



Copyright and You Part II: Fair Dealing

The new copyright provisions under the revised Copyright Act, most of which came into effect on November 7, 2012, have a number of implications for Canadians. As discussed in our previous issue of LegalEase, copyright protects the right to copy original works. This right to copy vests with the creator of the work, but can then be assigned or licensed to other parties, such as publishers, film distributors, television stations and so on.

Almost all of us make use of copyrighted material in our daily lives, be it while reading newspapers and blogs, looking at photographs, or watching television and film. When we buy a newspaper, visit a website, purchase a song on iTunes or subscribe to a streaming service like Netflix, we are making use of copyrighted material in a legitimate way. Copying and pasting images or text without permission, downloading media such as movies, television, music and books, via %underground+ services like BitTorrent, are examples of non-legitimate uses of copyrighted material. In our previous issue, we dealt with two types of permitted exceptions to the restriction on copying creative works: format shifting and time shifting.

In this issue, we will explore another important set of exceptions to the restriction on the right to copy. These uses fall under a category known as %fair dealing+. In addition to time shifting and format shifting, Canadian copyright law now contains expanded exceptions related to certain public interest outcomes. This may, for instance, result in further changes to how we, as users, will be able to borrow books from public libraries in order to ensure that there is user compliance with these new requirements, when using applications like OverDrive, which is the mobile, e-book platform used by the Kitchener, Waterloo and Guelph Public Libraries.

There are also several changes pertaining to uses of copyrighted materials by educational institutions and individuals acting under their authority. For instance, if a work is not commercially available in Canada within a reasonable timeline, for a reasonable price, then an educator can reproduce the work, or do any other necessary act, in order to display it for educational purposes. There is a significant ambiguity with regard to how %reasonable+ may be interpreted, however, the introduction of this exception makes it easier for educators to be able to make use of works that they deem to be useful teaching tools without needing to expend significant time and resources trying to avoid running afoul of the Copyright Act.

Another education-related exception will be of interest to those who are enrolled in distance education classes--namely, that students are now explicitly permitted to reproduce lessons that are broadcast via telecommunications, provided that the recordings are destroyed within thirty days of the students'receipt of their final course evaluations. These recordings cannot be distributed.

A final type of exception to the restrictions on copying can be found in the context of what is known as non-commercial %user-generated content+, and colloquially referred to as the %mash-up exception.+ This refers to the types of videos that are often available on YouTube, in which the creator has spliced together clips from a variety of different films, television shows and videos, often with mixed snippets of different soundtracks, synchronized appropriately to create a new work. These derivative works are often created as a tribute to the original, or for the purposes of satire or humour. Though mash-ups are now



permitted, there are a few restrictions that must be adhered to, for instance, the new work cannot be used for commercial purposes, should credit the original creator or rights holder, and should not have a substantial adverse effect, financial or otherwise, on the original work.

These additions to the fair dealings exception to the general restriction on the use of copyrighted material reflect much needed changes to legislation, especially given today's technological advances.

For questions regarding fair dealing and the Copyright Act, please contact Susan Deefholts.

About the Author

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