THE ©OPYRIGHT & NEW MEDIA LAW
newsletter

Editorial

Copyright compliance draws upon a vast variety of components ranging from possessing basic knowledge about domestic and global copyright issues, to understanding technology so we can correctly apply copyright to it, to interpreting and working within copyright's gray areas, to educating others about copyright law.

When tasked with copyright compliance matters—and especially with matters pertaining to permission to use copyright-protected works—we often focus on finding answers to the various questions that arise in the course of our day-to-day uses of copyright-protected materials. However, when working with copyright compliance, we sometimes need to learn how to ask the right questions, which can be as simple as compiling a list of the questions we are asked and reviewing it from time to time. If you do this, you will probably notice that certain questions or types of questions return to you again and again. These then become the "right" questions: i.e., they are the questions from which you are likely to realize the most return (in terms of achieving copyright compliance) on your time and efforts in researching them, finding legal and practical answers to them, and from this creating a "ready-reference" document for yourself and/or your co-workers. Below is a list of "popular" questions about obtaining copyright permissions that I have heard over the course of my work with diverse clients and/or client groups. It is likely that many of these exact questions, or variations of them, will be familiar to you.

Questions on Permissions

1. May I use the work if my best efforts in locating a copyright owner are not successful?
2. If there is no copyright symbol or notice on the work, may I use the work without permission?

3. Is it always necessary to pay for copyright permissions? If we are in a nonprofit institution, or we are using the content for a noncommercial use, are we allowed to use the work for free?
4. Are permissions different if the use of the content is online?
5. How do I get permission to use a work by a foreign author?
6. The license on the content says that the content may be freely used for nonprofit or noncommercial uses. How do I know if my use is nonprofit or noncommercial? How are these terms defined?
7. May I reproduce material that is freely available on the Internet? ? Is all online content protected by copyright?
8. May I download YouTube material to use in another work or must I get permission?

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9. If I have permission for one use of content, do I need additional permission for other uses? For example, if I can reproduce an article for an internal seminar, do I need further permission to reproduce the same article for a seminar open to the public?
10. Can I bring a video or DVD I purchased from a department store to my children's school or religious group to show on a rainy day or special occasion?
11. Does it require permission to change a work "a little?"
12. Do I need permission to hyperlink to someone else's work?
13. Do I need to get permission to use works published by the government?
14. If the creator of the work has been dead for 50 (in Canada) or 70 (in the U.S.) years, then I may use that work however I want—Right?
15. I have paid to download an e-book. Do I need permission to share this e-book with friends and relatives?

What are your popular permissions questions? And do the same questions—perhaps in different language and in the context of different works or uses or users—arise again and again? Write them down as they come to you. Review them periodically. And you will soon have a solid base from which to find the answers that you need. ■

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THE SUPREME COURT OF CANADA COPYRIGHT PENTALOGY

By Sundeep Chauhan

On 6–7 December 2011 the Supreme Court of Canada heard five copyright-related cases in respect of copyright tariffs and collective licensing.[1] Each of the five matters related to applications for judicial review of decisions made by the Copyright Board of Canada. The Board is an economic regulatory body empowered to establish the royalties to be paid for the use of copyright-protected works in Canada which are licensed by collective societies.

Entertainment Software Association, et al. v. Society of Composers, Authors and Music Publishers of Canada

On 24 October 2008 the Copyright Board of Canada issued its decision in regard to SOCAN Tariff 22.G for the years 1996–2006. SOCAN was formed to administer, in Canada and on behalf of authors, composers, and music publishers, the rights to perform musical works in public and to communicate those musical works to the public by telecommunication. The Copyright Board set the royalties to be collected by SOCAN for the "communication to the public by telecommunication" of musical works contained in video games downloaded over the internet. The Federal Court of Appeal upheld the decision.

The Supreme Court of Canada was asked by the Appellants, the Entertainment Software Association (ESA) et al., to determine whether the download of a video game—which includes music—is a communication of that music to the public by telecommunication within the meaning of paragraph 3(1)(f) of the Copyright Act of Canada. The second issue before the Supreme Court was whether a standard of reasonableness or a standard of correctness applies on judicial review of a Copyright Board decision.

