions of dollars of licensing fees collected and distributed to authors and composers under Tariffs 17, 22 and 24 since they were certified by the Board.

14. It is an interpretation that the statute simply cannot bear and that was repeatedly and correctly rejected by the Copyright Board and the Federal Court of Appeal. It should be rejected by this Court, as with this appeal.

B. SOCAN's Reply to the Appellants on their Overview and Facts

15. SOCAN disagrees with the Appellants' claims (in para. 5) that the FCA's interpretation of paragraph 3(1)(f):

(a) is "overly-broad and unclear";

(b) "could impede the development of online markets and stifle innovation in Canada";

(c) if accepted, "…would result in virtually every transmission to an individual over the Internet being subject to the communication to the public right…".

(d) "effectively renders the phrase 'to the public' meaningless…".

16. These are gratuitous statements that are not supported by any evidence on the record or any reasonable characterization of the FCA's Tariff 22.A decision.

17. The Appellants do not refer to any evidence (and there is no evidence) in support of their claim that the approval of Tariff 22 could impede the development of online markets and stifle innovation in Canada. While the Appellants clearly disagree with the conclusions reached by Pelletier J., there is nothing unclear about his reasons. On the contrary, they are detailed, precise and on point.

18. The FCA's decision is not overly-broad and does not render the phrase "to the public" meaningless. On the contrary, Pelletier J. makes it clear that a communication will be to the public within the meaning of paragraph 3(1)(f) only if the communicator targets members of the public and intends for them to receive the copyright protected work in question. This approach clearly allows private communications of protected works to occur without engaging liability pursuant to 3(1)(f).

19. The Appellants' indication that another copyright collective receives royalties for the reproduction of musical works in connection with Internet uses (paras. 18 and 19) is wholly irrelevant. The fact that the *Act* protects the reproduction of musical works does not in any way diminish the scope of protection provided under the performance head in sub-section 3(1) of the *Act* or the communication head in paragraph 3(1)(f). The matter at hand concerns the communication right, which is set out in the *Act* as a separate and distinct statutory right and has been recognized by the Board and the courts as such.

> ***Bishop v Stevens*, [1990] 2 SCR 467, Respondent's Authorities [RA] Tab 4.**
> ***Compo Co. v Blue Crest Music Inc,* [1980] 1 SCR 178, Appellants' Authorities [AA] Tab 9.**

C. Background

20. The Board's first analysis of paragraph 3(1)(f) in the context of Internet music uses was conducted as part of its determination of preliminary jurisdictional and legal issues in the SOCAN Tariff 22 Phase 1 proceeding. One of the key issues to be decided by the Board in that case was whether the Internet transmission of musical works to individual end-users constituted "communication to the public" within the meaning of paragraph 3(1)(f).

21. The hearings took place in 1998 and the Board answered that question in the affirmative in a decision dated October 27, 1999. The Board's analysis dealt separately with the concepts of "communication" and "to the public" and its conclusions in that regard were not challenged by any of the parties in that proceeding, including the current Appellants in the within Appeal. The Board concluded as follows:

> …expressions such as "in public" and "to the public" are to be interpreted by taking a realistic view of the impact and effect of technological developments and in a manner consistent with their plain and usual meaning "that is to say openly, without concealment and to the knowledge of all".
>
> …
>
> The private or public nature of the communication should be assessed as a function of the intended target of the act. In other words, the time frame within which the communication takes place is irrelevant…
>
> …
>
> Accordingly, a communication may be to the public when it is made to individual members of the public at different times, whether chosen by them (as is the case on the Internet) or by the person responsible for sending the work (as is the case with facsimile transmissions).
>
> **Decision of the Board dated October 27, 1999, *SOCAN – Tariff 22 (Transmission of Musical Works to Subscribers Via a Telecommunications Service Not Covered Under Tariff Nos. 16 or 17)* ("*Tariff 22 Phase 1 - Board*"), RA Tab 14 at 28-31.**

22. Following this Court's disposition of the Tariff 22 Phase 1 matter, the Board proceeded with Phase 2, the purpose of which was to determine

and certify the royalties to be paid for the music uses deemed to attract liability pursuant to paragraph 3(1)(f) in accordance with the ultimate results of the Phase 1 process.

23. However, in the meantime, the Board held hearings on a separate SOCAN Internet tariff relating to the use of music as part of ringtones ("Tariff 24"). Musical ringtones allow a cell phone user to hear an excerpt of a musical work when the phone receives an incoming call. As in the case of Tariff 22.A musical works and Tariff 22.G games containing musical works, ringtones can be purchased and downloaded over the Internet.

24. In approving Tariff 24, the Board reiterated its previous analysis from Tariff 22 Phase 1 and concluded that its interpretation was as applicable to the download of ringtones to cell phones as it was to the download of full length musical works to a computer. In both cases, the Internet activities constituted communications by telecommunication that were to the public within the meaning of those terms in paragraph 3(1)(f) of the *Act*.

> ***Statement of Royalties to be Collected by SOCAN for the Communication to the Public by Telecommunication, in Canada, of Musical or Dramatico-musical Works*, Tariff No. 24 – Ringtones (2003-2005), Copyright Board Decision dated August 18, 2006 ("*Tariff 24 - Board*"), RA Tab 16 at para. 56.**

25. The Board thus once again agreed with SOCAN's interpretation of paragraph 3(1)(f), but this time some of the parties sought judicial review of the Board's decision.

26. Before the FCA, the appellants made essentially the same arguments as the Appellants now make in the present appeal. However, the FCA agreed with the Board that the download of a ringtone on the Internet constitutes a communication to the public within the meaning of paragraph 3(1)(f), as had also been determined in the Tariff 22 Phase 1 cases. Essentially, the Court found that the meaning of the word "communication" and the concept of "to the public" proposed by the appellants were too

narrow and, in doing so, it properly distinguished the cases relied upon by the appellants in support of their position (the same cases relied upon by the Appellants in this appeal), as discussed further below.

> ***Canadian Wireless Telecommunications Association v. Society of Composers, Authors and Music Publishers of Canada,*** **2008 FCA 6, [2008] 3 FCR 539, leave to appeal dismissed, September 18, 2008, Supreme Court of Canada docket number 32516 ("*Tariff 24 - FCA*"), AA Tab 7.**

27. This Court dismissed an application for leave to appeal the FCA's Tariff 24 decision, brought by the Appellants, on September 18, 2008. Since then SOCAN has collected and distributed royalties to its members under Tariff 24. Moreover, SOCAN and the Appellants (other than Shaw) recently entered into a seven-year agreement concerning licence fees for Ringtones and have, on consent, requested that the Board certify the most recent Ringtones tariff.

28. The Board subsequently proceeded with its Tariff 22 Phase 2 hearing, which took place in 2007, to determine the royalties to be paid for the various Internet activities targeted by the tariff. That hearing gave rise to two separate decisions by the Board, each with its own set of reasons. The Tariff 22.A decision, for online music services that download and stream full-length musical works and previews to their customers, was issued on October 18, 2007.

> ***Statement of Royalties to be Collected by SOCAN for the Communication to the Public by Telecommunication, in Canada, of Musical or Dramatico-musical Works,*** **Tariff No. 22.A – Internet – Online Music Services (1996-2006), Copyright Board dated October 18, 2007 ("*Tariff 22.A - Board*"), Appellants' Record [AR] at 2.**

29. The Appellants were parties to the hearing that gave rise to the Board's Tariff 22.A and 22.G decisions and, at the hearing, took the position, among other things, that the Internet download of musical works did not constitute communications "to the public" of those works. In its Tariff 22.A reasons, the Board rejected the Appellants' position, and expanded upon its prior determinations that the Internet download of a musical work by

online music services constitutes a communication "to the public" within the meaning of paragraph 3(1)(f).

30. The Board's Tariff 22.A and 22.G decisions were both the subject of judicial review by the FCA. The FCA agreed with the Board that the *Act* provides a valid statutory base for Tariffs 22.A and 22.G, and that the Internet transmission of musical works and previews by online music services to their customers constitute communications to the public by telecommunication within the meaning of paragraph 3(1)(f) of the *Act*.

> ***Shaw Cablesystems G.P. v. Society of Composers, Authors and Music Publishers of Canada*, 2010 FCA 220, 323 D.L. R. (4th) 42 ("*Tariff 22.A - FCA*"), AR at 75.**

D. Key Evidence before the Board

i. The Internet Music Transmission Process

31. A technical description of the Internet transmission process, generally and in the specific case of music, was presented to the Board by SOCAN expert witnesses Clark (Tariff 22 Phase 1), as well as Jurenka and Hoffert (Tariff 22 Phase 1 and Phase 2).[2]

> **Report of David D. Clark at T.22 (Phase 1) Hearing, Respondent's Record [RR] at 2.**
> **Report of Tom Jurenka at T.22 (Phase 1) Hearing, RR at 51.**
> **Supplemental Report of David D. Clark, RR at 84.**
> **Supplemental Report of Tom Jurenka, RR at 97.**
> **Report of Tom Jurenka at T.22 (Phase 2) Hearing, RR at 113.**
> **Report of Paul Hoffert at T.22 (Phase 2) Hearing, RR at 135.**

32. The Board made several findings of fact based on that evidence, which can be summarized as follows:

(a) The Internet is a telecommunications network, the purpose of which is to transmit files containing data, including music as that term is commonly understood. A transmission occurs when the following

[2] The evidence presented by SOCAN in the Board's Tariff 22 Phase 1 hearing was made part of the record in the Phase 2 proceedings. Jurenka and Hoffert also testified in the Tariff 24 (ringtones) hearing.

series of events takes place: (1) the music file is incorporated (posted) to an Internet-accessible server; (2) upon request and at a time chosen by the recipient, the file is broken down into packets and transmitted from the host server to the recipient's server, via one or more routers; and (3) the recipient, usually using a computer, can reconstitute and open the file upon reception or save it to open it later.

***Tariff 22 Phase 1 – Board*, RA Tab 14 at p. 25.**

(b) There is no technical difference between the transmission of musical works by downloading or by streaming. Both are broken down into packets and transmitted, on request, to each end user individually, in separate transmissions and at different times. Neither is audible during the communication. Both must be stored, even if only temporarily, before they can be played. The only difference is that a stream is programmed to appear to be erased as it is played, while a permanent download is not.

***Tariff 22.A – Board,* AR at 2 at para. 95**

33. Based on this evidence, the Board was consistent in maintaining its conclusion that the Internet transmission of a musical work, either by way of downloading or streaming, constitutes the communication of that work to the public by telecommunication within the meaning of paragraph 3(1)(f). For the reasons set out further below in SOCAN's Part III submissions, SOCAN maintains that the Board's interpretation was and remains correct.

ii. Extent of Music Use

34. Apple iTunes is the predominant online music retailer; however the Appellants also operate online music services which offer catalogues of musical works that consumers can purchase electronically, either via computers or mobile devices or both.

35. The evidence before the Board at the Tariff 22.A hearing was that in 2006 Apple had reached world wide sales of two and a half billion songs, by way of many hundreds of millions of transactions. Apple had over four million songs available for purchase in its Canadian online iTunes music store (five million songs in its U.S. iTunes store).

