



# GUIDE TO USING

LITERARY, MUSICAL AND ARTISTIC WORKS

PROTECTED BY COPYRIGHT IN CANADA

IN ADÉSAM MEMBER SCHOOLS

This guide is an information and outreach tool. It is not a substitute for legal advice required in specific cases, and does not constitute a legal opinion.

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ISBN 978-2-9816305-2-0 (printed version)

ISBN 978-2-9816305-3-7 (PDF)

Legal deposit - Bibliothèque et Archives nationales du Québec, 2017

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The Association des écoles supérieures d'art de Montréal (ADÉSAM) would like to thank the *Ministère de la Culture et des Communications du Québec* for its financial support for this Guide.



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# PREAMBLE

Teaching in the arts requires extensive circulation of works made by creators and artisans.

Materials of all kinds are used in art schools for educational activities, whether it be literary works, plays, screenplays, music, musical scores, images, drawings, films, circus or comedy acts and choreographed works. These materials, in print or digital format on various media (book, CD, DVD, Internet) are presented, distributed to students by teachers, and to teachers by art and education departments. They are also made available to the wider community through school libraries and media centres, as well as outside schools, on-line or elsewhere.

Schools also produce materials for various purposes: archiving, promoting alumni, or providing information on educational institutions, in the form of texts, photographs, audiovisual recordings of teaching activities or student work, and for end-of-semester shows.

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The purpose of the Copyright Act is to balance the rights of creators and those of users. The copyright stipulates that only the creator of a work and the individuals expressly authorized by the creator (via licencing or assignment of rights) may produce or reproduce the creator's work, in whole or in part, in any form. Accordingly, to produce or reproduce a work, the consent of the creator, an assignee or a copyright collective society must be obtained. Payment of royalties constitutes consent.

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The Act was recently made more flexible for educational purposes by expanding the concept of fair dealing, an exception whereby the use of a work does not infringe copyright. However, the context in which the work is used must be specified and certain criteria considered, which we will address further on.

As stated in the Énoncé de valeurs éthiques of the Association des écoles supérieures d'art de Montréal (ADÉSAM), ADÉSAM member-schools are concerned about respecting and promoting the rights of creators, so ADÉSAM has worked closely with members of the schools to prepare this guide.

# PRESENTATION OF THE GUIDE

The purpose of this guide is to provide staff in ADÉSAM member-schools who are responsible for ensuring copyright compliance with the tools they need to formalize rules of conduct within their institutions and build awareness of the importance of copyright, throughout their respective communities.

This guide provides definitions and the general and specific principles of the Copyright Act as they apply to educational institutions.

The guide also addresses common applications of the Act for students, teaching and educational staff, and administrative staff.

The appendices provide information useful for managing copyright in educational institutions, set out the committee's recommendations, explain the process for applying to use a copyrighted work and describe copyright collective societies. The appendices also contain a bibliography and all the sections of the Act cited in the guide. The last appendix contains a sample assignment of rights and an example of a licence application form.

**The information in the guide should provide individuals who use works with the tools they need to:**

- recognize the protected nature of works;
- determine whether their use infringes copyright; and
- know the procedure for ensuring copyright compliance.

# 1. DEFINITIONS

## Works and subject-matter protected by copyright <sup>1</sup>:

**All original literary, scientific or artistic creations are protected by copyright as soon as they are fixed in any material form.**

The Act protects four categories of works and three other categories of subject-matter.

### FOUR CATEGORIES OF WORKS:

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- **Literary works:** books, newspapers, lyrics of songs (without music), poems, computer programs, reports, tables containing data, theses, academic works, compilations of literary works, etc.
- **Dramatic works:** choreographies, films, screenplays, pantomimes, plays, scripts, etc.
- **Musical works:** compositions with or without words, compilations of musical works, scores.
- **Artistic works:** maps, drawings, graphics, architectural works, paintings, engravings, photographs, portraits, plans, sculptures, etc.

### THREE OTHER CATEGORIES OF SUBJECT-MATTER PROTECTED BY COPYRIGHT:

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- **Sound recordings:** cassettes, compact disks, MP3 files, etc.
- **Performers' performances:** performances of dramatic or musical works, dramatic or musical improvisation, recitation of a literary work.
- **Communication signals:** radio and television waves, Internet.

### COPY OF A WORK:

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The physical object or document itself: book, magazine, CD, DVD, digital document, sound or audiovisual recording broadcast or on the Internet, musical score, etc.

### INFRINGING COPY <sup>2</sup>:

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Unlawfully produced copy, i.e. copy of a book or DVD or music download from an unauthorized website.

### TO USE A WORK:

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A work is used when it is reproduced, performed, presented in class, produced, broadcast or transformed to create another work (to adapt the work, for example).

### TO PRESENT OR PERFORM IN CLASS:

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To present or perform in class may mean reading a text, showing photographs, videos, artistic works, playing music.

### TO REPRODUCE, COPY, FIX:

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To photocopy, cut/paste, digitize, record on a device or medium, photograph, transmit or make accessible via telecommunications (by email, Internet or text message).

<sup>1</sup> Section 2 of the Copyright Act. **N.B. Unless otherwise indicated, all sections cited in footnotes refer to the *Copyright Act*.**  
<sup>2</sup> Section 2

**TO PERFORM A WORK:**

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To play, act, perform, present a work (visual, auditory).

**MEDIUM:**

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Object used to record data; anything used to save, transport, transmit information (e.g. CD, DVD, USB key, memory card, etc.).

**SOURCE OF A WORK<sup>3</sup>:**

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The origin of a work (magazine, newspaper, website, etc.), the name of the author, performer, publisher, maker, broadcaster.

**COMMERCIALLY AVAILABLE<sup>4</sup>:**

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Available on the Canadian market within a reasonable time and for a reasonable price, and which may be located with reasonable effort.

**PROPRIETARY (OR ECONOMIC) RIGHTS:**

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A work can be used under proprietary or economic rights, which include the right of reproduction and the right of public representation, i.e. the right to perform in public, the right to make and commercialize, the right to adapt and translate the work, etc., as well as the right to authorize such acts. Failing exceptions, the author is the first owner of copyright on his or her work, and thus the only individual able to authorize the above-mentioned acts. However, authors may assign or licence their rights, in part or in whole, to a publisher for example, who then becomes the new copyright owner, permanently (assignment) or for a set period (licencing). Authors may also have a management society administer their rights.

**MORAL RIGHTS:**

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Moral rights include the right to protect the integrity of the work, the right to claim its creation (paternity) and the right to anonymity. Copyright owners often licence or assign their proprietary rights (to a publisher, producer, etc.), but retain moral rights, which cannot be transferred. However, authors may waive the exercise of those rights, in writing.

**ASSIGNMENT:**

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The copyright owner may assign ownership of his/her proprietary rights to a third party, either wholly or partially, for a set period, which is generally the whole term of the copyright.

**LICENCE:**

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A licence allows an individual to use a protected work for certain purposes and under certain terms and conditions. It is a form of temporary leasing of a work.

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3 Section 29.1

4 Section 2

# 2. GENERAL AND SPECIFIC COPYRIGHT PRINCIPLES APPLICABLE TO EDUCATIONAL INSTITUTIONS

## RIGHTS OF PATERNITY AND INTEGRITY (MORAL RIGHTS)

- Sources are cited to satisfy the right of paternity.
- The right of integrity is infringed if the work or performance is distorted, mutilated or otherwise modified, or used in association with a product, service, cause or institution without the author's consent and to the prejudice of the author's honour or reputation.<sup>5</sup>

## WHAT WORKS ARE PROTECTED?

For a work to be protected, it must be fixed on a physical information medium. If the works are fixed on a medium, they are automatically protected in Canada without formalities, regardless of whether they bear the © sign or state "All rights reserved". Foreign works are also protected by Canadian law if they are used in Canada, with no formalities required<sup>6</sup>.

## PURPOSE OF COPYRIGHT PROTECTION

The Act protects authors' rights in their works, meaning their sole right to produce or reproduce the work or any "substantial part" thereof, in any material form whatsoever, and to perform the work or any substantial part thereof in public.

However, the Act does not define "substantial part". According to the case law, the term "substantial part" does not equal a quantitative volume (length of time or number of pages) but refers rather to the qualitative nature of the excerpt, depending on whether or not it constitutes a substantial part of the work, in other words, the part of the work that is most recognizable or emblematic.

## PUBLIC DOMAIN WORK

A work enters the public domain when the copyright expires (in Canada, usually 50 years after the author's death), at which point the works can be used freely.

<sup>5</sup> Section 28.2, paragraph 1

<sup>6</sup> Section 5, paragraph 2



## LAWFUL USE OF A PROTECTED WORK OR NON-INFRINGEMENT COPY

- Lawful use of a protected work means the use of a copy that is not an infringing copy
- Unlawful copies, recordings or downloads infringe on the proprietary rights of works because they deprive the copyright owner (creator, performer, producer, publisher, broadcaster, distributor) of income and royalties.
- The Act must be consulted to determine whether a specific use of a work is permitted, and where it is not, consent must be obtained from the copyright owners. Licences provided by collective rights management societies constitute consent because the societies are subrogated under the Act to manage the rights of authors on their behalf.

## EXCEPTIONS RELATED TO EDUCATIONAL INSTITUTIONS

There are exceptions in the Act that allow for the use of works without requesting the author's consent, primarily for presentation in the classroom and to compile collections of texts and educational materials and exams, for the use of material available free of charge and lawfully on the Internet, under certain terms and conditions.

For the reproduction of works, it is through their agreements with collective rights management societies that institutions may reproduce certain parts of work without having to request the authors' consent.

## EXCEPTIONS RELATED TO NON-PROFIT ORGANIZATIONS

Several exceptions apply to non-profit organizations. The educational activities of educational institutions are deemed to be acts undertaken without motive of gain when they recover no more than the costs, including overhead costs, of such activities<sup>7</sup>.

## FAIR DEALING EXCEPTION

The Act provides for a fair dealing exception, i.e. the possibility of using works or excerpts of work without having to request permission from the authors or pay royalties.

The courts have determined the factors to be considered in assessing whether a dealing is fair.

These factors are<sup>8</sup>:

- ✓ the purpose, character and amount of the dealing;
- ✓ alternatives to the dealing;
- ✓ the nature of the work;
- ✓ the effect of the dealing on the work;
- ✓ respect of moral rights.

7 Section 29.3, paragraph 2

8 See 2004 decision in [CCH Canadian Ltd. v. Law Society of Upper Canada, \[2004\] 1 SCR 339, 2004 SCC 13 \(CanLII\)](#). These criteria were confirmed by the Supreme Court of Canada in 2012 in [Alberta \(Education\) v. Canadian Copyright Licensing Agency \(Access Copyright\), 2012 SCC 32, \[2012\] 2 SCR 345](#).