The written submissions of the Appellants ESA et al. and the Respondent SOCAN can be found on the Supreme Court's website at www.scc-csc.gc.ca/case-dossier/cms-sgd/fac-mem-eng.aspx?cas=33921.

In the proceeding, there were also three Interveners who were allowed to make written submissions. The Interveners were CMRRA-SODRAC Inc., the Samuelson-Glushko Canadian Internet Policy and Public Interest Clinic, and Cineplex Entertainment LP.

Rogers Communications Inc., et al. v. Society of Composers, Authors and Music Publishers of Canada

On 18 October 2007 the Copyright Board of Canada issued its decision concerning SOCAN Tariff 22.A for the years 1996–2006. The Copyright Board had set the royalties to be collected by SOCAN for the "communication to the public by telecommunication" via internet download or streaming of a musical work in Canada. The Federal Court of Appeal upheld the decision.

The Supreme Court was asked to determine whether the download or streaming of a musical work is a communication of that musical work to the public by telecommunication within the meaning of paragraph 3(1)(f) of the Copyright Act of Canada. The second issue before the Supreme Court was the standard of review for interpreting paragraph 3(1)(f) of the Copyright Act of Canada. The Appellants argued that the download of a musical work is a private point-to-point transmission and not a communication to the public and hence should not result in the payment of public performance royalties.

The submissions of the Appellants Rogers Communications Inc., Rogers Wireless Partnership and Shaw Cablesystems G.P., Bell Canada, and Telus Communications Company and Respondent SOCAN can be found at www.scc-csc.gc.ca/case-dossier/cms-sgd/fac-mem-eng.aspx?cas=33922.

There were also four Interveners in the proceeding who were allowed to make written submissions. The Interveners were Apple Canada Inc. and Apple Inc., CMRRA-SODRAC Inc., Samuelson-Glushko Canadian Internet Policy and Public Interest Clinic, and Cineplex Entertainment LP.

Re:Sound v. Motion Picture Theatre Associations of Canada, et al.

On 31 May 2008 Re:Sound's proposed Tariff 7–Motion Picture Theatres and Drive-Ins (2009–2011) and Tariff 9–Commercial Television (2009–2013) were published in the *Canada Gazette*. Re:Sound (formerly the Neighbouring Rights Collective of Canada [NRCC]) is the Canadian not-for-profit music licensing company which collects "equitable remuneration" for recording artists and record companies in Canada. By way of a ruling on a Preliminary Issue, Tariffs 7 and 9 were struck by the Copyright Board on 16 September 2009 as having no legal foundation on which they could be certified. The Federal Court of Appeal upheld the decision of the Copyright Board.

The matter before the Supreme Court was a highly technical statutory interpretation question in respect of the definition of a "sound recording" and whether recording artists and record companies are entitled to be paid equitable remuneration under paragraph 19 of the Copyright Act when their music is included in a television program or in a motion picture.

The submissions of the Appellant Re: Sound and Respondents Motion Picture Theatre Associations of Canada, Rogers Communications Inc., Shaw Communications Inc., Bell Expressvu LLP, Cogeco Cable Inc., Eastlink, Quebecor Media, Telus Communications Company, Canadian Association of Broadcasters, and Canadian Broadcasting Corporation can be found on the Supreme Court of Canada's website at www.scc-csc.gc.ca/case-dossier/cms-sgd/fac-mem-eng.aspx?cas=34210.

There were also three requests for intervention, but only that of the Samuelson-Glushko Canadian Internet Policy and Public Interest Clinic was allowed.

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Society of Composers, Authors and Music Publishers of Canada, et al. v. Bell Canada, et al.

The issue in this appeal (also arising from the Copyright Board's Tariff 22.A decision for the years 1996-2006) to the Supreme Court was whether providing previews, consisting of short excerpts of musical works, can be considered fair dealing for the purpose of research, which therefore does not infringe copyright. This case arose in the context of online music retailers selling downloads of songs and allowing users to preview the tracks before purchasing them. The Copyright Board held that previews of musical works fall under the fair dealing exemption of research and do not attract the payment of copyright royalties to SOCAN. The Federal Court of Appeal upheld the decision of the Copyright Board of Canada. SOCAN argued that the decisions denied its members the right to be compensated for what they believe is an important use of their musical works by online music retailers.