> **Evidence of Eddy Cue before Copyright Board of Canada, *SOCAN Tariff 22*, May 1, 2007, Transcripts Vol. 10, Public, at 2001 and 2028, AR at 137 and 143.**

36. Apple selected Canada as one of the 22 countries (at the time) in which to launch iTunes because it was one of the countries in the world with robust music sales.

> **Evidence of Eddy Cue before Copyright Board of Canada, *SOCAN Tariff 22*, May 1, 2007, Transcripts Vol. 10, Public, at 2027, AR at 143.**

37. The Appellants each operate online music services in which they offer streaming and/or downloading of full length musical tracks. The size of their musical catalogues varies, as do the revenue models (pay-per-download, subscription, advertising supported); however they all offer the ability for members of the public to obtain musical works and to listen to them at the time and place of their choosing.

> **Witness Statement of Terry Canning, Patrick McLean and Alistair Mitchell, RR at 169.**

iii. Music Communication Rights in Foreign Jurisdictions

38. During the Board's Tariff 22 Phase 2 proceedings, the evidence presented by the Objectors to SOCAN's tariff proposals established categorically that online music services that conduct business in foreign countries are required to pay communication or performance rights for the download of musical works over the Internet. Those countries include the U.K., France, Germany, Italy, Australia, Japan, Argentina, Austria, Belgium, Brazil, Denmark, Finland, Hong Kong, Malaysia, the Netherlands, Norway, Singapore, the Slovak Republic, Spain, Sweden, Taiwan and Thailand.

Witness Statement of Geoffrey Michael Taylor, (Public Version), RR at 172.

39. At the time, the United States was also on the list. However, as discussed below, the communication right issue has been the subject of debate in the U.S., which debate continues in the courts.[3]

PART II - POINTS IN ISSUE

40. SOCAN submits that the points in issue in this application are:

(a) What is the standard of review?

(b) Is there a statutory basis for a SOCAN tariff for the Internet transmission of musical works by online music services? More specifically, is the Internet transmission of musical works (either as full length tracks and previews offered by online music services, or in video games offered by game sites) a communication "to the public" within the meaning of paragraph 3(1)(f) of the *Act*?

PART III - STATEMENT OF ARGUMENT

A. Issue 1: Standard of Review

41. It is well-settled that when an administrative board is applying its home statute to the particular facts before it, a reviewing court ought to show deference to the decision. Following the guidance of this Court in Dunsmuir, courts have repeatedly applied this principle. The decision of FCA in this case is no exception.

> ***Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 AA Tab 16 at para. 54.**
> ***Nolan v Kerry (Canada) Inc*., 2009 SCC 39, [2009] 2 SCR 678 AA Tab 18 at para. 34.**

42. The *Copyright Act* is the Board's home statute and one over which the Board enjoys considerable expertise, particularly when applying the *Act* to the facts as found by the Board – such as the intent of the online music

[3] The matter is now before the Supreme Court of the United States: Docket No. 10-1337.

services when they make millions of musical works available for download in “hundreds of millions of transactions”.

43. Even if paragraph 3(1)(f) is, as the Appellants suggest, a law of general application, it is one which lies squarely within the particular expertise of the Board. This is an indication that Parliament intended deference to be afforded to the Board on the interpretation of this provision. Only if the Board’s decision is unreasonable will it be set aside. And to be unreasonable, as this Court said in *Dunsmuir*, the decision must be said to fall outside “a range of possible, acceptable outcomes which are defensible in respect of the facts and law.”

> ***Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 AA Tab 16 at para. 47.**

44. In *Celgene Corp. v. Canada (Attorney General)*, this Court reaffirmed its guidance from *Dunsmuir* and further affirmed that where a specialized tribunal is interpreting its enabling legislation, deference will usually be accorded:

> [33] A final observation. In this Court, neither party presented any argument on the standard of review. Both had proceeded throughout the judicial review process on the basis that the applicable standard of review was correctness. While the parties should not be able, by agreement, to contract out of the appropriate standard of review, like Evans J.A. I am of the view that the Board’s decision would be upheld under either standard.
>
> [34] And like Evans J.A., I also question whether correctness is in fact the operative standard. This specialized tribunal is interpreting its enabling legislation. Deference will usually be accorded in these circumstances: see *Dunsmuir*, at paras. 54 and 59; *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12, [2009] 1 S.C.R. 339, at para. 44; and *Nolan v. Kerry (Canada) Inc.*, 2009 SCC 39, [2009] 2 S.C.R. 678. Only if the Board’s decision is unreasonable will it be set aside. And to be unreasonable, as this Court said in Dunsmuir, the decision must be said to fall outside “a range of possible, acceptable outcomes which are defensible in respect of the facts and law” (para. 47). Far from falling outside this range, I see the Board’s decision as unassailable under either standard of review. (emphasis added)
>
> ***Celgene Corp. v Canada (Attorney General)*, 2011 SCC 1, [2011] 1 SCR 3, RA Tab 8 at paras. 33-34.**

45. Even the interpretation of statutes that are external to the enabling statute of a board or tribunal may be entitled to deference if the subject-matter of those statutes is an area in which the board or tribunal has developed a particular familiarity or expertise.

> ***Canada (Attorney General) v. Professional Institute of the Public Service of Canada*, 2010 FC 728, RA Tab 7 at paras. 27-28.**

46. The *Copyright Act* is not external to the Board; it is its enabling statute. Nevertheless, the Appellants argue that Board's jurisdiction extends to certifying tariffs alone and the provisions at issue are outside of that jurisdiction. Even if this were the case, the provisions at issue are "intimately connected with the mandate of the tribunal and encountered frequently as a result." As mentioned above, the Board's decision in *Tariff 22.A - Board* is the third time the Board has considered the meaning of paragraph 3(1)(f) in the context of a full hearing and with the benefit of a full evidentiary record. On each occasion, the Board came to the same conclusion on the meaning of the phrase "to the public." Accordingly, the FCA correctly held that this accumulated experience and familiarity with the application of paragraph 3(1)(f) to the facts involved in this case warranted deference to the Board's decision.

> ***Toronto Board of Education v Ontario Secondary School Teachers' Federation, District 15*, [1997] 1 SCR 487, RA Tab 17.**
> ***Tariff 22.A- FCA,* AR at 75 at para. 25.**

47. In any event, the decision of the Board was correct.

B. Issue 2: Is the Internet transmission of musical works (either as full length tracks and previews offered by online music services, or in video games offered by game sites) a communication "to the public" within the meaning of paragraph 3(1)(f) of the Act?

i. SOCAN's Position

48. The Board and the FCA correctly interpreted the term "to the public" in paragraph 3(1)(f) of the *Act* when they repeatedly concluded that the transmission of musical works over the Internet by online music services

and other Internet entities (including game sites) to their customers results in the communication of musical works to the public by telecommunication.

49. Unlike the appellants in the ESA Appeal, the Appellants in this case do not challenge the Board's or the FCA's finding that the Tariff 22.A transmissions of musical works are "communications" within the meaning of the *Act* – they only challenge the conclusion that those communications are "to the public".[4]

50. The interpretation of a statute must always begin with the ordinary meaning of the words used. Here, the ordinary meaning of the term "to the public" is clear. In the context of the Internet transmission of musical works, the Board has repeatedly found that such transmissions are communications "to the public" because the music files are transmitted on the Internet openly and without concealment, with the knowledge and intent that the files be conveyed to all who might have access to the Internet. The FCA stressed that a communication will be "to the public" when the communicator intends the communication to be received by the public, as is clearly the case in the present context of online music services.

51. The Board found as a matter of fact, and the FCA agreed, that online music services target members of the public (i.e., their millions of customers and potential customers) and intend for them to receive music downloads, a fact that was readily apparent in the evidence before the Board and that was expressly noted by the FCA in *Tariff 24* and in *Tariff 22.A (FCA)*.

***Tariff 24* – *FCA*, AR Tab 7 at para. 36**

[4] Interestingly, Apple, the predominant online music service operating in Canada and in numerous countries around the world, did not contest the decisions of the Board and of the FCA that the Internet transmission of musical works and previews are "communications" or that they are "to the public" by telecommunication within the meaning of paragraph 3(1)(f) of the *Act*.

***Tariff 22.A – FCA*, AR at 75 at para. 63.**

52. The FCA focussed on the fact that a communication will be to the public if the communicator intends that it be received by the public, including members of the public in individual private settings. In doing so, the FCA clearly addressed the misplaced concern raised by the Appellants (at para. 12 of their memorandum) that the FCA did not recognize the limiting nature of the words "to the public" and that its interpretation results in the communication right being applied to point-to-point transmissions that are entirely private. There is simply no basis for that claim. Transmissions that are not intended to be received by the public (e.g., a transmission made in the purely domestic context of a family or within a circle of known friends) will remain private. That is not the basis upon which online music services such as Apple conduct their business.

***Tariff 22.A – FCA*, AR at 75 at para. 42.**

53. The test adopted by the Board and by the FCA is clear and understandable and was correctly applied to the facts at hand. Given the nature and scope of the operations of online music services, it is a perfect example of the intended application of paragraph 3(1)(f).

54. The Appellants' arguments ignore the common sense approach of the FCA and instead propose an interpretation of paragraph 3(1)(f) that would view each transmission in isolation, disregarding the greater commercial context and the intention of the communicator. This overly technical, myopic approach to the interpretation of the communication right essentially assumes its own conclusion and ought to be rejected in favour of the string of decided cases that support the decisions of the Board and the FCA.

ii. The Board's Tariff 24 *Ringtones* Decision

55. A musical ringtone allows a cell phone user to hear an excerpt of a musical work when the phone receives an incoming call. As in the case of

Tariff 22.A musical works and Tariff 22.G video games containing musical works, ringtones can be purchased and downloaded over the Internet. In 2002, SOCAN filed a tariff for musical ringtones ("Tariff 24") which was the subject of a hearing before the Board.

56. While all of the Objectors to Tariff 24 conceded before the Board that the Internet transmission of a ringtone to a mobile phone subscriber constitutes a "communication" of a musical work within the meaning of paragraph 3(1)(f), they took the position that the communication was not "to the public".

57. In approving the tariff, the Board reiterated its previous analysis from Tariff 22 Phase 1 and concluded that its interpretation was as applicable to the download of ringtones to cell phones as it was to the download of full length musical works to a computer. In both cases, the Internet activities constituted communications that were to the public and by telecommunication within the meaning of paragraph 3(1)(f) of the *Act*.

***Tariff 24 – Board*, RA Tab 16 at para. 51.**

58. The Board's reasoning was supported in all respects by the factual evidence before it in the Tariff 22 Phase 1 and Tariff 24 hearings, including the technical evidence presented by SOCAN expert witness Jurenka. As noted in the Part I above, Jurenka testified in the Tariff 22 Phase 1 and 2 proceedings before the Board, as well as Tariff 24. In his evidence at the Tariff 24 hearing, he agreed with the Board's Tariff 22 Phase 1 description of the various uses of music on the Internet and confirmed that, from a technical standpoint, the use of musical works by online music services and other Internet entities fell squarely within the terms of that description.

59. The Board accepted Jurenka's evidence and, based on those findings of fact, concluded that there were no meaningful differences between the different types of music transmissions on the Internet. More specifically,

the Board once again found, in the context of ringtones, that musical works (information in the form of electronic data packets) are communicated (transmitted or conveyed) by telecommunication (Internet downloading technology).

