

## An Act to amend the Copyright Act, S.C. 1997, c. 24\*

(Assented to 25 April 1997)

1.—(1) The definitions “delivery”, “Her Majesty’s Realms and Territories” and “work of sculpture” in **section 2** of the *Copyright Act* are repealed.

(2) The definitions “book”, “cinematograph”, “infringing”, “maker”, “performance”, “performer’s performance” and “plate” in **section 2** of the Act are replaced by the following:

“book”

«livre»

“book” means a volume or a part or division of a volume, in printed form, but does not include

- (a) a pamphlet,
- (b) a newspaper, review, magazine or other periodical,
- (c) a map, chart, plan or sheet music where the map, chart, plan or sheet music is separately published, and
- (d) an instruction or repair manual that accompanies a product or that is supplied as an accessory to a service;

“cinematographic work”

«*œuvre cinématographique*»

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\* Official English title.

Entry into force: (a) September 1, 1997: paragraphs 1(1) to (4); definitions of “broadcaster,” “collective society,” “commercially available,” “communication signal,” “copyright,” “country,” “perceptual disability,” “premises,” “Rome Convention country,” “sculpture” and “sound recording,” in section 2 of the Copyright Act, enacted by subsection 1(5); sections 2.11 to 2.5 and 2.7 of the Copyright Act, enacted by section 2; sections 3 to 5, 8 and 9; subsection 10(2); sections 11 to 14; section 27 of the Copyright Act, enacted by section 15; sections 16 and 17; sections 29 to 29.5, 29.8, 30 and 30.4 to 30.7 of the Copyright Act, enacted by subsection 18(1); subsection 18(2); section 19; subsections 34(1) to (3) and sections 34.1 to 38 and 39 of the Copyright Act, enacted by subsection 20(1); sections 21 to 28 and 35 to 44; subsections 67.1(3) to (5) and sections 68 to 68.2 of the Copyright Act, enacted by section 45; sections 46 to 49, 71 to 78 and 89 to 92 of the Copyright Act, enacted by section 50; and sections 51, 52, 53.1, 54, 55 to 58, 59 and 60 of this Act. (b) January 1, 1998: section 67 and subsections 67.1(1) and (2) of the Copyright Act, enacted by section 45 of this Act.

A replacement sheet indicating the dates of entry into force of other provisions of this Act will be published later.

Source: Communication from the Canadian authorities.

“cinematographic work” includes any work expressed by any process analagous to cinematography, whether or not accompanied by a soundtrack;

“infringing”

«*contrefaçon*»

“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;

“maker”

«*producteur*»

“maker” means

- (a) in relation to a cinematographic work, the person by whom the arrangements necessary for the making of the work are undertaken, or
- (b) in relation to a sound recording, the person by whom the arrangements necessary for the first fixation of the sounds are undertaken;

“performance”

«*représentation*» ou «*exécution*»

“performance” means any acoustic or visual representation of a work, performer’s performance, sound recording or communication signal, including a representation made by means of any mechanical instrument, radio receiving set or television receiving set;

“performer’s performance”

«*prestation*»

“performer’s performance” means any of the following when done by a performer:

- (a) a performance of an artistic work, dramatic work or musical work, whether or not the work was previously fixed in any material form, and whether or not the work’s term of copyright protection under this Act has expired,
- (b) a recitation or reading of a literary work, whether or not the work’s term of copyright protection under this Act has expired, or
- (c) an improvisation of a dramatic work, musical work or literary work, whether or not the improvised work is based on a pre-existing work;

“plate”

«*planche*»

“plate” includes

- (a) any stereotype or other plate, stone, block, mould, matrix, transfer or negative used or intended to be used for printing or reproducing copies of any work, and
- (b) any matrix or other appliance used or intended to be used for making or reproducing sound recordings, performer’s performances or communication signals;

(3) The definitions “artiste interprète” and “œuvre artistique” in section 2 of the French version of the Act are replaced by the following:

«*artiste-interprète*»

*French version only*

«*artiste-interprète*» Tout artiste-interprète ou exécutant.

«*œuvre artistique*»

“*artistic work*”

«*œuvre artistique*» Sont compris parmi les œuvres artistiques les peintures, dessins, sculptures, œuvres architecturales, gravures ou photographies, les œuvres artistiques dues à des artisans ainsi que les graphiques, cartes, plans et compilations d’œuvres artistiques.

(4) [Paragraph \(b\)](#) of the definition “dramatic work” in [section 2](#) of the English version of the Act is replaced by the following:

(b) any cinematographic work, and

(5) [Section 2](#) of the Act is amended by adding the following in alphabetical order:

“broadcaster”

«*radiodiffuseur*»

“broadcaster” means a body that, in the course of operating a broadcasting undertaking, broadcasts a communication signal in accordance with the law of the country in which the broadcasting undertaking is carried on, but excludes a body whose primary activity in relation to communication signals is their retransmission;

“collective society”

«*société de gestion*»

“collective society” means a society, association or corporation that carries on the business of collective administration of copyright or of the remuneration right conferred by [section 19](#) or [81](#) for the benefit of those who, by assignment, grant of licence, appointment of it as their agent or otherwise, authorize it to act on their behalf in relation to that collective administration, and

- (a) operates a licensing scheme, applicable in relation to a repertoire of works, performer’s performances, sound recordings or communication signals of more than one author, performer, sound recording maker or broadcaster, pursuant to which the society, association or corporation sets out classes of uses that it agrees to authorize under this Act, and the royalties and terms and conditions on which it agrees to authorize those classes of uses, or
- (b) carries on the business of collecting and distributing royalties or levies payable pursuant to this Act;