The submissions of the parties can be found on the Supreme Court of Canada's website at www.scc-csc.gc.ca/case-dossier/cms-sgd/fac-mem-eng.aspx?cas=33800.

Intervener status was given to the Samuelson-Glushko Canadian Internet Policy and Public Interest Clinic, the Canadian Association of University Teachers, the Federation of Law Societies of Canada and Canadian Legal Information Institute, and the Computer & Communications Industry Association.

Province of Alberta as represented by the Minister of Education;, et al. v. Canadian Copyright Licensing Agency Operating as "Access Copyright"

On 26 June 2009 the Copyright Board of Canada issued its decision with respect to the Access Copyright (Educational Institutions) Tariff for 2005-2009. Access Copyright represents authors and publishers of literary and artistic works in printed materials that are subject to copying by photocopying and other forms of reproduction. The Copyright Board certified a tariff on the reproduction of literary, dramatic, and artistic works in books, newspapers, and magazines for use in primary– and secondary-level educational institutions, outside of the province of Quebec.

While the Federal Court of Appeal remitted portions of the decision back to the Copyright Board, they agreed with the Copyright Board's decision with respect to fair dealing. The Appellants (comprised of the Province of Alberta as represented by the Minister of Education and others) argued that the decisions of the Copyright Board and Federal Court were now a legal precedent for the proposition that teachers making copies for distribution to students in their classes in Canadian primary and secondary schools does not constitute fair dealing, hence attracting the payment of copyright royalties. The arguments raised in the Appeal by the Appellants were:

i.) only the consumer's purpose is relevant in determining whether a dealing is fair, not the copier's;

ii.) in assessing the amount of dealing to be looked at in determining fair dealing each dealing must be looked at individually and not in the aggregate;

iii.) the dealings of a teacher who makes copies of short excerpts for the purposes of research, private study, criticism, and review for/by students in her class are fair.

The written submissions of the parties can be found on the Supreme Court of Canada's website at www.scc-csc.gc.ca/case-dossier/cms-sgd/fac-mem-eng.aspx?cas=33888.

Interveners to the proceeding were numerous and included the Canadian Publishers' Council; Association of Canadian Publishers; Canadian Educational Resources Council: Canadian Association of University Teachers; Canadian Federation of Students: Association of Universities and Colleges of Canada; Association of Canadian Community Colleges: CMRRA-SODRAC Inc.: Samuelson-Glushko Canadian Internet Policy and Public Interest Clinic: Canadian Authors Association; Canadian Freelance Union; Canadian Society of Children's Authors, Illustrators and Performers; League of Canadian Poets; Literary Translators' Association of Canada; Playwrights Guild of Canada: Professional Writers Association of Canada; Writers Union of Canada: Centre for Innovation Law and Policy of the Faculty of Law University of Toronto.

The decisions of the Supreme Court are expected by the summer of 2012. Thus 2011 and 2012 promise to be groundbreaking years for copyright in Canada, with long-anticipated reform of the Copyright Act of Canada and five Supreme Court of Canada decisions that will determine the scope of numerous rights impacting thousands of creators and users. ■

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[1] Webcasts of the five hearings are at: www.scc-csc.gc.ca/case-dossier/cms-sgd/webcasts-webdiffusions-eng.aspx?ya=2011&ses=01&sr=Search

