

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

BETWEEN:

**THE PROVINCE OF ALBERTA AS REPRESENTED BY THE MINISTER OF  
EDUCATION AND OTHERS\***

Appellants  
(Applicants on Judicial Review)

- and -

**THE CANADIAN COPYRIGHT LICENSING AGENCY  
Operating as "ACCESS COPYRIGHT"**

Respondent  
(Respondents on Judicial Review)

- and -

**THE CENTRE FOR INNOVATION LAW AND POLICY ("CILP")  
FACULTY OF LAW, UNIVERSITY OF TORONTO  
AND OTHERS\*\***

Interveners

---

**FACTUM OF THE INTERVENER  
THE CENTRE FOR INNOVATION LAW AND POLICY ("CILP")  
Pursuant to Rule 42 of the Rules of the Supreme Court of Canada**

---

Howard P. Knopf  
Macera & Jarzyna, LLP  
1200 - 427 Laurier Ave. W.,  
Ottawa, Canada, K1R 7Y2  
Phone: 613-238-8173  
Fax: 613-235-2508  
Email: howard.knopf@macerajarzyna.com

Ariel Katz  
Faculty of Law, University of Toronto  
78 Queen's Park, RM 412  
Toronto, Ontario  
Canada, M5S 2C5  
Tel.: 416-978-8892  
Email: ariel.katz@utoronto.ca

Counsel for the Intervener CILP

\* The Province of British Columbia as represented by the Minister of Education; The Province of Manitoba as represented by the Minister of Education, Citizenship and Youth; The Province of New Brunswick as represented by the Minister of Education; The Province of Newfoundland and Labrador as represented by the Minister of Education; The Northwest Territories as represented by the Minister of Education, Culture and Employment; The Province of Nova Scotia as represented by the Minister of Education; The Territory of Nunavut as represented by the Minister of Education; The Province of Ontario as represented by the Minister of Education; The Province of Prince Edward Island as represented by the Minister of Education; The Province of Saskatchewan, as represented by the Minister of Education The Yukon Territory as represented by the Minister of Education; The Airy and Sabine District School Area Board; The Algoma District School Board; The Algonquin and Lakeshore Catholic District School Board; The Asquith-Garvey District School Area Board; The Atikokan Roman Catholic Separate School Board; The Avon Maitland District School Board; The Bloorview MacMillan School Authority; The Bluewater District School Board; The Brant Haldimand Norfolk Catholic District School Board; The Bruce-Grey Catholic District School Board; The Campbell Children's School Authority; The Caramat District School Area Board; The Catholic District School Board of Eastern Ontario; The Collins District School Area Board; The Connell and Ponsford District School Area Board; The Conseil des écoles catholiques du Centre-Est de l'Ontario; The Conseil des écoles publiques de l'Est de l'Ontario; The Conseil des écoles séparées catholiques de Dubreuilville; The Conseil des écoles séparées catholiques de Foleyet; The Conseil scolaire de district catholiques Centre-Sud; The Conseil scolaire de district catholique de l'Estontarien; The Conseil scolaire de district catholique des Aurores boréales; The Conseil scolaire de district catholique des Grandes Rivières; The Conseil scolaire de district catholique du Nouvel-Ontario; The Conseil scolaire de district catholique Franco-Nord; The Conseil scolaire de district des écoles catholiques de Sud-Ouest; The Conseil scolaire de district du Centre Sud-Ouest; The Conseil scolaire de district du Grand Nord de l'Ontario; The Conseil scolaire de district du Nord-Est de l'Ontario; The District School Board of Niagara; The District School Board Ontario North East; The Dufferin-Peel Catholic District School Board; The Durham Catholic District School Board; The Durham District School Board; The Foleyet District School Area Board; The Gogama District School Area Board; The Gogama Roman Catholic Separate School Board; The Grand Erie District School Board; The Greater Essex County District School Board; The Halton Catholic District School Board; The Halton District School Board; The Hamilton-Wentworth Catholic District School Board; The Hamilton-Wentworth District School Board; The Hastings & Prince Edward District School Board; The Hornepayne Roman Catholic Separate School Board; The Huron Perth Catholic District School Board; The Huron-Superior Catholic District School Board; The James Bay Lowlands Secondary School Board; The Kawartha Pine Ridge District School Board; The Keewatin-Patricia District School Board; The Kenora Catholic District School Board; The Lakehead District School Board; The Lambton Kent District School Board; The Limestone District School Board; The Mississauga District School Area Board; The Moose Factory Island District School Area Board; The Moosonee District School Area Board; The Moosonee Roman Catholic Separate School Board; The Murchison and Lyell District School Area Board; The Nakina District School Area Board; The Near North District School Board; The Niagara Catholic District School Board; The Niagara Peninsula Children's Centre School Authority; The Nipissing-Parry Sound Catholic District School Board; The Northeastern Catholic District School Board; The Northern District

School Area Board; The Northwest Catholic District School Board; The Ottawa Children's Treatment Centre School Authority; The Ottawa Carleton Catholic District School Board; The Ottawa~Carleton District School Board; The Parry Sound Roman Catholic Separate School Board; The Peel District School Board; The Peterborough Victoria Northumberland and Clarington Catholic District School Board; The Rainbow District School Board; The Rainy River District School Board; The Red Lake Area Combined Roman Catholic Separate School Board; The Renfrew County Catholic District School Board; The Renfrew County District School Board; The Simcoe County District School Board; The Simcoe Muskoka Catholic District School Board; The St Clair Catholic District School Board; The Sudbury Catholic District School Board; The Superior North Catholic District School Board; The Superior-Greystone District School Board; The Thames Valley District School Board; The Thunder Bay Catholic District School Board; The Toronto Catholic District School Board; The Toronto District School Board; The Trillium Lakelands District School Board; The Upper Canada District School Board; The Upper Grand District School Board; The Upsala District School Area Board; The Waterloo Catholic District School Board; The Waterloo Region District School Board; The Wellington Catholic District School Board; The Windsor~Essex Catholic District School Board; The York Catholic District School Board; and The York Region District School Board.

**Original To:**

The Registrar  
Supreme Court of Canada  
Wellington St.,  
Ottawa, Canada

**And to:**

Claude Brunet  
Ogilvy, Renault S.E.N.C.R.L., s.r.l.  
Suite 2500  
1 Place Ville Marie  
Montréal, Quebec H3B 1R1  
Telephone: 514-847-4747  
Fax: 514-286-5474

And

Neil Finkelstein  
McCarthy Tetrault  
Box 48, Suite 5300  
Toronto Dominion Bank Tower  
Toronto ON M5K 1E6  
Solicitors for the Respondent  
c/o

Sally Gomery  
Norton Rose OR LLP  
1500-45 O'Connor Street  
Ottawa, Ontario  
K1P 1A4

Telephone: (613) 780-8604  
FAX: (613) 230-5459  
E-mail: sally.gomery@nortonrose.com

J. Aidan O'Neill,  
Fasken, Martineau LLP  
Suite 1300  
55 Metcalfe Street  
Ottawa, ON K1P 6L5  
613-236-3882  
613-230-6423 (fax)  
Solicitors for the Applicants,  
and on behalf of Ms. Wanda Noel, co-counsel for the Appellants

**\*\* And Copies To Other Interveners:**

**ASSOCIATION OF UNIVERSITIES AND COLLEGES OF CANADA (AUCC) and  
ASSOCIATION OF CANADIAN COMMUNITY COLLEGES (ACCC)**

c/o

Marcus Klee  
Glen A. Bloom  
Patricia Wilson Solicitors for the Moving Parties, AUCC and ACCC  
Osler Hoskin & Harcourt LLP  
340 Albert Street, Suite 1900 Ottawa, ON K1R 7Y6  
Tel: (613) 235-7234  
Fax: (613) 235-2867 Email: mklee@osler.com  
Tel: (613) 787-1009 Fax: (613) 235-2867  
Email: pwilson@osler.com

**THE CANADIAN ASSOCIATION OF UNIVERSITY TEACHERS AND THE  
CANADIAN FEDERATION OF STUDENTS**

Torys LLP  
79 Wellington St. W., Suite 3000 Box 270, TD Centre  
Toronto, Ontario  
M5K 1 N2 Canada  
Fax: 416.865.7380  
Wendy Matheson Tel: 416.865.8133  
Email: wmatheson@torys.com  
Andrew Bernstein Tel: 416.865.7678  
Email: abernstein@torys.com

c/o

Osler Hoskin & Harcourt LLP Suite 1900  
340 Albert Street Ottawa ON K1R 7Y6 Fax: 613.235.2867  
Patricia Wilson 613.787.1009  
Email: pwilson@osler.com

Agent for the Moving Party, Canadian Association of University Teachers and Canadian Federation of Students

**CANADIAN AUTHORS ASSOCIATION et al,**

Hebb & Sheffer (in association) Barristers & Solicitors

1535A Queen Street West Toronto, ON M6R 1A7

Marian Hebb LSUC#: 17788D Warren Sheffer LSUC#: 46093F Tel: 416-556-8187

Fax: 866-400-3215

Stockwoods LLP

77 King Street West, Suite 4130 Toronto, ON M5K 1H1

Brendan van Niejenhuis LSUC#: 46752J Tel: 416-593-7200

Fax: 416-593-9345

Solicitors for the Applicants

Michael Sobkin Barrister & Solicitor

90 Boulevard de Lucerne Gatineau, Quebec

J9H 7K8

Tel: 819-778-7794 Fax: 819-778-1740

E-mail: msobkin@sympatico.ca

Agent for the Applicants

**Canadian Publishers' Council et al**

McCarthy Tétrault LLP

Suite 5300, Toronto-Dominion Bank Tower Toronto, ON M5K 1E6

Barry B. Sookman Steven G. Mason Daniel G.C. Glover

Tel: (416) 601-7949 Fax: (416) 868-0673

E-mail: bsookman@mccarthy.ca

Solicitors for the Proposed Interveners Canadian Publishers' Council,

the Association of Canadian Publishers,

and the Canadian Educational Resources Council

c/o Cavanagh Williams Conway Baxter LLP Suite 401, 1111 Prince of Wales Drive Ottawa, ON K2C 312

Colin S. Baxter Tel: (613) 780-2011 Fax: (613) 569-8668

Ottawa Agent for the Proposed Interveners

**CMRRA-SODRAC INC.**

Casey M. Chisick

(416) 869-5403

Timothy Pinos

(416) 869-5784

Jason Beitchman

(416) 860-2988

Cassels Brock & Blackwell LLP

Scotia Plaza, Suite 2100

40 King Street West

Toronto, ON M5H 3C2

Telephone: (416) 869-5300  
Facsimile: (416) 644-9326  
c/o Ottawa Agent:  
Eugene Meehan Q.C.  
Jeffrey Beedell  
McMillan LLP  
50 O'Connor Street  
Suite 300  
Ottawa, Ontario, K1P 6L2  
Telephone: (613) 232-7171  
Facsimile: (613) 231-3191  
Agent for the Proposed Intervener  
CMRRA-SODRAC Inc.