# 3. GUIDELINES FOR STUDENTS

## ACQUIRING A COPY OF A WORK

- You may obtain a copy of a work by buying it, renting it, borrowing it, recording it (from a communication medium such as radio, TV or the Internet), downloading it or receiving it as a gift, but ALWAYS MAKE SURE that it is not an infringing copy.
- If the work is not commercially available in Canada, you may purchase it abroad or obtain a copy made from a non-infringing copy.

## RENTING AND BORROWING A COPY OF A WORK

- When you rent or borrow a copy of a work, you must limit its use to personal, study and classroom presentation purposes. It is illegal to reproduce a rented or borrowed copy for any other purpose<sup>9</sup>.

## SCHOOL MATERIALS SUPPLIED BY THE SCHOOL OR TEACHER

- If in one of your courses you are sent or given access to excerpts from literary works, course notes or other material in the form of digital files, you may keep them or print a copy, but you may not provide a hard or digital copy of those files to anyone else, or use them for any commercial purpose.

## COPY / REPRODUCTION / FIXATION

- You may reproduce, copy and/or fix all or a substantial portion of a work ONLY if you are already the owner of a non-infringing copy (or if you received it via a communication medium in a lawful manner) AND ONLY for personal use<sup>10</sup>.
- In the case of a musical work of which you own a copy, you may make a copy and/or reproduction on audio media, your iPod, smartphone, tablet or a hard disk for personal use only<sup>11</sup>.
- In the case of a radio or television broadcast<sup>12</sup>, you may make a copy by recording it ONCE, and ONLY to listen to it or watch it later within a reasonable time, and you must, in principle, destroy the copy afterwards. You may not give anyone else a recording that you made. You may not record programs to add to your library without paying for your copy<sup>13</sup>.

9 Section 29.22, paragraph 1b

10 Section 29.22, paragraph 1, a, b, c, d, e and section 29.23, paragraph 1a, f

11 Section 29.22, paragraph 3

12 Section 29.23, paragraph 2

13 Section 29.23, paragraphs 1c, d, e

- You must never rent or sell a reproduction or copy of a work to anyone else <sup>14</sup>.
- If you give someone a lawfully acquired copy of a work, you must always destroy any reproduction or copy you previously made of that work <sup>15</sup>.
- You must not circumvent any technological protection measure in order to make a reproduction, a copy and/or fixation <sup>16</sup>.

### INCORPORATING A WORK INTO YOUR SCHOOL WORK

- You may use a work for the purpose of private study, research, education, parody or satire <sup>17</sup>.
- You must always cite the source of a work or excerpt from a work that you are using or referencing <sup>18</sup>.
- You may use any work of any kind, regardless of its medium, to create another work, provided that the new work is not used for any commercial purpose <sup>19</sup>. For example, you may use music in a video recording of your performance.

### USING STUDENT WORK IN YOUR PORTFOLIO, AT PROFESSIONAL AUDITIONS OR FOR PERSONAL PURPOSES <sup>20</sup>

- The purpose of a portfolio is to present yourself in order to obtain a contract or to get hired. It is therefore considered a commercial activity. Accordingly, you must be careful about using protected work.
- If the student work is entirely your creation, you may of course use it, unless the agreement with your establishment prohibits it <sup>21</sup>.
- If the student work is entirely the creation of a team, you must also obtain your teammates' authorization to use it.
- If the student work is a school production (for example, a show), you must ALWAYS check with the administration to see whether it is protected. Your school may have conditions governing the dissemination of student work.

### PHOTOGRAPHING OR FILMING INSIDE THE SCHOOL

- If you want to photograph or film school activities, you must always get the permission of your teacher or the administration, who will explain the procedure you need to follow.

14 Section 29.22, paragraph 1e

15 Section 29.22, paragraph 4

16 Section 29.22, paragraph 1c and section 29.23, paragraph 1b

17 Section 29

18 Section 29.1

19 Section 29.21, paragraph 1a

20 May vary from school to school, depending on the contract between the school and its students.

21 For example, at some universities students hold the rights to their work, but a non-exclusive licence allows the university to reproduce and distribute it for teaching and research purposes.

# 4. GUIDELINES FOR TEACHERS AND EDUCATIONAL STAFF

## AUTHORIZED USES OF WORKS

The use (reproduction, presentation/publication/communication and public performance) of any work (written, audiovisual, digital), regardless of its medium (print, CD, DVD, Internet, etc.) is permitted as follows:

- with the author's written consent <sup>22</sup>;
- when the work is in the public domain <sup>23 24</sup>;
- when the work is distributed free of charge and lawfully on the Internet;
- when the institution has a licence with a copyright collective society, under the terms and conditions of that agreement;
- when the use is deemed to constitute fair dealing.

## WARNING:

It is an infringement of copyright for any person to <sup>25</sup>:

- sell or rent out or distribute [a work, etc.] for commercial purposes;
- distribute [a work, etc.] to such an extent as to affect prejudicially the owner of the copyright on the work or on any other copyright subject-matter included in the lesson <sup>26</sup>;
- communicate [a lesson] by telecommunication to any person not affected by the lesson;
- circumvent or contravene any measure to prevent recipients of the transmission from fixing, reproducing or communicating the work.

<sup>22</sup> Section 27, paragraph 1. Written proof is required.

<sup>23</sup> Section 6. However, this does not release from copyright translations and annotations of these works. The Act contains other information on works in the public domain. In Canada, a work enters the public domain 50 years following the death of the author, and increasing this term to 70 years is being discussed. **Outside Canada, copyright terms are not necessarily the same.**

<sup>24</sup> If the author is unknown, see Section 6.1.

<sup>25</sup> Section 27, paragraph 2

<sup>26</sup> The concept of "lesson" refers to the audiovisual recording of a course given by a teacher. The transmission of the recording to students, for distance courses for example, requires caution. The rules governing in-class presentation of works are less restrictive than the rules governing the transmission of a copy of a work.

## ORIGIN OF WORKS AND CITATION OF SOURCES

- Ensure at all times that copies of works are not infringing copies<sup>27</sup> and, where necessary, that the communication signals received to access the work are not received unlawfully;
- Always cite sources, including the author and/or performer and/or publishers and/or producer and/or broadcaster<sup>28</sup>;
- A teacher may use in class a copy of work that belongs to him/her or which he/she has borrowed.  
To ensure that the copy is a lawful copy, check with the library to determine whether the document is available and use the library copy for teaching purposes.

## PRESENTATION AND DISTRIBUTION IN CLASS

- Works can be presented or shown on screen in class without the author's permission, but non-infringing copies must be used at all times (written document, CD, DV, digital file)<sup>29</sup>;
- Radio and television programs may be viewed/listened to live<sup>30</sup>;
- A copy may be reproduced in writing on a board in the classroom<sup>31</sup>;
- If a work is not commercially available in Canada on a medium appropriate for classroom presentation, the work may be copied to the appropriate medium<sup>32</sup>.

## PUBLIC PERFORMANCE (PRESENTATION, SHOW, PROJECTION, PERFORMANCE)

- As long as the performance takes place on the institution's premises for educational purposes before an audience consisting primarily of the institution's students or staff, any work may be performed live in public, primarily by students, without the author's permission<sup>33</sup>;
- Public performance includes the production of a scenic or dramatic work, a show, the projection of a film, the broadcast of music. Always ensure that the copy of the work (CD, DVD, etc.) being used is not an infringing copy.

## USE OF A WORK TO CREATE ANOTHER WORK

- A work may be used to create another work, on the condition that the new work created is not marketed. Ensure that the new work does not replace the original work and thus does not adversely affect its exploitation<sup>34</sup>;
- For musical compositions, a montage may be created or the tempo modified for educational purposes, if the new work is not used for commercial purposes;
- For public performances held off the premises of the educational institution, the use of music requires the permission of the copyright owners and/or payment of royalties to the authors.

27 A non-infringing copy may be a copy purchased at or rented from a retail store, a library copy, a copy borrowed from a friend or shown on YouTube.

28 Section 29.1

29 Section 29.5b, d

30 Section 29.5c

31 Section 29.4, paragraph 3

32 Section 29.4, paragraphs 1 and 3

33 Section 29.5a

34 Section 29.21, paragraph 1 d

### FOR EXAMINATIONS OR TESTS (FORMAL EVALUATIONS)

- A work may be copied, translated, distributed electronically, presented or played for a test or an examination, if it is not commercially available in an appropriate medium<sup>35</sup>;
- A work may also be produced and performed for an examination as long as the performance occurs on the institution's premises, before an audience consisting primarily of the institution's students and staff;
- However, because the examination or test must be for the purposes of formal evaluation of the student, this exception does not apply to performances for entrance audition purposes.

### RECORDING OF AN AUDIOVISUAL WORK FROM A COMMUNICATION SIGNAL

- A radio or television program may be recorded and saved for up to 30 days to determine its educational value<sup>36</sup>;
- A single copy of a radio or television news or news commentary program, excluding documentaries, can be made for presentation to students<sup>37</sup>;
- Under the Act, a single copy of a television program can be made for presentation to students if the school pays the royalties<sup>38</sup>.

### WORKS AVAILABLE THROUGH THE INTERNET

- Any work available through the Internet can be reproduced, communicated by telecommunication or performed<sup>39</sup>, under the following conditions:
  - ✓ if it is not protected by a technological protection measure that restricts access to the site (such as a password) or the site does not display any notice prohibiting its reproduction, communication or performance<sup>40</sup>;
  - ✓ a work cannot be used if it is known (or should be known) that the work was made available through the Internet without the consent of the copyright owner<sup>41</sup>;
  - ✓ providing the source: author, performer, maker or broadcaster, depending on the nature of the work<sup>42</sup>.

35 Section 29.4, paragraphs 2 and 3

36 Section 29.7, paragraph 1b

37 Section 29.6

38 Section 29.7, paragraph 3. The ERCC, which was responsible for collecting the royalties, was dissolved because the management was too costly. There seems to be a legal void in this respect.

39 Section 30.04, paragraph 1b

40 Section 30.04, paragraphs 3 and 4

41 Section 30.04, paragraph 5

42 Section 30.04, paragraph 2a, b

## REPRODUCTION OF A WRITTEN DOCUMENT (PHOTOCOPYING AND TRANSMISSION OF A DIGITAL FILE)

- Certain documents may be reproduced in full, such as a newspaper article or short excerpts from literary works.
- Because the institution has a licence with Copibec, the institution and its staff, under the terms of the agreement, are permitted to:
  - ✓ Reproduce and distribute a protected document, in compliance with the terms of the agreement <sup>43</sup>. The number of copies must be logged <sup>44</sup>;
  - ✓ Make a digital reproduction of a protected document and communicate it by telecommunication <sup>45</sup>. The number of recipients must be logged, and precautions taken to ensure that the document cannot be retransmitted or printed more than once <sup>46</sup>;
  - ✓ Fix a reproduction in any material form <sup>47</sup>. The reproduction must be destroyed within 30 days of the final course evaluation <sup>48</sup>.