***Tariff 24 – Board*, RA Tab 16 at para. 56.**

60. The Board thus once again agreed with SOCAN's interpretation of paragraph 3(1)(f); however, unlike Tariff 22 Phase 1, some of the parties to Tariff 24 sought judicial review of the Board's decision on this issue.

iii. The FCA's Comments on Tariff 24

61. On judicial review of *Tariff 24,* the appellants there made the same arguments as the Appellants now make in the present appeal. However, the FCA agreed with the Board that the download of a ringtone via the Internet constitutes a communication to the public within the meaning of paragraph 3(1)(f).

62. Justice Sharlow for the Federal Court of Appeal distinguished the cases relied upon by the appellants in support of their position (the same cases relied upon by the Appellants in this appeal) and came to the same conclusion as Justice Pelletier in the *Tariff 22.A* appeals, which are now before this Court, that the 1968 *CAPAC* case, as well as the *CTV* and the *CCTA* cases were no impediment to a finding that point-to-point transmissions of musical works over the Internet are communications "to the public".

***Tariff 24 – FCA*, AA Tab 7 at para. 30.**
***Tariff 22.A – FCA*, AR at 75 at para. 36.**

63. In doing so, the FCA made the following comments in regard to the term "to the public":

> [42] In the present case, no one except the wireless carrier and the recipient normally would be aware of a particular transmission of a ringtone to a cellphone, and in that sense the transmission is not made "openly". However, it does not necessarily follow that paragraph 3(1)(f) does not apply. The transmission of a

> television program is a performance in public, even if no one is watching it or everyone who is watching it is doing so in private, because it is made available to a sufficiently large and diverse group of people. Similarly, in this case all of the customers of a wireless carrier (that is, all members of the relevant segment of the public) have access to all of the ringtones offered by that wireless carrier. The fact that the ringtones are offered to the public, or to a significant segment of the public, supplies the requisite degree of "openness".
>
> [43] In my view, the conclusion of the Copyright Board that the transmissions in issue in this case are within the scope of paragraph 3(1)(f) of the *Copyright Act* is consistent with the language of that provision and its context. It also accords with common sense. If a wireless carrier were to transmit a particular ringtone simultaneously to all customers who have requested it, that transmission would be a communication to the public. It would be illogical to reach a different result simply because the transmissions are done one by one, and thus at different times.
>
> ***Tariff 24 – FCA*, AA Tab 7 at paras. 42-43.**

iv. The Board's Tariff 22.A Decision

64. As noted above in the overview, the Tariff 22 Phase 2 hearing resulted in two decisions in which the Board again confirmed its view that paragraph 3(1)(f) of the *Act* provides a valid statutory base for a tariff for the Internet transmission of musical works, including downloads and on-demand streams.

65. The Appellants were parties to this proceeding and, at the hearing, took the position that the Internet download of full-length musical works and previews did not constitute communication to the public. In its Tariff 22.A reasons, the Board rejected the Appellants' position, and expanded upon its prior determinations that the Internet download or on-demand stream of a musical work or preview by online music services constitutes a communication to the public within the meaning of paragraph 3(1)(f):

> [98] The proposition that a communication is not to the public unless recipients share a simultaneous (or near-simultaneous), common experience… challenges common sense: if the proposition were true, the content of a learned paper posted on the Internet would not be communicated to the public if it was read (on screen or after being downloaded) by several persons but at vastly different times. In effect, to require simultaneity or commonality of experience would lead to the absurd result that most of what is viewed or heard by hundreds or even thousands of Internet users would involve private communications within the meaning of the *Act*. (Emphasis added)

***Tariff 22.A – Board*, AR at 2 at para. 98.**

66. Considering that the evidence before the Board was that online music services communicate billions of musical works to millions of customers, the Appellants' assertion that these communications are not made "to the public" challenges common sense.

v. The FCA's Comments on the Tariff 22.A and 22.G Decisions

67. The FCA agreed with the Board that the *Act* provides a valid statutory base for Tariffs 22.A and 22.G, and that the Internet transmission of musical works by online music services to their customers, as well as the Internet transmission of video games containing musical works, constitute communications to the public by telecommunication within the meaning of paragraph 3(1)(f) of the *Act*. The FCA also refused to interfere with the conclusions of the Board relating to the tariff formula to be used for calculating the royalties payable by online music sites and game sites for their use of music.

68. Accordingly, the Board quite properly reached the same conclusions for the various Internet tariffs it approved for SOCAN, including Tariffs 22.A and 22.B-G. Based on the analyses of the Board and the FCA as set out above, SOCAN submits that the Board correctly interpreted the section 3(1)(f) concept of communication in the context of all Internet transmissions of musical works.

C. *Tariff 22.A FCA* follows and is consistent with *CCH*

69. In *CCH*, this Court considered whether the facsimile transmissions of literary works to lawyers by staff of the Law Society's Great Library could constitute communications to the public within the meaning of paragraph 3(1)(f) of the *Act*. The Court stated as follows:

> [78] ... The fax transmission of a single copy to a single individual is not a communication to the public. This said, a series of repeated fax transmissions of the same work to numerous different recipients might constitute communication to the public in infringement of copyright.

> However, there was no evidence of this type of transmission having occurred in this case.
>
> [79] On the evidence in this case, the fax transmissions were not communications to the public. I would dismiss this ground of cross-appeal. (Emphasis added)
>
> ***CCH Canadian Ltd. v Law Society of Upper Canada,* 2004 SCC 13, [2004] 1 SCR 339 ("*CCH*"), AA Tab 10 at paras 77-79.**

70. The Appellants' position is that the decision of the Board and those of the FCA in *CWTA* and *Tariff 22.A (FCA)* are inconsistent and cannot be reconciled with the decision in *CCH*. However, the Board and the FCA very specifically referred to and distinguished *CCH* in their respective decisions.

71. The facts in *CCH* and in *Tariff 22.A - FCA* are very different. As was noted in *Tariff 22.A - Board*, the transactions in *CCH* were truly "point-to-point" communications between library staff and individual library members rather than the public at large. Each request was reviewed and filled by a staff member of the Library and then provided by facsimile to the requester along with an invoice. The Law Society of Upper Canada adopted an Access to the Law Policy and all request forms for the custom photocopy service required the person who requested copies to state the purpose for the photocopying. The policy also required library staff to ask the purpose for which the copies were required.

> ***CCH*, AA Tab 10 at para. 61.**

72. Online music services, as illustrated by the evidence before the Board with respect to Apple iTunes, effect hundreds of millions of automated transmissions of musical works on an ongoing basis - a scale that cannot even begin to be compared to that of the Great Library faxing individual copies of cases from law texts in response to requests from lawyers.

73. These distinctions were noted and accepted in *Tariff 24 – FCA* and *Tariff 22.A - FCA.* Consider the following comments of Sharlow J.A. in *Tariff 24*:

> [35] Based on [the reasoning in *CCH*], it seems to me that in determining whether paragraph 3(1)(f) applies to the transmission of a musical work in the form of a digital audio file, it is not enough to ask whether there is a one-to-one communication, or a one-to-one communication requested by the recipient. The answer to either of those questions would not necessarily be determinative because a series of transmissions of the same musical work to numerous different recipients may be a communication to the public if the recipients comprise the public, or a significant segment of the public.
>
> [36] The Copyright Board concluded that the present case involves a series of transmissions of the same works to different recipients, and thus to the public. That conclusion is explained as follows at paragraph 68 of its reasons:
>
> > Wireless carriers are trying to sell as many copies of every single musical ringtone as possible to maximize sales and profit. They intend, indeed they wish for, a series of repeated transactions of the same work to numerous recipients. This, in our opinion, amounts to a communication to the public.
>
> [37] The Copyright Board's description of the relevant facts is an apt one, and it is well supported by evidence in the record. (Emphasis added)
>
> ***Tariff 24 – FCA*, AA Tab 7 at paras. 35-37.**

74. Justice Sharlow also commented on the conclusions of Justice Linden in the FCA's decision in *CCH* on the issue of what constitutes a communication "to the public", which were adopted by this Court:

> [39] In my view, these comments are not intended to be a comprehensive description of the meaning of "communication to the public". There is no reason to believe that in making these comments, Justice Linden was contemplating a series of one-to-one transmissions to individuals who together comprise a group that may fairly be described as the public, as in this case.
>
> ***Tariff 24 – FCA*, AA Tab 7 at para. 39.**

75. In fact, this Court stated clearly in *CCH* that there was "no evidence" of a series of repeated fax transmissions of the same work to numerous different recipients. By contrast, in its decisions, the Board found, and the evidence showed, that online music services do, in fact, communicate the same musical works numerous times to their end-user clients and that those clients are generally repeat customers.

***CCH*, AA Tab 10 at para. 78.**
***Tariff 22.A – Board*, AR at 2 at para. 97.**

76. Moreover this Court merely said, without deciding, that a series of repeated fax transmissions of the same work to numerous different recipients might constitute communication to the public in infringement of copyright.

***CCH*, AA Tab 10 at para. 78.**

77. Justice Pelletier in *Tariff 22.A FCA* noted that this Court's conclusion in *CCH* (that a single transmission of a single copy to a single individual is not a communication to the public) was made in a context where there was no evidence of an intention to communicate to the public. For that reason, *CCH* is not authority for the proposition that no "point to point" communication can ever amount to a communication to the public.

78. In doing so, Pelletier J.A. also added the following:

> [41] This leads to my next point. While the Supreme Court held, on the facts before it in *CCH*, that a point to point communication was not a communication to the public, I do not take this to foreclose the possibility that one could communicate to the public one person at a time. This is best understood by an analogy. The concept of selling to the public is generally understood as meaning that the vendor will sell his product to anyone who is interested in buying it. But each sale is a sale to an individual, involving an individual contract of sale between the vendor and the purchaser. If one focuses too closely on the individual sales, the notion of selling to the public fades from view. But if one steps back, it is more apparent that the vendor is selling to the public by selling to each of those members of the public who wishes to purchase his product.
>
> […] [43] In the same way, nothing precludes communications to the public by telecommunications from occurring one transmission at a time, each transmission being a discrete transaction which occurs within the framework of an intention to communicate the work to the public.
>
> […] [52] In fact, the Supreme Court's caveat with respect to multiple transmissions of a work to multiple recipients is best understood as an indication that numerous transmissions to multiple recipients could be evidence of an intention to communicate to the public. This does not mean that volume alone is determinative of whether a communication is a communication to the public, but it does suggest that volume of transmissions can be evidence of the communicator's intention. (Emphasis added)

***Tariff 22.A – FCA*, AR at 75 at paras. 41, 43, 52.**

79. Accordingly, the Board and the FCA correctly distinguished the factual issues relating to the communication of musical works from those in *CCH* and the Applicants' contention that their respective decisions cannot be reconciled with *CCH* should be rejected.