**Professional Writers Association of Canada and Writers Union of Canada**

Counsel  
Marian Hebb  
Address  
Hebb & Sheffer  
1535A Queen Street West  
Toronto, Ontario  
M6R 1A7  
Telephone: (416) 556-8187  
FAX: (866) 400-3215  
c/o Agent  
Michael J. Sobkin  
Address  
90 blvd. de Lucerne  
Unit #2  
Gatineau, Quebec  
J9H 7K8  
Telephone: (819) 778-7794  
FAX: (819) 778-1740  
E-mail: msobkin@sympatico.ca

**Samuelson-Glushko Canadian Internet Policy & Public Interest Clinic (CIPPIC),  
University of Ottawa, Faculty of Law**

57 Louis Pasteur St.  
Ottawa, Ontario K1N 6N5

c/o David Fewer  
Telephone: (613)562-5800 (ext.2558)  
Fax: (613)562-5417  
E-mail: [dfewer@uottawa.ca](mailto:dfewer@uottawa.ca)

## TABLE OF CONTENTS

PART I - OVERVIEW AND STATEMENT OF FACTS .....	1
PART II - QUESTIONS IN ISSUE.....	1
PART III – ARGUMENT.....	2
STANDARD OF REVIEW .....	2
FAIR DEALING APPLIES TO EDUCATIONAL USES .....	3
(i) The basic errors of the FCA in applying CCH v. LSUC .....	3
(ii) What is “Private Study”? .....	3
(iii) The Correct Statutory Interpretation of s. 29 and s. 29.1 .....	5
(iv) How the Board and the FCA misinterpreted “purpose” .....	7
(v) The evolution of ss. 29 and 29.1 as an exercise in codification of the common law ...	7
(vi) The “Three Step Test” Is a Red Herring.....	9
(vii) There Is No Need to Consider the Charter .....	9
PART IV – COSTS .....	10
PART V - ORDER SOUGHT .....	10
PART VI - TABLE OF AUTHORITIES .....	11
PART VII – STATUTORY PROVISIONS IN ISSUE .....	14
1. Copyright Act, R.S.C. Ch. C-42 as amended.....	14
2. United States Copyright Act – 17 U.S.C. §107 .....	25
3. United Kingdom Copyright Act 1911.....	26
4. Libel And Slander Act R.S.O. 1990, Chapter L.12 .....	27
5. The Statute Of Anne; April 10, 1710.....	28

## **PART I - OVERVIEW AND STATEMENT OF FACTS**

1. In 2004, the Chief Justice, writing for a unanimous Court, rendered its landmark decision in *CCH v. LSUC*, and stated that:

*The fair dealing exception under s. 29 is open to those who can show that their dealings with a copyrighted work were for the purpose of research or private study. “Research” must be given a large and liberal interpretation in order to ensure that users’ rights are not unduly constrained.*<sup>1</sup>

2. *CCH* has taken its place in the pantheon of international jurisprudence concerning users’ rights in copyright law. According to one of the two leading U.S. copyright treatise writers:

*What Judge Leval, Chief Judge MacLachlin [sic], and the early common-law judges who created fair use understood is that copyright is a system; it is not a thing, it is not a property right. Copyright is a means to an end, the end being to encourage learning. All learning is a community experience, and one that takes place over generations, over decades, over centuries. For any system to function, it must take into account, in a meaningful, liberal way, the manner in which humanity proceeds. In the case of copyright, this means that fair use must be viewed as an integral part of the system, and not a begrudging exception to a Hobbesian state of nature where ruthless enforcement of exclusive rights as private property is the ideal.*<sup>2</sup> (emphasis added)

3. Only seven years later, the *CCH* decision is under attack with respect to its application in educational settings from kindergartens to graduate schools and wherever learning takes place in Canada. In the proceedings below, the Copyright Board (“the Board”) declared that “*CCH* now is the unavoidable starting point of any analysis of the notion of fair dealing,”<sup>3</sup> and then proceeded to undo *CCH* in many essential respects. The Board’s conclusions on fair dealing were upheld as “reasonable” and even reinforced by the Federal Court of Appeal (“FCA”).<sup>4</sup>

4. CILP generally supports the Appellants, but not always for the same reasons. CILP also seeks a broader declaration that is not unnecessarily restricted to “short excerpts”.

## **PART II - QUESTIONS IN ISSUE**

5. Did the Federal Court of Appeal (“FCA”) err in:

- (a) Reviewing the Board’s decision for “reasonableness” rather than “correctness”;
- (b) Upholding the Board’s conclusions that (i) fair dealing categorically excludes “copies of excerpts made on the teacher’s initiative for his or her students or at the student’s request with instructions to read them” and “copies made on the teacher’s initiative for his or her

---

<sup>1</sup> *CCH Canadian Ltd. v. Law Society of Upper Canada*, [2004] 1 S.C.R. 339 (“*CCH*”), para. 51. Intervener CILP’s Book of Authorities (“IBA”), Tab 7.

<sup>2</sup> W. Patry, *Patry on Copyright, loose-leaf, 2010, §10.2, Intervener’s Authorities*, IBA Tab 28.



students” and (ii) that the purpose of the copier and not the user is determinative<sup>5</sup>;

(c) Ruling that all six fair dealing factors identified in *CCH* must be satisfied; and,

(d) Concluding that “private study” means “study by oneself”?

6. Quite apart from procedural concerns, is it necessary or even appropriate to give any consideration in this appeal to international law or the Charter of Rights and Freedoms?

### **PART III – ARGUMENT**

#### **STANDARD OF REVIEW**

7. In their findings on fair dealing, the FCA and the Copyright Board (“the Board”) addressed “general questions of law that are both of central importance to the legal system as a whole and outside the adjudicator’s specialized area of expertise.”<sup>6</sup> According to the Board’s Chairman, “[T]he Board’s primary function is not to interpret copyright law but to fix tariffs...”<sup>7</sup> The fair dealing provisions of the *Copyright Act* in ss. 29 and 29.1 have implications well beyond the Board’s limited rate-setting jurisdiction<sup>8</sup> and could affect both civil and criminal copyright infringement litigation<sup>9</sup>, as well as the nature and quality of education and innovation in Canada. In any event, the Board has no special expertise on such legal issues. In this instance, the Board came to sweeping and categorical legal conclusions about fair dealing that stand apart from any factual situation and which are clearly incorrect and even unreasonable.

8. Any legal conclusions by the Board on copyright or on any other matter with general legal implications beyond fixing tariffs are reviewable for correctness. Not only did the FCA err in

<sup>3</sup> *Statement Of Royalties To Be Collected By Access Copyright For The Reprographic Reproduction, In Canada, Of Works In Its Repertoire* (Educational Institutions – 2005-2009) Copyright Board decision (“Board decision”) para.71, IBA Tab 19.

<sup>4</sup> *Province of Alberta v. Canadian Copyright Licensing Agency*, 2010 FCA 198, (“FCA decision”) IBA Tab 12.

<sup>5</sup> Board decision, paras. 90, 98, 100, 104, Table I, IBA Tab 19; FCA decision, para. 46, IBA Tab 12.

<sup>6</sup> *Canada (Canadian Human Rights Commission) v. Canada (Attorney General)*, 2011 SCC 53, paras. 16-23, IBA Tab 4.

<sup>7</sup> Justice William J. Vancise, *Celebrating the Twentieth Anniversary of the Copyright Board*, Seminar jointly sponsored by the Intellectual Property Institute of Canada and McGill University Montreal, Quebec, August 11, 2009, at 6. <http://cb-cda.gc.ca/about-apropos/speeches-discours/20090811.pdf>, IBA, Tab 21.

<sup>8</sup> *Copyright Act, R.S. C. Ch. C-42 as amended*, (“*Copyright Act*”) ss. 29 and 29.1 and ss. 66-66.91 Intervener CILP, Factum (“Factum”) pp. 14-15, 16 ff.