Under the [terms and conditions of the agreement](#) with Copibec, the following reproductions are generally permitted <sup>49</sup>:

- ✓ an entire page (e.g. newspaper article);
- ✓ an entire article in a periodical;
- ✓ an entire chapter that does not exceed approximately 15% of the total number of pages in the book;
- ✓ a musical score of 6 pages or less taken from a collection of scores totalling 40 pages, i.e. 15% of the work;
- ✓ to save a copy on an intranet site or in-house wiki;
- ✓ to transmit in-house by email;
- ✓ the following statements must be shown: **©Names of the author, publisher, artist or illustrator** (where applicable). **This document was reproduced under a licence granted by Copibec. The sale and reproduction of this document are strictly prohibited;**
- ✓ Warning: Copibec produces a list of exclusions, i.e. works that cannot be reproduced in any manner.

43 Section 30.02, paragraph 1

44 Section 30.02, paragraph 3

45 Section 30.01, paragraph 3a and section 30.02, paragraph 1a, b

46 Section 30.01, paragraph 6b, c, d and section 30.02, paragraph 3b, c

47 Section 30.01, paragraph 3b

48 Section 30.01, paragraph 6a

49 <http://copibeceducation.ca/en/licence-collegiale/>

### IN CLASS, BUT TRANSMITTED DIGITALLY

- Digital files containing works may be transmitted to students because students are considered to be on the educational institution's premises when they receive the digital file <sup>50</sup>;
- This measure also applies to on-line education because a class (lesson) can be fixed in digital format;
- It is important to remember that transmitting a digital file is the same as making a copy (print copy, CD, etc.). The same reproduction rules apply under the agreement between Copibec and the institution. The number of transmissions must be reported;
- However, measures must be taken to ensure that the student can print only one copy and cannot transmit the work to others <sup>51</sup>;
- Teachers or staff members who receive a digital file for educational purposes may not make more than one copy <sup>52</sup>.

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50 Section 30.01, paragraph 4

51 Section 30.02, paragraph 3b, c

52 Section 30.02, paragraph 2



# 5. GUIDELINES FOR ADMINISTRATIVE STAFF

## USE OF PROTECTED WORKS

- In a non-educational setting, the exception for educational institutions allowing them to use works without requesting permission no longer applies. For example, a SOCAN licence must be purchased to broadcast musical works during a dance, as background music, or as telephone music on hold;
- To use images, you must obtain permission from graphic artists, photographers, and also from the people appearing in the photographs;
- Under the Act, photographers are the first owners of copyright in their work. However, it is not an infringement of copyright to use a photograph or a portrait of an individual commissioned by said individual, even if used by a third party, but always for non-commercial or private purposes<sup>53</sup>.

## REPRODUCTION USING A PHOTOCOPIER OR SCANNER

- The educational institution must post a warning about copyright infringement near any self-serve photocopier or scanner<sup>54</sup>.

## EDUCATIONAL MATERIALS AND ACADEMIC WORKS: WHO OWNS RIGHTS?

- The educational institution may use works it produces in accordance with its written agreements and contracts with the creators (authors, composers, directors, designers, screenwriters, graphic artists, photographers, producers);
- Students who participate in creating a work own rights in the work, and their permission must be obtained to use the work;
- The employer is considered as the owner of the rights in educational materials and scholarly works created by a salaried employee or with his or her assistance, unless the contract with said employee stipulates otherwise<sup>55</sup>;
- For contract employees, the contract must stipulate who owns rights in educational materials and works created in the workplace. Depending on preferences, the parties may sign a licence or assignment of rights for managing the use of the materials and works in question;
- A work may be a promotional document – think about graphic artists!

53 Section 13 and section 32.2, paragraph 1f

54 Section 30.3, paragraph 1c

55 Section 13, paragraph 3

### PHOTOGRAPHING OR FILMING INSIDE THE EDUCATIONAL INSTITUTION

- The school is responsible for ensuring it has permission to photograph and film individuals <sup>56</sup>;
- Determine whether the school's contracts with students and staff stipulate that they agree automatically to be photographed and filmed;
- There are no specific limitations if the photographs or films are for archival purposes, but you may eventually want to distribute the archives;
- Posting a written notice is more effective at prohibiting people from reporting on, photographing or filming an event at the institution <sup>57</sup>.

### BROADCASTING PHOTOS OR IMAGES FILMED IN CLASS OR DURING A SCHOOL PRODUCTION

- If the documents are used for educational purposes, meaning if the broadcast is via closed-circuit for the students and teacher, no further permission is required;
- If the purpose is non-educational (personal use, promotion, CV, social media), the school must authorize the broadcast of the photos or films, ensuring first that the agreements with the creators and the people appearing in the photos authorize their broadcast;
- There must also be a written agreement in place with the students and staff members authorizing the broadcast of the material and releasing rights to the image <sup>58</sup>.

### PUBLISHING REPORTS

- The creation and publication of a report of a lecture given in public or a political speech made during a public meeting are permitted and do not require permission <sup>59</sup>.

### SCHOOL LIBRARIES

#### Reproduction of a work for the Library

- A library may make a copy of a work for the maintenance or management of its permanent collection <sup>60</sup>;
- Where a work is not commercially available or available in an appropriate format, the library may make a copy for the following purposes:
  - ✓ to save a rare or unpublished original that is at risk of deterioration or becoming lost;
  - ✓ for the purposes of on-site consultation if the original is not in the appropriate condition for that purpose;
  - ✓ if the original is in a format that is obsolete.

<sup>56</sup> Section 3 et 36(3) of the Civil Code of Quebec

<sup>57</sup> Section 32.2, paragraph 1c

<sup>58</sup> Section 3 et 36(3) of the Civil Code of Quebec and Section 4 of the Quebec Charter of Human Rights and Freedoms.

<sup>59</sup> Section 32.2, paragraph 1e

<sup>60</sup> Section 30.1

### Reproduction of an item for a user

- Subject to the restrictions listed above, a library may make a copy of an item at a user's request and must inform the user that the copy is to be used solely for private study, research, education, parody or satire (fair dealing)<sup>61</sup>;
- The item may be an article in a scholarly, scientific or technical periodical<sup>62</sup>;
- The item may be an article published in a newspaper or periodical if the newspaper or periodical was published more than one year before the copy is made<sup>63</sup>;
- The item may not be a work of fiction or poetry or a dramatic or musical work<sup>64</sup>;
- If the copy is in digital format, the library must ensure that the user can make only one copy, that the user cannot use the digital copy for more than five business days from the day on which the user first uses it, and that the user cannot communicate the digital copy to any other person<sup>65</sup>.

### Unpublished works<sup>66</sup>

- A single copy of an unpublished work may be given to a user if:
  - ✓ a copyright owner has not prohibited copying;
  - ✓ at the time of deposit, the Library notified the person depositing the work that it could be reproduced;
  - ✓ the user requests the copy for private study or research;
  - ✓ the Library must remind the user that the copy can be used only for that purpose, and that any other use will require permission.

## **IMPORTATION OF PROTECTED WORKS**

- The importation or exportation of documents that are considered to be infringing copies in the country in which they were made, or which would be considered as infringing copies if they had been made in Canada, is prohibited<sup>67</sup>;
- However, an individual may<sup>68</sup>:
  - a. import for their own use not more than two copies of a work or other subject-matter made with the consent of the owner of the copyright in the country where it was made;
  - b. at any time, before copies are distributed or made in Canada, import the copies (not more than one copy in the case of a book<sup>69</sup>) made with the consent of the owner of the copyright in the country where the copies were made, that are required for the use by a library, an archive, a museum or an educational institution<sup>70</sup>;

61 Section 30.2, paragraphs 1 and 4

62 Section 30.2, paragraph 2a

63 Section 30.2, paragraph 2b

64 Section 30.2, paragraph 3

65 Section 30.2, paragraph 5.02

66 Section 30.21

67 Section 44.01

68 Section 45, paragraph 1

69 Section 45, paragraph 1d

70 Section 45, paragraph 1c

- c. import copies of used books made with the consent of the owner of the copyright in the country where they were made, except textbooks of a scientific, technical or scholarly nature for use within an educational institution.

### COMPUTER PROGRAMS

- Licences must be purchased for the use of computer programs at all work stations within the educational institution.
- Any person who owns a non-infringing copy of a computer program or has a licence to use a copy of the computer program may:
  - ✓ reproduce the copy for backup or to adapt, modify, convert or translate it into another computer language, if the copy is intended to ensure that the program is compatible with a computer, is solely for the person's own use, and is destroyed immediately after the person ceases to be the owner of the copy or of the licence<sup>71</sup>;
  - ✓ reproduce the copy if it is used to obtain information required to make that program and another program interoperable or to assess their interoperability, even if the other program is made commercially available (or available for lease)<sup>72</sup>;
  - ✓ reproduce a copy for encryption research if the research would otherwise be difficult to carry out, provided that the copyright owner has been so informed. The research must not constitute a criminal offence, and if the person discovers a vulnerability or security flaw in a computer program, they must notify the copyright owner before making that information public<sup>73</sup>.
  - ✓ reproduce a work to assess the vulnerability of a computer or to correct security flaws (unless there is a criminal offence). If the person discovers a security flaw in a computer program, they must notify the copyright owner before making that information public<sup>74</sup>;
  - ✓ include a work or act within a new work if such inclusion is incidental and not deliberate<sup>75</sup>;
  - ✓ reproduce a work if the reproduction is an essential part of a technological process, if its sole purpose is to facilitate a use that is not a copyright infringement, and the copy is destroyed once the process has been completed<sup>76</sup>;
  - ✓ It is not an infringement of copyright to provide the means for reproducing a work or transmitting a work through the Internet, or to cache a work through telecommunication or the Internet or any other digital network<sup>77</sup>.

71	Section 30.6
72	Section 30.61, paragraph 2
73	Section 30.62
74	Section 30.63
75	Section 30.7
76	Section 30.71
77	Section 31.1, paragraphs 1 and 2

# APPENDIX A

## RECOMMENDATIONS AND GUIDELINES FOR EDUCATIONAL INSTITUTIONS

### 1) NOTICE

- At shows, performances and presentations, post a notice of warning about filming or photographing.
- In the libraries, post a notice of warning about taking photographs of documents/works of art using any device whatsoever.
- At any self-serve (pay or free) photocopier/printer/scanner, post a notice of warning about restrictions on copying set out in your agreement with Copibec.