D. Other Important Considerations

i. Legislative History of Paragraph 3(1)(f)

80. Paragraph 3(1)(f) was first enacted in 1931 to confer on copyright owners a right to communicate works by radio-communication in accordance with Canada's obligations under the *Berne Convention* (Rome, 1928). In 1987, Canada entered into the *Free Trade Agreement* (the "FTA") with the United States. The FTA required each party to provide copyright holders with a right to compensation for certain retransmissions to the public of conventional television signals. Amendments to the *Act* were made in 1988 to implement the FTA, including a significantly broadened paragraph 3(1)(f).

81. At that time, the Canadian government recognized that technology could evolve in unpredictable ways. So Parliament, in amending paragraph 3(1)(f), decided to provide all radio and television transmission and retransmission activities with a significantly broader scope of protection, by replacing the previous words "communicate the work by radiocommunication" with the phrase "communicate the work to the public by telecommunication".

82. A broad definition of the term "telecommunication" was also added to the *Act*: "'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".

Copyright Act,* RSC, 1985, c. C-42*,* AA Tab 37 at s. 2*.

83. In light of the above, the conclusions reached by the Board and the FCA

concerning the Internet transmission of musical works are not at all surprising. The legal framework in Canada, including Canada's international copyright treaty obligations, and the legal framework in numerous foreign jurisdictions clearly support the proposition that the Internet transmission of a musical work involves a communication of the work to the public by telecommunication.

84. In Canada, this "communication right" is expressly recognized in paragraph 3(1)(f) of the *Act*. This right was intentionally drafted to be broad, robust and technologically neutral. The principles established in the decisions of the Board and the FCA do nothing more than apply the well known principles of copyright law previously established in Canada.

ii. International Treaties

85. The Appellants' discussion concerning the International context (paras. 29-33) is far from complete.

86. At the outset, it must be noted that International treaties and agreements represent minimum requirements and do not preclude any signatory country from adopting greater protections in its domestic legislation. Nor are signatories required to use the same terms as those found in the relevant treaties or those adopted by other countries for implementation in their domestic legislation.

> ***Berne Convention for the Protection of Literary and Artistic Works*, 24 July 1971, WIPO Database of Intellectual Property Legislative Texts, Article 19, RA Tab 3**
> **Ricketson & Ginsburg, *International Copyright and Neighbouring Rights - The Berne Convention and Beyond*, Oxford University Press, 2ème édition, 2006 ("Ricketson"), RA Tab 13, Vol. I at p. 301, para. 6.80 and following.**

87. Also, as noted below, a full panoply of Berne member countries, including the U.K., France, Germany and Italy, to name but a few, recognize that the Internet transmission of musical works, including downloads by online music services, is a protected act for which copyright owners are entitled compensation (separate compensation over and above any compensation

received for reproduction rights). Other than in the United States, where the issue remains the subject of judicial debate, SOCAN's sister societies around the world are entitled to royalties for the communication of their musical works on the Internet (in addition to any amounts payable for reproduction rights). There is no basis for suggesting that Parliament intended a different result for Canada.

88. Internationally, the advent of Internet transmissions gave rise to questions as to the type of copyrights they involve, i.e., the reproduction right, the communication right or a combination of both. Eventually, the World Intellectual Property Organization (WIPO) Copyright Treaty ("WCT"), through article 8, established a compromise:

> Without prejudice to the provisions of Articles 11(1)(ii), 11bis(1)(i) and (ii), 11ter(1)(ii), 14(1)(ii) and 14bis(1) of the Berne Convention, authors of literary and artistic works shall enjoy the exclusive right of authorizing any communication to the public of their works, by wire or wireless means, including the making available to the public of their works in such a way that members of the public may access these works from a place and at a time individually chosen by them.
>
> **WIPO Copyright Treaty, Geneva, 1996, article 8, RA Tab 19.**

89. It has been remarked that several signs point to the conclusion that the above article "certainly does seem to establish a right within the family of the performance right rather than the reproduction right."

> **Gendreau, "The Reproduction Right and Internet" (1998) 178 RIDA 3 at 58, RA Tab 9**

90. There is no definition of the term "to the public" within *Berne*, and the requirement of a "communication to the public" has already been interpreted in a broad and progressive manner in order to cover transmissions by satellite, a significant evolution in communication technology that was not contemplated in 1948 under article 11*bis*. Nothing in the concept of "communication to the public" excludes downloading. In every instance of an Internet transmission, be it a download or a stream, there is a transmission of content from a website to

an end-user member of the public, as intended by the content provider.

> **Ricketson, RA Tab 13, Vol. I at p. 727 and at p. 742, para. 12.48, p. 743, para. 12.51 and p. 746, para. 12.57.**

91. The 1988 amendments to paragraph 3(1)(f) resulted in the drafting of technologically neutral terms. As a result of this technologically neutral language, it has been said that the Canadian right of communication to the public by telecommunication is already in compliance with the making available right of the WCT for the purpose of protecting the rights of copyright owners in the new Internet environment, including on-demand requests by individuals for downloads:

> Despite the radical novelty of the Internet, the analysis reflected in this paper has proceeded on the basis that the Copyright Act has already developed into a flexible instrument that is capable of responding to many of the challenges of the digitally networked environment.
>
> It is important to note that the formulation of the "making available" right in the particular terms used by the treaties does not mean that it must be characterized in the same terms in any national legislation.
>
> In their 1998 reports, the expert consultants expressed the opinion that the Copyright Act's communication right, with its attendant authorization right, is sufficiently broad to include a making available right for authors and their successors. […] The departments share the consultant's view that the Act provides for an on-demand communication right. (Emphasis added)
>
> **Intellectual Property Policy Directorate: Industry Canada and Copyright Policy Branch: Canadian Heritage, "Consultation Paper on Digital Copyright Issues," June 22, 2001 ("Consultation Paper"), RA Tab 10 at 5, 18.**

92. This view was not challenged by an industry group that included Bell Mobility, one of the appellants in the Rogers Appeal (Bell Mobility is a division of Bell Canada). In their response to the Federal Government's Consultation Paper on Digital Copyright Issues, the group made the following statement:

> The existing exclusive right of communication found in the Act for music authors is sufficiently broad to include a making available right for content that is either streamed on-line or made available for download such that no amendment to the Copyright Act is needed in order to meet the obligations of the WCT. (Emphasis added)

Consultation Paper, RA Tab 10 at 6.

iii. International Jurisprudence

93. During the Board's Tariff 22 Phase 2 proceedings, the evidence presented by the Objectors to SOCAN's tariff proposals established that, in addition to reproduction rights, online music services that conduct business in foreign countries are also required to pay communication or performance rights for the download of musical works over the Internet. Those countries include the U.K., France, Germany, Italy, Australia, Japan, Argentina, Austria, Belgium, Brazil, Denmark, Finland, Hong Kong, Malaysia, the Netherlands, Norway, Singapour, the Slovak Republic, Spain, Sweden, Taiwan and Thailand.

Witness Statement of Geoffrey Michael Taylor, Exhibit Coalition-6 (Public Version), RR at 172.

94. The only current exception to the rule is the United States, where a recent decision held that the download of a musical work did not give rise to liability pursuant to the U.S. Copyright provisions relating to public performances. However, the U.S. legislation is drafted quite differently from paragraph 3(1)(f), and that decision is also currently the subject of an appeal by the U.S. performing right society, ASCAP.[5]

95. Unlike the Canadian *Act*, the U.S. Act does not provide for an exclusive right to communicate a work to the public by telecommunication. Instead, the U.S. Act provides protection for transmissions of "performances" to the public. It is this difference that is the source of the discrepancies seen between the Canadian and U.S. jurisprudence.

96. The Canadian *Act* provides protection for communications of works, while the U.S. Act only protects performances. Contrary to U.S. law, the Canadian *Act* does not require simultaneous perceptibility.

97. In any event, the U.S. law is far from settled. As mentioned above, the

[5] The matter is now before the Supreme Court of the United States: Docket No. 10-1337.

ASCAP decision is under appeal. In addition, there is conflicting case law at the lower levels of U.S. courts on this issue. In the *Cartoon Network* case, the Second Circuit held that a remote personal video recorder service did not engage the transmission right, but in *Warner Bros. Entertainment Inc., et al. v WTV Systems, Inc*., the New York District Court held that a remote DVD-player service did.

> ***Cartoon Network and Cable News Network v CSC Holdings Inc and Cablevision Systems Corp*, 536 F.3d 121 [*Cartoon Network*], AA Tab 24**
> ***Warner Bros. Entertainment Inc., et al. v WTV Systems, Inc.*, CV 11-2817-JFW (Ex), RA Tab 18.**

98. The Appellants refer to the *Cartoon Network* decision – where the U.S. Court of Appeals held that playback of a single unique copy of an audiovisual work to an individual subscriber was not a transmission to the public – for the proposition that transmissions to individuals cannot be considered transmissions "to the public."

> ***Cartoon Network,* AA Tab 24.**

99. However, the Appellants overlook the reliance of the Second Circuit on the particular wording of the U.S. "transmit clause". The Second Circuit saw each copy of a program as a separate performance that could only be transmitted to the subscriber who caused the copy to be made. Because the U.S. Act only provides protection for transmissions of <u>performances</u> of works (i.e., not the works themselves), the transmission of each unique performance to the subscriber who made it was not a transmission to the public. It was on this narrow basis, which relies on the particular wording in the U.S. Act, that the Second Circuit allowed the appeal in *Cartoon Network*.

100. The Appellants also ignore the key distinction between the facts in the *Cartoon Network* case and those in this appeal. In the *Cartoon Network* case, the Second Circuit based its decision on the fact that each transmission was made from a single, unique copy. The online music

services operated by entities such as Apple iTunes and the Appellants communicate musical works to customers from a common, master copy.

101. Cablevision, the appellant in the *Cartoon Network* case, itself conceded that, had it been operating a "traditional" video-on-demand (VOD) service, it would have fallen under the ambit of the transmit clause. Cablevision conceded that any VOD transmission – even to a single customer – is a transmission "to the public" because any member of the public can receive the offered transmission simply by paying the appropriate fee.

> **Reply Brief for Defendants-Counterclaimants-Appellants, *Cartoon Network*, 536 F.3d 121 (2d Cir. 2008) (No. 07-1480-cv(L)), 2007 WL 6101594, RA Tab 12 at 41.**

102. Services such as those operated by the Appellants and by Apple iTunes use a traditional on-demand service for transmission of full-length musical works and previews (as well as for audiobooks, television programs, music videos and movies).

103. US law, because of the unique wording of the transmit clause, is inapplicable in this case. In any event, the Appellants' reliance on the *Cartoon Network* decision is misplaced. That decision reinforces the conclusions of the Board and the FCA below that, for a traditional on-demand service, any communication – even to a single customer – is a communication to the public.

104. The Appellants also ignore other relevant foreign cases, including the line of authority supporting the proposition that the term "public" should be determined by asking whether the members of the public in question are "part of the copyright owner's public". These cases have set discernible limits as to what constitutes "public" for copyright purposes and correctly take into consideration the character of the audience for determining whether that audience constitutes the "public". Essentially, the test is whether there is a sufficient connecting factor between the audience and the copyright protected interest in issue – whether the audience is part of

the public from whom the copyright owner would expect compensation for the use of his or her works that are in issue.