LICENSING DIGITAL CONTENT: A PRACTICAL GUIDE FOR LIBRARIANS
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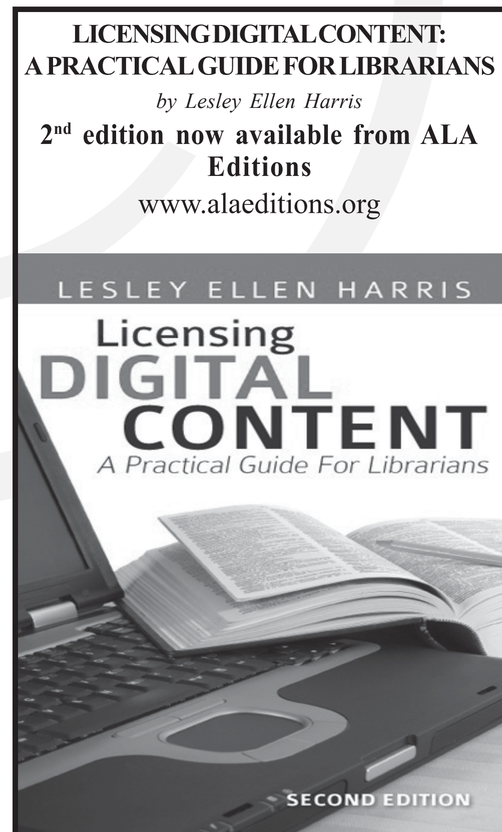

COPYRIGHTS AS ASSETS

By Lesley Ellen Harris

Many libraries and organizations primarily regard themselves as consumers or users of copyright-protected materials and may not focus on their role as creators and owners of such content. However, this may be overlooking a valuable asset. A regular copyright audit will ensure that you have an up-to-date record of your copyright-protected works and other intellectual property. Need justification for the time, effort, and expense of undertaking an audit? An audit will provide you with:

- A record of content that you own or in which you have rights-to-use.
- A database of nontangible assets which may be exploited and may earn you revenue.
- A library of works in which you own rights and which you can immediately use without going through the copyright permissions process.

Creating an inventory of your copyright-protected works, however, may not be as simple as taking an inventory of your tangible goods. It is best to approach this task in a systematic fashion. First, you should identify the copyright-protected works in your library or organization. Next, you must determine who owns these works—you, a staff member, or someone else. Finally, you should examine how the works are being used and brainstorm ways you may be able to exploit the works.

Identify Your Copyright-Protected Works

These are some of the many types of traditional (print and analogue) and digital copyright-protected works that may be in your library or organization:

- Manuscripts and research papers
- Books
- Brochures and pamphlets
- Reports, discussion papers, corporate documents
- Artwork
- Photographs
- Presentations
- Audio recordings and podcasts
- Motion pictures and videos
- Computer software (purchased as-is and proprietary/ customized software)
- Musical works
- Web 2.0 and other digital content including organizational websites, blogs and wikis

You should ensure that works that are part of your copyright inventory are still protected by copyright, and are not in the public domain. In the U.S., most works are protected by copyright for seventy years after the death of the author of the work. In Canada, as in some other countries, copyright is protected for fifty years after the death of the creator. Keep in mind special rules: for example, U.S., government works are generally not protected by copyright, whereas in Canada most government works are copyright-protected. However, this is a complex area of copyright law, and the nature and extent of copyright protection for specific works and circumstances should be investigated. A helpful chart prepared by Laura Gasaway on duration of copyright protection in the U.S. is at www.unc.edu/~unclng/public-d.htm. Also, see the U.S. Copyright Office Publication at www.copyright.gov/circs/circ15a.html.

Who Owns These Copyright-Protected Works?

Possession of copyright-protected works does not necessarily mean full ownership of them. In other words, physical ownership of a work does not necessarily mean ownership of its copyright. This is the time to determine whether you own the copyrights in the copyright-protected works in your inventory. Generally, the author of the work is the first owner of copyright in the work. However, there are a number of considerations, such as:

- If a work was created in the course of employment, ownership of copyright resides in the employer unless a contract or other agreement has specified other terms.
- Wikis are websites that are developed collaboratively by a community of users, anyone of whom can edit and add content, so determination of ownership can be tricky.
- Blogs are often a personal narrative, but they can also capture student, faculty or employee-generated content. Some blogs and other social networking spaces may be owned by individuals rather than their employers.
- Some countries have special rules for specific works. For example, in Canada a photograph, engraving, or portrait that is commissioned belongs to the commissioner as long as valuable consideration was paid.[1]