### 2) REPRODUCTION OF WRITTEN WORKS (LITERARY WORKS)

- Have in place an agreement with Copibec and produce the required logs, such as the volume log, which requires recording the number of copies made for all of the educational institution's activities, not just educational activities. The cost of the Copibec licence is based on the number of students at the school and not on the excerpts copied. By submitting logs of all copies made, you are ensuring that the authors receive the royalties owed to them.
- Implement a procedure for teachers for controlling the copying of excerpts of literary works within the institution. The institution is responsible for determining whether reproduction is allowed by Copibec (and the list of exclusions) or by the Act, and for reporting to Copibec.
- Copibec may also permit the reproduction of a larger portion of a work than is usually allowed for a set fee or in response to a special request.
- There is also Adel inc., a virtual bookstore that, in cooperation with Copibec, permits the printing of French-language Quebec and Canadian dramatic works, approximately 80% of which are unpublished. Printing fees are paid as royalties to the authors of these unpublished works.

### 3) DIGITAL DOCUMENTS

- Digital documents must be transmitted to students by an employee of the educational institution (authorized third party), and the student must be clearly informed that the document may be printed only once and cannot be retransmitted.
- Because transmission constitutes reproduction, the number of times digital documents (articles, excerpts of work) are transmitted must be recorded and the number included in the logs submitted to Copibec.
- If a digital resource cannot be reproduced because of a protective measure or a clear prohibition, it is recommended that the hyperlink be sent to the students. However, some sites prohibit the transmission of hyperlinks without their permission.

#### 4) SELECTION OF WORKS USED BY THE SCHOOL FOR STUDENT WORK

- Focus on works by creators whose permission to use their works includes allowing students to distribute the new work they have created;
- Before making a final decision on the selection of a work, ensure that all permissions required have been obtained and that all creators and copyright holders have been taken into account, and record the information, noting who will be responsible for having rights cleared.

#### 5) CONTRACTS WITH CREATORS

- Keep contracts or, in the absence of a contract, exchanges with creators and their contact information for future reference.
- To help manage the use of works created with the students, have the same clauses in contracts with all creators for a single work (choreographers, authors, musicians, other designers, etc.).
- If the school hires a creator on a contract-basis, include in the contract the copyright-related obligations for all the works that the creator will use in his or her work. Accordingly, if the person (a choreographer, for example) is responsible for ensuring that the contents of the work are not borrowed from any protected work, put a clause to that effect in their contract.
- In contracts with creators, insert the necessary clauses to cover the creation, broadcast, recording and sale of the work. Stipulate that the work may be broadcast by the school, teachers or students, for a portfolio, audition or personal use, and whether the recording of the work produced by the school can be sold to only a few (for example, to students and parents) or, on the contrary, to the public, a broadcaster, etc.
- Request an assignment of rights in the written agreement with your photographers.

#### 6) CONTRACTS WITH STUDENTS AND STAFF

- Have a written agreement with students, teachers and other employees authorizing the use of their image in the school's graphic creations (brochures, videos, etc.).
- In the contracts with students, include a clause stipulating that the school will be able to use students' work for promotional or other purposes, and whether the student must get the school's permission to use certain student works for commercial purposes, including shows.
- In the contracts with teachers and administrative staff, whether on salary or on contract, include a clause stipulating that the material produced and the works created as part of their employment automatically become the property of the educational institution. This is automatically provided for under the Act in the case of employees.

## 7) TEACHING PRACTICES

- Recommend that students do their work using works that are free of copyright or works with rights that can be easily released so that once they graduate, they can use them for promotional or commercial purposes.
- In the case of a work that is not authorized for extensive broadcast but must be transmitted by the student, for example for a professional audition, suggest that the student provide the digital material via media such as private-access accounts on the Internet (for example, Vimeo) to limit the risks of broadcasting protected works that can be shown to specific persons.
- To expand the institution's teaching materials and limit the use of infringing copies, encourage teachers to ask the library/media centre to acquire documents and works that they can use in class.

## 8) ACQUISITION OF MATERIAL BY THE SCHOOL OR THE LIBRARIES

- Buy copies with educational/collective licences where available.
- When a work is donated to the school, include in the contract with the donor that the donor agrees that the work or a copy of the work may be loaned or that the creators of the work have been advised that the work could be loaned.







# APPENDIX B

## PROCESS FOR CLEARING RIGHTS ON PROTECTED WORKS

### Steps:

**1. DETERMINE WHETHER THE ACT ALLOWS YOU TO USE THE WORK** without requesting permission and without paying rights (by following our guide!). If the answer is yes, use a non-infringing copy and cite your sources.

**2. IF THE ACT DOES NOT ALLOW IT**, contact either the appropriate copyright collective society or the holder directly (author, publisher, etc.).

- ✓ The copyright collective society may sell you a licence or request permission on your behalf from the copyright holder.
- ✓ When requesting permission to use a work directly from copyright holders, you can either ask permission to use the work (or to have specific rights waived) without payment, or negotiate payment.
- ✓ Require that copyright holders give you written consent and keep copies of the consent.
- ✓ A creator may refuse to provide consent to have his or her works used, for any number of reasons, and that is his or her rights.
- ✓ If a collective society cannot manage your request and you are unable to locate the copyright owners, submit a request to the Copyright Board of Canada for a licence under section 77 of the Copyright Act. However, be aware that this is a lengthy and unusual process, and even if it is possible to get a licence, it would be better to select other works.

### 3. HOW TO IDENTIFY COPYRIGHT OWNERS?

The Intellectual Property Office has a database of Canadian copyrights, and can identify the owner of copyright in works that have been recorded in the database since 1991. The database contains contact information for copyright owners. However, copyright protection is automatic in Canada, and a work is protected even if it is not registered. Registering a work is simply a formality.

The copyright collective societies administer the copyrights of many copyright owners. It is recommended that you contact the appropriate copyright collective society first to obtain permission to use a work.

A school could also contact copyright owners directly to request a specific permission.

#### 4. WHAT RIGHTS REQUIRE PERMISSION OR A LICENCE?

Copyright covers a number of rights. Here is a simplified list.

##### COPYING PRINTED WORKS

###### Copying a printed work or its digital equivalent in print or digital format.

Follow the rules of your institution's licence agreement with **Copibec**. Generally, the college licence stipulates that:

- Up to 15% of a work and 10% of a work specifically made for college teaching may be copied.
- Special permission is required to copy a larger section of a work (cost is approximately \$0.12/page).
- The digital copy of a work may be made accessible to students but only on a secure network, for example an intranet.
- Lyrics to a song may be copied.
- Copibec offers a variety of digital contents on **SAMUEL** that may be used for educational purposes. The contents offered contain excerpts of books and magazines, as well as song lyrics and images.

###### Copying French-language Quebec and Canadian dramatic works.

In cooperation with **Copibec**, the Association québécoise des auteurs dramatiques (AQAD) prints entire works inexpensively (\$4.50 to \$7.50). Consult **ADEL**.

###### Otherwise:

A request can be made to the author or publisher.

##### USING A WORK TO CREATE A NEW WORK AND FIXATION

###### Using a work in the creation of a new student work. (For example, music in an audiovisual work.)

If the work is not commercially available, simply use non-infringing copies of the work and cite the sources.

If you want to broadcast the work worry-free and without exclusions, use works that are not protected by copyright.

## IN CLASS, FOR EDUCATIONAL PURPOSES

### Presenting or performing a work or playing, producing, projecting, broadcasting it.

Use a non-infringing copy if the work is in a material format. If the work is taken from the Internet, check to determine whether the site gives you permission to use it.

Check to see if your library has a commercial copy of a CD or a DVD, and if not, whether it can purchase it.

- ✓ Curio.ca (Radio-Canada) and Connecting Videos to Education (programs produced by Télé-Québec, among others) offer subscriptions to educational institutions and to libraries.
- ✓ In the case of a radio or television program, if it is not commercially available in Canada, ask the broadcaster or producer (CBC, NFB, Ciné Fête, etc.).

## USING MUSICAL WORKS (COMPOSITIONS AS IS) OUTSIDE THE SCHOOL

### Playing / performing musical works in public, outside the school premises.

Check to see if the broadcaster (concert hall) has a licence with SOCAN allowing the music to be performed live. If the broadcaster has leased the hall, it may not have a licence.

- ✓ Cost is approximately 1% to 3% of gross receipts (\$35 minimum).
- ✓ SOCAN pays royalties to the authors, lyricists, composers and music publishers.



## USING VIDEO RECORDINGS OUTSIDE THE CLASSROOM OR OUTSIDE THE SCHOOL

### Broadcasting a video recording during a show, off school premises.

Request permission from the producers (or negotiate payment) to use images and incorporate them within a show.

### Broadcasting a video recording as part of non-educational activities.

Apply for a licence from the appropriate copyright collective society (Audio Ciné Films, Les Films Criterion, etc.)

**N.B.: The purchase or rental of a video does not confer the right to broadcast it as part of non-educational activities.**

## USING SOUND RECORDINGS OUTSIDE CLASS OR OUTSIDE THE SCHOOL

### Broadcasting a sound recording during a show, off school premises.

Check to see if the broadcaster (concert hall) has a licence with **SOCAN** allowing the music to be performed live. If the broadcaster has leased the hall, it may not have a licence.

- ✓ Cost is approximately 2% of gross receipts (\$62 minimum).
- ✓ SOCAN pays royalties to the authors, lyricists, composers and music publishers.

### Broadcasting a sound recording as part of non-educational activities.

Apply for an annual or ad hoc licence from **SOCAN** and **Re:sound**.

For example, SOCAN fees are:

- ✓ Telephone music on hold: \$95/line/year
- ✓ Dance: from \$40 to \$200 per event, based on hall capacity

## USING A CHOREOGRAPHIC WORK, PLAY OR OTHER LIVE NUMBER OUTSIDE THE SCHOOL

### Dancing, acting or performing in public off school premises.

Contact the creators or their representatives directly to obtain permission or to negotiate payment, e.g. the choreographer or a dance company, the author, the translator or adaptor of a play, the comedy writer, the producer of a show or their agent.

#### For plays:

[http://aqad.jabtech.com/faqsqad\\_collegial.asp#1](http://aqad.jabtech.com/faqsqad_collegial.asp#1)

SOQAD: 10% of net receipts or minimum lump sum of \$125 per performance for an original text.

## FIXING (RECORDING) A WORK CONTAINING PRE-EXISTING WORKS

### Recording (fixing on a medium), during a show for example, a student work that uses pre-existing works.

If the work is not commercially available, simply use non-infringing copies of the work and cite the sources. If you want to broadcast the work worry-free and without exclusions, use works that are not protected by copyright.

If the recording is made for commercial purposes, request permission to fix the work in a medium (on a DVD, for example).