> ***Jennings v Stephens*** **[1936] 1 Ch 469 (CA), RA Tab 11.**
> ***Australasian Performing Right Assn v Telstra*****, (1995) 31 IPR 289, RA Tab 1 at 323.**

iv. Interpretative Principles

105. SOCAN relies on the following principles with respect to the proper interpretation of the phrase "to the public" in paragraph 3(1)(f) of the *Act*:

(a) In the context at hand, i.e., Internet music uses, the proper interpretation of the *Act* was very specifically at issue in the Supreme Court of Canada's decision concerning Tariff 22 Phase 1, where the Court stated the following:

> This Court has recently described the Copyright Act as providing "a balance between promoting the public interest in the encouragement and dissemination of works of the arts and intellect and obtaining a just reward for the creator (or, more accurately, to prevent someone other than the creator from appropriating whatever benefits may be generated)" […] The capacity of the Internet to disseminate "works of the arts and intellect" is one of the great innovations of the information age. Its use should be facilitated rather than discouraged, but this should not be done unfairly at the expense of those who created the works of arts and intellect in the first place. [Emphasis added]

> ***Society of Composers, Authors and Music Publishers of Canada v Canadian Assn. of Internet Providers*****, 2004 SCC 45, [2004] 2 SCR 427 ("*Tariff 22 Phase 1 – SCC*"), AA Tab 21 at para. 40**

(b) As also noted by the Federal Court of Appeal in its review of Tariff 22 Phase 1, ordinary words in the *Act* are to be interpreted as understood in ordinary speech and should not be given a sense that is at odds with their most familiar meaning, particularly when "this would further erode copyright holders' right to be compensated for the use of their works by others".

> ***Society of Composers, Authors and Music Publishers of Canada v. Canadian Assn. of Internet Providers*****, 2002 FCA 166, [2002] 4 FC 3 ("*Tariff 22 Phase 1 – FCA*"), RA Tab 15 at para. 135.**

106. The arguments advanced by the Appellants are counter to these principles

of interpretation and should be rejected by this Court.

107. The FCA was correct to point out that the commercial or non-commercial nature of the communication is not determinative of whether there is an intention to communicate to the public. However, it should not be forgotten that the Appellants, as well as other online music services who have not joined in the appeal but who would benefit were the Appellants' position if accepted, earn millions (perhaps billions) of dollars through the sale of music downloads and on-demand streams.

108. It would be fundamentally unfair and contrary to the purposes of the *Act* if these revenues were earned at the expense of the creators of the works transmitted in those hundreds of millions of transactions.

109. Finally, SOCAN notes that paragraph 3(1)(f) shares similarities with the definition of the word "broadcast" under the *Broadcasting Act*:

> "broadcasting" *« radiodiffusion »*
>
> "broadcasting" means any transmission of programs, whether or not encrypted, by radio waves or other means of telecommunication for reception by the public by means of broadcasting receiving apparatus, but does not include any such transmission of programs that is made solely for performance or display in a public place;
>
> ***Broadcasting Act*, S.C. 1991, c.11, s.2(1), "broadcasting"**

110. The Canadian Radio-television and Telecommunications Commission (CRTC) has interpreted the definition of "broadcasting" to include new media uses on the Internet:

> 44. In the Commission's view, there is no explicit or implicit statutory requirement that broadcasting involve scheduled or simultaneous transmissions of programs. The Commission notes that the legislator could have, but did not, expressly exclude on-demand programs from the Act. As noted by one party, the mere ability of an end-user to select content on-demand does not by itself remove such content from the definition of broadcasting. The Commission considers that programs that are transmitted to members of the public on-demand are transmitted "for reception by the public". (Emphasis added)

Broadcasting Public Notice CRTC 1999-84/Telecom Public Notice CRTC 99-14, RA Tab 5.
See also Broadcasting Public Notice CRTC 2006-47 (Regulatory framework for mobile television broadcasting services), RA Tab 6.

111. If the Internet transmission of individual programs on-demand are for reception "by the public" for the purposes of the *Broadcasting Act*, SOCAN submits that that those same on-demand transmissions should equally be considered "to the public" for the purposes of the *Copyright Act*'s paragraph 3(1)(f).

E. Implications of the Appellants' Position

i. Loss of Copyright Protection for a Wide Array of Uses

112. The Appellants' position, if accepted, would not only erode copyright holders' rights to compensation for the use of their works but would, in fact, completely eliminate their right to such compensation for both present and future uses of their music in several important respects. In fact, all current and future copyright works that are transmitted on the Internet – other than those which resemble conventional simultaneous broadcasts – would be excluded from protection under section 3(1)(f). This could not have been the intention of Parliament.

113. As noted by the Board, such an interpretation could "render nugatory all Canadian copyright legislation in the world of telecommunications, by putting future advances in interactivity, addressability and transmission on demand outside of the realm of copyright protection".

***Tariff 24 – Board*, RA Tab 16 at para. 67.**

114. This broad restriction would apply not only to SOCAN's musical works, but to all types of works protected under the *Act*, including literary (which includes computer programs), musical, artistic, and dramatic works (including a whole panoply of film and television programs). In the case of SOCAN, there would be no legal basis for retaining or continuing to collect royalties for the Internet transmission of musical works by popular

downloading services such as iTunes, Puretracks, Napster and ArchambaultZiq under its Tariff 22.A or ringtones under Tariff 24. The same would apply to the Internet downloading of a very broad range of other types of audio and audio-visual files containing music, including Internet film and television programs presently covered by Tariffs 22.B-G.

115. In addition, current uses of music for which commercial entities already pay communication right royalties to SOCAN in other media would suddenly find themselves without any legal obligation to continue to pay those fees.

116. For example, under Tariff 17, broadcasting distribution undertakings pay royalties to SOCAN for the use of music in the specialty and pay television services they transmit to their subscribers, including videos-on-demand. Unlike conventional pay and pay-per-view programs that are transmitted at pre-determined times by the distribution undertaking, videos-on-demand need not be viewed at the moment of their initial transmission to the subscriber. They involve point-to-point communications that can be viewed at a time chosen by the subscriber and, in some cases, can be viewed any number of times over a set period of time.[6] Distribution undertakings currently pay SOCAN Tariff 17 royalties for these uses of music. If the Appellants' interpretation of the *Act* were to be accepted, there would be no legal basis for these undertakings to continue their payments. Clearly, this would be counter to the intention of Parliament.

117. The same would apply for other types of digital content, such as ebooks, like those on Amazon's Kindle, and computer programs, such as apps for mobile devices.

118. These digital works are distributed in much the same way as are the musical works on the Appellants' online music services: through billions of

[6] In fact, the same can be said of any type of television program, in that modern video recording systems also allow users to record and view programs later at any time of their choosing.

automated, point-to-point, on-demand communications between content providers and members of the public. The position advanced by the Appellants would render nugatory all Canadian copyright protection for the online distribution of these works.

119. The implications of the Appellants' position are thus far greater than Tariff 22.A online music services and, when properly considered in the full context, the frailty of the Appellants' position becomes readily apparent.

ii. Technological Neutrality

120. The Appellants, relying solely on U.S. jurisprudence, purport to offer a "technology-neutral" interpretation of "to the public" which excludes any type of point-to-point transmission of copyright protected work.

Appellants' Factum at paras. 99-121

121. SOCAN submits that the interpretation proposed by the Appellants would have exactly the opposite effect. By removing from the realm of copyright protection all works that are communicated by telecommunication through a multitude of point-to-point or non-simultaneous transactions, protection under the *Act* would depend on whether the works are communicated to the public simultaneously or not.

122. For example, under the Appellants' formulation, there would be copyright protection for the transmission via the Internet of a webcast of a hit Arcade Fire song by an Internet-based radio station, even if that webcast was only heard by a single listener. However, there would be no copyright protection for that very same musical work if it were downloaded by or streamed to 100,000 people at their demand in the hour after Arcade Fire won its (rather unexpected) Grammy Award. This is not a technologically-neutral interpretation.

123. The key, of course, is that the work must be communicated "by telecommunication" and the communicator must intend that it be received

by the public, SOCAN concedes that there are other methods of communication of musical works (e.g. the manual distribution of recorded CDs) that do not attract copyright protection.[7] However, all forms of distribution of literary, dramatic, musical or artistic works by telecommunication should be similarly protected.

124. Moreover, the principle of technological neutrality guarantees that as technology evolves, copyright protection evolves with it. Currently, digital distribution is evolving from a distributor-directed broadcast model to a consumer-directed on-demand model for a wide variety of digital works, including full-length musical works and previews, literary works, television programs and movies. The technology involved in the distribution process has changed but the end result remains the same: content distributors are communicating copyright-protected works to the public. The *Act* must not punish creators for the technological advances in the exploitation of their works.

> In interpreting the term "to the public", a realistic view of the impact and effect of technological developments needs to be taken into account and those words should be construed consistent with their plain and usual meaning...
>
> **Barry Sookman, *Sookman on Computer, Internet and Electronic Commerce Law*, looseleaf (Toronto, ON: Thompson-Carswell, 2007), RA Tab 2, §3.7(n)(ii)(B) at 3-280.20**

F. Conclusion

125. In light of the foregoing, SOCAN maintains that the decisions of the Copyright Board and the FCA, and the comments of this Court as quoted above, correctly interpreted paragraph 3(1)(f) to include the Internet transmission of musical works, whether as downloads or on-demand streams of full length musical works or previews (Tariff 22.A), or as part of video games (Tariff 22.G).

---

[7] Although there may still be copyright in the public performance of those works notwithstanding that the communication right is not engaged.

126. More specifically, a musical work is communicated by telecommunication to the public whenever the person or entity communicating the work intends that it be accessible to the public or to members of the public and when a copy of the work has been received by at least one member of the public.

PART IV – SUBMISSIONS ON COSTS

127. The Respondent requests that the appeal be dismissed and that costs should be awarded to the Respondent both in this Court and before the FCA and the Board below.

PART V – ORDER REQUESTED

128. The Respondent requests an order dismissing this appeal with costs here and throughout.

RESPECTFULLY SUBMITTED THIS 13TH DAY OF SEPTEMBER 2011.