“*commercially available*”

«*accessible sur le marché*»

“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;

“communication signal”

«*signal de communication*»

“communication signal” means radio waves transmitted through space without any artificial guide, for reception by the public;

“copyright”

*«droit d’auteur»*

“copyright” means the rights described in

- (a) [section 3](#), in the case of a work,
- (b) [sections 15](#) and [26](#), in the case of a performer’s performance,
- (c) [section 18](#), in the case of a sound recording, or
- (d) [section 21](#), in the case of a communication signal;

“country”

*«pays»*

“country” includes in any territory;

“defendant”

*Version anglaise seulement*

“defendant” includes a respondent to an application;

“educational institution”

*«établissement d’enseignement»*

“educational institution” means

- (a) a non-profit institution licensed or recognized by or under an Act of Parliament or the legislature of a province to provide pre-school, elementary, secondary or post-secondary education,
- (b) a non-profit institution that is directed or controlled by a board of education regulated by or under an Act of the legislature of a province and that provides continuing, professional or vocational education or training,
- (c) a department or agency of any order of government, or any non-profit body, that controls or supervises education or training referred to in [paragraph \(a\)](#) or [\(b\)](#), or
- (d) any other non-profit institution prescribed by regulation;

“exclusive distributor”

*«distributeur exclusif»*

“exclusive distributor” means, in relation to a book, a person who

- (a) has, before or after the coming into force of this definition, been appointed in writing, by the owner or exclusive licensee of the copyright in the book in Canada, as

- (i) the only distributor of the book in Canada or any part of Canada, or
  - (ii) the only distributor of the book in Canada or any part of Canada in respect of a particular sector of the market, and
- (b) meets the criteria established by regulations made under [section 2.6](#), and, for greater certainty, if there are no regulations made under [section 2.6](#), then no person qualifies under this definition as an “exclusive distributor”;
- “library, archive or museum”

*«bibliothèque, musée ou service d’archive»*

“library, archive or museum” means

- (a) an institution, whether or not incorporated, that is not established or conducted for profit or that does not form a part of, or is not administered or directly or indirectly controlled by, a body that is established or conducted for profit, in which is held and maintained a collection of documents and other materials that is open to the public or to researchers, or
  - (b) any other non-profit institution prescribed by regulation;
- “perceptual disability”

*«déficiência perceptuelle»*

“perceptual disability” means a disability that prevents or inhibits a person from reading or hearing a literary, musical, dramatic or artistic work in its original format, and includes such a disability resulting from

- (a) severe or total impairment of sight or hearing or the inability to focus or move one’s eyes,
  - (b) the inability to hold or manipulate a book, or
  - (c) an impairment relating to comprehension;
- “plaintiff”

*Version anglaise seulement*

“plaintiff” includes an applicant;

“premises”

*«locaux»*

“premises” means, in relation to an educational institution, a place where education or training referred to in the definition “educational institution” is provided, controlled or supervised by the educational institution;

“Rome Convention country”

«pays partie à la Convention de Rome»

“Rome Convention country” means a country that is a party to the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations, done at Rome on October 26, 1961;

“sculpture”

«*sculpture*»

“sculpture” includes a cast or model;

“sound recording”

«*enregistrement sonore*»

“sound recording” means a recording, fixed in any material form, consisting of sounds, whether or not of a performance of a work, but excludes any soundtrack of a cinematographic work where it accompanies the cinematographic work;

2. The Act is amended by adding the following after [section 2.1](#):

Definition of “maker”

2.11 For greater certainty, the arrangements referred to in [paragraph \(b\)](#) of the definition “maker” in [section 2](#), as that term is used in [section 19](#) and in the definition “eligible maker” in [section 79](#), include arrangements for entering into contracts with performers, financial arrangements and technical arrangements required for the first fixation of the sounds for a sound recording.

Definition of “publication”

2.2—(1) For the purposes of this Act, “publication” means

(a) in relation to works,

(i) making copies of a work available to the public,

(ii) the construction of an architectural work, and

(iii) the incorporation of an artistic work into an architectural work, and

in relation to sound recordings, making copies of a sound recording available to the public, but does not include

the performance in public, or the communication to the public by telecommunication, of a literary, dramatic, musical or artistic work or a sound recording, or

(d) the exhibition in public of an artistic work.

### Issue of Photographs and Engravings

(2) For the purpose of [subsection \(1\)](#), the issue of photographs and engravings of sculptures and architectural works is not deemed to be publication of those works.

### Where No Consent of Copyright Owner

(3) For the purposes of this Act, other than in respect of infringement of copyright, a work or other subject-matter is not deemed to be published or performed in public or communicated to the public by telecommunication if that act is done without the consent of the owner of the copyright.

### Unpublished Works

(4) Where, in the case of an unpublished work, the making of the work is extended over a considerable period, the conditions of this Act conferring copyright are deemed to have been complied with if the author was, during any substantial part of that period, a subject or citizen of, or a person ordinarily resident in, a country to which this Act extends.

## Telecommunication

2.3 A person who communicates a work or other subject-matter to the public by telecommunication does not by that act alone perform it in public, nor by that act alone is deemed to authorize its performance in public.