- ✓ SODRAC manages synchronization (1st integration rights), which authorizes users to include a pre-existing musical work in a unique audiovisual production (\$500 fee, negotiable). For an administration fee, SODRAC may handle an application to copyright holders for permission without payment.

### OPEN ACCESS MUSIC BANKS

[incompetech.com](http://incompetech.com)  
[premiumbeat.com](http://premiumbeat.com)  
[audionetwork.com](http://audionetwork.com)  
[aboutdufil.com](http://aboutdufil.com)

### IMAGES DATABANK COPYRIGHT-FREE

[flickr.com/commons](https://www.flickr.com/commons)  
[digitalcollections.nypl.org](http://digitalcollections.nypl.org)  
[openclipart.org/share](http://openclipart.org/share)  
[pixabay.com](http://pixabay.com)



# APPENDIX C

## PRIVATE OR COLLECTIVE COPYRIGHT SOCIETIES IN CANADA

***The contents of this Appendix are taken from the website of the Copyright Board of Canada.***

A collective society is an organization that administers the rights of several copyright owners. It can grant permission to use their works and set the conditions for that use. Collective administration is widespread in Canada, particularly for music performance rights, reprography rights and mechanical reproduction rights. Some collective societies are affiliated with foreign societies ; this allows them to represent foreign copyright owners as well.

### **VISUAL ARTS (PHOTOGRAPHS, PAINTINGS, ETC.)**

#### ***Canadian Artists' Representation Copyright Collective (CARCC)***

[carcc.ca](http://carcc.ca)

The Canadian Artists' Representation Copyright Collective was founded in 1990 to create opportunities to increase income for Canadian visual and media artists. Services offered to artists who join the society include negotiating the terms for copyright use and issuing an appropriate licence to the user.

#### ***Society for Reproduction Rights of Authors, Composers and Publishers in Canada (SODRAC)***

[sodrac.ca](http://sodrac.ca)

SODRAC's *Visual Arts and Crafts Department* manages the rights of nearly 40,000 Canadian and foreign creators of artistic works. SODRAC negotiates on their behalf the conditions for the use of their works for any of the purposes outlined in the *Copyright Act*, and grants licences for public exhibition, communication to the public by telecommunication and the reproduction of their works on all distribution platforms and media, including audiovisual and multimedia. In addition to monitoring the use of their works, SODRAC collects royalties for the authorizations granted and distributes them to its members. SODRAC members are also represented in all countries where sister societies exist.

## AUDIO-VISUAL AND MULTIMEDIA

### *Audio Ciné Films*

[acf-film.com](http://acf-film.com)

Audio Ciné Films Inc. (ACF) is Canada's exclusive non-theatrical distributor and public performance licensing agent for Canadian, American and foreign feature film producers such as Universal Studios, Walt Disney Pictures, Alliance-Atlantis, Paramount Pictures, MGM Studios, Touchstone Pictures, Polygram Filmed Entertainment, United Artists, FineLine Features, Orion Pictures, Hollywood Pictures, New Line Cinema, Behaviour, Miramax Films, Odeon, Sony Classics, Paramount Classics, Blackwatch Releasing, and Artisan Entertainment, among others.

### *Canadian Screenwriters Collection Society (CSCS)*

[wgc.ca/cscs/about.html](http://wgc.ca/cscs/about.html) - **Email:** [m.king@wgc.ca](mailto:m.king@wgc.ca)

The Canadian Screenwriters Collection Society (CSCS) is a non-profit corporation created by the Writers Guild of Canada with the mandate to claim, collect and distribute secondary authors' levies to which film and television writers are entitled under the copyright legislation of European and other jurisdictions. In this context, secondary authors' monies include private home copying (blank tape) levies, rental and lending levies, and educational use levies.

### *Criterion Pictures*

[criterionpic.com](http://criterionpic.com)

Criterion Pictures is the non-theatrical distributor of feature films for many of Hollywood's Major Motion Picture Studios. We offer movies to the non-theatrical market on three primary mediums: Digital Cinema Package (DCP), Blu-Ray and DVD.

The majority of our films are available months before the home video release date. Our customers use these films for film programs across the country. Many Canadian schools, College and University Student Councils, Bus Companies, Hotels, Recreation Centres and Public Libraries show movies as fund raisers or special events on a regular basis. Contact us for a list of exclusive films provided by our Hollywood Studio partners.

### *Producers Audiovisual Collective of Canada*

[pacc.ca](http://pacc.ca) - **Email:** [info@pacc.ca](mailto:info@pacc.ca)

The Producers' Audiovisual Collective of Canada (PACC) is a not-for-profit copyright collective founded by the Canadian Media Production Association (CMPA). On behalf of producers and rights holders, it collects, allocates and distributes royalties arising from most secondary uses, in a number of countries, of their productions, including specifically, from the sale of blank audiovisual recording media and devices (often referred to as "private copy levies"), from the rental and lending of video recordings, from exhibition or public performance rights, and from educational copying and performance of audiovisual works.

### *Directors Rights Collective of Canada (DRCC)*

[dgc.ca](http://dgc.ca) - **Email:** [hengel@dgc.ca](mailto:hengel@dgc.ca)

The Directors Rights Collective of Canada (DRCC) is a non-profit corporation founded by the Directors Guild of Canada. Its mandate is to collect and distribute royalties and levies to which film and television directors are entitled under the copyright legislation of jurisdictions throughout the world.



### ***Société civile des auteurs multimédias (SCAM)***

[scam.ca](http://scam.ca)

The Société civile des auteurs multimédia (SCAM) is an international Francophone society tasked by its members with negotiating licences in particular with conventional and specialty broadcasters, video on demand services, negotiating agreements for cable retransmission, as well as collecting and distributing their royalties. SCAM's repertoire consists mainly of audio-visual documentaries, as well as radio and literary works.

## **PRIVATE COPYING**

### ***Canadian Private Copying Collective (CPCC)***

[cpcc.ca](http://cpcc.ca)

The Canadian Private Copying Collective (CPCC) is an umbrella organization whose member collectives represent songwriters, recording artists, music publishers and record companies. The CPCC is the non-profit organization responsible for collecting private copying levies and distributing the levies to rights holders through its member collectives. The member collectives of the CPCC are: Canadian Musical Reproduction Rights Agency (CMRRA), Re: Sound Music Licensing Company, Society for Reproduction Rights of Authors, Composers and Publishers in Canada (SODRAC) and Society of Composers, Authors and Music Publishers of Canada (SOCAN).

## **LITERARY (LITERARY WORKS, DRAMATIC WORKS, TEXTS, ETC.)**

### ***Playwrights Guild of Canada (PGC)***

[playwrightsguild.ca](http://playwrightsguild.ca)

The Playwrights Guild of Canada (PGC) is the national service organization for professional playwrights. It represents nearly 400 members, distributes more than 2,000 plays and offers many services to the theatre-loving public. It acts as agent for the distribution of rights and collection of royalties.

### ***Société des auteurs et compositeurs dramatiques (SACD)***

[sacd.ca](http://sacd.ca)

The Société des auteurs et compositeurs dramatiques (SACD) is an international Francophone society tasked by its members (playwrights, screenwriters, composers, producers, choreographers, and directors) with negotiating licences with conventional and specialty broadcasters, negotiating agreements for cable retransmission, as well as collecting and distributing their royalties. SACD's repertoire consists of stage works (plays, ballets, operas, operettas, reviews, musicals, mime performances and skits), audio-visual works (movies for television, series, serial dramas, cartoons, and feature and non-feature films) and radio works.

***Société québécoise de gestion collective des droits de reproduction (COPIBEC)***

[copibec.qc.ca](http://copibec.qc.ca)

The Société québécoise de gestion collective des droits de reproduction (COPIBEC) is the collective society which authorizes in Quebec the reproduction of works from Quebec, Canadian (through a bilateral agreement with Access Copyright, the Canadian Copyright Licensing Agency) and foreign rights holders. COPIBEC was founded in 1997 by l'Union des écrivaines et écrivains québécois (UNEQ) and the Association nationale des éditeurs de livres (ANEL).

***Société québécoise des auteurs dramatiques (SoQAD)***

[aqad.qc.ca](http://aqad.qc.ca)

Founded in 1994, the Société québécoise des auteurs dramatiques (SoQAD) has the mandate of redistributing (redirect/forward) to Quebec, Canadian and foreign playwrights whose works are performed in public or private teaching institutions to the pre-school, primary and secondary levels, royalties provided for in the financial agreement between the Ministry of Education and the Association québécoise des auteurs dramatiques (AQAD).

**MUSIC**

***ACTRA Performers' Rights Society (ACTRA PRS)***

[actra.ca/racs](http://actra.ca/racs)

As a division of ACTRA Performers' Rights Society ("ACTRA PRS"), ACTRA Recording Artists' Collecting Society ("ACTRA RACS") is a not-for-profit organization that has been collecting and disbursing equitable remuneration for eligible recording artists for over ten years. Equitable remuneration monies are received through certified tariffs, including private copying and reciprocal agreements.

***Canadian Musical Reproduction Rights Agency (CMRRA)***

[cmrra.ca](http://cmrra.ca)

The Canadian Musical Reproduction Rights Agency (CMRRA) is a Canadian centralized licensing and collecting agency for the reproduction rights of musical works in Canada. It represents over 6,000 Canadian and U.S. publishers who own and administer approximately 75 per cent of the music recorded and performed in Canada. Licensing is done on a per use basis.

***Artisti***

[uniondesartistes.com](http://uniondesartistes.com)

Artisti is the collective society of the Union des artistes (UDA) for the remuneration of performers' rights.

**CMRRA-SODRAC INC. (CSI)**

[cmrrasodrac.ca](http://cmrrasodrac.ca)

CMRRA-SODRAC INC. (CSI), a collective society incorporated in 2002, is a joint venture of the Canadian Musical Reproduction Rights Agency Ltd. (CMRRA) and the Society for Reproduction Rights of Authors, Composers and Publishers in Canada and SODRAC 2003 Inc. (SODRAC). These collectives have granted CSI an exclusive mandate to license the reproduction of musical works in their repertoires for certain uses to various music users, including radio stations, background music services or online music services. CSI licenses its repertoire by way of tariffs certified by the Copyright Board of Canada or by way of privately negotiated agreements.

Together, CMRRA and SODRAC represent the vast majority of songwriters and music publishers whose songs are active in the Canadian market place. CSI's role is to provide a convenient one-stop licensing shop to access a worldwide music repertoire for use in Canada.