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Of counsel for the Respondent Society of Composers, Authors and Music Publishers of Canada (SOCAN)

PART VI – TABLE OF AUTHORITIES

Authority	Paragraphs
Australasian Performing Right Assn v Telstra, (1995) 31 IPR 289 at 323	104
Barry Sookman, *Sookman on Computer, Internet and Electronic Commerce Law*, looseleaf (Toronto, ON: Thompson-Carswell, 2007), § 3.7(n)(ii)(B) at 3-280.20	124
Berne Convention for the Protection of Literary and Artistic Works, 24 July 1971, WIPO Database of Intellectual Property Legislative Texts, Article 19	86
Bishop v Stevens, [1990] 2 SCR 467	19
Broadcasting Act, S.C. 1991, c.11	109
Broadcasting Public Notice CRTC 1999-84/Telecom Public Notice CRTC 99-14	110
Broadcasting Public Notice CRTC 2006-47	110
Canada (Attorney General) v. Professional Institute of the Public Service of Canada, 2010 FC 728	45
Canadian Wireless Telecommunications Association v. Society of Composers, Authors and Music Publishers of Canada, 2008 FCA 6, [2008] 3 FCR 539	26, 51, 62, 63, 73, 74
Cartoon Network and Cable News Network v CSC Holdings Inc and Cablevision Systems Corp, 536 F.3d 121	97, 98
CCH Canadian Ltd. v Law Society of Upper Canada, 2004 SCC 13, [2004] 1 SCR 339	69, 71, 75, 76
Celgene Corp. v. Canada (Attorney General), 2011 SCC 1, [2011] 1 S.C.R. 3	44
Compo Co. v Blue Crest Music Inc, [1980] 1 SCR 178	19
Copyright Act, R.S.C., 1985, c. C-42	82
Dunsmuir v New Brunswick, 2008 SCC 9, [2008] 1 SCR 190	41, 42
Gendreau, "The Reproduction Right and Internet" (1998) 178 R.I.D.A. 3	89
Intellectual Property Policy Directorate: Industry Canada and Copyright Policy Branch: Canadian Heritage, "Consultation Paper on Digital Copyright Issues," June 22, 2001	91, 92
Jennings v Stephens [1936] 1 Ch 469 (CA)	104
Nolan v Kerry (Canada) Inc., 2009 SCC 39, [2009] 2 SCR 678	41
Reply Brief for Defendants-Counterclaimants-Appellants, *Cartoon Network*, 536 F.3d 121 (2d Cir. 2008) (No. 07-1480-cv(L)), 2007 WL 6101594	101
Ricketson & Ginsburg, *International Copyright and Neighbouring Rights - The Berne Convention and Beyond*, Oxford University Press, 2ème édition, 2006	86, 90
Shaw Cablesystems G.P. v. Society of Composers, Authors and Music Publishers of Canada, 2010 FCA 220, 323 D.L. R. (4th) 42	30, 46, 51, 52, 62, 78

SOCAN – Tariff 22 (Transmission of Musical Works to Subscribers Via a Telecommunications Service Not Covered Under Tariff Nos. 16 or 17) [Phase 1: Legal Issues], Copyright Board decision dated October 27, 1999	21, 32
Society of Composers, Authors and Music Publishers of Canada v. Canadian Assn. of Internet Providers, 2002 FCA 166, [2002] 4 FC 3	105
Society of Composers, Authors and Music Publishers of Canada v. Canadian Assn. of Internet Providers, 2004 SCC 45, [2004] 2 SCR 427	105
Statement of Royalties to be Collected by SOCAN for the Communication to the Public by Telecommunication, in Canada, of Musical or Dramatico-musical Works, Tariff No. 24 – Ringtones (2003-2005), Copyright Board Decision dated August 18, 2006	24, 57, 59, 113
Toronto Board of Education v. Ontario Secondary School Teachers' Federation, District 15, [1997] 1 SCR 487	46
Warner Bros. Entertainment Inc., et al. v WTV Systems, Inc., CV 11-2817-JFW (Ex)	97
WIPO Copyright Treaty, Geneva, 1996, article 8	88

CANADA

CONSOLIDATION

CODIFICATION

Broadcasting Act

Loi sur la radiodiffusion

S.C. 1991, c. 11

L.C. 1991, ch. 11

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S.C. 1991, c. 11 L.C. 1991, ch. 11

An Act respecting broadcasting and to amend certain Acts in relation thereto and in relation to radiocommunication

[*Assented to 1st February 1991*]

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

SHORT TITLE

Short title

1. This Act may be cited as the *Broadcasting Act*.

PART I

GENERAL

INTERPRETATION

Definitions

2. (1) In this Act,

"broadcasting" « *radiodiffusion* »

"broadcasting" means any transmission of programs, whether or not encrypted, by radio waves or other means of telecommunication for reception by the public by means of broadcasting receiving apparatus, but does not include any such transmission of programs that is made solely for performance or display in a public place;

"broadcasting receiving apparatus" « *récepteur* »

"broadcasting receiving apparatus" means a device, or combination of devices, intended for or capable of being used for the reception of broadcasting;

"broadcasting undertaking" « *entreprise de radiodiffusion* »

"broadcasting undertaking" includes a distribution undertaking, a programming undertaking and a network;

"Commission" « *Conseil* »

"Commission" means the Canadian Radio-television and Telecommunications Commission established by the *Canadian Radio-television and Telecommunications Commission Act*;

Loi concernant la radiodiffusion et modifiant certaines lois en conséquence et concernant la radiocommunication

[*Sanctionnée le 1er février 1991*]

Sa Majesté, sur l'avis et avec le consentement du Sénat et de la Chambre des communes du Canada, édicte :

TITRE ABRÉGÉ

Titre abrégé

1. *Loi sur la radiodiffusion*.

PARTIE I

DISPOSITIONS GÉNÉRALES

DÉFINITIONS

Définitions

2. (1) Les définitions qui suivent s'appliquent à la présente loi.

« Conseil » "*Commission*"

« Conseil » Le Conseil institué par la *Loi sur le Conseil de la radiodiffusion et des télécommunications canadiennes*.

« émission » "*program*"

« émission » Les sons ou les images — ou leur combinaison — destinés à informer ou divertir, à l'exception des images, muettes ou non, consistant essentiellement en des lettres ou des chiffres.

« encodage » "*encrypted*"

« encodage » Traitement électronique ou autre visant à empêcher la réception en clair.

« entreprise de distribution » "*distribution undertaking*"

« entreprise de distribution » Entreprise de réception de radiodiffusion pour retransmission, à l'aide d'ondes radioélectriques ou d'un autre moyen de télécommunication, en vue de sa réception dans plusieurs résidences permanentes ou temporaires ou locaux d'habitation, ou en vue de sa réception par une autre entreprise semblable.

"Corporation" « *Société* »
"Corporation" means the Canadian Broadcasting Corporation continued by section 36;

"distribution undertaking" « *entreprise de distribution* »
"distribution undertaking" means an undertaking for the reception of broadcasting and the retransmission thereof by radio waves or other means of telecommunication to more than one permanent or temporary residence or dwelling unit or to another such undertaking;

"encrypted" « *encodage* »
"encrypted" means treated electronically or otherwise for the purpose of preventing intelligible reception;

"licence" « *licence* »
"licence" means a licence to carry on a broadcasting undertaking issued by the Commission under this Act;

"Minister" « *ministre* »
"Minister" means such member of the Queen's Privy Council for Canada as is designated by the Governor in Council as the Minister for the purposes of this Act;

"network" « *réseau* »
"network" includes any operation where control over all or any part of the programs or program schedules of one or more broadcasting undertakings is delegated to another undertaking or person;

"program" « *émission* »
"program" means sounds or visual images, or a combination of sounds and visual images, that are intended to inform, enlighten or entertain, but does not include visual images, whether or not combined with sounds, that consist predominantly of alphanumeric text;

"programming undertaking" « *entreprise de programmation* »
"programming undertaking" means an undertaking for the transmission of programs, either directly by radio waves or other means of telecommunication or indirectly through a distribution undertaking, for reception by the public by means of broadcasting receiving apparatus;

"radio waves" « *ondes radioélectriques* »
"radio waves" means electromagnetic waves of frequencies lower than 3 000 GHz that are propagated in space without artificial guide;

"temporary network operation" « *exploitation temporaire d'un réseau* »
"temporary network operation" means a network operation with respect to a particular program or a series of programs that extends over a period not exceeding sixty days.

Meaning of "other means of telecommunication"
(2) For the purposes of this Act, "other means of telecommunication" means any wire, cable, radio, optical or other electromagnetic system, or any similar technical system.

« entreprise de programmation » "*programming undertaking*"
« entreprise de programmation » Entreprise de transmission d'émissions soit directement à l'aide d'ondes radioélectriques ou d'un autre moyen de télécommunication, soit par l'intermédiaire d'une entreprise de distribution, en vue de leur réception par le public à l'aide d'un récepteur.

« entreprise de radiodiffusion » "*broadcasting undertaking*"
« entreprise de radiodiffusion » S'entend notamment d'une entreprise de distribution ou de programmation, ou d'un réseau.

« exploitation temporaire d'un réseau » "*temporary network operation*"
« exploitation temporaire d'un réseau » Exploitation d'un réseau en vue d'une certaine émission ou série d'émissions couvrant une période maximale de soixante jours.

« licence » "*licence*"
« licence » Licence d'exploitation d'une entreprise de radiodiffusion, délivrée par le Conseil aux termes de la présente loi.

« ministre » "*Minister*"
« ministre » Le membre du Conseil privé de la Reine pour le Canada chargé par le gouverneur en conseil de l'application de la présente loi.

« ondes radioélectriques » "*radio waves*"
« ondes radioélectriques » Ondes électromagnétiques de fréquences inférieures à 3 000 GHz transmises dans l'espace sans guide artificiel.

« radiodiffusion » "*broadcasting*"
« radiodiffusion » Transmission, à l'aide d'ondes radioélectriques ou de tout autre moyen de télécommunication, d'émissions encodées ou non et destinées à être reçues par le public à l'aide d'un récepteur, à l'exception de celle qui est destinée à la présentation dans un lieu public seulement.

« récepteur » "*broadcasting receiving apparatus*"
« récepteur » Appareil ou ensemble d'appareils conçu pour la réception de radiodiffusion ou pouvant servir à cette fin.

« réseau » "*network*"
« réseau » Est assimilée à un réseau toute exploitation où le contrôle de tout ou partie des émissions ou de la programmation d'une ou plusieurs entreprises de radiodiffusion est délégué à une autre entreprise ou personne.

« Société » "*Corporation*"
« Société » La Société Radio-Canada, visée à l'article 36.

Moyen de télécommunication
(2) Pour l'application de la présente loi, sont inclus dans les moyens de télécommunication les systèmes électromagnétiques — notamment les fils, les câbles et les systèmes radio ou op-

Interpretation

(3) This Act shall be construed and applied in a manner that is consistent with the freedom of expression and journalistic, creative and programming independence enjoyed by broadcasting undertakings.

1991, c. 11, s. 2; 1993, c. 38, s. 81; 1995, c. 11, s. 43.

tiques — , ainsi que les autres procédés techniques semblables.

Interprétation

(3) L'interprétation et l'application de la présente loi doivent se faire de manière compatible avec la liberté d'expression et l'indépendance, en matière de journalisme, de création et de programmation, dont jouissent les entreprises de radiodiffusion.

1991, ch. 11, art. 2; 1993, ch. 38, art. 81; 1995, ch. 11, art. 43.