### Communication to the Public by Telecommunication

2.4—(1) For the purposes of communication to the public by telecommunication,

- (a) persons who occupy apartments, hotel rooms or dwelling units situated in the same building are part of the public, and a communication intended to be received exclusively by such persons is a communication to the public;
- (b) a person whose only act in respect of the communication of a work or other subject-matter to the public consists of providing the means of telecommunication necessary for another person to so communicate the work or other subject-matter does not communicate that work or other subject-matter to the public; and
- (c) where a person, as part of
  - (i) a network, within the meaning of the *Broadcasting Act*, whose operations result in the communication of works or other subject-matter to the public, or
  - (ii) any programming undertaking whose operations result in the communication of works or other subject-matter to the public,
- (d) transmits by telecommunication a work or other subject-matter that is communicated to the public by another person who is not a retransmitter of a signal within the meaning of [subsection 31\(1\)](#), the transmission and communication of that work or other subject-matter by those persons

constitute a single communication to the public for which those persons are jointly and severally liable.

#### Regulations

(2) The Governor in Council may make regulations defining “programming undertaking” for the purpose of [paragraph \(1\)\(c\)](#).

#### Exception

(3) A work is not communicated in the manner described in [paragraph \(1\)\(c\)](#) or [3\(1\)\(f\)](#) where a signal carrying the work is retransmitted to a person who is a retransmitter to whom [section 31](#) applies.

#### What Constitutes Rental

2.5—(1) For the purposes of paragraphs [3\(1\)\(h\)](#) and [\(i\)](#), [15\(1\)\(c\)](#) and [18\(1\)\(c\)](#), an arrangement, whatever its form, constitutes a rental of a computer program or sound recording if, and only if,

- (a) it is in substance a rental, having regard to all the circumstances; and
- (b) it is entered into with motive of gain in relation to the overall operations of the person who rents out the computer program or sound recording, as the case may be.

#### Motive of Gain

(2) For the purpose of [paragraph \(1\)\(b\)](#), a person who rents out a computer program or sound recording with the intention of recovering no more than the costs, including overhead, associated with the rental operations does not by that act alone have a motive of gain in relation to the rental operations.

#### Exclusive Distributor

2.6 The Governor in Council may make regulations establishing distribution criteria for the purpose of [paragraph \(b\)](#) of the definition “exclusive distributor” in [section 2](#).

#### Exclusive Licence

2.7 For the purposes of this Act, an exclusive licence is an authorization to do any act that is subject to copyright to the exclusion of all others including the copyright owner, whether the authorization is granted by the owner or an exclusive licensee claiming under the owner.

## **PART I COPYRIGHT AND MORAL RIGHTS IN WORKS**

3.—(1) The portion of [subsection 3\(1\)](#) of the Act before [paragraph \(a\)](#) is replaced by the following:

## Copyright in Works

3.—(1) For the purposes of this Act, “copyright”, in relation to a work, means the sole right to produce or reproduce the work or any substantial part thereof in any material form whatever, to perform the work or any substantial part thereof in public or, if the work is unpublished, to publish the work or any substantial part thereof, and includes the sole right

(2) Paragraphs 3(1)(d) and (e) of the Act are replaced by the following:

(d) in the case of a literary, dramatic or musical work, to make any sound recording, cinematograph film or other contrivance by means of which the work may be mechanically reproduced or performed,

(e) in the case of any literary, dramatic, musical or artistic work, to reproduce, adapt and publicly present the work as a cinematographic work,

(3) Subsection 3(1) of the Act is amended by striking out the word “and” at the end of paragraph (g), by adding the word “and” at the end of paragraph (h) and by adding the following after paragraph (h):

(i) in the case of a musical work, to rent out a sound recording in which the work is embodied,

(4) Subsections 3(1.2) to (4) of the Act are repealed.

4. Section 4 of the Act is repealed.

5.—(1) Paragraphs 5(1)(a) to (c) of the Act are replaced by the following:

(a) in the case of any work, whether published or unpublished, including a cinematographic work, the author was, at the date of the making of the work, a citizen or subject of, or a person ordinarily resident in, a treaty country;

(b) in the case of a cinematographic work, whether published or unpublished, the maker, at the date of the making of the cinematographic work,

(i) if a corporation, had its headquarters in a treaty country, or

(ii) if a natural person, was a citizen or subject of, or a person ordinarily resident in, a treaty country; or

(c) in the case of a published work, including a cinematographic work,

(i) in relation to subparagraph 2.2(1)(a)(i), the first publication in such a quantity as to satisfy the reasonable demands of the public, having regard to the nature of the work, occurred in a treaty country, or

(ii) in relation to subparagraph 2.2(1)(a)(ii) or (iii), the first publication occurred in a treaty country.

(2) Subsection 5(1.1) of the Act is replaced by the following:

## Application of Subsections (1.01) and (1.02)

(1.03) Subsections (1.01) and (1.02) apply, and are deemed to have applied, regardless of whether the country in question became a Berne Convention country or a WTO Member before or after the coming into force of those subsections.

## First Publication

(1.1) The first publication described in subparagraph (1)(c)(i) or (ii) is deemed to have occurred in a treaty country notwithstanding that it in fact occurred previously elsewhere, if the interval between those two publications did not exceed thirty days.

(3) Subsection 5(3) to (6) of the Act are repealed.

6. Section 7 of the Act is replaced by the following:

### Term of Copyright in Posthumous Works

7.—(1) Subject to subsection (2), in the case of a literary, dramatic or musical work, or an engraving, in which copyright subsists at the date of the death of the author or, in the case of a work of joint authorship, at or immediately before the date of the death of the author who dies last, but which has not been published or, in the case of a lecture or a dramatic or musical work been performed in public or communicated to the public by telecommunication, before that date, copyright shall subsist until publication, or performance in public or communication to the public by telecommunication, whichever may first happen, for the remainder of the calendar year of the publication or of the performance in public or communication to the public by telecommunication, as the case may be, and for a period of fifty years following the end of that calendar year.

