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A Fair(y) Use Tale

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"A Fair(y) Use Tale." Online video file. *The Center for Internet and Society*. 1 Mar. 2007. Web. 18 May 2009.

What is Copyright?

"the exclusive legal right to reproduce, publish, sell, or distribute the matter and form of something (as a literary, musical, or artistic work)"

Merriam-Webster Online Dictionary. Merriam-Webster Online, 2009. Web. 27 Mar. 2009.

- It is the law that gives creators the right to be compensated for the uses of their works.
- It also gives them the ability to control how their works are used.



Image from Microsoft PowerPoint 2010.

Moral Rights

- Copyright legislation in Canada provides the author with moral rights
- Moral Rights include:
 - The Right of Attribution
 - When using a work whether in part or in whole you must provide acknowledgement of the original source and its creator
 - The Right of Association including:
 - The right to remain anonymous, using a pseudonym or having one's name associated with the work
 - The Right of Integrity including:
 - The use of the work must not harm the reputation of the creator in any way. This would include ensuring the work will not be distorted, modified or mutilated, or used in association with a which would harm the creator's honour or reputation.

Moral Rights

Snow v. The Eaton Centre Ltd.



Image "Gone to the Birds" from S. Yume http://www.flickr.com/photos/syume/8463539030/

Balance

BUT

• Those rights need to be balanced with users rights.



Image from Microsoft PowerPoint 2010.

Balance

Creators rights are limited in time and allowances or exceptions are included in our laws.

- Fair Dealing
- Library Exemptions
- Perceptual Disabilities

For users this ensures access and the ability to re-use or re-create works into new works

What is Protected by Copyright?



Images from Microsoft Word 2010.

Copyright Protection

- Protection is automatic upon the creation of a work
- Does not require registration with the Copyright Office
- Applies whether or not a copyright statement or symbol appears on the material



Image from Mirosoft PowerPoint 2010.

Who Owns Copyright?

- Generally it is the creator who owns the copyright in a work
- If a work is created during the course of employment it is the employer who owns the copyright
 - Except if there is an agreement that says something different

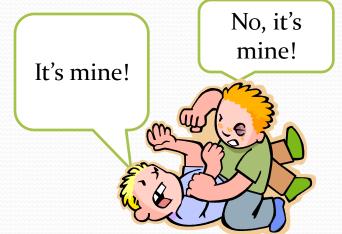


Image from Microsoft PowerPoint 2010.

International Copyright

• Under International copyright you apply the copyright law for the country in which the copy is being made

Example: when copying an article in Canada that has been written by an American author, Canadian copyright law should be applied.

Image from Microsoft PowerPoint 2010.



Duration of Copyright

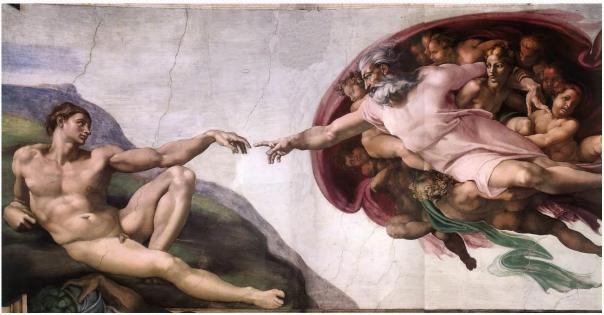


- The general rule is that works are protected for the life of the author + 50 years after their death.
- After this time period the work moves into the public domain and can be used freely without consent.

Image from Microsoft PowerPoint 2003.

Then What?

 Once the copyright has expired the material goes into the public domain.



http://en.wikipedia.org/wiki/Creation_of_Adam, Fresco, Michelangelo, 1510 Sistine Chapel, Vatican

Other Options To Copyrighted Materials

Open Source Resources

- Content that is available for use without permissions
 - Creative Commons www.creativecommons.org
 - Directory of Open Access Journals www.doaj.org/
 - Flickr Creative Commons www.flickr.com/creativecommons
 - Images Canada http://www.imagescanada.ca/index-e.html
 - International Music Score Library Project http://imslp.org/
 - Internet Archive http://archive.org/index.php
 - MIT OpenCourseWare *http://ocw.mit.edu/index.htm*
 - Mutopia Project *http://www.mutopiaproject.org/*
 - Project Gutenberg http://www.gutenberg.org/wiki/Main_Page
 - TED Talks http://www.ted.com/talks

Licensing

- Agreement authorizing use of material
 - Usually valid for a particular length of time (term)
 - May apply to specific users
 - May be specific uses of the copyrighted material allowed under the license



Image from Microsoft PowerPoint 2010

Copyright Collectives

- Organization that administers the rights for copyright owners
 - Grant permissions on behalf of the copyright owner
 - Collect royalties from users
 - Distribute royalties to the copyright holders
 - Enforce rights for the copyright owner

Who Are the Collectives?