Broadcasting Policy for Canada

Declaration

3. (1) It is hereby declared as the broadcasting policy for Canada that

(*a*) the Canadian broadcasting system shall be effectively owned and controlled by Canadians;

(*b*) the Canadian broadcasting system, operating primarily in the English and French languages and comprising public, private and community elements, makes use of radio frequencies that are public property and provides, through its programming, a public service essential to the maintenance and enhancement of national identity and cultural sovereignty;

(*c*) English and French language broadcasting, while sharing common aspects, operate under different conditions and may have different requirements;

(*d*) the Canadian broadcasting system should

(i) serve to safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada,

(ii) encourage the development of Canadian expression by providing a wide range of programming that reflects Canadian attitudes, opinions, ideas, values and artistic creativity, by displaying Canadian talent in entertainment programming and by offering information and analysis concerning Canada and other countries from a Canadian point of view,

(iii) through its programming and the employment opportunities arising out of its operations, serve the needs and interests, and reflect the circumstances and aspirations, of Canadian men, women and chil-

Politique canadienne de radiodiffusion

Politique canadienne de radiodiffusion

3. (1) Il est déclaré que, dans le cadre de la politique canadienne de radiodiffusion :

a) le système canadien de radiodiffusion doit être, effectivement, la propriété des Canadiens et sous leur contrôle;

b) le système canadien de radiodiffusion, composé d'éléments publics, privés et communautaires, utilise des fréquences qui sont du domaine public et offre, par sa programmation essentiellement en français et en anglais, un service public essentiel pour le maintien et la valorisation de l'identité nationale et de la souveraineté culturelle;

c) les radiodiffusions de langues française et anglaise, malgré certains points communs, diffèrent quant à leurs conditions d'exploitation et, éventuellement, quant à leurs besoins;

d) le système canadien de radiodiffusion devrait :

(i) servir à sauvegarder, enrichir et renforcer la structure culturelle, politique, sociale et économique du Canada,

(ii) favoriser l'épanouissement de l'expression canadienne en proposant une très large programmation qui traduise des attitudes, des opinions, des idées, des valeurs et une créativité artistique canadiennes, qui mette en valeur des divertissements faisant appel à des artistes canadiens et qui fournisse de l'information et de l'analyse concernant le Canada et l'étranger considérés d'un point de vue canadien,

(iii) par sa programmation et par les chances que son fonctionnement offre en matière d'emploi, répondre aux besoins et aux intérêts, et refléter la condition et les

CANADA

CONSOLIDATION

CODIFICATION

Copyright Act

Loi sur le droit d’auteur

CHAPTER C-42

CHAPITRE C-42

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CHAPTER C-42

CHAPITRE C-42

An Act respecting copyright

Loi concernant le droit d'auteur

SHORT TITLE

Short title

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

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

TITRE ABRÉGÉ

Titre abrégé

1. *Loi sur le droit d'auteur*.

S.R., ch. C-30, art. 1.

INTERPRETATION

Definitions

2. In this Act,

"architectural work" « *œuvre architecturale* »

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

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

"artistic work" « *œuvre artistique* »

"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" « *pays partie à la Convention de Berne* »

"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" « *Commission* »

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

"book" « *livre* »

"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

DÉFINITIONS ET DISPOSITIONS INTERPRÉTATIVES

Définitions

2. Les définitions qui suivent s'appliquent à la présente loi.

« accessible sur le marché » "*commercially available*"

« accessible sur le marché » S'entend, en ce qui concerne une œuvre ou de tout autre objet du droit d'auteur

a) qu'il est possible de se procurer, au Canada, à un prix et dans un délai raisonnables, et de trouver moyennant des efforts raisonnables;

b) pour lequel il est possible d'obtenir, à un prix et dans un délai raisonnables et moyennant des efforts raisonnables, une licence octroyée par une société de gestion pour la reproduction, l'exécution en public ou la communication au public par télécommunication, selon le cas.

« appareil récepteur » [Abrogée, 1993, ch. 44, art. 79]

« artiste interprète » [Abrogée, 1997, ch. 24, art. 1]

« artiste-interprète » *French version only*

« artiste-interprète » Tout artiste-interprète ou exécutant.

« bibliothèque, musée ou service d'archives » "*library, archive or museum*"

« bibliothèque, musée ou service d'archives » S'entend :

a) d'un établissement doté ou non de la personnalité morale qui :

(i) d'une part, n'est pas constitué ou administré pour réaliser des profits, ni ne fait

(*d*) an instruction or repair manual that accompanies a product or that is supplied as an accessory to a service;

"broadcaster" « *radiodiffuseur* »

"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" « *œuvre chorégraphique* »

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

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

"cinematographic work" « *œuvre cinématographique* »

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

"collective society" « *société de gestion* »

"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" « *recueil* »

"collective work" means

(*a*) an encyclopaedia, dictionary, year book or similar work,

(*b*) a newspaper, review, magazine or similar periodical, and

partie d'un organisme constitué ou administré pour réaliser des profits, ni n'est administré ou contrôlé directement ou indirectement par un tel organisme,

(ii) d'autre part, rassemble et gère des collections de documents ou d'objets qui sont accessibles au public ou aux chercheurs;

b) de tout autre établissement à but non lucratif visé par règlement.

« Commission » "*Board*"

« Commission » La Commission du droit d'auteur constituée au titre du paragraphe 66(1).

« compilation » "*compilation*"

« compilation » Les œuvres résultant du choix ou de l'arrangement de tout ou partie d'œuvres littéraires, dramatiques, musicales ou artistiques ou de données.

« conférence » "*lecture*"

« conférence » Sont assimilés à une conférence les allocutions, discours et sermons.

« contrefaçon » "*infringing*"

« contrefaçon »

a) À l'égard d'une œuvre sur laquelle existe un droit d'auteur, toute reproduction, y compris l'imitation déguisée, qui a été faite contrairement à la présente loi ou qui a fait l'objet d'un acte contraire à la présente loi;

b) à l'égard d'une prestation sur laquelle existe un droit d'auteur, toute fixation ou reproduction de celle-ci qui a été faite contrairement à la présente loi ou qui a fait l'objet d'un acte contraire à la présente loi;

c) à l'égard d'un enregistrement sonore sur lequel existe un droit d'auteur, toute reproduction de celle-ci qui a été faite contrairement à la présente loi ou qui a fait l'objet d'un acte contraire à la présente loi;

d) à l'égard d'un signal de communication sur lequel existe un droit d'auteur, toute fixation ou reproduction de la fixation qui a été faite contrairement à la présente loi ou qui a fait l'objet d'un acte contraire à la présente loi.

La présente définition exclut la reproduction — autre que celle visée par l'alinéa 27(2)*e*) et l'article 27.1 — faite avec le consentement du titulaire du droit d'auteur dans le pays de production.

« débit » [Abrogée, 1997, ch. 24, art. 1]

(*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" « *accessible sur le marché* »

"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" « *signal de communication* »

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

"compilation" « *compilation* »

"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" « *programme d'ordinateur* »

"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" « *droit d'auteur* »

"copyright" means the rights described in

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

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

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

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

"country" « *pays* »

"country" includes any territory;

"defendant" *Version anglaise seulement*

"defendant" includes a respondent to an application;

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

"dramatic work" « *œuvre dramatique* »

"dramatic work" includes

(*a*) any piece for recitation, choreographic work or mime, the scenic arrangement or

« déficience perceptuelle » "*perceptual disability*"

« déficience perceptuelle » Déficience qui empêche la lecture ou l'écoute d'une œuvre littéraire, dramatique, musicale ou artistique sur le support original ou la rend difficile, en raison notamment :

a) de la privation en tout ou en grande partie du sens de l'ouïe ou de la vue ou de l'incapacité d'orienter le regard;

b) de l'incapacité de tenir ou de manipuler un livre;

c) d'une insuffisance relative à la compréhension.

« distributeur exclusif » "*exclusive distributor*"

« distributeur exclusif » S'entend, en ce qui concerne un livre, de toute personne qui remplit les conditions suivantes :

a) le titulaire du droit d'auteur sur le livre au Canada ou le titulaire d'une licence exclusive au Canada s'y rapportant lui a accordé, avant ou après l'entrée en vigueur de la présente définition, par écrit, la qualité d'unique distributeur pour tout ou partie du Canada ou d'unique distributeur pour un secteur du marché pour tout ou partie du Canada;

b) elle répond aux critères fixés par règlement pris en vertu de l'article 2.6.

Il est entendu qu'une personne ne peut être distributeur exclusif au sens de la présente définition si aucun règlement n'est pris en vertu de l'article 2.6.

« droit d'auteur » "*copyright*"

« droit d'auteur » S'entend du droit visé :

a) dans le cas d'une œuvre, à l'article 3;

b) dans le cas d'une prestation, aux articles 15 et 26;

c) dans le cas d'un enregistrement sonore, à l'article 18;

d) dans le cas d'un signal de communication, à l'article 21.

« droits moraux » "*moral rights*"

« droits moraux » Les droits visés au paragraphe 14.1(1).

« enregistrement sonore » "*sound recording*"

« enregistrement sonore » Enregistrement constitué de sons provenant ou non de l'exécution d'une œuvre et fixés sur un support matériel quelconque; est exclue de la présente définition la bande sonore d'une œuvre cinématographique lorsqu'elle accompagne celle-ci.

acting form of which is fixed in writing or otherwise,

(*b*) any cinematographic work, and

(*c*) any compilation of dramatic works;

"educational institution" « *établissement d'enseignement* »

"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 preschool, 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" « *gravure* »

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

"every original literary, dramatic, musical and artistic work" « *toute œuvre littéraire, dramatique, musicale ou artistique originale* »

"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" « *distributeur exclusif* »

"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,

« établissement d'enseignement » "*educational institution*"

« établissement d'enseignement » :

a) Établissement sans but lucratif agréé aux termes des lois fédérales ou provinciales pour dispenser de l'enseignement aux niveaux préscolaire, élémentaire, secondaire ou postsecondaire, ou reconnu comme tel;

b) établissement sans but lucratif placé sous l'autorité d'un conseil scolaire régi par une loi provinciale et qui dispense des cours d'éducation ou de formation permanente, technique ou professionnelle;

c) ministère ou organisme, quel que soit l'ordre de gouvernement, ou entité sans but lucratif qui exerce une autorité sur l'enseignement et la formation visés aux alinéas *a*) et *b*);

d) tout autre établissement sans but lucratif visé par règlement.

« gravure » "*engravings*"

« gravure » Sont assimilées à une gravure les gravures à l'eau-forte, les lithographies, les gravures sur bois, les estampes et autres œuvres similaires, à l'exclusion des photographies.

« livre » "*book*"

« livre » Tout volume ou toute partie ou division d'un volume présentés sous forme imprimée, à l'exclusion :

a) des brochures;

b) des journaux, revues, magazines et autres périodiques;

c) des feuilles de musique, cartes, graphiques ou plans, s'ils sont publiés séparément;

d) des manuels d'instruction ou d'entretien qui accompagnent un produit ou sont fournis avec des services.

« locaux » "*premises*"

« locaux » S'il s'agit d'un établissement d'enseignement, lieux où celui-ci dispense l'enseignement ou la formation visés à la définition de ce terme ou exerce son autorité sur eux.

« membre de l'OMC » "*WTO Member*"

« membre de l'OMC » Membre de l'Organisation mondiale du commerce au sens du paragraphe 2(1) de la *Loi de mise en œuvre de l'Accord sur l'Organisation mondiale du commerce*.

« ministre » "*Minister*"

« ministre » Sauf à l'article 44.1, le ministre de l'Industrie.

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

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

"infringing" « *contrefaçon* »

"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" « *conférence* »

"lecture" includes address, speech and sermon;

"legal representatives" « *représentants légaux* »

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

"library, archive or museum" « *bibliothèque, musée ou service d'archives* »

"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;

« œuvre » "*work*"

« œuvre » Est assimilé à une œuvre le titre de l'œuvre lorsque celui-ci est original et distinctif.

« œuvre architecturale » "*architectural work*"

« œuvre architecturale » Tout bâtiment ou édifice ou tout modèle ou maquette de bâtiment ou d'édifice.