### Application of Subsection (1)

(2) Subsection (1) applies only where the work in question was published or performed in public or communicated to the public by telecommunication, as the case may be, before the coming into force of this section.

### Transitional Provision

(3) Where

(a) a work has not, at the coming into force of this section, been published or performed in public or communicated to the public by telecommunication,

(b) subsection (1) would apply to that work if it had been published or performed in public or communicated to the public by telecommunication before the coming into force of this section, and

(c) the relevant death referred to in subsection (1) occurred during the period of fifty years immediately before the coming into force of this section, copyright shall subsist in the work for the remainder of the calendar year in which this section comes into force and for a period of fifty years following the end of that calendar year, whether or not the work is published or performed in public or communicated to the public by telecommunication after the coming into force of this section.

## Transitional Provision

### (4) Where

- (a) a work has not, at the coming into force of this section, been published or performed in public or communicated to the public by telecommunication,
- (b) [subsection \(1\)](#) would apply to that work if it had been published or performed in public or communicated to the public by telecommunication before the coming into force of this section, and
- (c) the relevant death referred to in [subsection \(1\)](#) occurred more than fifty years before the coming into force of this section,

copyright shall subsist in the work for the remainder of the calendar year in which this section comes into force and for a period of five years following the end of that calendar year, whether or not the work is published or performed in public or communicated to the public by telecommunication after the coming into force of this section.

7. [Section 10](#) of the Act is replaced by the following:

### Term of Copyright in Photographs

10.—(1) Where the owner referred to in [subsection \(2\)](#) is a corporation, the term for which copyright subsists in a photograph shall be the remainder of the year of the making of the initial negative or plate from which the photograph was derived or, if there is no negative or plate, of the initial photograph, plus a period of fifty years.

### Where Author Majority Shareholder

(1.1) Where the owner is a corporation, the majority of the voting shares of which are owned by a natural person who would have qualified as the author of the photograph except for [subsection \(2\)](#), the term of copyright is the term set out in [section 6](#).

### Author of Photograph

### (2) The person who

- (a) was the owner of the initial negative or other plate at the time when that negative or other plate was made, or
- (b) was the owner of the initial photograph at the time when that photograph was made, where there was no negative or other plate, is deemed to be the author of the photograph and, where that owner is a body corporate, the body corporate is deemed for the purposes of this Act to be ordinarily resident in a treaty country if it has established a place of business therein.

8. [Section 11](#) of the Act is repealed.

9.—(1) The portion of [section 11.1](#) of the Act before [paragraph \(a\)](#) is replaced by the following:

### Cinematographic Works

11.1 Except for cinematographic works in which the arrangement or acting form or the combination of incidents represented give the work a dramatic character, copyright in a cinematographic work or a compilation of cinematographic works shall subsist

(2) Paragraph 11.1(a) and (b) of the English version of the Act are replaced by the following:

- (a) for the remainder of the calendar year of the first publication of the cinematographic work or of the compilation, and for a period of fifty years following the end of that calendar year; or
- (b) if the cinematographic work or compilation is not published before the expiration of fifty years following the end of the calendar year of its making, for the remainder of that calendar year and for a period of fifty years following the end of that calendar year.

10.—(1) Subsection 13(2) of the Act is replaced by the following:

#### Engraving, Photograph or Portrait

(2) Where, in the case of an engraving, photograph or portrait, the plate or other original was ordered by some other person and was made for valuable consideration, and the consideration was paid, in pursuance of that order, in the absence of any agreement to the contrary, the person by whom the plate or other original was ordered shall be the first owner of the copyright.

(2) Subsection 13(4) of the Act is replaced by the following:

#### Assignments and Licences

(4) The owner of the copyright in any work may assign the right, either wholly or partially, and either generally or subject to limitations relating to territory, medium or sector of the market or other limitations relating to the scope of the assignment, and either for the whole term of the copyright or for any other part thereof, and may grant any interest in the right by licence, but no assignment or grant is valid unless it is in writing signed by the owner of the right in respect of which the assignment or grant is made, or by the owner's duly authorized agent.

#### Ownership in Case of Partial Assignment

(5) Where, under any partial assignment of copyright, the assignee becomes entitled to any right comprised in copyright, the assignee, with respect to the rights so assigned, and the assignor, with respect to the rights not assigned, shall be treated for the purposes of this Act as the owner of the copyright, and this Act has effect accordingly.

#### Assignment of Right of Action

(6) For greater certainty, it is deemed always to have been the law that a right of action for infringement of copyright may be assigned in association with the assignment of the copyright or the grant of an interest in the copyright by licence.

#### Exclusive Licence

(7) For greater certainty, it is deemed always to have been the law that a grant of an exclusive licence in a copyright constitutes the grant of an interest in the copyright by licence.

11. Subsection 14(3) of the Act is repealed.

12. Section 14.01 of the Act and the heading before it are repealed.

13. [Section 14.2](#) of the Act is amended by adding the following after [subsection \(2\)](#):

#### Subsequent Succession

(3) [Subsection \(2\)](#) applies, with such modifications as the circumstances require, on the death of any person who holds moral rights.