- With regard to pre-existing works: Do you merely own the physical work and not any copyright in it? Specifically, did you acquire a transfer of ownership when you acquired physical possession of that work, or do you merely have a license (i.e., permission) to use that work in limited circumstances? As an example, off-the-shelf computer software usually is not purchased outright; it is merely licensed. The same is often true with videos and musical recordings, where the public use of it requires permission. Licensed databases would also fall into this category.
- Moral rights—the author's right to control the work even after the economic rights have been transferred—must be considered. Who owns the moral rights in these works, or have these rights been waived? Moral rights protect the right to attribution and the integrity of the author of the work. Even if you own the copyright, you may not own the moral rights and may not be able to adapt the work or use it without including the author's name. In the U.S., moral rights apply only to works of fine art, whereas in Canada and elsewhere, moral rights apply to all copyright-protected works.
- Are there restrictions relating to the use of these works via the license or assignment of rights in the works? Did you sign an agreement when acquiring the work that puts limits on how you may use it?

Your Copyright-Protected Works

Once you determine if you own copyright-protected works or have the rights to exploit them, you should determine which of these works have been licensed or assigned to others. Generally, this is a way for you to make money from your works, or to let others use them for free in exchange for a credit and promotion of your organization.

For each work in your audit, consider the following questions:
- Has the work been previously exploited?
- If so, what was the value of that work?
- What were the terms and conditions of that exploitation?

Brainstorm possibilities of how to exploit that work by licensing or assigning it to others. Speak to your marketing people and see if they have any ideas. Ask those who generally provide permissions to requests outside your organization to see if they have suggestions for further allowing others to use your works. Think creatively. Are others interested in using your images on their corporate documents or in periodicals or newsletters? Do your PowerPoint presentations have value to others? Do you have a database that someone else may be able to use for research or commercial purposes? Digital media and the Internet have opened a whole new world of need for a large variety of content—what content or copyright-protected works can help fill this need?

Another issue to consider is how you will maintain a record of blogs and other social media. Because of the transient nature of these works, they can be difficult to archive and index. How can they be accessed? What happens when students, interns, or employees leave?

When To Audit

Undertaking a copyright audit on a regularly scheduled basis is a worthwhile exercise for any organization. If possible, conduct a copyright audit at, or as soon as possible after, the formation of your library or organization. If you have not yet done this, do consider conducting an audit as soon as it is feasible. For example, you might decide to undertake your first audit (or update an existing audit) at the beginning of a new, large project or when you create or acquire an important new work or set of works. Perhaps a change in the copyright law will necessitate an initial or new audit. Regardless of the events that prompt your audits, it is a good idea to inform others in your organization that audits will be done on a regular basis and for everyone to routinely keep track of copyright-protected works as they are created, acquired, or licensed.

Comprehensive IP Audits

Keep in mind that comprehensive intellectual property (IP) audits cover a broad range of intellectual property including patents, trademarks, and confidential information. Some copyright audits are completed with IP audits, and some copyright audits are done on their own. If you go the latter route, make a note in your audit that your organization may own other intellectual property and that this audit focused only on copyright-protected intellectual property. ■

[1] Bill C-11, an Act to Amend the Copyright Act, introduced into the Canadian House of Commons on 29 September 2011, changes this provision. At the time of writing this article, Bill C-11 is being discussed and is not part of the Canadian Copyright Act.

EMPLOYEE LIABILITY FOR COPYRIGHT

By Tonya J. Gisselberg

Could employees be liable for acts of copyright infringement that they commit in their workplace? The short answer is "Yes, they could." Not very comforting, right? Read below to gain a greater understanding of how employees may commit copyright infringement at work and the likelihood of an employee being individually named in a lawsuit.

Employee Liability in General

In general, employers are liable for torts committed by employees. The legal theories that create liability on the part of the employer for the employee's acts do not address the question of whether the employee is relieved of liability when the employer is liable. As a practical matter, plaintiffs (i.e., copyright owners suing possible infringers) will seek recovery from the party with the most money and insurance: this is usually the employer. However, the behavior of the typical plaintiff is irrelevant to the issue of whether the employee can also be held accountable. Strange as it may seem, there does not appear to be a case in the U.S. discussing employee liability for copyright infringement when the employee is not also an officer and/or shareholder of the employer corporation.