**CONNECT Music Licensing (formerly known as Audio-Video Licensing Agency (AVLA))**

[connectmusiclicensing.ca](http://connectmusiclicensing.ca)

CONNECT Music Licensing administers licences in Canada for the reproduction of sound recordings, and the reproduction and broadcast of music videos. Its members, which consist of all the major record companies, many independent labels, as well as artists and producers, own or control the vast majority of the copyright of all the sound recordings and music videos produced and/or distributed in Canada. CONNECT Music Licensing also distributes royalties to its members for the communication, public performance or private copying of their eligible sound recordings.

**Musicians' Rights Organization Canada**

[musiciansrights.ca](http://musiciansrights.ca)

*Musicians' Rights Organization Canada* (MROC) is a non-profit copyright collective that collects and redistributes to its musicians royalties and remuneration flowing from Re:Sound and similar societies around the world. Those monies arise out of the radio airplay, public performance and private copying (the blank CD levy) of sound recordings on which musicians have performed.

**Re:Sound - Music Licensing Company (Re:Sound)**

[resound.ca](http://resound.ca)

Re:Sound (formerly known as the Neighbouring Rights Collective of Canada) is the Canadian not-for-profit music licensing company dedicated to obtaining fair compensation for artists and record companies for their performance rights. On behalf of its members, representing thousands of artists and record companies, Re:Sound licenses recorded music for public performance, broadcast and new media.

Re:Sound is also a member of the Canadian Private Copying Collective, created to receive private copying levies from the manufacturers and importers of blank audio recording media.

***Society of Composers, Authors and Music Publishers of Canada (SOCAN)***

[socan.ca](http://socan.ca)

The Society of Composers, Authors and Music Publishers of Canada (SOCAN) is a performing rights society that administers performing rights in musical works on behalf of Canadian composers, authors and publishers as well as affiliated societies representing foreign composers, authors and publishers.

***Société de gestion collective des droits des producteurs de phonogrammes et vidéogrammes du Québec (SOPROQ)***

[soproq.org](http://soproq.org)

SOPROQ is a non-profit copyright collective society founded in 1991 whose mission is to ensure that the Quebec makers of sound and video recordings maximize the royalties they are owed under copyright legislation in Canada and other foreign countries.

***Society for Reproduction Rights of Authors, Composers and Publishers in Canada (SODRAC)***

[sodrac.ca](http://sodrac.ca)

The Society for Reproduction Rights of Authors, Composers and Publishers in Canada (SODRAC) manages the reproduction rights of musical works of some 6,000 Canadian authors, composers and music publishers as well as of the musical repertoire of over 90 countries. To facilitate the use of these works in all distribution platforms and to ensure a fair compensation to the authors, composers, publishers it represents, SODRAC negotiates collective and individual agreements with users, licensing its repertoire by way of tariffs certified by the Copyright Board of Canada or by way of privately negotiated agreements. In this context, SODRAC collects royalties for the use of the works and redistributes them to the rights holders. It therefore controls all reproduction of its members' works on any type of audio, audiovisual, visual or digital media, as well as the use of recordings on these media. SODRAC members are represented in nearly 100 countries and territories.

**RETRANSMISSION**

***Society of Composers, Authors and Music Publishers of Canada (SOCAN)***

[socan.ca](http://socan.ca)

The Society of Composers, Authors and Music Publishers of Canada (SOCAN) is a performing rights society that administers performing rights in musical works on behalf of Canadian composers, authors and publishers as well as affiliated societies representing foreign composers, authors and publishers. With respect to retransmission, SOCAN represents owners of the copyright in the music that is integrated in the programming carried in retransmitted radio and television signals. Rather than claiming ownership of individual programs, SOCAN asks for a share of the royalties for all works.

### ***Canadian Retransmission Collective (CRC)***

[crc-scrc.ca](http://crc-scrc.ca) - Email: [info@crc-scrc.ca](mailto:info@crc-scrc.ca)

The Canadian Retransmission Collective (CRC) is a not-for-profit corporation founded by the Canadian Media Production Association (CMPA) and is one of a number of collective societies sanctioned by the Copyright Board of Canada to collect royalties from retransmitters and distribute them to the program owners they represent.

CRC represents independent Canadian program producers, producers of programs shown on Public Broadcasting Service (PBS) and Réseau France Outre-mer (RFO), educational TV producers in Canada (except Tele-Quebec), all foreign producers and broadcasters outside North America, and producers of music videos used in Canadian programs. The CRC represents U.S. programs only when they are retransmitted on a PBS station or RFO.





# APPENDIX D

## BIBLIOGRAPHY AND LEGAL CITATIONS QUOTED IN THIS GUIDE

### BIBLIOGRAPHY

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## LEGAL CITATIONS QUOTED IN THIS GUIDE

### QUEBEC CHARTER OF HUMAN RIGHTS AND FREEDOMS

4 Every person has a right to the safeguard of his dignity, honour and reputation.

### CIVIL CODE OF QUÉBEC

3 Every person is the holder of personality rights, such as the right to life, the right to the inviolability and integrity of his person, and the right to the respect of his name, reputation and privacy.

36, 3 The following acts, in particular, may be considered as invasions of the privacy of a person:

3 appropriating or using his image or voice while he is in private premises;

### COPYRIGHT ACT

2 (excerpts) « **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;

« **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.

« **work** » includes the title thereof when such title is original and distinctive;

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

« **artistic work** » includes paintings, drawings, maps, charts, plans, photographs, engravings, sculptures, works of artistic craftsmanship, architectural works, and compilations of artistic works;

« **choreographic work** » includes any work of choreography, whether or not it has any story line;



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

« **dramatic work** » includes any piece for recitation, choreographic work or mime, the scenic arrangement or acting form of which is fixed in writing or otherwise, any cinematographic work, and any compilation of dramatic works;

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

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

« **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.

5, 2

### Minister may extend copyright to other countries

Where the Minister certifies by notice, published in the Canada Gazette, that any country that is not a treaty country grants or has undertaken to grant, either by treaty, convention, agreement or law, to citizens of Canada, the benefit of copyright on substantially the same basis as to its own citizens or copyright protection substantially equal to that conferred by this Act, the country shall, for the purpose of the rights conferred by this Act, be treated as if it were a country to which this Act extends, and the Minister may give a certificate, notwithstanding that the remedies for enforcing the rights, or the restrictions on the importation of copies of works, under the law of such country, differ from those in this Act.

6

The term for which copyright shall subsist shall, except as otherwise expressly provided by this Act, be the life of the author, the remainder of the calendar year in which the author dies, and a period of fifty years following the end of that calendar year.

6.1

Except as provided in section 6.2, where the identity of the author of a work is unknown, copyright in the work shall subsist for whichever of the following terms ends earlier:

→ a) a term consisting of the remainder of the calendar year of the first publication of the work and a period of fifty years following the end of that calendar year, and

→ b) a term consisting of the remainder of the calendar year of the making of the work and a period of seventy-five years following the end of that calendar year,

but where, during that term, the author's identity becomes commonly known, the term provided in section 6 applies.

13, 1 and 3

### Ownership of copyright

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

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

27, 1 and 2

**Infringement of copyright**

(1) It is an infringement of copyright for any person to do, without the consent of the owner of the copyright, anything that by this Act only the owner of the copyright has the right to do.

(2) It is an infringement of copyright for any person to:

- (a) sell or rent out;
- (b) distribute to such an extent as to affect prejudicially the owner of the copyright;
- (c) by way of trade distribute, expose or offer for sale or rental, or exhibit in public;
- (d) possess for the purpose of doing anything referred to in paragraphs (a) to (c), or
- (e) import into Canada for the purpose of doing anything referred to in paragraphs (a) to (c),

A copy of a work, sound recording or fixation of a performer's performance or of a communication signal that the person knows or should have known infringes copyright or would infringe copyright if it had been made in Canada by the person who made it.

28.2, 1

**Nature of right of integrity**

The author's or performer's right to the integrity of a work or performer's performance is infringed only if the work or the performance is, to the prejudice of its author's or performer's honour or reputation,

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

29

**Fair dealing - research, private study, etc.**

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

29.1

**Criticism or review**

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
  - author, in the case of a work,
  - performer, in the case of a performer's performance,
  - maker, in the case of a sound recording, or,
  - broadcaster, in the case of a communication signal.

29.21, 1a et d

**Non-commercial user-generated content**

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

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

29.22

**Reproduction for private purposes**

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

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

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

**Limitation - audio recording medium**

(3) In the case of a work or other subject-matter that is a musical work embodied in a sound recording, a performer's performance of a musical work embodied in a sound recording or a sound recording in which a musical work or a performer's performance of a musical work is embodied, subsection (1) does not apply if the reproduction is made onto an audio recording medium as defined in section 79.

**Limitation: destruction of reproductions**

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

29.23, 1 et 2

**Reproduction for later listening or viewing**

It is not an infringement of copyright for an individual to fix a communication signal, to reproduce a work or sound recording that is being broadcast or to fix or reproduce a performer's performance that is being broadcast, in order to record a program for the purpose of listening to or viewing it later, if

- (a) the individual receives the program legally;
- (b) the individual, in order to record the program, did not circumvent, as defined in section 41, a technological protection measure, as defined in that section, or cause one to be circumvented;
- (c) the individual makes no more than one recording of the program;
- (d) the individual keeps the recording no longer than is reasonably necessary in order to listen to or view the program at a more convenient time;
- (e) the individual does not give the recording away, and
- (f) the recording is used only for the individual's private purposes.

**Limitation**

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

29.3, 2

**Acts undertaken without motive of gain**

An educational institution, library, archive or museum, or person acting under its authority does not have a motive of gain where it or the person acting under its authority, does anything referred to in section 29.4, 29.5, 30.2 or 30.21 and recovers no more than the costs, including overhead costs, associated with doing that act.

29.4

**Reproduction for instruction**

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

**Reproduction for examinations, etc.**

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

- a) reproduce, translate or perform in public on the premises of the educational institution, or
- b) communicate by telecommunication to the public situated on the premises of the educational institution

a work or other subject-matter as required for a test or examination.

**If work commercially available**

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

29.5

**Performances**

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

- (a) the live performance in public, primarily by students of the educational institution, of a work;
- (b) the performance in public of a sound recording, or of a work or performer's performance that is embodied in a sound recording, as long as the sound recording is not an infringing copy or the person responsible for the performance has no reasonable grounds to believe that it is an infringing copy;
- (c) the performance in public of a work or other subject-matter at the time of its communication to the public by telecommunication; and
- (d) the performance in public of a cinematographic work, as long as the work is not an infringing copy or the person responsible for the performance has no reasonable grounds to believe that it is an infringing copy.

29.6, 1

**News and commentary**

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

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

29.7, 1

**Reproduction of broadcast**

Subject to subsection (2) and section 29.9, it is not an infringement of copyright for an educational institution or a person acting under its authority to

- (a) make a single copy of a work or other subject-matter at the time that it is communicated to the public by telecommunication; and
- (b) keep the copy for up to thirty days to decide whether to perform the copy for educational or training purposes.