14. The Act is amended by adding the following after [section 14.2](#):

## **PART II COPYRIGHT IN PERFORMER'S PERFORMANCES, SOUND RECORDINGS AND COMMUNICATION SIGNALS**

### Performers' Rights

#### Copyright in Performer's Performance

15.—(1) Subject to [subsection \(2\)](#), a performer has a copyright in the performer's performance, consisting of the sole right to do the following in relation to the performer's performance or any substantial part thereof:

- (a) if it is not fixed,
    - (i) to communicate it to the public by telecommunication,
    - (ii) to perform it in public, where it is communicated to the public by telecommunication otherwise than by communication signal, and
    - (iii) to fix it in any material form,
  - (b) if it is fixed,
    - (i) to reproduce any fixation that was made without the performer's authorization,
    - (ii) where the performer authorized a fixation, to reproduce any reproduction of that fixation, if the reproduction being reproduced was made for a purpose other than that for which the performer's authorization was given, and
    - (iii) where a fixation was permitted under [Part III](#) or [VIII](#), to reproduce any reproduction of that fixation, if the reproduction being reproduced was made for a purpose other than one permitted under [Part III](#) or [VIII](#), and
  - (c) to rent out a sound recording of it,
- and to authorize any such acts.

Conditions(2) [Subsection \(1\)](#) applies only if the performer's performance

- (a) takes place in Canada or in a Rome Convention country;
- (b) is fixed in

- (i) a sound recording whose maker, at the time of the first fixation,
  - (A) if a natural person, was a Canadian citizen or permanent resident of Canada within the meaning of the Immigration Act, or a citizen or permanent resident of a Rome Convention country, or
  - (B) if a corporation, had its headquarters in Canada or in a Rome Convention country, or
- (ii) a sound recording whose first publication in such a quantity as to satisfy the reasonable demands of the public occurred in Canada or in a Rome Convention country; or
- (c) is transmitted at the time of the performer's performance by a communication signal broadcast from Canada or a Rome Convention country by a broadcaster that has its headquarters in the country of broadcast.

#### Publication

(3) The first publication is deemed to have occurred in a country referred to in [paragraph \(2\)\(b\)](#) notwithstanding that it in fact occurred previously elsewhere, if the interval between those two publications does not exceed thirty days.

#### Contractual Arrangements

16. Nothing in [section 15](#) prevents the performer from entering into a contract governing the use of the performer's performance for the purpose of broadcasting, fixation or retransmission.

#### Cinematographic Works

17.—(1) Where the performer authorizes the embodiment of the performer's performance in a cinematographic work, the performer may no longer exercise, in relation to the performance where embodied in that cinematographic work, the copyright referred to in [subsection 15\(1\)](#).

#### Right to Remuneration

(2) Where there is an agreement governing the embodiment referred to in [subsection \(1\)](#) and that agreement provides for a right to remuneration for the reproduction, performance in public or communication to the public by telecommunication of the cinematographic work, the performer may enforce that right against

- (a) the other party to the agreement or, if that party assigns the agreement, the assignee, and
- (b) any other person who
  - (i) owns the copyright in the cinematographic work governing the reproduction of the cinematographic work, its performance in public or its communication to the public by telecommunication, and

(ii) reproduces the cinematographic work, performs it in public or communicates it to the public by telecommunication,

and persons referred to in [paragraphs \(a\)](#) and [\(b\)](#) are jointly and severally liable to the performer in respect of the remuneration relating to that copyright.

#### Application of [Subsection \(2\)](#)

(3) [Subsection \(2\)](#) applies only if the performer's performance is embodied in a prescribed cinematographic work.

#### Exception

(4) If so requested by a country that is a party to the North American Free Trade Agreement, the Minister may, by a statement published in the *Canada Gazette*, grant the benefits conferred by this section, subject to any terms and conditions specified in the statement, to performers who are nationals of that country or another country that is a party to the Agreement or are Canadian citizens or permanent residents within the meaning of the *Immigration Act* and whose performer's performances are embodied in works other than the prescribed cinematographic works referred to in [subsection \(3\)](#).

#### Rights of Sound Recording Makers

##### Copyright in Sound Recordings

18.—(1) Subject to [subsection \(2\)](#), the maker of a sound recording has a copyright in the sound recording, consisting of the sole right to do the following in relation to the sound recording or any substantial part thereof:

- (a) to publish it for the first time,
- (b) to reproduce it in any material form, and
- (c) to rent it out,

and to authorize any such acts. Conditions for Copyright

(2) [Subsection \(1\)](#) applies only if

- (a) the maker of the sound recording was a Canadian citizen or permanent resident of Canada within the meaning of the *Immigration Act*, or a citizen or permanent resident of a Berne Convention country, a Rome Convention country or a country that is a WTO Member, or, if a corporation, had its headquarters in one of the foregoing countries,
  - (i) at the date of the first fixation, or
  - (ii) if that first fixation was extended over a considerable period, during any substantial part of that period; or
- (b) the first publication of the sound recording in such a quantity as to satisfy the reasonable demands of the public occurred in any country referred to in [paragraph \(a\)](#).

## Publication

(3) The first publication is deemed to have occurred in a country referred to in [paragraph \(2\)\(a\)](#) notwithstanding that it in fact occurred previously elsewhere, if the interval between those two publications does not exceed thirty days.

### Provisions Applicable to Both Performers and Sound Recording Makers

#### Right to Remuneration

19.—(1) Where a sound recording has been published, the performer and maker are entitled, subject to [section 20](#), to be paid equitable remuneration for its performance in public or its communication to the public by telecommunication, except for any retransmission.