The U.S. Copyright Act

The U.S. Copyright Act provides that "[a]nyone who violates any of the exclusive rights of the copyright owner as provided by sections 106 through 122 ... is an infringer of the copyright or right of the author, as the case may be." 17 U.S.C. §501(a). Copyright is a strict liability tort, meaning that intent to commit the tort is irrelevant. What matters is whether the infringer performed the act of copying. Viewed in this light, the employee who copies a copyright-protected work without authorization from the copyright owner is liable for copyright infringement.

How can an employee commit copyright infringement at work? One way is for an employee to create an infringing work on behalf of the employer. Another way is for the employee to copy and/or pass along copyright-protected material, such as emailing a copyright-protected industry report to co-workers who do not have a subscription. An email transmission of copyright-protected material creates at least one copy of the material, regardless of whether the sender meant to create a copy. These scenarios both include copying a copyright-protected work, but the former involves some equities that may work in the employee's favor, as discussed below.

When an employee creates a work on behalf of the employer, the work is a "work made for hire." 17 U.S.C. §101. Unless there is a written agreement otherwise, the employer is the author and owner of works made for hire. 17 U.S.C. §201(b). The employee has none of the exclusive rights of a copyright owner in a work made for hire. Since the employee has no rights in the work she creates for the employer, it seems unjust to hold her liable for copyright infringement if she creates an infringing work at the direction of her employer.

Court Cases

An employee created a work made for hire in *Dath v. Sony Computer Entertainment America, Inc.*[1] In addition to naming the corporation, the plaintiffs named the Sony employee who created the work as a defendant. The defendants did not argue that the employee could not be liable for copyright infringement and the court did not address the issue. This case is a good illustration of how the creator of a work can be sued for copyright infringement even when taking care not to infringe. The defendants in *Dath* created the *God of War* video game. They thought they were taking care to ensure it was unlike other published works. They were sued by the plaintiffs for infringing a map, screenplays, and screenplay treatments that the plaintiffs had created. Both the defendants' work and the plaintiffs' works were set in ancient Greece and depicted Spartans and Greek gods in their story lines. The court ruled in Sony's favor, concluding that the two bodies of work were not substantially similar.

Employees made and distributed unauthorized copies of a subscription-only industry report (i.e., *Lowry's Reports*) in *Lowry's Reports, Inc., v. Legg Mason, Inc.*[2] *Lowry's Reports* contained technical stock market analyses and was available to individuals only on a subscription basis. Institutional or group licenses were not available. Legg Mason is a financial services firm whose services include brokerage services.

Legg Mason employees posted copies of *Lowry's Reports* on the company intranet, making it available to all of its brokers. This violated copyright law by making unauthorized copies and by distributing copies without authorization. Lowry's Reports, Inc., ultimately received a $19,725,270 US jury award against Legg Mason for willful copyright infringement and breach of contract. This extreme example highlights that copyright infringement can lead to significant damages and can arise out of copying proprietary industry information that most employees in the organization would benefit from knowing. Lowry's Reports, Inc., did not name individual Legg Mason employees as defendants, even though the case centered on the activities of just a handful of employees.

An employee can be liable for copyright infringement when the employee is also a shareholder or corporate officer. Again, the cases discussing this situation do not address whether the employee is liable as an employee independent of being a shareholder or corporate officer. A major reason for a business to incorporate is to protect shareholders and corporate officers from individual liability. This corporate veil of protection does not apply to copyright infringement, and, according to at least one court, all of the individual participants are jointly and severally liable. This view supports liability for non–shareholder employees. A corporate officer will be held individually liable when the officer has the ability to control the activities that result in the infringement. In most instances, shareholders have not been held individually liable absent some corporate managerial capacity.

The Practical Side of Naming Employees

Suing individual employees for copyright infringement may be counterproductive due to the expense involved in proving individual employee liability and the limitations in calculating damages. The plaintiff must prove that one or more defendants copied or violated one of the other exclusive rights without authorization from the copyright owner. For the company to be held liable, the plaintiff need only prove that somebody at the company infringed. For the employee to be held liable, the plaintiff must prove that person infringed, increasing the cost of litigation. Even if an individual employee is held liable, damages are calculated per work infringed, not per defendant. Therefore, naming an individual employee as a defendant may significantly add to the cost of litigation without increasing the possible damages award. 17 U.S.C. §504 describes how copyright infringement damages are calculated.