<sup>9</sup> *Society of Composers, Authors and Music Publishers of Canada v. Canadian Assn. of Internet Providers (C.A.)* [2002] 4 F.C. 3, paras. 104-105, 107, IBA Tab 17. As to the relevance of fair dealing in criminal proceedings, see *R. v. Laurier Office Mart*, 58 C.P.R. (3d) 403 (trial); (1993) 63 C.P.R. (3d) 229 (appeal) at 232, IBA Tabs 13 and 13A respectively. See also *Copyright Act*, s. 42, Factum p. 15.

this instance by using a “reasonableness” standard. It will also be argued in other cases<sup>10</sup> being heard together with the instant case that the Federal Court of Appeal has been inconsistent regarding the appropriate standard of review in Board cases. Further guidance from this Court now seems to be required. The FCA decision itself is reviewable by this Court on the basis of correctness.<sup>11</sup>

## **FAIR DEALING APPLIES TO EDUCATIONAL USES**

### **(i) The basic errors of the FCA in applying CCH v. LSUC**

9. The FCA erred in how it applied this Court’s fairness framework laid down in paras. 50 to 60 of *CCH*. In explaining this framework, this Court noted that “these allowable purposes should not be given a restrictive interpretation or this could result in the undue restriction of users’ rights” and that “some dealings, even if for an allowable purpose, may be more or less fair than others; research done for commercial purposes may not be as fair as research done for charitable purposes” (para. 54). Despite this clear statement, the FCA, as did the Board, having found that the activities in question were for an allowable purpose, undermined this very finding in their consideration of the “purpose” aspect of the second six stage analysis, even though the purpose in this instance was clearly non-commercial and educational.<sup>12</sup> The Board was also clearly wrong in concluding that no dealing is fair unless all six factors laid down in *CCH* are satisfied.<sup>13</sup> The inflexibility of the Board’s conclusions on fair dealing can readily be seen in Table I of the Board’s decision.<sup>14</sup> The Board further erred in concluding with insufficient evidence that the copying in question was prejudicial to publishers, despite *CCH*’s holding that if harm exists, the copyright owners bear the burden of proving it.<sup>15</sup>

### **(ii) What is “Private Study”?**

10. “Private” study means study “not open to the public”.<sup>16</sup> It does not mean only “study by

<sup>10</sup> E.g. *Bell Canada v. SOCAN*, SCC #33,922 and *ESA v. SOCAN*, SCC #33,921

<sup>11</sup> *Society of Composers, Authors and Music Publishers of Canada v. Canadian Assn. of Internet Providers*, 2004 SCC 45, [2004] 2 S.C.R. 427, paras. 48-50, IBA Tab 17; *Dunsmuir v. New Brunswick*, 2008 SCC 9, para. 62 IBA Tab 10; *Canadian Wireless Telecommunications Association v. Society of Composers, Authors and Music Publishers of Canada*, 2008 FCA 6, para. 5, IBA Tab 5.

<sup>12</sup> FCA decision, para. 38, IBA Tab 12,

<sup>13</sup> Board decision, para. 79, IBA Tab 19.

<sup>14</sup> Included in FCA decision, para. 15, IBA Tab 12.

<sup>15</sup> FCA decision para. 72, IBA Tab 12.

<sup>16</sup> *Oxford English Dictionary Second Edition on CD-ROM (v. 4.0.0.3)*, definition of “private”, IBA Tab 33E.

oneself<sup>17</sup> as the Board<sup>18</sup> and the FCA<sup>19</sup> have both incorrectly held. These erroneous conclusions follow a series of misinterpretations of a 1916 judgment in which the question of what constitutes private study did not actually arise. The 1911 UK *Copyright Act* provided that the right to engage in “private study, research” is protected as “fair dealing.”<sup>20</sup> The University of London Press (*ULP*) decision<sup>21</sup> presented the first full judicial consideration of that provision. The case involved commercial copying of examination papers by a rival publisher and no party in that case claimed to be engaged in “private study.” *ULP* held that mere republication of a work by a rival publisher, without adding anything substantial, does not constitute fair dealing. The defendants alleged that their republication was “fair dealing” because their customers, the purchasers of the reprinted text, would be using it “for purposes of private study.” The court properly rejected that contention and held that the defendants’ commercial reprinting was not “fair dealing”.

11. In the FCA judgment<sup>22</sup> in *CCH*, Linden J.A. mistakenly stated that *ULP* “held that use in an educational institution [is] not for the purpose of private study.” First, *ULP* held no such thing, because the facts did not involve members of an educational institution, seeking to characterize their use as “private study.” Second, even if *ULP* could sustain this interpretation, it would be *dicta*, because the dispute turned on commercial reprinting, and so any observation about educational use was irrelevant to the holding. In the case now under appeal, the Board’s decision further compounded these errors and confusions by citing the above-quoted comments of Linden J. in *CCH* (themselves *dicta*), and then adding *a non sequitur* in the form of a categorical, conclusory and erroneous statement of law that “It therefore seems impossible that a copy made by a teacher for his or her class can be for the purpose of private study, no matter what is written on the logging sticker.”<sup>23</sup>

12. This Court should reject these erroneous, unsupported views, and should take this opportunity to clarify the meaning of “private study.” Such clarification would correct years of misunderstanding that relied uncritically on a judgment that decided nothing about private study. It is high time that the *ULP* case be put to rest as an authority in modern Canadian copyright law.

---

<sup>17</sup> FCA decision para. 38, IBA Tab 12.

<sup>18</sup> Board decision, para. 90. IBA Tab 19

<sup>19</sup> FCA decision para. 38, IBA Tab 12.

<sup>20</sup> United Kingdom *Copyright Act* of 1911, s. 2(1) (“the 1911 UK *Copyright Act*”), Factum p. 26.

<sup>21</sup> *University of London Press v. University Tutorial Press*, [1916] 2 Ch. 601 (Ch.D.). IBA Tab 20.

<sup>22</sup> *CCH Canadian Ltd. v. Law Society of Upper Canada (FCA.)* [2002] 4 F.C. 213, 2002 FCA 187, para. 129, IBA Tab 6.

<sup>23</sup> Board decision para. 90, IBA Tab 19.

At the very least, “Foreign and pre-2004 Canadian precedents that treat use rights restrictively should ... be used with caution.”<sup>24</sup>

13. In any event, “private” surely must be given a large and liberal interpretation in the era of smart phones, tablets, instant messaging and collaboration via the “cloud” because almost no educational activity involves isolated “study by oneself”. Indeed, even in 1887, the meaning of “private” was much broader than “study by oneself”. In *Caird v. Sime*<sup>25</sup>, the House of Lords held that a university professor had not forfeited his right of first publication of his lectures by delivering them to his students in the classroom. The professor’s duty as a teacher was not to address the public at large, but “to give personal instruction to the individuals composing his audience.” The court held that the professor’s lectures were “private, inasmuch as the author [did] not by their delivery communicate his ideas and language to the public at large.” Education in Canada, from kindergarten to graduate school, normally occurs in the same way. Similarly, in *Dickens v Hawksley*,<sup>26</sup> the terms “instruction” and “private study” were used interchangeably by different judges, and were distinguished from “public” and publication”.<sup>27</sup> From a definitional standpoint, there is no clear boundary and, indeed, overlap between “research” and “study”.<sup>28</sup>

(iii) **The Correct Statutory Interpretation of s. 29 and s. 29.1**

14. Ss. 29 and 29.1 of the *Copyright Act* include the key words “fair”, “dealing”, “purpose”, “research”, “private”, “study”, “criticism” and “review”.<sup>29</sup> These words must be interpreted purposively “in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament,”<sup>30</sup> and consequentially, so as to avoid absurdity<sup>31</sup> and in light of dictionary meanings.<sup>32</sup> With such an interpretation, and in light of the legislative history and the common law evolution of the concept of “fair dealing”, ss. 29 and 29.1 provide several large, expansive and expandable “tents” into

<sup>24</sup> D. Vaver, *Intellectual Property Law*, Second Edition, Toronto, 2011, p 234, n964 IBA Tab 23.

<sup>25</sup> *Caird v. Sime*, 1887) 12 App.Cas. 326 (H.L. Sc.), 348-350, IBA Tab 2.

<sup>26</sup> *Dickens v Hawksley*, [1935] Ch. 267, IBA Tab 9.

<sup>27</sup> The case involved a dispute between heirs of Charles Dickens over the copyright in his unpublished manuscript about the life of Jesus Christ. Bennett. J., at 267, described the manuscript as “written for the *instruction* of the author’s children and ... not intended by him for publication” On appeal, Maugham L.J., described the work as one “written by the author *not for publication but* for the benefit of his family, and ... for their *private* study.” Ibid, at 301 (emphases added).

<sup>28</sup> See *Oxford English Dictionary Second Edition on CD-ROM (v. 4.0.0.3)*, IBA Tab 33D and 33F.

<sup>29</sup> *Copyright Act*, s. 29 and s. 29.1, Factum p. 14,

<sup>30</sup> *CCH*, at para. 9, IBA Tab 7.

<sup>31</sup> *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27, paras. 27-29, IBA Tab 14.

<sup>32</sup> See *Oxford English Dictionary Second Edition on CD-ROM (v. 4.0.0.3)*, IBA Tab33 A-H.

one or more of which many educational activities may find a safe harbour with reasonably bright lines of certainty and predictability.

15. The decisions below inevitably lead to absurdity. For example, the categorical exclusion of any copying prescribed by a teacher would mean that a motivated and assertive student who knows what to request would receive better education than one who is not so informed and fortunate, because the teacher could help the former but not the latter. Moreover, it would mean that essential pedagogical acts, such as handing out copies of works in order to analyze them closely, would require the copyright owner's permission, irrespective of any measure of fairness.

16. Parliament cannot have intended to make Canada's teachers into civil or even criminal<sup>33</sup> copyright infringers simply because they make copies in a manner and for a purpose that most would regard as fair manner in order to conscientiously go about their important work.<sup>34</sup> The correct interpretation is that "private", in the educational context, means not "to the public", i.e. not for general distribution or publication, and limited to reasonable academic needs. English usage before and after 1911 supports this interpretation.<sup>35</sup>

17. Though much has changed in the century since fair dealing was codified in the 1911 UK *Copyright Act*, there has been enough continuity that its language can be purposively construed today. Rapid, inexpensive and multiple copying was well underway by 1911, with technology such as photostat and mimeograph machines well in place.<sup>36</sup> Indeed, when Parliament introduced a levy scheme in 1997 permitting "private copying" of sound recordings under certain circumstances, it did not restrict the term "private" to use "by oneself" in s. 80(1) of the *Copyright Act*, but, instead, used the words "by the person who makes the copy", which stops short of "by oneself."<sup>37</sup> This illustrates the wide spectrum between what is absolutely "private" (e.g. a hermit in a cave, which may not be far removed what the FCA meant by "study by oneself") and what is clearly public (e.g. publication in a newspaper).

---

<sup>33</sup> Given the Board's findings as to the harm done by what it considered unfair distribution (see paras. 90, 98, 100, 107 and 110-113 of Board Decision) and para. 47 of the FCA decision, there is a real possibility that distribution of infringing copies in a class room would be contrary to the offence set forth in s. 42(1)(c) of the *Copyright Act*.

<sup>34</sup> Compare *Sony Corp. of America v. Universal City Studios, Inc.*, 464 U.S. 417 (1984), at 456. ("One may search the *Copyright Act* in vain for any sign that the elected representatives of the millions of people who watch television every day have made it unlawful to copy a program for later viewing at home." IBA Tab 18.