#### Royalties

(2) For the purpose of providing the remuneration mentioned in [subsection \(1\)](#), a person who performs a published sound recording in public or communicates it to the public by telecommunication is liable to pay royalties

- (a) in the case of a sound recording of a musical work, to the collective society authorized under [Part VII](#) to collect them; or
- (b) in the case of a sound recording of a literary work or dramatic work, to either the maker of the sound recording or the performer.

#### Division of Royalties

(3) The royalties, once paid pursuant to [paragraph \(2\)\(a\)](#) or [\(b\)](#), shall be divided so that

- (a) the performer or performers receive in aggregate fifty per cent; and
- (b) the maker or makers receive in aggregate fifty per cent.

#### Conditions

20.—(1) The right to remuneration conferred by [section 19](#) applies only if

- (a) the maker was, at the date of the first fixation, a Canadian citizen or permanent resident of Canada within the meaning of the *Immigration Act*, or a citizen or permanent resident of a Rome Convention country, or, if a corporation, had its headquarters in one of the foregoing countries; or
- (b) all the fixations done for the sound recording occurred in Canada or in a Rome Convention country.

#### Exception

(2) Notwithstanding [subsection \(1\)](#), if the Minister is of the opinion that a Rome Convention country does not grant a right to remuneration, similar in scope and duration to that provided by [section 19](#), for the performance in public or the communication to the public of a sound recording whose maker, at the date of its first fixation, was a Canadian

citizen or permanent resident of Canada within the meaning of the *Immigration Act* or, if a corporation, had its headquarters in Canada, the Minister may, by a statement published in the *Canada Gazette*, limit the scope and duration of the protection for sound recordings whose first fixation is done by a maker who is a citizen or permanent resident of that country or, if a corporation, has its headquarters in that country.

#### Exception

(3) If so requested by a country that is a party to the North American Free Trade Agreement, the Minister may, by a statement published in the *Canada Gazette*, grant the right to remuneration conferred by [section 19](#) to performers or makers who are nationals of that country and whose sound recordings embody dramatic or literary works.

#### Application of [Section 19](#)

(4) Where a statement is published under [subsection \(3\)](#), [section 19](#) applies

- (a) in respect of nationals of a country mentioned in that statement, as if they were citizens of Canada or, in the case of corporations, had their headquarters in Canada; and
- (b) as if the fixations made for the purpose of their sound recordings had been made in Canada.

#### Rights of Broadcasters

##### Copyright in Communication Signals

21.—(1) Subject to [subsection \(2\)](#), a broadcaster has a copyright in the communication signals that it broadcasts, consisting of the sole right to do the following in relation to the communication signal or any substantial part thereof:

- (a) to fix it,
- (b) to reproduce any fixation of it that was made without the broadcaster's consent,
- (c) to authorize another broadcaster to retransmit it to the public simultaneously with its broadcast, and
- (d) in the case of a television communication signal, to perform it in a place open to the public on payment of an entrance fee,

and to authorize any act described in [paragraph \(a\)](#), [\(b\)](#) or [\(d\)](#).

##### Conditions for Copyright

(2) [Subsection \(1\)](#) applies only if the broadcaster

- (a) at the time of the broadcast, had its headquarters in Canada, in a country that is a WTO Member or in a Rome Convention country; and
- (b) broadcasts the communication signal from that country.

#### Exception

(3) Notwithstanding [subsection \(2\)](#), if the Minister is of the opinion that a Rome Convention country or a country that is a WTO Member does not grant the right mentioned in [paragraph \(1\)\(d\)](#), the Minister may, by a statement published in the *Canada Gazette*, declare that broadcasters that have their headquarters in that country are not entitled to that right.

#### Reciprocity

22.—(1) Where the Minister is of the opinion that a country other than a Rome Convention country grants or has undertaken to grant

(a) to performers and to makers of sound recordings, or to broadcasters that are Canadian citizens or permanent residents of Canada within the meaning of the *Immigration Act* or, if corporations, have their headquarters in Canada, as the case may be, whether by treaty, convention, agreement or law, benefits substantially equivalent to those conferred by this Part, the Minister may, by a statement published in the *Canada Gazette*, grant the benefits conferred by this Part

(i) to performers and to makers of sound recordings, or

(ii) to broadcasters

as the case may be, that are citizens, subjects or permanent residents of or, if corporations, have their headquarters in that country, and

(d) declare that that country shall, as regards those benefits, be treated as if it were a country to which this Part extends.

#### Reciprocity

(2) Where the Minister is of the opinion that a country other than a Rome Convention country neither grants nor has undertaken to grant

(a) to performers, and to makers of sound recordings, or

(b) to broadcasters

that are Canadian citizens or permanent residents of Canada within the meaning of the *Immigration Act* or, if corporations, have their headquarters in Canada, as the case may be, whether by treaty, convention, agreement or law, benefits substantially equivalent to those conferred by this Part, the Minister may, by a statement published in the *Canada Gazette*,

(c) grant the benefits conferred by this Part to performers, makers of sound recordings or broadcasters that are citizens, subjects or permanent residents of or, if corporations, have their headquarters in that country, as the case may be, to the extent that that country grants those benefits to performers, makers of sound recordings or broadcasters that are Canadian citizens or permanent residents of Canada within the meaning of the *Immigration Act* or, if corporations, have their headquarters in Canada, and

(d) declare that that country shall, as regards those benefits, be treated as if it were a country to which this Part extends.

### Application of Act

(3) Any provision of this Act that the Minister specifies in a statement referred to in [subsection \(1\)](#) or [\(2\)](#)

- (a) applies in respect of performers, makers of sound recordings or broadcasters covered by that statement, as if they were citizens of or, if corporations, had their headquarters in Canada; and
- (b) applies in respect of a country covered by that statement, as if that country were Canada.