29.7, 3

**Royalties for performance**

It is not an infringement of copyright for the educational institution or a person acting under its authority to perform the copy in public for educational or training purposes on the premises of the educational institution before an audience consisting primarily of students of the educational institution if the educational institution pays the royalties and complies with any terms and conditions fixed under this Act for the performance in public.

### Literary collections

The publication in a collection, mainly composed of non-copyright matter, intended for the use of educational institutions, and so described in the title and in any advertisements issued by the publisher, of short passages from published literary works in which copyright subsists and not themselves published for the use of educational institutions, does not infringe copyright in those published literary works if

- (a) not more than two passages from works by the same author are published by the same publisher within five years;
- (b) the source from which the passages are taken is acknowledged; and
- (c) the name of the author, if given in the source, is mentioned.

### Communication by telecommunication

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

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

### Participation by telecommunication

(4) A student who is enrolled in a course of which the lesson forms a part is deemed to be a person on the premises of the educational institution when the student participates in or receives the lesson by means of communication by telecommunication under paragraph (3)(a).

### Reproducing lessons

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

### Conditions

(6) The educational institution and any person acting under its authority, except a student, shall:

- (a) destroy any fixation of the lesson within 30 days after the day on which the students who are enrolled in the course to which the lesson relates have received their final course evaluations;
- (b) take measures that can reasonably be expected to limit the communication by telecommunication of the lesson to the persons referred to in paragraph (3)(a);

- (c) take, in relation to the communication by telecommunication of the lesson in digital form, measures that can reasonably be expected to prevent the students from fixing, reproducing or communicating the lesson other than as they may do under this section; and;
- (d) take, in relation to a communication by telecommunication in digital form, any measure prescribed by regulation.

30.02, 1 to 3

#### **Exception: digital reproduction of works**

(1) Subject to subsections (3) to (5), it is not an infringement of copyright for an educational institution that has a reprographic reproduction licence under which the institution is authorized to make reprographic reproductions of works in a collective society's repertoire for an educational or training purpose

- (a) to make a digital reproduction — of the same general nature and extent as the reprographic reproduction authorized under the licence — of a paper form of any of those works;
- (b) to communicate the digital reproduction by telecommunication for an educational or training purpose to persons acting under the authority of the institution; or
- (c) to do any other act that is necessary for the purpose of the acts referred to in paragraphs (a) and (b).

(2) Subject to subsections (3) to (5), it is not an infringement of copyright for a person acting under the authority of the educational institution to whom the work has been communicated under paragraph (1)(b) to print one copy of the work.

(3) An educational institution that makes a digital reproduction of a work under paragraph (1)(a) shall:

- (a) pay to the collective society, with respect to all the persons to whom the digital reproduction is communicated by the institution under paragraph (1) (b), the royalties that would be payable if one reprographic reproduction were distributed by the institution to each of those persons, and comply with the licence terms and conditions applicable to a reprographic reproduction to the extent that they are reasonably applicable to a digital reproduction;
- (b) take measures to prevent the digital reproduction from being communicated by telecommunication to any persons who are not acting under the authority of the institution;
- (c) take measures to prevent a person to whom the work has been communicated under paragraph (1)(b) from printing more than one copy, and to prevent any other reproduction or communication of the digital reproduction; and
- (d) take any measure prescribed by regulation.

30.04, 1 to 5

#### **Work available through internet**

(1) Subject to subsections (2) to (5), it is not an infringement of copyright for an educational institution, or a person acting under the authority of one, to do any of the following acts for educational or training purposes in respect of a work or other subject-matter that is available through the Internet:

- (a) reproduce it;

- (b) communicate it to the public by telecommunication, if that public primarily consists of students of the educational institution or other persons acting under its authority;
- (c) perform it in public, if that public primarily consists of students of the educational institution or other persons acting under its authority; or
- (d) do any other act that is necessary for the purpose of the acts referred to in paragraphs (a) to (c).

#### Conditions

(2) Subsection (1) does not apply unless the educational institution or person acting under its authority, in doing any of the acts described in that subsection in respect of the work or other subject-matter, mentions the following:

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

#### Non-application

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

#### Non-application

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

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

#### Non-application

(5) Subsection (1) does not apply if the educational institution or person acting under its authority knows or should have known that the work or other subject-matter was made available through the Internet without the consent of the copyright owner.

30.1, 1

#### Management and maintenance of collection

It is not an infringement of copyright for a library, archive or museum or a person acting under the authority of a library, archive or museum to make, for the maintenance or management of its permanent collection or the permanent collection of another library, archive or museum, a copy of a work or other subject-matter, whether published or unpublished, in its permanent collection



- (a) if the original is rare or unpublished and is
  - ▶ (i) deteriorating, damaged or lost, or
  - ▶ (ii) at risk of deterioration or becoming damaged or lost;
- (b) for the purposes of on-site consultation if the original cannot be viewed, handled or listened to because of its condition or because of the atmospheric conditions in which it must be kept;
- (c) in an alternative format if the library, archive or museum or a person acting under the authority of the library, archive or museum considers that the original is currently in a format that is obsolete or is becoming obsolete, or that the technology required to use the original is unavailable or is becoming unavailable;
- (d) for the purposes of internal record-keeping and cataloguing;
- (e) for insurance purposes or police investigations; or
- (f) if necessary for restoration.

30.2, 1 to 5

#### Research or private study

(1) It is not an infringement of copyright for a library, archive or museum or a person acting under its authority to do anything on behalf of any person that the person may do personally under section 29 or 29.1.

#### Copies of articles for research

(2) It is not an infringement of copyright for a library, archive or museum or a person acting under the authority of a library, archive or museum to make, by reprographic reproduction, for any person requesting to use the copy for research or private study, a copy of a work that is, or that is contained in, an article published in

- (a) a scholarly, scientific or technical periodical; or
- (b) a newspaper or periodical, other than a scholarly, scientific or technical periodical, if the newspaper or periodical was published more than one year before the copy is made.

#### Restriction

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

#### Conditions

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

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

#### Patrons of other libraries, etc.

(5) Subject to subsection (5.02), a library, archive or museum, or a person acting under the authority of one, may do, on behalf of a patron of another library, archive or museum, anything under subsection (1) or (2) that it is authorized by this section to do on behalf of one of its own patrons.

#### Deeming

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

#### Limitation regarding copies in digital form

(5.02) A library, archive or museum, or a person acting under the authority of one, may, under subsection (5), provide a copy in digital form to a person who has requested it through another library, archive or museum if the providing library, archive or museum or person takes measures to prevent the person who has requested it from

- (a) making any reproduction of the digital copy, including any paper copies, other than printing one copy of it;
- (b) communicating the digital copy to any other person; and
- (c) using the digital copy for more than five business days from the day on which the person first uses it.

#### Destruction of intermediate copies

(5.1) Where an intermediate copy is made in order to copy a work referred to in subsection (5), once the copy is given to the patron, the intermediate copy must be destroyed.

30.21

#### Copying works deposited in archive

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

#### Notice

(2) When a person deposits a work in an archive, the archive must give the person notice that it may copy the work in accordance with this section.

#### Conditions for copying of works

(3) The archive may copy the work only on the condition that

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

#### Condition for providing copy

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

- (a) the person is provided with a single copy of the work; and

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

30.3

### Reprography

An educational institution or a library, archive or museum does not infringe copyright where

- (a) a copy of a work is made using a machine for the making, by reprographic reproduction, of copies of works in printed form;
- (b) the machine is installed by or with the approval of the educational institution, library, archive or museum on its premises for use by students, instructors or staff at the educational institution or by persons using the library, archive or museum; and
- (c) there is affixed in the prescribed manner and location a notice warning of infringement of copyright.

30.6

### Computer programs

It is not an infringement of copyright in a computer program for a person who owns a copy of the computer program that is authorized by the owner of the copyright, or has a licence to use a copy of the computer program, to

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

30.61

### Interoperability of computer programs

(1) It is not an infringement of copyright in a computer program for a person who owns a copy of the computer program that is authorized by the owner of the copyright, or has a licence to use a copy of the computer program, to reproduce the copy if:

- (a) they reproduce the copy for the sole purpose of obtaining information that would allow the person to make the program and another computer program interoperable; and
- (b) they do not use or disclose that information, except as necessary to make the program and another computer program interoperable or to assess that interoperability.

**No limitation**

(2) In the case where that information is used or disclosed as necessary to make another computer program interoperable with the program, subsection (1) applies even if the other computer program incorporates the information and is then sold, rented or otherwise distributed.

30.62

**Encryption research**

(1) Subject to subsections (2) and (3), it is not an infringement of copyright for a person to reproduce a work or other subject-matter for the purposes of encryption research if

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

**Limitation**

(2) Subsection (1) does not apply if the person uses or discloses information obtained through the assessment or correction to commit an act that is an offence under the *Criminal Code*.

**Limitation — computer program**

(3) Subsection (1) applies with respect to a computer program only if, in the event that the research reveals a vulnerability or a security flaw in the program and the person intends to make the vulnerability or security flaw public, the person gives adequate notice of the vulnerability or security flaw and of their intention to the owner of copyright in the program. However, the person need not give that adequate notice if, in the circumstances, the public interest in having the vulnerability or security flaw made public without adequate notice outweighs the owner's interest in receiving that notice.

30.63

**Security**

(1) Subject to subsections (2) and (3), it is not an infringement of copyright for a person to reproduce a work or other subject-matter for the sole purpose, with the consent of the owner or administrator of a computer, computer system or computer network, of assessing the vulnerability of the computer, system or network or of correcting any security flaws.

**Limitation**

(2) Subsection (1) does not apply if the person uses or discloses information obtained through the assessment or correction to commit an act that is an offence under the *Criminal Code*.

**Limitation — computer program**

(3) Subsection (1) applies with respect to a computer program only if, in the event that the assessment or correction reveals a vulnerability or a security flaw in the program and the person intends to make the vulnerability or security flaw public, the person gives adequate notice of the vulnerability or security flaw and of their intention to the owner of copyright in the program. However, the person need not give that adequate notice if, in the circumstances, the public interest in having the vulnerability or security flaw made public without adequate notice outweighs the owner's interest in receiving that notice.

30.7

**Incidental inclusion**

It is not an infringement of copyright to incidentally and not deliberately

- (a) include a work or other subject-matter in another work or other subject-matter; or
- (b) do any act in relation to a work or other subject-matter that is incidentally and not deliberately included in another work or other subject-matter.