<sup>35</sup> *Oxford English Dictionary Second Edition on CD-ROM (v. 4.0.0.3)*, BOA, Tab 33E,

<sup>36</sup> Laura N. Gasaway, *Libraries And Copyright At The Dawn Of The Twentieth Century: The 1909 Copyright Act*, N.C. J.L. & TECH. Vol. 11: 419 (2010) at 452 ff., IBA Tab 31.

<sup>37</sup> See *Copyright Act*, s. 80, Factum p. 23.

(iv) **How the Board and the FCA misinterpreted “purpose”**

18. In setting out an exception for “[f]air dealing *for the purpose of* research or private study,” the *Act* must be understood as including the *user’s* purpose. The FCA wrongly upheld the Board in the latter’s decision to look only at the purpose of the teacher (the provider of the copies) and not the user.<sup>38</sup> This holding is clearly inconsistent with the ruling by another panel of the FCA in the SOCAN “previews” case,<sup>39</sup> #33,800, which is being heard together with this case. That ruling was rendered about three weeks before the current case was heard, but was not referred to in the FCA’s reasons in the current decision. This Court held, in *CCH*, that a librarian who provides a copy to a patron is not liable for infringement, because the “research” purpose is that of the patron and not the librarian. Thus, “the user/defendant’s real purpose or motive” matters and not be ignored.<sup>40</sup> In the instant case, the users are Canadian students, or teachers, or both. Education is interactive and the “purpose” of any dealing may serve both teacher and student.

19. In any event, the word “purpose” as used in the statute is capable of a very broad and open meaning – including “in the context of” and “as part of an exercise in”<sup>41</sup> – and should itself be given a “purposive” interpretation. It should make no difference whether the teacher makes copies for students at their request or at the teacher’s initiative, or whether the teacher instructs the students to read material or merely recommends that they do so. Any of these often-indistinguishable scenarios may fall within the “purpose” of “private study,” “research,” “review,” and/or “criticism,” subject only to whether the copying is otherwise fair.

(v) **The evolution of ss. 29 and 29.1 as an exercise in codification of the common law**

20. “Fair dealing” and its closely related “kissing cousins”, American “fair use” began as a judge-made law and continues to evolve according to common law principles<sup>42</sup>, which were uncodified until 1911 in Britain, 1921 in Canada, and 1976 in the US. Ample contemporaneous<sup>43</sup>

<sup>38</sup> FCA decision, para. 46, IBA Tab 12.

<sup>39</sup> *SOCAN v. Bell et al*, 2010 FCA 123, para. 22, IBA Tab 15.

<sup>40</sup> *CCH* para. 54, IBA Tab 7.

<sup>41</sup> *Oxford English Dictionary Second Edition on CD-ROM (v. 4.0.0.3)*, BOA, Tab 33C; See also *Pro Sieben Media AG v. Carlton UK Television Ltd.*, [1999] F.S.R. 610 (C.A). p. 614 IBA Tab 11 and *Allen v. Toronto Star Newspapers Ltd.*, (1997) 152 D.L.R. (4th) 518 (Ont. Gen. Div.), pars. 36-39, IBA Tab 1.

<sup>42</sup> W. F. Patry, *Patry on Copyright*, vol. 4, §10.2, IBA Tab 28; M de Zwart, *An Historical Analysis of the Birth of Fair Dealing and Fair Use: Lessons for the Digital Age*, (2007) I.P.Q.No, 1 p, 60, IBA Tab 32.

<sup>43</sup> Copinger on Copyright, (J. M. Easton, *The Law of Copyright in Works in Literature, Art, Architecture, Photography, Music and The Drama by the Late Walter Arthur Copinger*, 5<sup>th</sup> ed. (London, UK: Stevens & Haynes, 1915), at p. 144, IBA Tab 22.

and modern<sup>44</sup> scholarly commentary confirms that, as the US Supreme Court has recently explained about American “fair use”,<sup>45</sup> codification in the UK was never intended to restrict or narrow the doctrine of fair dealing or to limit the role of the judiciary in applying, developing, and adjusting it to new circumstances. This commentary also reveals that the specific inclusion of the terms “private study” and “research”, which are at the heart of this appeal, was done *ex abundante cautela* to preserve, if not expand, the rights of users.<sup>46</sup> Taken together, the enumerated purposes “were intended to be understood synecdochically as standing in for a variety of permissible uses.”<sup>47</sup> Indeed, the term “fair” demands an evolving common law approach in the copyright context, just as it does in the context of defamation, where the term “fair comment” is codified in statute law but its meaning continues to evolve in the courts.<sup>48</sup>

21. In keeping with the essence of common law tradition, this Court has not hesitated to reject the application of obsolete or inapposite foreign copyright case law that is inconsistent with the purpose of copyright law in Canada. For example, in *CCH* this Court has wisely rejected *ULP*’s approach to “originality”, as well as the core holding on “authorization” of the important 1976 Australian High Court decision in *Moorhouse*.<sup>49</sup> Likewise, *CCH* established a “made in Canada” standard of “originality”, and adopted a fair dealing framework that in some key respects is more flexible than that of the US and flexible enough to encompass education.<sup>50</sup>

22. Applying a large and liberal interpretation to each of the key terms in ss. 29-29.1, in accordance with the modern approach to interpretation and the legislative and common law history of fair dealing, leads to the conclusion that when a teacher makes one or more copies of

---

<sup>44</sup> R. Burrell & A Coleman, *Copyright Exceptions: The Digital Impact* (Cambridge, UK: Cambridge University Press, 2005), at 255-259, IBA Tab 27; I. Alexander, *Copyright Law and the Public Interest in the Nineteenth Century* (Oxford, UK: Hart Publishing, 2010) (“Alexander”), at 280-285, IBA Tab 25; A Sims, *Strangling their creation: the courts' treatment of fair dealing in copyright law since 1911*, (2010) I.P.Q. 192, IBA TOA 29.

<sup>45</sup> *Campbell v. Acuff-Rose*, (1994) 510 U.S. 569 at 577, IBA Tab 3.

<sup>46</sup> E. J. MacGillivray, *The Copyright Act, 1911*, Annotated (London, UK; Stevens & Sons, 1912), at p. 26, IBA Tab 24.

<sup>47</sup> Alexander, at 284, IBA Tab 25.

<sup>48</sup> E.g. *Libel and Slander Act*, R.S.O. 1990, Chapter L.12, ss. 23 and 24, Factum p. 27. This court has recently considered the term “fair comment” in great detail in *WIC Radio Ltd. v. Simpson*, 2008 SCC 40, [2008] 2 S.C.R. 420 and *Grant v. Torstar Corp.*, 2009 SCC 61, [2009] 3 S.C.R. 640, which are not included in the Book of Authorities, since no reliance is placed upon them as such other than as recent examples of the common law evolution of the concept of “fair”, even when the word is included in a statute.

<sup>49</sup> *CCH* paras. 15, 41. IBA Tab 7.

<sup>50</sup> G. D’Agostino, *Healing Fair Dealing? A Comparative Copyright Analysis of Canada’s Fair Dealing to U.K. Fair Dealing and U.S. Fair Use*, (2008) 53 McGill L.J. 309 (“D’Agostino”) at p. 315, 346, 356. IBA Tab 30.

works for educational purposes, whether at the request of a student or at the teacher's initiative,<sup>51</sup> and with or without instructing students to read them, the teacher is dealing with the works "in the context of," or "as part of an exercise in" research, private study, criticism or review. These enumerated purposes simply reflect different aspects of the process of learning, the encouragement of which was the stated *raison d'être* of the first ***Copyright Act***, the *Statute of Anne*.<sup>52</sup> All aspects of "the encouragement of learning" should continue to be encouraged.

23. Even if the above-mentioned educational uses are deemed to outside the ordinary meaning of the fair dealing provisions, purposive interpretation of the Act would still allow this Court to recognize an implied fair dealing category, just as it effectively created in CCH a new implied fair dealing exception for the use of multiple copies in court proceedings.<sup>53</sup>

(vi) ***The "Three Step Test" Is a Red Herring***

24. There is no need to consider international treaties and the "three-step test" therein. Recent expert authority recognizes the legitimacy of liberal educational exceptions in domestic laws.<sup>54</sup> As Vaver recently notes, "Canadian user rights likely meet international standards; most are relatively innocuous or they would have been challenged by now".<sup>55</sup> Likewise, the result sought by the Appellants or this Intervener is less broad than §107 of the U.S. ***Copyright Act***<sup>56</sup>, which has never been challenged in any way. Moreover, there is no ambiguity in the fair dealing provisions that the treaties can help resolving. Canada has adhered to the treaty language in question for almost two decades and the statutory language in question is a century old and itself based on common law. The single decision by a WTO panel mentioned certain interveners concerns is based upon completely different facts and is completely inapposite, even if it were somehow binding on this Court, which it is not. This issue is nothing but a red herring.

(vii) ***There Is No Need to Consider the Charter***

25. One intervener, CIPPIC, is expected to base its argument on the *Charter* or *Charter* values.

---

<sup>51</sup> Board decision, pars. 98, 100, 104, Table I, IBA Tab 19. FCA decision, para. 46 IBA Tab 12.

<sup>52</sup> *An Act for the Encouragement of Learning, by Vesting the Copies of Printed Books in the Authors or Purchasers of such Copies, During the Times therein mentioned*, 1710, 8 Anne, c.19, Factum p. 28.

<sup>53</sup> CCH para. 71, IBA Tab 7.

<sup>54</sup> P. Goldstein and B. Hugenholtz, *International Copyright: Principles, Law and Practice*, New York, 2010, pp. 383-385, IBA Tab 26.

<sup>55</sup> D. Vaver, *Intellectual Property Law*, 2<sup>nd</sup> edition, Toronto, 2011, p. 216, IBA Tab 23.

<sup>56</sup> *United States Copyright Act*, 17 USC §107 Factum p.25.