« œuvre artistique » "*artistic work*"

« œuvre artistique » Sont compris parmi les œuvres artistiques les peintures, dessins, sculptures, œuvres architecturales, gravures ou photographies, les œuvres artistiques dues à des artisans ainsi que les graphiques, cartes, plans et compilations d'œuvres artistiques.

« œuvre chorégraphique » "*choreographic work*"

« œuvre chorégraphique » S'entend de toute chorégraphie, que l'œuvre ait ou non un sujet.

« œuvre cinématographique » "*cinematographic work*"

« œuvre cinématographique » Y est assimilée toute œuvre exprimée par un procédé analogue à la cinématographie, qu'elle soit accompagnée ou non d'une bande sonore.

« œuvre créée en collaboration » "*work of joint authorship*"

« œuvre créée en collaboration » Œuvre exécutée par la collaboration de deux ou plusieurs auteurs, et dans laquelle la part créée par l'un n'est pas distincte de celle créée par l'autre ou les autres.

« œuvre d'art architecturale » [Abrogée, 1993, ch. 44, art. 53]

« œuvre de sculpture » [Abrogée, 1997, ch. 24, art. 1]

« œuvre dramatique » "*dramatic work*"

« œuvre dramatique » Y sont assimilées les pièces pouvant être récitées, les œuvres chorégraphiques ou les pantomimes dont l'arrangement scénique ou la mise en scène est fixé par écrit ou autrement, les œuvres cinématographiques et les compilations d'œuvres dramatiques.

« œuvre littéraire » "*literary work*"

« œuvre littéraire » Y sont assimilés les tableaux, les programmes d'ordinateur et les compilations d'œuvres littéraires.

« œuvre musicale » "*musical work*"

« œuvre musicale » Toute œuvre ou toute composition musicale — avec ou sans paroles — et toute compilation de celles-ci.

« pays » "*country*"

« pays » S'entend notamment d'un territoire.

« pays partie à la Convention de Berne » "*Berne Convention country*"

« pays partie à la Convention de Berne » Pays partie à la Convention pour la protection des œuvres littéraires et artistiques, conclue à Berne le 9 septembre 1886, ou à l'une de ses versions

"literary work" « *œuvre littéraire* »
"literary work" includes tables, computer programs, and compilations of literary works;

"maker" « *producteur* »
"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" « *ministre* »
"Minister", except in section 44.1, means the Minister of Industry;

"moral rights" « *droits moraux* »
"moral rights" means the rights described in subsection 14.1(1);

"musical work" « *œuvre musicale* »
"musical work" means any work of music or musical composition, with or without words, and includes any compilation thereof;

"perceptual disability" « *déficience perceptuelle* »
"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" « *représentation* » *ou* « *exécution* »
"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" « *prestation* »
"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,

révisées, notamment celle de l'Acte de Paris de 1971.

« pays partie à la Convention de Rome »
«pays partie à la Convention de Rome» Pays partie à la Convention internationale sur la protection des artistes interprètes ou exécutants, des producteurs d'enregistrements sonores et des organismes de radiodiffusion, conclue à Rome le 26 octobre 1961.

« pays partie à la Convention universelle »
«pays partie à la Convention universelle» Pays partie à la Convention universelle sur le droit d'auteur, adoptée à Genève (Suisse) le 6 septembre 1952, ou dans sa version révisée à Paris (France) le 24 juillet 1971.

« pays signataire »
«pays signataire» Pays partie à la Convention de Berne ou à la Convention universelle ou membre de l'OMC.

« photographie »
«photographie» Y sont assimilées les photolithographies et toute œuvre exprimée par un procédé analogue à la photographie.

« planche »
«planche» Sont assimilés à une planche toute planche stéréotypée ou autre, pierre, matrice, transposition et épreuve négative, et tout moule ou cliché, destinés à l'impression ou à la reproduction d'exemplaires d'une œuvre, ainsi que toute matrice ou autre pièce destinées à la fabrication ou à la reproduction d'enregistrements sonores, de prestations ou de signaux de communication, selon le cas.

« prestation »
«prestation» Selon le cas, que l'œuvre soit encore protégée ou non et qu'elle soit déjà fixée sous une forme matérielle quelconque ou non :

a) l'exécution ou la représentation d'une œuvre artistique, dramatique ou musicale par un artiste-interprète;

b) la récitation ou la lecture d'une œuvre littéraire par celui-ci;

c) une improvisation dramatique, musicale ou littéraire par celui-ci, inspirée ou non d'une œuvre préexistante.

« producteur »
«producteur» La personne qui effectue les opérations nécessaires à la confection d'une œuvre cinématographique, ou à la première fixation de sons dans le cas d'un enregistrement sonore.

« programme d'ordinateur »
«programme d'ordinateur» Ensemble d'instructions ou d'énoncés destiné, quelle que soit la façon dont ils sont exprimés, fixés, incorporés ou emmagasinés, à être utilisé directement

(*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" « *photographie* »

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

"plaintiff" *Version anglaise seulement*

"plaintiff" includes an applicant;

"plate" « *planche* »

"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" « *locaux* »

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

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

"Rome Convention country" « *pays partie à la Convention de Rome* »

"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" « *sculpture* »

"sculpture" includes a cast or model;

"sound recording" « *enregistrement sonore* »

"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" « *télécommunication* »

"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" « *pays signataire* »

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

ou indirectement dans un ordinateur en vue d'un résultat particulier.

« radiodiffuseur » "*broadcaster*"

« radiodiffuseur » Organisme qui, dans le cadre de l'exploitation d'une entreprise de radiodiffusion, émet un signal de communication en conformité avec les lois du pays où il exploite cette entreprise; est exclu de la présente définition l'organisme dont l'activité principale, liée au signal de communication, est la retransmission de celui-ci.

« recueil » "*collective work*"

« recueil »

a) Les encyclopédies, dictionnaires, annuaires ou œuvres analogues;

b) les journaux, revues, magazines ou autres publications périodiques;

c) toute œuvre composée, en parties distinctes, par différents auteurs ou dans laquelle sont incorporées des œuvres ou parties d'œuvres d'auteurs différents.

« représentants légaux » "*legal representatives*"

« représentants légaux » Sont compris parmi les représentants légaux les héritiers, exécuteurs testamentaires, administrateurs, successeurs et ayants droit, ou les agents ou fondés de pouvoir régulièrement constitués par mandat écrit.

« représentation », « exécution » ou « audition » [Abrogée, 1997, ch. 24, art. 1]

« représentation » ou « exécution » "*performance*"

« représentation » ou « exécution » Toute exécution sonore ou toute représentation visuelle d'une œuvre, d'une prestation, d'un enregistrement sonore ou d'un signal de communication, selon le cas, y compris l'exécution ou la représentation à l'aide d'un instrument mécanique, d'un appareil récepteur de radio ou d'un appareil récepteur de télévision.

« royaumes et territoires de Sa Majesté » [Abrogée, 1997, ch. 24, art. 1]

« sculpture » "*sculpture*"

« sculpture » Y sont assimilés les moules et les modèles.

« signal de communication » "*communication signal*"

« signal de communication » Ondes radioélectriques diffusées dans l'espace sans guide artificiel, aux fins de réception par le public.

« société de gestion » "*collective society*"

« société de gestion » Association, société ou personne morale autorisée — notamment par voie de cession, licence ou mandat — à se livrer à la gestion collective du droit d'auteur ou du droit à rémunération conféré par les articles

"UCC country" « *pays partie à la Convention universelle* »

"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" « *œuvre* »

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

"work of joint authorship" « *œuvre créée en collaboration* »

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

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

"WTO Member" « *membre de l'OMC* »

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

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

19 ou 81 pour l'exercice des activités suivantes :

a) l'administration d'un système d'octroi de licences portant sur un répertoire d'œuvres, de prestations, d'enregistrements sonores ou de signaux de communication de plusieurs auteurs, artistes-interprètes, producteurs d'enregistrements sonores ou radiodiffuseurs et en vertu duquel elle établit les catégories d'utilisation qu'elle autorise au titre de la présente loi ainsi que les redevances et modalités afférentes;

b) la perception et la répartition des redevances payables aux termes de la présente loi.

« télécommunication » "*telecommunication*"

« télécommunication » Vise toute transmission de signes, signaux, écrits, images, sons ou renseignements de toute nature par fil, radio, procédé visuel ou optique, ou autre système électromagnétique.

« toute œuvre littéraire, dramatique, musicale ou artistique originale » "*every original literary, dramatic, musical and artistic work*"

« toute œuvre littéraire, dramatique, musicale ou artistique originale » S'entend de toute production originale du domaine littéraire, scientifique ou artistique quels qu'en soient le mode ou la forme d'expression, tels les compilations, livres, brochures et autres écrits, les conférences, les œuvres dramatiques ou dramatico-musicales, les œuvres musicales, les traductions, les illustrations, les croquis et les ouvrages plastiques relatifs à la géographie, à la topographie, à l'architecture ou aux sciences.

L.R. (1985), ch. C-42, art. 2; L.R. (1985), ch. 10 (4e suppl.), art. 1; 1988, ch. 65, art. 61; 1992, ch. 1, art. 145(F); 1993, ch. 23, art. 1, ch. 44, art. 53 et 79; 1994, ch. 47, art. 56; 1995, ch. 1, art. 62; 1997, ch. 24, art. 1.

Compilations

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

Compilations

2.1 (1) La compilation d'œuvres de catégories diverses est réputée constituer une compilation de la catégorie représentant la partie la plus importante.

Idem

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

1993, c. 44, s. 54.

Idem

(2) L'incorporation d'une œuvre dans une compilation ne modifie pas la protection conférée par la présente loi à l'œuvre au titre du droit d'auteur ou des droits moraux.

1993, ch. 44, art. 54.

Definition of "maker"

2.11 For greater certainty, the arrangements referred to in paragraph (*b*) of the definition "maker" in section 2, as that term is used in section 19 and in the definition "eligible mak-

Définition de « producteur »

2.11 Il est entendu que pour l'application de l'article 19 et de la définition de « producteur admissible » à l'article 79, les opérations nécessaires visées à la définition de « producteur » à

AMENDMENTS NOT IN FORCE

— 2010, c. 12, s. 1710

2001, c. 34, subpar. 32(1)(*a*)(ii)(E)

1710. Subsection 20(1) of the *Broadcasting Act* is replaced by the following:

Panels of Commission

20. (1) The Chairperson of the Commission may establish panels, each consisting of not fewer than three members of the Commission, to deal with, hear and determine any matter on behalf of the Commission.

MODIFICATIONS NON EN VIGUEUR

— 2010, ch. 12, art. 1710

1710. Le paragraphe 20(1) de la *Loi sur la radiodiffusion* est remplacé par ce qui suit :

2001, ch. 34, sous-al. 32(1)*a*)(ii)(A)

Comités

20. (1) Le président du Conseil peut former des comités — composés d'au moins trois conseillers — chargés de connaître et décider, au nom du Conseil, des affaires dont celui-ci est saisi.

PART VII – STATUTORY PROVISIONS

1. *Broadcasting Act*, SC 1991, c.11, s.2(1), “broadcasting”
2. *Copyright Act*, RSC 1985, c. 42, s. 2, “telecommunication”