30.71

**Temporary reproductions**

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

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

31, 1 and 2

**Retransmission****(1) Interpretation**

31 (1) In this section

**New media retransmitter** means a person whose retransmission is lawful under the [Broadcasting Act](#) only by reason of the *Exemption Order for New Media Broadcasting Undertakings* issued by the Canadian Radio-television and Telecommunications Commission as Appendix A to Public Notice CRTC 1999-197, as amended from time to time;

**Retransmitter** means a person who performs a function comparable to that of a cable retransmission system, but does not include a new media retransmitter;

**Signal** means a signal that carries a literary, dramatic, musical or artistic work and is transmitted for free reception by the public by a terrestrial radio or terrestrial television station.

**Retransmission of local and distant signals**

(2) It is not an infringement of copyright for a retransmitter to communicate to the public by telecommunication any literary, dramatic, musical or artistic work if

- (a) the communication is a retransmission of a local or distant signal;
- (b) the retransmission is lawful under the *Broadcasting Act*;
- (c) the signal is retransmitted simultaneously and without alteration, except as otherwise required or permitted by or under the laws of Canada;
- (d) in the case of the retransmission of a distant signal, the retransmitter has paid any royalties, and complied with any terms and conditions, fixed under this Act; and
- (e) the retransmitter complies with the applicable conditions, if any, referred to in paragraph (3)(b).

32

**Persons with perceptual disabilities - Reproduction in alternate format**

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

- (a) reproduce a literary, musical, artistic or dramatic work, other than a cinematographic work, in a format specially designed for persons with a perceptual disability;
- (b) translate, adapt or reproduce in sign language a literary or dramatic work, other than a cinematographic work, in a format specially designed for persons with a perceptual disability;
- (c) perform in public a literary or dramatic work, other than a cinematographic work, in sign language, either live or in a format specially designed for persons with a perceptual disability.

**Limitation**

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

32.2, 1c to 1f

**Permitted acts**

It is not an infringement of copyright

- (c) for any person to make or publish, for the purposes of news reporting or news summary, a report of a lecture given in public, unless the report is prohibited by conspicuous written or printed notice affixed before and maintained during the lecture at or about the main entrance of the building in which the lecture is given, and, except while the building is being used for public worship, in a position near the lecturer;
- (d) for any person to read or recite in public a reasonable extract from a published work;
- (e) for any person to make or publish, for the purposes of news reporting or news summary, a report of an address of a political nature given at a public meeting; or
- (f) for an individual to use for private or non-commercial purposes, or permit the use of for those purposes, a photograph or portrait that was commissioned by the individual for personal purposes and made for valuable consideration, unless the individual and the owner of the copyright in the photograph or portrait have agreed otherwise.

44.01, 1

**Prohibition on importation or exportation**

Copies of a work or other subject-matter in which copyright subsists shall not be imported or exported if

- (a) they were made without the consent of the owner of the copyright in the country where they were made; and
- (b) they infringe copyright or, if they were not made in Canada, they would infringe copyright had they been made in Canada by the person who made them.

45, 1

**Exceptions**

Notwithstanding anything in this Act, it is lawful for a person

- (a) to import for their own use not more than two copies of a work or other subject-matter made with the consent of the owner of the copyright in the country where it was made;
- (b) to import for use by a department of the Government of Canada or a province copies of a work or other subject-matter made with the consent of the owner of the copyright in the country where it was made;
- (c) at any time before copies of a work or other subject-matter are made in Canada, to import any copies, except copies of a book, made with the consent of the owner of the copyright in the country where the copies were made, that are required for the use of a library, archive, museum or educational institution;
- (d) to import, for the use of a library, archive, museum or educational institution, not more than one copy of a book that is made with the consent of the owner of the copyright in the country where the book was made; and
- (e) to import copies, made with the consent of the owner of the copyright in the country where they were made, of any used books, except textbooks of a scientific, technical or scholarly nature for use within an educational institution in a course of instruction.







# APPENDIX E

## SAMPLE ASSIGNMENT OF RIGHTS AND LICENCE APPLICATION FORM

### SAMPLE ASSIGNMENT OF RIGHTS IN A SOUND RECORDING SO THAT THE RECORDING CAN BE BROADCAST ON TELEVISION AND THE INTERNET

I, the undersigned, hereby authorize (name of institution) \_\_\_\_\_ to record my performance performed on \_\_\_\_\_ for the program \_\_\_\_\_ and grant the institution the same rights to use and reproduce at their convenience and without limitation, all or part of the recording content, including but not limited to my voice, my image, texts, photographs, graphics, audio segments, and so on. I declare and warrant that said contents have not been borrowed from any protected work.

The rights granted hereunder to the above-mentioned institution are without costs or compensation and include television and Internet broadcast and any other means of communication to the public, as well as, without limitation, a licence to (name of broadcaster) \_\_\_\_\_ for a maximum term of two years, for the purposes of television and Internet broadcast and the promotion of the above-mentioned program over its broadcasting system.

I also release the above-mentioned institution and (name of broadcaster) \_\_\_\_\_ from all claims, liability and legal action resulting from the use of the rights granted hereunder.

Finally, I confirm that I understand the nature and effect of this authorization and I agree to be bound hereby.

\_\_\_\_\_

SIGNATURE OF PARTICIPANT

DATE

FIRST AND LAST NAME OF PARTICIPANT (PLEASE PRINT)	TELEPHONE NUMBER
CIVIC ADDRESS	DESCRIPTION OF PARTICIPANT

**SAMPLE APPLICATION FOR A LICENCE TO BROADCAST A SOUND RECORDING THAT INCLUDES MUSICAL WORKS PROTECTED BY COPYRIGHT**



Tower B, Suite 1010  
1470, Peel Street  
Montreal (Quebec) H3A 1T1  
Tel.: 514 845-3268  
Fax: 514 845-3401  
sodrac.ca

**SYNCHRONIZATION LICENSING REQUEST**

Please fill up and return to SODRAC, *Audiovisual Licence* – email [licencesaudiovisual@sodrac.ca](mailto:licencesaudiovisual@sodrac.ca) or fax at 514 845-3401.

APPLICANT INFORMATION			
Name of contact for this file :			
Producer's name :			
Address :		Phone :	
		Fax:	
		Email :	
GST number :			
QST number (Quebec only) :			
A. MUSICAL WORK INFORMATION (attached schedule, if needed)			
Title	Duration	Performer(s)	Author / Publisher
1	<input type="checkbox"/> full length version <input type="checkbox"/> excerpts [ ___ min ___ sec ]		
2	<input type="checkbox"/> full length version <input type="checkbox"/> excerpts [ ___ min ___ sec ]		
3	<input type="checkbox"/> full length version <input type="checkbox"/> excerpts [ ___ min ___ sec ]		
4	<input type="checkbox"/> full length version <input type="checkbox"/> excerpts [ ___ min ___ sec ]		
5	<input type="checkbox"/> full length version <input type="checkbox"/> excerpts [ ___ min ___ sec ]		
B. PROGRAM INFORMATION			
Title of Program :		Nb of episode :	
Genre :	<input type="checkbox"/> Advertising <input type="checkbox"/> Animation <input type="checkbox"/> Children / Youth <input type="checkbox"/> Corporate Video <input type="checkbox"/> Drama <input type="checkbox"/> Documentary <input type="checkbox"/> Feature Film	<input type="checkbox"/> Musical Documentary <input type="checkbox"/> Musical <input type="checkbox"/> Public Affairs <input type="checkbox"/> Recording of a gala, revue or concert <input type="checkbox"/> Variety <input type="checkbox"/> Videoclip <input type="checkbox"/> Workout show	
Director(s) :			
Lead Actor(s) :			
Budget of the Program & Music Budget:		Duration :	min
Name of composer of original soundtrack :			
Does the main program primarily contain musical content?		<input type="checkbox"/> Yes <input type="checkbox"/> No	
Please provide a synopsis of the Program and a description on how the music shall be used.		<input type="checkbox"/> Attached	

## SYNCHRONIZATION LICENSING REQUEST

<b>C. EXPLOITATION INFORMATION</b>			
<b>MARKET(S) :</b>			
Requested	Option?	Requested	Option?
<input type="checkbox"/> Conventional TV: [_____]	<input type="checkbox"/>	<input type="checkbox"/> Specialty Channels : [_____]	<input type="checkbox"/>
<input type="checkbox"/> Festival	<input type="checkbox"/>	<input type="checkbox"/> Theatres	<input type="checkbox"/>
<input type="checkbox"/> Mobility	<input type="checkbox"/>	<input type="checkbox"/> Theatrical Trailer	<input type="checkbox"/>
<input type="checkbox"/> Non theatrical (ex.: School, Museum)	<input type="checkbox"/>	<input type="checkbox"/> Video (except VOD)	<input type="checkbox"/>
<input type="checkbox"/> Off-line	<input type="checkbox"/>	<input type="checkbox"/> Video on Demand (VOD)	<input type="checkbox"/>
<input type="checkbox"/> On-line (except Mobility and / or VOD)	<input type="checkbox"/>	<input type="checkbox"/> Other : [_____]	
<input type="checkbox"/> Pay TV: [_____]	<input type="checkbox"/>	<input type="checkbox"/> <b>All markets described herein</b>	
<b>TERRITORIES :</b>			
Requested	Option?	Requested	Option?
<input type="checkbox"/> Quebec	<input type="checkbox"/>	<input type="checkbox"/> North America & Europe	<input type="checkbox"/>
<input type="checkbox"/> Canada	<input type="checkbox"/>	<input type="checkbox"/> World	<input type="checkbox"/>
<input type="checkbox"/> United States	<input type="checkbox"/>	<input type="checkbox"/> Other : [_____]	
<input type="checkbox"/> Canada & United States	<input type="checkbox"/>	(Please specify)	
<b>TYPE OF USE :</b>			
<input type="checkbox"/> Background	Will the lyrics be modified? : <input type="checkbox"/> Yes <input type="checkbox"/> No		
<input type="checkbox"/> Vocal	Will the music requested be part of the storyline*? <input type="checkbox"/> Yes <input type="checkbox"/> No		
<input type="checkbox"/> Credits	* « part of the storyline » means that the music and/or the lyrics plays a intricate role in the script of the movie itself		
<b>DURATION:</b>			
From : [_____]		To : [_____]	
<b>NAME OF DISTRIBUTORS (if known) :</b>			
Broadcaster	Country	Distributors	Country
[_____]	[_____]	[_____]	[_____]
<b>SUGGESTED PRICE BY PRODUCER (MANDATORY) (excluding the master recording)</b>			
[_____]			<i>Reserved to SODRAC</i>
[_____]			\$
<b>E. RESERVED TO SODRAC</b>			
[_____]			

ISBN 978-2-9816305-2-0 (printed version)

ISBN 978-2-9816305-3-7 (PDF)

Legal deposit - Bibliothèque et Archives nationales du Québec, 2017

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Please direct questions to 514.523.5966 or [infos@adesam.com](mailto:infos@adesam.com).