CILP does not disagree with the position that the *Charter* should inform the interpretation of the *Copyright Act*, and is mindful that, while limited copyright rights can serve as the “engine of free expression”, excessive copyright rights can serve as an effective engine for censorship and suppression. Beyond that point, however, there is an insufficient basis and record in this instance for any detailed look at the *Charter*. While CILP believes that the remedy it seeks is consistent with the *Charter* value of freedom of expression,<sup>57</sup> any consideration of the interplay between the *Charter* and copyright law is unnecessary in this instance and might best await another day.<sup>58</sup>

#### **PART IV – COSTS**

26. CILP does not seek any costs and asks that no costs be awarded against it in this appeal.

#### **PART V - ORDER SOUGHT**

27. CILP respectfully asks to make oral submissions of 15 minutes and for a declaration that:

- (a) The making of copies, including multiple copies, for educational purposes, whether or not at the request of a student, and whether or not the student is instructed by a teacher to read such copies, is an allowable purpose within s. 29 or s. 29.1 of the *Copyright Act*, subject only to whether the dealing is otherwise “fair” in the circumstances; and,
- (b) The determination of whether a particular dealing is fair may consider either or both of the purposes of the maker of the copies or the user of the copies.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 21<sup>st</sup> day of November, 2011.

---

Howard P. Knopf

---

Ariel Katz

Counsel for the Intervener CILP

---

<sup>57</sup> See *Crookes v. Newton*, 2011 SCC 47, para. 33, IBA Tab 8.

<sup>58</sup> *Bell ExpressVu Limited Partnership v. Rex*, [2002] 2 S.C.R. 559, 2002 SCC 42, paras. 56-67, IBA Tab 34.

**PART VI - TABLE OF AUTHORITIES**

ITEM	PAGE/TAB
<u>Cases</u>	
Allen v. Toronto Star Newspapers Ltd, (1997) 152 D.L.R. (4th) 518 (Ont. Gen. Div.) .....	7
Caird v. Sime, 1887) 12 App.Cas. 326 (H.L. Sc.),.....	5
Campbell v. Acuff-Rose, (1994) 510 U.S. 569 .....	8
Canada (Canadian Human Rights Commission) v. Canada (Attorney General), 2011 SCC 53 .....	2
Canadian Wireless Telecommunications Association v, Society of Composers, Authors and Music Publishers of Canada, 2008 FCA 6.....	3
CCH Canadian Ltd. v. Law Society of Upper Canada (FCA.) [2002] 4 F.C. 213 .....	4
CCH Canadian Ltd. v. Law Society of Upper Canada, [2004] 1 S.C.R. 339.....	1, 7, 9
Crookes v. Newton, 2011 SCC 47 .....	10
Dickens v Hawksley, [1935] Ch. 267.....	5
Dunsmuir v. New Brunswick, 2008 SCC 9.....	3
Pro Sieben Media AG v. Carlton UK Television Ltd., [1999] F.S.R. 610 (C.A).....	7
Province of Alberta v. Canadian Copyright Licensing Agency, 2010 FCA 198 .....	2
R. v. Laurier Office Mart, 58 C.P.R. (3d) 403 (trial); (1993) 63 C.P.R. (3d) 229 (appeal) .....	2
Rizzo & Rizzo Shoes Ltd. (Re), [1998] 1 S.C.R. 27.....	5
SOCAN v. Bell et at, 2010 FCA 123 .....	7
Society of Composers, Authors and Music Publishers of Canada v. Canadian Assn. of Internet Providers (C.A.) [2002] 4 F.C. 3,.....	2
Society of Composers, Authors and Music Publishers of Canada v. Canadian Assn. of Internet Providers, 2004 SCC 45 .....	3
Sony Corp. of America v. Universal City Studios, Inc., 464 U.S. 417 (1984).....	6
Statement Of Royalties To Be Collected By Access Copyright For The Reprographic Reproduction, In Canada, Of Works In Its Repertoire (Educational Institutions – 2005-2009).....	2, 4
University of London Press v. University Tutorial Press, [1916] 2 Ch. 601 (Ch.D.) .....	4

Statutes

Copyright Act, R.S. C. Ch. C-42 as amended .....	2, 5, 6
United Kingdom Copyright Act of 1911, .....	4
United States Copyright Act, 17 USC §107 .....	9

Other Authorities

Justice William J. Vancise, Celebrating the Twentieth Anniversary of the Copyright Board, Seminar jointly sponsored by the Intellectual Property Institute of Canada and McGill University Montreal, Quebec, August 11, 2009 .....	2
--	---

Treatises

Copinger on Copyright, (J. M. Easton, The Law of Copyright in Works in Literature, Art, Architecture, Photography, Music and The Drama by the Late Walter Arthur Copinger, 5 <sup>th</sup> ed. (London, UK: Stevens & Haynes, 1915) .....	7
D. Vaver, Intellectual Property Law, Second Edition, Toronto, 2011 .....	5, 9
E. J. MacGillivray, The Copyright Act, 1911, Annotated (London, UK; Stevens & Sons, 1912 .....	8
I. Alexander, Copyright Law and the Public Interest in the Nineteenth Century (Oxford, UK: Hart Publishing, 2010) .....	8
P. Goldstein and B. Hugenholtz, International Copyright, : Principles, Law and Practice, New York, 2010	9
R. Burrell & A Coleman, Copyright Exceptions: The Digital Impact (Cambridge, UK: Cambridge University Press, 2005), .....	8
W. Patry, Patry on Copyright, loose-leaf, 2010, §10.2 .....	1, 7

Articles

A Sims, Strangling their creation: the courts' treatment of fair dealing in copyright law since 1911, (2010) I.P.Q. 192 .....	8
G. D'Agostino, Healing Fair Dealing? A Comparative Copyright Analysis of Canada's Fair Dealing to U.K. Fair Dealing and U.S. Fair Use, (2008) 53 McGill L.J. 309 .....	8
Laura N. Gasaway, Libraries And Copyright At The Dawn Of The Twentieth Century: The 1909 Copyright Act, N.C. J.L. & TECH. Vol. 11: 419 (2010) .....	6
M de Zwart, An Historical Analysis of the Birth of Fair Dealing and Fair Use: Lessons for the Digital Age, (2007) I.P.Q.No, 1 .....	7

Dictionary

Oxford English Dictionary Second Edition on CD-ROM (v. 4.0.0.3) .....	3, 5, 6, 7
---	------------

Constitutional Cases

Bell ExpressVu Limited Partnership v. Rex, [2002] 2 S.C.R. 559, 2002 SCC 42, paras. 56-67, ..... 10

**PART VII – STATUTORY PROVISIONS IN ISSUE**

**1. Copyright Act, R.S.C. Ch. C-42 as amended**

**Fair Dealing**

**Research or private study**

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

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

**Criticism or review**

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

- (a) the source; and
- (b) if given in the source, the name of the
  - (i) author, in the case of a work,
  - (ii) performer, in the case of a performer's performance,
  - (iii) maker, in the case of a sound recording, or
  - (iv) broadcaster, in the case of a communication signal.

1997, c. 24, s. 18.

**News reporting**

29.2 Fair dealing for the purpose of news reporting does not infringe copyright if the following are mentioned:

**Utilisation équitable**

**Étude privée ou recherche**

29. L'utilisation équitable d'une oeuvre ou de tout autre objet du droit d'auteur aux fins d'étude privée ou de recherche ne constitue pas une violation du droit d'auteur.

L.R. (1985), ch. C-42, art. 29;  
L.R. (1985), ch. 10 (4e suppl.), art. 7;  
1994, ch. 47, art. 61;  
1997, ch. 24, art. 18.

**Critique et compte rendu**

29.1 L'utilisation équitable d'une oeuvre ou de tout autre objet du droit d'auteur aux fins de critique ou de compte rendu ne constitue pas une violation du droit d'auteur à la condition que soient mentionnés :

- a) d'une part, la source;
- b) d'autre part, si ces renseignements figurent dans la source :
  - (i) dans le cas d'une oeuvre, le nom de l'auteur,
  - (ii) dans le cas d'une prestation, le nom de l'artiste-interprète,
  - (iii) dans le cas d'un enregistrement sonore, le nom du producteur,
  - (iv) dans le cas d'un signal de communication, le nom du radiodiffuseur.

1997, ch. 24, art. 18.

- (a) the source; and
- (b) if given in the source, the name of the
  - (i) author, in the case of a work,
  - (ii) performer, in the case of a performer's performance,
  - (iii) maker, in the case of a sound recording, or
  - (iv) broadcaster, in the case of a communication signal.

1997, c. 24, s. 18.

\*\*\*\*\*

**CRIMINAL REMEDIES RECOURS  
CRIMINELS  
Offences and Punishment**

42. (1) Every person who knowingly

- (a) makes for sale or rental an infringing copy of a work or other subject-matter in which copyright subsists,
- (b) sells or rents out, or by way of trade exposes or offers for sale or rental, an infringing copy of a work or other subject-matter in which copyright subsists,
- (c) distributes infringing copies of a work or other subject-matter in which copyright subsists,

either for the purpose of trade or to such an extent as to affect prejudicially the owner of the copyright,

Communication des nouvelles

29.2 L'utilisation équitable d'une oeuvre ou de tout autre objet du droit d'auteur pour la communication des nouvelles ne constitue pas une violation du droit d'auteur à la condition que soient mentionnés :

- a) d'une part, la source;
- b) d'autre part, si ces renseignements figurent dans la source :
  - (i) dans le cas d'une oeuvre, le nom de l'auteur,
  - (ii) dans le cas d'une prestation, le nom de l'artiste-interprète,
  - (iii) dans le cas d'un enregistrement sonore, le nom du producteur,
  - (iv) dans le cas d'un signal de communication, le nom du radiodiffuseur.

1997, ch. 24, art. 18.