Conclusion

The bottom line is that there is no authority indicating individual employees cannot be held liable for acts of copyright infringement they commit at work. It would serve both the employee and the employer well for the employee to be on the lookout for scenarios that could give rise to acts of copyright infringement and to bring those scenarios to the attention of the employer. Copyright compliance policies as well as on-going education of employees about copyright law is also helpful to ensure that employees stay within the confines of the law. ■

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[1] See Dath's summary judgment at: http:scholar.google.comscholar_case?case=8775725488949367814&q=dath+v.+sony&hl=en&as_sdt=2,48.

[2] See Lowry's Reports motions for summary judgment at: http://scholar.google.comscholar_case?case=14336505068300790181&q=lowry+v.+legg+mason&hl=en&as_sdt=2,48.

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SMALL CLAIMS COURT FOR COPYRIGHT INFRINGEMENT

By Lesley Ellen Harris

In its priorities released on 25 October 2011, the U.S. Copyright Office included investigating small claims solutions for copyright owners. As Register of Copyrights Maria Pallante stated, rights afforded to creators and content owners are meaningless if they cannot be enforced. With infringement being omnipresent and the cost of legal action in a federal court often being prohibitive, it is timely to look at alternatives for resolving copyright infringement claims, especially where the claims involve limited monetary relief. Within a few days of releasing its priorities, the Copyright Office requested public comments on remedies for copyright small claims. See www.copyright.gov/docs/smallclaims/.

All copyright owners can pursue cases of copyright infringement by initiating a federal lawsuit, but often the time and resources required to do so are not available; this is particularly true in cases where only a small award is granted. Therefore, the U.S. Congress has asked the Copyright Office to investigate and seek comment on how small copyright claims have been managed in the past and to outline recommendations for changes and alternatives to current procedures.

Previous Report

A report was tabled by the Copyright Office to the U.S. House of Representatives, 109th Congress, 2nd session on 29 March 2006. As part of the investigation of orphan works, the question of alternative mechanisms for copyright infringement cases was brought forward by photographers who had no resources to sue in federal court. Included in this report by the Copyright Office to Congress were statements about how some copyright holders (due to lack of financial resources) may indeed be hindered from pursuing legal action and enforcing their rights and the importance of systematically investigating the degree to which this might be true, with a view to proposing what changes in law would be necessary to remedy this situation. The report outlined seven topics to guide information collection for a systematic examination of this issue. Additionally, the report also indicated four viable alternatives to the legal mechanisms currently in place for copyright infringement cases. See Remedies for Small Copyright Claims at www.copyright.gov/docs/regstat032906.html.

Canada

The Canadian Copyright Act states that either the federal or any of the provincial courts (including small claims court) may hear an action for copyright infringement and enforce any civil remedies. Thus, unlike copyright owners in the U.S. who are limited to the federal court, copyright owners in Canada have the option of choosing the venue in which to commence an action.

If the amount of damages being claimed is within the limits allowed in small claims court, the copyright owner may want to pursue the action on her own (but note that her claim might then be limited to damages and no injunction). Among the advantages of small claims court are that it is often speedier than other courts and costs can be minimized since plaintiffs often represent themselves without the aid of a lawyer. You are eligible to sue in small claims court only if the monetary compensation being claimed is within a certain limit. For example, in Ontario this amount is C$25,000.

If you begin your action in a court other than small claims court, you will have to choose between commencing it in federal or provincial court. There are certain advantages and disadvantages to consider when you are deciding between these two courts, and your lawyer will outline these advantages and disadvantages to you. One of the main advantages of proceeding in the federal court as opposed to a provincial court is that the federal court is more specialized. The federal court has jurisdiction to deal only with specific matters, and as such it is believed by some to have greater expertise in cases pertaining to intellectual property. Other advantages are that the federal court may give you an earlier trial date than a provincial court; there may be monetary ceilings for the claiming of damages in certain provincial courts; and the federal court may grant a restraining order that is valid throughout Canada, whereas provincial courts have power only within their own province.