### Application of Act

(4) Subject to any exceptions that the Minister may specify in a statement referred to in [subsection \(1\)](#) or [\(2\)](#), the other provisions of this Act also apply in the way described in [subsection \(3\)](#).

### Term of Rights

23.—(1) Subject to this Act, the rights conferred by [sections 15](#), [18](#) and [21](#) terminate fifty years after the end of the calendar year in which

- (a) in the case of a performer's performance,
  - (i) its first fixation in a sound recording, or
  - (ii) its performance, if it is not fixed in a sound recording,occurred;
- (b) in the case of a sound recording, the first fixation occurred; or
- (c) in the case of a communication signal, it was broadcast.

### Term of Right to Remuneration

(2) The rights to remuneration conferred on performers and makers by [section 19](#) have the same terms, respectively, as those provided by [paragraphs \(1\)\(a\)](#) and [\(b\)](#).  
Application of [Subsections \(1\)](#) and [\(2\)](#)

(3) [Subsections \(1\)](#) and [\(2\)](#) apply whether the fixation, performance or broadcast occurred before or after the coming into force of this Part. Berne Convention Countries, Rome Convention Countries, WTO Members

(4) Where the performer's performance, sound recording or communication signal meets the requirements set out in [section 15](#), [18](#) or [21](#), as the case may be, a country that becomes a Berne Convention country, a Rome Convention country or a WTO Member after the date of the fixation, performance or broadcast is, as of becoming a Berne Convention country, Rome Convention country or WTO Member, as the case may be, deemed to have been such at the date of the fixation, performance or broadcast.

Where Term of Protection Expired

(5) [Subsection \(4\)](#) does not confer any protection in Canada where the term of protection in the country referred to in that subsection had expired before that country

became a Berne Convention country, Rome Convention country or WTO Member, as the case may be.

#### Ownership of Copyright

24. The first owner of the copyright

- (a) in a performer's performance, is the performer;
- (b) in a sound recording, is the maker; or
- (c) in a communication signal, is the broadcaster that broadcasts it.

#### Assignment of Rights

25. **Subsections 13(4) to (7)** apply, with such modifications as the circumstances require, in respect of the rights conferred by this Part on performers, makers of sound recordings and broadcasters.

#### Performers' Rights—WTO Countries

##### Performer's Performance in WTO Country

26.—(1) Where a performer's performance takes place on or after January 1, 1996 in a country that is a WTO Member, the performer has, as of the date of the performer's performance, a copyright in the performer's performance, consisting of the sole right to do the following in relation to the performer's performance or any substantial part thereof:

- (a) if it is not fixed, to communicate it to the public by telecommunication and to fix it in a sound recording, and
- (b) if it has been fixed in a sound recording without the performer's authorization, to reproduce the fixation or any substantial part thereof, and to authorize any such acts.

##### Where Country Joins WTO after Jan. 1, 1996

(2) Where a performer's performance takes place on or after January 1, 1996 in a country that becomes a WTO Member after the date of the performer's performance, the performer has the copyright described in [subsection \(1\)](#) as of the date the country becomes a WTO Member.

##### Performer's Performances before Jan. 1, 1996

(3) Where a performer's performance takes place before January 1, 1996 in a country that is a WTO Member, the performer has, as of January 1, 1996, the sole right to do and to authorize the act described in [paragraph \(1\)\(b\)](#).

##### Where Country Joins WTO after Jan. 1, 1996

(4) Where a performer's performance takes place before January 1, 1996 in a country that becomes a WTO Member on or after January 1, 1996, the performer has the right described in [subsection \(3\)](#) as of the date the country becomes a WTO Member.

#### Term of Performer's Rights

(5) The rights conferred by this section subsist for the remainder of the calendar year in which the performer's performance takes place and a period of fifty years following the end of that calendar year.

#### Assignment of Rights

(6) **Subsections 13(4) to (7)** apply, with such modifications as the circumstances require, in respect of a performer's rights conferred by this section.

#### Limitation

(7) Notwithstanding an assignment of a performer's right conferred by this section, the performer, as well as the assignee, may

- (a) prevent the reproduction of
  - (i) any fixation of the performer's performance, or
  - (ii) any substantial part of such a fixation,

where the fixation was made without the performer's consent or the assignee's consent; and

- (b) prevent the importation of any fixation of the performer's performance, or any reproduction of such a fixation, that the importer knows or ought to have known was made without the performer's consent or the assignee's consent.

15. The heading before [section 27](#) and [sections 27](#) and **28** of the Act are replaced by the following:

## **PART III INFRINGEMENT OF COPYRIGHT AND MORAL RIGHTS AND EXCEPTIONS TO INFRINGEMENT**

### Infringement of Copyright

#### GENERAL

#### Infringement Generally

27.—(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.

#### Secondary Infringement

- (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,

possess for the purpose of doing anything referred to in [paragraphs \(a\) to \(c\)](#), or

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.

#### Knowledge of Importer

(3) In determining whether there is an infringement under [subsection \(2\)](#) in the case of an activity referred to in any of [paragraphs \(2\)\(a\) to \(d\)](#) in relation to a copy that was imported in the circumstances referred to in [paragraph \(2\)\(e\)](#), it is irrelevant whether the importer knew or should have known that the importation of the copy infringed copyright.

#### Plates

(4) It is an infringement of copyright for any person to make or possess a plate that has been specifically designed or adapted for the purpose of making infringing copies of a work or other subject-matter.