\*\*\*\*\*

**RECOURS CRIMINELS  
Infractions et peines**

42. (1) Commet une infraction quiconque, sciemment :

- a) se livre, en vue de la vente ou de la location, à la contrefaçon d'une oeuvre ou d'un autre objet du droit d'auteur protégés;
- b) en vend ou en loue, ou commercialement en met ou en offre en vente ou en location un exemplaire contrefait;
- c) en met en circulation des exemplaires contrefaits, soit dans un but commercial, soit de façon à porter préjudice au titulaire du droit d'auteur;

(d) by way of trade exhibits in public an infringing copy of a work or other subject-matter in which copyright subsists, or  
 (e) imports for sale or rental into Canada any infringing copy of a work or other subject-matter in which copyright subsists is guilty of an offence and liable  
 (f) on summary conviction, to a fine not exceeding twenty-five thousand dollars or to imprisonment for a term not exceeding six months or to both, or  
 (g) on conviction on indictment, to a fine not exceeding one million dollars or to imprisonment for a term not exceeding five years or to both.

d) en expose commercialement en public un exemplaire contrefait;  
 e) en importe pour la vente ou la location, au Canada, un exemplaire contrefait.  
 Le contrevenant encourt, sur déclaration de culpabilité par procédure sommaire, une amende maximale de vingt-cinq mille dollars et  
 un emprisonnement maximal de six mois, ou l'une de ces peines, ou, sur déclaration de culpabilité par voie de mise en accusation, une amende maximale d'un million de dollars et un emprisonnement maximal de cinq ans, ou l'une de ces peines.

\*\*\*\*\*

**Copyright Board**

**Establishment**

66. (1) There is hereby established a Board, to be known as the Copyright Board, consisting of not more than five members, including a chairman and a vice-chairman, to be appointed by the Governor in Council.

**Service**

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

**Chairman**

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

**Tenure**

\*\*\*\*\*

**Commission du droit d'auteur**

**Constitution**

66. (1) Est constituée la Commission du droit d'auteur, composée d'au plus cinq commissaires, dont le président et le vice-président, nommés par le gouverneur en conseil.

**Mandat**

(2) Les commissaires sont nommés à temps plein ou à temps partiel.

**Président**

(3) Le gouverneur en conseil choisit le président parmi les juges, en fonction ou à la retraite, de cour supérieure, de cour de comté ou de cour de district.

**Durée du mandat**

(4) Each member of the Board shall hold office during good behaviour for a term not exceeding five years, but may be removed at any time by the Governor in Council for cause.

#### Re-appointment

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

#### Prohibition

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

#### Members deemed public service employees

(7) A full-time member of the Board, other than the chairman, shall be deemed to be employed in

(a) the public service for the purposes of the Public Service Superannuation Act; and

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

R.S., 1985, c. C-42, s. 66;  
R.S., 1985, c. 10 (1st Suppl.), s. 1, c. 10 (4th Suppl.), s. 12;  
2003, c. 22, s. 154(E), 224(E), 225(E).

#### Previous Version

##### Duties of chairman

66.1 (1) The chairman shall direct the work of the Board and apportion its work among the members of the Board.

##### Absence or incapacity of chairman

(2) If the chairman is absent or incapacitated

(4) Les commissaires sont nommés à titre inamovible pour un mandat maximal de cinq ans, sous réserve de la révocation motivée que prononce le gouverneur en conseil.

#### Nouveau mandat

(5) Les mandats des commissaires sont renouvelables une seule fois.

#### Interdiction de cumul

(6) Les commissaires ne peuvent, pendant leur mandat, faire partie de la fonction publique au sens de la Loi sur les relations de travail dans la fonction publique.

#### Fonctionnaires

(7) Les commissaires à temps plein autres que le président sont réputés rattachés :

a) à la fonction publique pour l'application de la Loi sur la pension de la fonction publique;

b) à l'administration publique fédérale pour l'application des règlements pris sous le régime de l'article 9 de la Loi sur l'aéronautique.

L.R. (1985), ch. C-42, art. 66;  
L.R. (1985), ch. 10 (1er suppl.), art. 1, ch. 10 (4e suppl.), art. 12;  
2003, ch. 22, art. 154(A), 224(A) et 225(A).

#### Version précédente

##### Rôle du président

66.1 (1) Le président assume la direction des travaux de la Commission et, notamment, voit à la répartition des tâches entre les commissaires.

##### Absence et empêchement



or if the office of chairman is vacant, the vice-chairman has all the powers and functions of the chairman during the absence, incapacity or vacancy.

#### Duties of vice-chairman

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

R.S., 1985, c. 10 (4th Supp.), s. 12.

#### Remuneration and expenses

66.2 The members of the Board shall be paid such remuneration as may be fixed by the Governor in Council and are entitled to be paid reasonable travel and living expenses incurred by them in the course of their duties under this Act while absent from their ordinary place of residence.

R.S., 1985, c. 10 (4th Supp.), s. 12.

#### Conflict of interest prohibited

66.3 (1) A member of the Board shall not, directly or indirectly, engage in any activity, have any interest in a business or accept or engage in any office or employment that is inconsistent with the member's duties.

#### Termination of conflict of interest

(2) Where a member of the Board becomes aware that he is in a conflict of interest contrary to subsection (1), the member shall, within one hundred and twenty days, terminate the conflict or resign.

R.S., 1985, c. 10 (4th Supp.), s. 12.

#### Staff

66.4 (1) Such officers and employees as are necessary for the proper conduct of the work

(2) En cas d'absence ou d'empêchement du président, ou de vacance de son poste, la présidence est assumée par le vice-président.

#### Attributions du vice-président

(3) Le vice-président est le premier dirigeant de la Commission et, à ce titre, il en assure la direction et contrôle la gestion de son personnel.

L.R. (1985), ch. 10 (4e suppl.), art. 12.

#### Rémunération

66.2 Les commissaires reçoivent la rémunération fixée par le gouverneur en conseil et ont droit aux frais de déplacement et autres entraînés par l'accomplissement de leurs fonctions hors du lieu habituel de leur résidence.

L.R. (1985), ch. 10 (4e suppl.), art. 12.

#### Conflits d'intérêt

66.3 (1) Les commissaires ne peuvent, directement ou indirectement, se livrer à des activités, avoir des intérêts dans une entreprise, ni occuper de charge ou d'emploi qui sont incompatibles avec leurs fonctions.

#### Suppression du conflit

(2) Le commissaire qui apprend l'existence d'un conflit d'intérêt doit, dans les cent vingt jours, y mettre fin ou se démettre de ses fonctions.

L.R. (1985), ch. 10 (4e suppl.), art. 12.

#### Personnel

66.4 (1) Le personnel nécessaire à l'exercice des activités de la Commission est nommé conformément à la Loi sur l'emploi dans la

of the Board shall be appointed in accordance with the Public Service Employment Act.

#### Idem

(2) The officers and employees referred to in subsection (1) shall be deemed to be employed in the public service for the purposes of the Public Service Superannuation Act.

#### Technical assistance

(3) The Board may engage on a temporary basis the services of persons having technical or specialized knowledge to advise and assist in the performance of its duties and the Board may, in accordance with Treasury Board directives, fix and pay the remuneration and expenses of those persons.

R.S., 1985, c. 10 (4th Supp.), s. 12;  
2003, c. 22, s. 225(E).

#### Previous Version

Concluding matters after membership expires

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

#### Decisions

(2) Matters before the Board shall be decided by a majority of the members of the Board and the presiding member shall have a second vote in the case of a tie.

R.S., 1985, c. 10 (4th Supp.), s. 12.

#### Interim decisions

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

fonction publique.

#### Présomption

(2) Ce personnel est réputé faire partie de la fonction publique pour l'application de la Loi sur la pension de la fonction publique.

#### Experts

(3) La Commission peut, à titre temporaire, retenir les services d'experts pour l'assister dans l'exercice de ses fonctions et, conformément aux instructions du Conseil du Trésor, fixer et payer leur rémunération et leurs frais.

L.R. (1985), ch. 10 (4e suppl.), art. 12;  
2003, ch. 22, art. 225(A).

#### Version précédente

#### Prolongation

66.5 (1) Le commissaire dont le mandat est échu peut terminer les affaires dont il est saisi.

#### Décisions

(2) Les décisions sont prises à la majorité des commissaires, celui qui préside disposant d'une voix prépondérante en cas de partage.

L.R. (1985), ch. 10 (4e suppl.), art. 12.

#### Décisions provisoires

66.51 La Commission peut, sur demande, rendre des décisions provisoires.

L.R. (1985), ch. 10 (4e suppl.), art. 12.

#### Modifications de décisions

66.52 La Commission peut, sur demande, modifier toute décision concernant les

R.S., 1985, c. 10 (4th Supp.), s. 12.

#### Variation of decisions

66.52 A decision of the Board respecting royalties or their related terms and conditions that is made under subsection 68(3), sections 68.1 or 70.15 or subsections 70.2(2), 70.6(1), 73(1) or 83(8) may, on application, be varied by the Board if, in its opinion, there has been a material change in circumstances since the decision was made.

R.S., 1985, c. 10 (4th Supp.), s. 12;  
1988, c. 65, s. 64;  
1997, c. 24, s. 42.

#### Regulations

66.6 (1) The Board may, with the approval of the Governor in Council, make regulations governing

(a) the practice and procedure in respect of the Board's hearings, including the number of members of the Board that constitutes a quorum;

(b) the time and manner in which applications and notices must be made or given;

(c) the establishment of forms for the making or giving of applications and notices; and

(d) the carrying out of the work of the Board, the management of its internal affairs and the duties of its officers and employees.

#### Publication of proposed regulations

(2) A copy of each regulation that the Board proposes to make under subsection (1) shall be published in the Canada Gazette at least sixty days before the proposed effective date

redevances visées au paragraphe 68(3), aux articles 68.1 ou 70.15 ou aux paragraphes 70.2(2), 70.6(1), 73(1) ou 83(8), ainsi que les modalités y afférentes, en cas d'évolution importante, selon son appréciation, des circonstances depuis ces décisions.

L.R. (1985), ch. 10 (4e suppl.), art. 12;  
1988, ch. 65, art. 64;  
1997, ch. 24, art. 42.

#### Règlement

66.6 (1) La Commission peut, avec l'approbation du gouverneur en conseil, prendre des règlements régissant :

a) la pratique et la procédure des audiences, ainsi que le quorum;

b) les modalités, y compris les délais, d'établissement des demandes et les avis à donner;

c) l'établissement de formules pour les demandes et les avis;

d) de façon générale, l'exercice de ses activités, la gestion de ses affaires et les fonctions de son personnel.