- Access Copyright The Canadian Copyright Licensing Agency
- Alliance of Canadian Cinema Television and Radio Artists Performers' Rights Society (ACTRA)
- Audio Ciné Films Inc.
- Canadian Artists' Representation Copyright Collective (CARCC)
- Canadian Musical Reproduction Agency Ltd. (CMRRA)
- Canadian Screenwriters Collection Society (CSCS)
- Copyright Collective of Canada (CCC)
- Criterion Pictures
- Playwrights Guild of Canada (PGC
- Re:Sound Music Licensing Company
- Society of Composers, Authors & Music Publishers of Canada (SOCAN)

Copyright Act & Legal Cases

- CCH Canadian Ltd. V. Law Society of Upper Canada
- Updated Act
- 5 Supreme Court Cases on Copyright



Supreme Court of Canada Image by Adrian Lee www.flickr.com/photos/adrianlee/130018945/sizes/m/in/photostream

CCH Canadian Ltd v. Law Society of Upper Canada, 2004 SCC 13

- CCH Canadian Limited, Carswell Thomson Professional Publishing and Canada Law Book Inc., sued the Law Society of Upper Canada for infringement of copyright
- the Law Society argued in order to provide equal access to the library collection that the services offered were necessary
- The Court held that the Law Society did not infringe any copyright when single copies of decisions, statutes, regulations, etc. were made by the library or by its patrons using photocopiers

Two Step Fair Dealing Test

Is it one of the fair dealing categories?

s. 29 Fair dealing for the purpose of research, private study, education, parody or satire does not infringe copyright.

6 Factors

1. Purpose of the dealing

- 2. Character of the dealing
- 3. Amount of the dealing
- 4. Availability of Alternatives
- 5. Nature of the Work
- 6. Effect of the Dealing

2010 - Access Copyright Tariff

- until Dec. 2010 all Colleges and Universities were licensed under Access Copyright
- In June 2010 Access Copyright applied to the Copyright Board for a new tariff
 - Tariff would cover use of works in its repertoire & include digital rights such as scanning, hyperlinking & uploading
 - Included an increased fee from \$3.38 per student to \$35 & \$45 respectively for the colleges & universities
- Copyright Board approved an interim tariff in 2011

2011 – Bill C-11

The Copyright Modernization Act

- There have been no substantial changes to our copyright act since 1997
- Balance of a creators rights and a users rights
- Align our laws with international treaties
- Inclusion of new technologies
- Make provisions technologically neutral
- June 29, 2012 Bill C-11 receives Royal Assent

Changes to the Act

s. 10 & s. 13(2) Sections 10 & 13(2) were repealed. The change reflects ownership for photographs.



s. 29, 29.1 & 29. 2 Expansion of fair dealing to include education, parody and satire

s. 29.21 Non-commercial User Generated Content or the "Mash up or YouTube Clause"

Conditions:

- Use must be non-commercial
- Source must be cited
- Must not have an adverse effect on the original work
- Original source material must be a non-infringing copy

QUIZ

Does the short video I used at the beginning of the presentation fall under the conditions in the Mash-up Clause?

- **1**. Purpose is for education. $\sqrt{}$
- 2. Original source cited. $\sqrt{}$
- 3. Adverse effect on the original? A 20 second clip from multiple movies would not have an adverse effect of the originals. $\sqrt{}$
- 4. Original source from a well established educational institution. ?

s. 30.04 Publicly Available Internet Materials

Conditions:

- Original source must be cited
- Must not be protected by a digital lock
- Must not be a clearly visible notice prohibiting the use
- Original source material must be a non-infringing copy

QUIZ

• Which of these images meets the conditions under PAMs?



(Image from Shutterstock)



(Image from UnicornPictures.com)

(Quiz used with permission from http://facultycopyright.wordpress.com/pams/)



s. 30.2(5) Inter-library Loans

s. 32 Perceptual Disabilities

s. 38.1 Statutory Damages

s. 41 Anti-Circumvention Provisions



Litigation

July 2012

- The Copyright Pentalogy
 - ESA v. SOCAN, 2012 SCC 34
 - Rogers v. SOCAN, 2012 SCC 35
 - SOCAN v. Bell, 2012 SCC 36
 - Alberta (Education) v. Access Copyright, 2012 SCC37
 - Re:sound v. Motion Picture Theatre Associations of Canada, 2012 SCC 38

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