U.S. Seeks Your Comments

Whether you are a plaintiff or defendant in a copyright infringement claim, there are both advantages and disadvantages to an action being held in a small claims court. If you have an opinion on this matter, file your comments electronically at www.copyright.gov/docs/smallclaims/comments/comment-submission.html. The Copyright Office will post all comments it receives on the Copyright Office website. ■

REVIEWS

DIGITAL

CREATIVE COMMONS FREQUENTLY ASKED QUESTIONS

http://wiki.creativecommons.org/FAQ

In December 2002, Creative Commons (CC) released its first set of copyright licenses. Since that first release, CC has gained popularity around the world. Although aimed at simplicity, CC licenses (perhaps like copyright itself) are sometimes complex and can be misunderstood. Are CC-licensed works in the public domain? May you reproduce CC-licensed works for commercial or for-profit purposes? What can you do with CC-licensed works?

CC has updated the FAQs about its licenses in an effort to provide clarity about its licenses, for both creators and users of licensed content. The revised FAQs has definitions to key concepts and answers 77 questions about the use and management of CC licenses and the legal and technical tools that are offered by CC. The questions are separated into different areas of interest: Introductory Questions; About CC; General Licensing Information; Licensors; Licensees; Technical; and Legal Background.

The site is easy to use with each question clearly identified within the various subject areas. Responses are very comprehensive with many links to further information. Occasionally, the number of links and the amount of information they provide can be a little overwhelming. However, the variety and breadth of the responses to the questions should answer most queries regarding CC licenses. As well, an email address to request further information is provided.

Certificate in Copyright Management

Open for 2012 Registration
www.clickuniversity.com

DATABASE OF INTERNATIONAL COPYRIGHT LAW

http://digital.lampdev.columbia.edu/cmc/

This international copyright law database created by the Copyright Advisory Office at Columbia University provides a wealth of information. Easy to use, you can select one of twelve countries and click to find out the basic copyright law in each of these countries. The information includes rights covered, duration, certain exceptions, etc. – all in a concise format.

An additional benefit in this site is that you can compare up to three countries with up to three criteria selected. For example, you can select Canada and France from the list of countries and select "Formalities of Copyright" and "Works Made for Hire" from the topic list, and the site produces a table comparing the selected criteria in each country. Comparisons can be done quickly and easily with just a click.

In addition, there is a SOURCE list with links to several books, legal databases and websites which provide extensive information about international copyright sources.

News Brief
WIPO COPYRIGHT EXCEPTIONS FOR LIBRARIES AND ARCHIVES

On 2 December 2011, the 23rd session of WIPO's Standing Committee on Copyright and Related Rights (SCCR) concluded with an agreement for further discussion on a list of ten topics relating to libraries and archives. Libraries and archives' groups have been lobbying for an international treaty to establish a set of basic limitations and exceptions for the benefit of their users. See http://wipo.int/meetings/en doc_details.jsp?doc_id=189639.

COPYRIGHT QUESTIONS & ANSWERS

Question: I am creating a digital paper collection of articles from personal computers in my office. The collection will contain articles from the internet, articles from licensed databases and digitized articles. Do I need permission to create a SharePoint library with all of these articles?

Answer: You need to examine each article or perhaps set of articles on its own. The articles from the internet – are they in the public domain? If not, do the websites state that they may be used for free or just for personal or noncommercial purposes? The licensed articles – what does your license agreement state? Are you allowed to accumulate individual articles or just use individual articles for specific purposes? For the digitized articles, did you obtain permission to digitize the articles? If so, does this permission extend to collecting the paper in a digital library?

Question: To complement a work project, my employer has posted some of my personal photos on the company's website. May he do this without my permission?

Answer: No, the photographs belong to you. Unless the photographs were taken as part of your employment duties, you own the copyright in the photographs. Your employer must get your permission prior to posting the photographs.

Email your questions to: editor@copyrightlaws.com or post them in the Qs & As section at www.copyrightlaws.com.

S U B S C R I B I N G   I S   E A S Y . . .

Mail this form with a check or money order to:

Copyrightlaws.com
Farragut Station, Box 33271
Washington, DC 20033 USA

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