#### Publication des projets de règlement

(2) Les projets de règlements d'application du paragraphe (1) sont publiés dans la Gazette du Canada au moins soixante jours avant la date prévue pour leur entrée en vigueur, les intéressés se voyant accorder la possibilité de présenter à la Commission leurs observations à cet égard.

#### Exception

(3) Ne sont pas visés les projets de règlement déjà publiés dans les conditions prévues au paragraphe (2), même s'ils ont

thereof and a reasonable opportunity shall be given to interested persons to make representations with respect thereto.

#### Exception

(3) No proposed regulation that has been published pursuant to subsection (2) need again be published under that subsection, whether or not it has been altered as a result of representations made with respect thereto.

R.S., 1985, c. 10 (4th Supp.), s. 12.

#### General powers, etc.

66.7 (1) The Board has, with respect to the attendance, swearing and examination of witnesses, the production and inspection of documents, the enforcement of its decisions and other matters necessary or proper for the due exercise of its jurisdiction, all such powers, rights and privileges as are vested in a superior court of record.

#### Enforcement of decisions

(2) Any decision of the Board may, for the purposes of its enforcement, be made an order of the Federal Court or of any superior court and is enforceable in the same manner as an order thereof.

#### Procedure

(3) To make a decision of the Board an order of a court, the usual practice and procedure of the court in such matters may be followed or a certified copy of the decision may be filed with the registrar of the court and thereupon the decision becomes an order of the court.

#### Effect of variation of decision

(4) Where a decision of the Board that has been made an order of a court is varied by a

été modifiés à la suite des observations.

L.R. (1985), ch. 10 (4e suppl.), art. 12.

#### Attributions générales

66.7 (1) La Commission a, pour la comparution, la prestation de serments, l'assignation et l'interrogatoire des témoins, ainsi que pour la production d'éléments de preuve, l'exécution de ses décisions et toutes autres questions relevant de sa compétence, les attributions d'une cour supérieure d'archives.

#### Assimilation

(2) Les décisions de la Commission peuvent, en vue de leur exécution, être assimilées à des actes de la Cour fédérale ou de toute cour supérieure; le cas échéant, leur exécution s'effectue selon les mêmes modalités.

#### Procédure

(3) L'assimilation se fait selon la pratique et la procédure suivies par le tribunal saisi ou par la production au greffe du tribunal d'une copie certifiée conforme de la décision. La décision devient dès lors un acte du tribunal.

#### Décisions modificatives

(4) Les décisions qui modifient les décisions déjà assimilées à des actes d'un tribunal sont réputées modifier ceux-ci et peuvent, selon les mêmes modalités, faire l'objet d'une assimilation.

L.R. (1985), ch. 10 (4e suppl.), art. 12; 2002, ch. 8, art. 131(F).

#### Version précédente

#### Publication d'avis

subsequent decision of the Board, the order of the court shall be deemed to have been varied accordingly and the subsequent decision may, in the same manner, be made an order of the court.

R.S., 1985, c. 10 (4th Supp.), s. 12;  
2002, c. 8, s. 131(F).

#### Previous Version

#### Distribution, publication of notices

66.71 Independently of any other provision of this Act relating to the distribution or publication of information or documents by the Board, the Board may at any time cause to be distributed or published, in any manner and on any terms and conditions that it sees fit, any notice that it sees fit to be distributed or published.

1997, c. 24, s. 43.

#### Studies

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

R.S., 1985, c. 10 (4th Supp.), s. 12.

#### Report

66.9 (1) The Board shall, not later than August 31 in each year, submit to the Governor in Council through the Minister an annual report on the Board's activities for the preceding year describing briefly the applications made to the Board, the Board's decisions and any other matter that the Board considers relevant.

#### Tabling

(2) The Minister shall cause a copy of each annual report to be laid before each House of Parliament on any of the first fifteen days on

66.71 La Commission peut en tout temps ordonner l'envoi ou la publication de tout avis qu'elle estime nécessaire, indépendamment de toute autre disposition de la présente loi relative à l'envoi ou à la publication de renseignements ou de documents, ou y procéder elle-même, et ce de la manière et aux conditions qu'elle estime indiquées.

1997, ch. 24, art. 43.

#### Études

66.8 À la demande du ministre, la Commission effectue toute étude touchant ses attributions.

L.R. (1985), ch. 10 (4e suppl.), art. 12.

#### Rapport

66.9 (1) Au plus tard le 31 août, la Commission présente au gouverneur en conseil, par l'intermédiaire du ministre, un rapport annuel de ses activités résumant les demandes qui lui ont été présentées et les conclusions auxquelles elle est arrivée et toute autre question qu'elle estime pertinente.

#### Dépôt

(2) Le ministre fait déposer le rapport devant chaque chambre du Parlement dans les quinze premiers jours de séance de celle-ci suivant sa réception.

L.R. (1985), ch. 10 (4e suppl.), art. 12.

#### Règlements

66.91 Le gouverneur en conseil peut, par règlement, donner des instructions sur des questions d'orientation à la Commission et

which that House is sitting after the Minister receives the report.

R.S., 1985, c. 10 (4th Supp.), s. 12.

#### Regulations

66.91 The Governor in Council may make regulations issuing policy directions to the Board and establishing general criteria to be applied by the Board or to which the Board must have regard

(a) in establishing fair and equitable royalties to be paid pursuant to this Act; and

(b) in rendering its decisions in any matter within its jurisdiction.

1997, c. 24, s. 44.

\*\*\*\*\*

#### Copying for Private Use

Where no infringement of copyright

**80.** (1) Subject to subsection (2), the act of reproducing all or any substantial part of

(a) a musical work embodied in a sound recording,

(b) a performer's performance of a musical work embodied in a sound recording, or

(c) a sound recording in which a musical work, or a performer's performance of a musical work, is embodied onto an audio recording medium for the private use of the person who makes the copy does not constitute an infringement of the copyright in the musical work, the performer's performance or the sound recording.

établir les critères de nature générale à suivre par celle-ci, ou à prendre en compte par celle-ci, dans les domaines suivants :

a) la fixation des redevances justes et équitables à verser aux termes de la présente loi;

b) le prononcé des décisions de la Commission dans les cas qui relèvent de la compétence de celle-ci.

1997, ch. 24, art. 44.

\*\*\*\*\*

#### Copie pour usage privé

Non-violation du droit d'auteur

**80.** (1) Sous réserve du paragraphe (2), ne constitue pas une violation du droit d'auteur protégeant tant l'enregistrement sonore que l'oeuvre musicale ou la prestation d'une oeuvre musicale qui le constituent, le fait de reproduire pour usage privé l'intégralité ou toute partie importante de cet enregistrement sonore, de cette oeuvre ou de cette prestation sur un support audio.

Limite

(2) Le paragraphe (1) ne s'applique pas à la reproduction de l'intégralité ou de toute partie importante d'un enregistrement sonore, ou de l'oeuvre musicale ou de la prestation d'une oeuvre musicale qui le constituent, sur un support audio pour les

## Limitation

(2) Subsection (1) does not apply if the act described in that subsection is done for the purpose of doing any of the following in relation to any of the things referred to in paragraphs (1)(a) to (c):

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

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

(c) communicating to the public by telecommunication; or

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

1997, c. 24, s. 50.

usages suivants :

a) vente ou location, ou exposition commerciale;

b) distribution dans un but commercial ou non;

c) communication au public par télécommunication;

d) exécution ou représentation en public.

1997, ch. 24, art. 50.

## 2. **United States Copyright Act – 17 U.S.C. §107**

### § 107. Limitations on exclusive rights: Fair use

Notwithstanding the provisions of sections 106 and 106A, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include —

- (1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
- (2) the nature of the copyrighted work;
- (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
- (4) the effect of the use upon the potential market for or value of the copyrighted work.

The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors.



### **3. United Kingdom Copyright Act 1911**

#### **2 Infringement of copyright**

(1) Copyright in a work shall be deemed to be infringed by any person who, without the consent of the owner of the copyright, does anything the sole right to do which is by this Act conferred on the owner of the copyright: Provided that the following acts shall not constitute an infringement of copyright:—(i) Any fair dealing with any work for the purposes of private study, research, criticism, review, or newspaper summary:

#### 4. Libel And Slander Act R.S.O. 1990, Chapter L.12

<p><b>Fair comment</b></p> <p>23. In an action for libel or slander for words consisting partly of allegations of fact and partly of expression of opinion, a defence of <b>fair comment</b> shall not fail by reason only that the truth of every allegation of fact is not proved if the expression of opinion is fair comment having regard to such of the facts alleged or referred to in the words complained of as are proved. R.S.O. 1990, c. L.12, s. 23.</p>	<p><b>Commentaire loyal</b></p> <p>23. Dans une action en libelle diffamatoire ou en diffamation verbale découlant de mots qui expriment à la fois des allégations de fait et des opinions, la défense de <b>commentaire loyal</b> ne doit pas être rejetée au seul motif que la véracité de chacune des allégations de fait n'est pas établie si l'opinion exprimée constitue un commentaire loyal, eu égard aux faits allégués ou mentionnés dans les mots reprochés qui sont établis. L.R.O. 1990, chap. L.12, art. 23.</p>
<p><b>Fair comment</b></p> <p>24. Where the defendant published defamatory matter that is an opinion expressed by another person, a defence of <b>fair comment</b> by the defendant shall not fail for the reason only that the defendant or the person who expressed the opinion, or both, did not hold the opinion, if a person could honestly hold the opinion. R.S.O. 1990, c. L.12, s. 24.</p>	<p><b>Commentaires loyaux par un tiers</b></p> <p>24. Si le défendeur a publié un fait diffamatoire qui constitue l'opinion qu'un tiers a exprimée, la défense de <b>commentaire loyal</b> ne doit pas être rejetée au seul motif que le défendeur ou la personne qui a exprimé l'opinion, ou les deux, n'a pas cette opinion, si une personne pouvait honnêtement avoir cette opinion. L.R.O. 1990, chap. L.12, art. 24.</p>

## 5. The Statute Of Anne; April 10, 1710

### 8 Anne, c. 19 (1710)

An act for the encouragement of learning, by vesting the copies of printed books in the authors or purchasers of such copies, during the times therein mentioned.

I. Whereas printers, booksellers, and other persons have of late frequently taken the liberty of printing, reprinting, and publishing, or causing to be printed, reprinted, and published, books and other writings, without the consent of the authors or proprietors of such books and writings, to their very great detriment, and too often to the ruin of them and their families: for preventing therefore such practices for the future, and for the encouragement of learned men to compose and write useful books; may it please your Majesty, that it may be enacted, and be it enacted by the Queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same;

II. That from and after the tenth day of April, one thousand seven hundred and ten, the author of any book or books already printed, who hath not transferred to any other the copy or copies of such book or books, share or shares thereof, or the bookseller or booksellers, printer or printers, or other person or persons, who hath or have purchased or acquired the copy or copies of any book or books, in order to print or reprint the same, shall have the sole right and liberty of printing such book and books for the term of one and twenty years, to commence from the said tenth day of April, and no longer; and That the author of any book or books already composed, and not printed and published, or that shall hereafter be composed, and his assignee or assigns, shall have the sole liberty of printing and reprinting such book and books for the term of fourteen years, to commence from the day of the first publishing the same, and no longer; and That if any other bookseller, printer or other person whatsoever, from and after the tenth day of April, one thousand seven hundred and ten, within the times granted and limited by this act, as aforesaid, shall print, reprint, or import, or cause to be printed, reprinted, or imported, any such book or books, without the consent of the proprietor or proprietors thereof first had and obtained in writing, signed in the presence of two or more credible witnesses; or knowing the same to be so printed or reprinted, without the consent of the proprietors, shall sell, publish, or expose to sale, or cause to be sold, published, or exposed to sale, any such book or books, without such consent first had and obtained, as aforesaid: then such offender or offenders shall forfeit such book or books, and all and every sheet or sheets, being part of such book or books, to the proprietor or proprietors of the copy thereof, who shall forthwith damask, and make waste paper of them; and further, That every such offender or offenders shall forfeit one penny for every sheet which shall be found in his, her, or their custody, either printed or printing, published, or exposed to sale, contrary to the true intent and meaning of this act; the one moiety thereof to the Queen's most excellent majesty, her heirs and successors, and the other moiety thereof to any person or persons that shall sue for the same, to be recovered in any of her Majesty's courts of record at Westminster, by action of debt, bill, plaint, or information, in which no wager of law, essoin, privilege, or protection, or more than one imparlance shall be allowed. II. And whereas many persons may through ignorance offend against this act, unless some provision be made, whereby the property in every such book, as is intended by this act to be secured to the proprietor or proprietors thereof, may be ascertained, as likewise the consent of such proprietor or proprietors for the printing or reprinting of such book or books may from time to time be known; be it therefore further enacted by the authority aforesaid,

That nothing in this act contained shall be construed to extend to subject any bookseller, printer, or other person whatsoever, to the forfeitures or penalties therein mentioned, for or by reason of the printing or reprinting of any book or books without such consent, as aforesaid, unless the title to the copy of such book or books hereafter published shall, before such publication, be entered in the register book of the company of stationers, in such manner as hath been usual, which register book shall at all times be kept at the hall of the

said company, and unless such consent of the proprietor or proprietors be in like manner entered as aforesaid, for every of which several entries, six pence shall be paid, and no more; which said register book may, at all seasonable and convenient time, be resorted to, and inspected by any bookseller, printer, or other person, for the purposes before-mentioned, without any fee or reward; and the clerk of the said company of stationers shall, when and as often as thereunto required, give a certificate under his hand of such entry or entries, and for every such certificate may take a fee not exceeding six pence.

III. Provided nevertheless, That if the clerk of the said company of stationers for the time being, shall refuse or neglect to register, or make such entry or entries, or to give such certificate, being thereunto required by the author or proprietor of such copy or copies, in the presence of two or more credible witnesses, That then such person and persons so refusing, notice being first duly given of such refusal, by an advertisement in the Gazette, shall have the like benefit, as if such entry or entries, certificate or certificates had been duly made and given; and that the clerks so refusing, shall, for any such offence, forfeit to the proprietor of such copy or copies the sum of twenty pounds, to be recovered in any of her Majesty's courts of record at Westminster, by action of debt, bill, plaint, or information, in which no wager of law, essoin, privilege or protection, or more than one imparlance shall be allowed.

IV. Provided nevertheless, and it is hereby further enacted by the authority aforesaid, That if any bookseller or booksellers, printer or printers, shall, after the said five and twentieth day of March, one thousand seven hundred and ten, set a price upon, or sell, or expose to sale, any book or books at such a price or rate as shall be conceived by any person or persons to be too high and unreasonable; it shall and may be lawful for any person or persons, to make complaint thereof to the lord archbishop of Canterbury for the time being, the lord chancellor, or lord keeper of the great seal of Great Britain for the time being, the lord bishop of London for the time being, the lord chief justice of the court of Queen's Bench, the lord chief justice of the court of Common Pleas, the lord chief baron of the court of Exchequer for the time being, the vice chancellors of the two universities for the time being, in that part of Great Britain called England; the lord president of the sessions for the time being, the lord chief justice general for the time being, the lord chief baron of the Exchequer for the time being, the rector of the college of Edinburgh for the time being, in that part of Great Britain called Scotland; who, or any one of them, shall and have hereby full power and authority, from time to time, to send for, summon, or call before him or them such bookseller or booksellers, printer or printers, and to examine and enquire of the reason of the dearness and inhauncement of the price or value of such book or books by him or them so sold or exposed to sale; and if upon such enquiry and examination it shall be found, that the price of such book or books is inhaunced, or any wise too high or unreasonable, then and in such case the said archbishop of Canterbury, lord chancellor or lord keeper, bishop of London, two chief justices, chief baron, vice chancellors of the universities, in that part of Great Britain called England, and the said lord president of the sessions, lord justice general, lord chief baron, and the rector of the college of Edinburgh, in that part of Great Britain called Scotland, or any one or more of them, so enquiring and examining, have hereby full power and authority to reform and redress the same, and to limit and settle the price of every such printed book and books, from time to time, according to the best of their judgments, and as to them shall seem just and reasonable; and in case of alteration of the rate or price from what was set or demanded by such bookseller or booksellers, printer or printers, to award and order such bookseller and booksellers, printer and printers, to pay all the costs and charges that the person or persons so complaining shall be put unto, by reason of such complaint, and of the causing such rate or price to be so limited and settled; all which shall be done by the said archbishop of Canterbury, lord chancellor or lord keeper, bishop of London, two chief justices, chief baron, vice chancellors of the two universities, in that part of Great Britain called England, and the said lord president of the sessions, lord justice general, lord chief baron, and rector of the college of Edinburgh, in that part of Great Britain called Scotland, or any one of them, by writing under their hands and seals, and thereof publick notice shall be forthwith given by the said bookseller or booksellers, printer or printers, by an advertisement in the Gazette; and if any bookseller or booksellers, printer or printers, shall, after such settlement made of the said rate and price, sell, or expose to sale, any book or books, at a higher or greater price, than what shall have been so limited and settled, as aforesaid, then, and in every such case such bookseller and booksellers, printer and printers, shall forfeit the sum of five pounds for every such book so by him, her, or them sold or exposed to sale; one moiety thereof to the Queen's most excellent majesty, her heirs

and successors, and the other moiety to any person or persons that shall sue for the same, to be recovered, with costs of suit, in any of her Majesty's courts of record at Westminster, by action of debt, bill, plaint or information, in which no wager of law, essoin, privilege, or protection, or more than one imparlance shall be allowed.

V. Provided always, and it is hereby enacted, That nine copies of each book or books, upon the best paper, that from and after the said tenth day of April, one thousand seven hundred and ten, shall be printed and published, as aforesaid, or reprinted and published with additions, shall, by the printer and printers thereof, be delivered to the warehouse keeper of the said company of stationers for the time being, at the hall of the said company, before such publication made, for the use of the royal library, the libraries of the universities of Oxford and Cambridge, the libraries of the four universities in Scotland, the library of Sion College in London, and the library commonly called the library belonging to the faculty of advocates at Edinburgh respectively; which said warehouse keeper is hereby required within ten days after demand by the keepers of the respective libraries, or any person or persons by them or any of them authorized to demand the said copy, to deliver the same, for the use of the aforesaid libraries; and if any proprietor, bookseller, or printer, or the said warehouse keeper of the said company of stationers, shall not observe the direction of this act therein, that then he and they so making default in not delivering the said printed copies, as aforesaid, shall forfeit, besides the value of the said printed copies, the sum of five pounds for every copy not so delivered, as also the value of the said printed copy not so delivered, the same to be recovered by the Queen's majesty, her heirs and successors, and by the chancellor, masters, and scholars of any of the said universities, and by the president and fellows of Sion College, and the said faculty of advocates at Edinburgh, with their full costs respectively.

VI. Provided always, and be it further enacted, That if any person or persons incur the penalties contained in this act, in that part of Great Britain called Scotland, they shall be recoverable by any action before the court of session there.

VII. Provided, That nothing in this act contained, do extend, or shall be construed to extend to prohibit the importation, vending, or selling of any books in Greek, Latin, or any other foreign language printed beyond the seas; any thing in this act contained to the contrary notwithstanding.

VIII. And be it further enacted by the authority aforesaid, That if any action or suit shall be commenced or brought against any person or persons whatsoever, for doing or causing to be done any thing in pursuance of this act, the defendants in such action may plead the general issue, and give the special matter in evidence; and if upon such action a verdict be given for the defendant, or the plaintiff become nonsuited, or discontinue his action, then the defendant shall have and recover his full costs, for which he shall have the same remedy as a defendant in any case by law hath.

IX. Provided, That nothing in this act contained shall extend, or be construed to extend, either to prejudice or confirm any right that the said universities, or any of them, or any person or persons have, or claim to have, to the printing or reprinting any book or copy already printed, or hereafter to be printed.

X. Provided nevertheless, That all actions, suits, bills, indictments or informations for any offence that shall be committed against this act, shall be brought, sued, and commenced within three months next after such offence committed, or else the same shall be void and of none effect.

XI. Provided always, That after the expiration of the said term of fourteen years, the sole right of printing or disposing of copies shall return to the authors thereof, if they are then living, for another term of fourteen years.