#### Public Performance for Profit

(5) It is an infringement of copyright for any person, for profit, to permit a theatre or other place of entertainment to be used for the performance in public of a work or other subject-matter without the consent of the owner of the copyright unless that person was not aware, and had no reasonable ground for suspecting, that the performance would be an infringement of copyright.

### PARALLEL IMPORTATION OF BOOKS

#### Importation of Books

27.1—(1) Subject to any regulations made under [subsection \(6\)](#), it is an infringement of copyright in a book for any person to import the book where

- (a) copies of the book were made with the consent of the owner of the copyright in the book in the country where the copies were made, but were imported without the consent of the owner of the copyright in the book in Canada; and
- (b) the person knows or should have known that the book would infringe copyright if it was made in Canada by the importer.

#### Secondary Infringement

(2) Subject to any regulations made under [subsection \(6\)](#), where the circumstances described in [paragraph \(1\)\(a\)](#) exist, it is an infringement of copyright in an imported book for any person who knew or should have known that the book would infringe copyright if it was made in Canada by the importer to

- (a) sell or rent out the book;
- (b) by way of trade, distribute, expose or offer for sale or rental, or exhibit in public, the book; or
- (c) possess the book for the purpose of any of the activities referred to in [paragraph \(a\)](#) or [\(b\)](#).

### Limitation

(3) [Subsections \(1\)](#) and [\(2\)](#) only apply where there is an exclusive distributor of the book and the acts described in those subsections take place in the part of Canada or in respect of the particular sector of the market for which the person is the exclusive distributor.

### Exclusive Distributor

(4) An exclusive distributor is deemed, for the purposes of entitlement to any of the remedies under [Part IV](#) in relation to an infringement under this section, to derive an interest in the copyright in question by licence.

### Notice

(5) No exclusive distributor, copyright owner or exclusive licensee is entitled to a remedy under Part IV in relation to an infringement under this section unless, before the infringement occurred, notice has been given within the prescribed time and in the prescribed manner to the person referred to in [subsection \(1\)](#) or [\(2\)](#), as the case may be, that there is an exclusive distributor of the book.

### Regulations

(6) The Governor in Council may, by regulation, establish terms and conditions for the importation of certain categories of books, including remaindered books, books intended solely for re-export and books imported by special order.

16. [Section 28.01](#) of the Act is renumbered as [section 31](#) and that section and the heading before it are repositioned accordingly and that heading is replaced by the following:

### RETRANSMISSION

17. The heading before [section 28.02](#) and [sections 28.02](#) and [28.03](#) of the Act are repealed.

18.—(1) [Section 29](#) of the Act and the heading before it are replaced by the following:

### Exceptions

### FAIR DEALING

#### Research or Private Study

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

#### Criticism or Review

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

- (a) the source; and
- (b) if given in the source, the name of the

- (i) author, in the case of a work,
- (ii) performer, in the case of a performer's performance,
- (iii) maker, in the case of a sound recording, or
- (iv) broadcaster, in the case of a communication signal.

#### News Reporting

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

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

### **ACTS UNDERTAKEN WITHOUT MOTIVE OF GAIN**

#### Motive of Gain

29.3—(1) No action referred to in [section 29.4](#), [29.5](#), [30.2](#) or [30.21](#) may be carried out with motive of gain.

#### Cost Recovery

(2) 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.

### **EDUCATIONAL INSTITUTIONS**

#### Reproduction for Instruction

29.4—(1) It is not an infringement of copyright for an educational institution or a person acting under its authority

- (a) to make a manual reproduction of a work onto a dry-erase board, flip chart or other similar surface intended for displaying handwritten material, or
- (b) to make a copy of a work to be used to project an image of that copy using an overhead projector or similar device for the purposes of education or training on the premises of an educational institution.

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.

#### Where Work Commercially Available

(3) Except in the case of manual reproduction, the exemption from copyright infringement provided by [paragraph \(1\)\(b\)](#) and [subsection \(2\)](#) does not apply if the work or other subject-matter is commercially available in a medium that is appropriate for the purpose referred to in that paragraph or subsection, as the case may be.

#### Performances

29.5 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; and
- (c) the performance in public of a work or other subject-matter at the time of its communication to the public by telecommunication.

#### News and Commentary

29.6—(1) 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, 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, at any time or times within one year after the making of a copy under [paragraph \(a\)](#), before an audience consisting primarily of students of the educational institution on its premises for educational or training purposes.

#### Royalties for Reproduction and Performance

(2) The educational institution must

- (a) on the expiration of one year after making a copy under [paragraph \(1\)\(a\)](#), pay the royalties and comply with any terms and conditions fixed under this Act for the making of the copy or destroy the copy; and

- (b) where it has paid the royalties referred to in [paragraph \(a\)](#), pay the royalties and comply with any terms and conditions fixed under this Act for any performance in public of the copy after the expiration of that year.

#### Reproduction of Broadcast

29.7—(1) 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.

#### Royalties for Reproduction

(2) An educational institution that has not destroyed the copy by the expiration of the thirty days infringes copyright in the work or other subject-matter unless it pays any royalties, and complies with any terms and conditions, fixed under this Act for the making of the copy.

#### Royalties for Performance

(3) 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.

#### Unlawful Reception

29.8 The exceptions to infringement of copyright provided for under [sections 29.5 to 29.7](#) do not apply where the communication to the public by telecommunication was received by unlawful means.

#### Records and Marking

29.9—(1) Where an educational institution or person acting under its authority

- (a) makes a copy of a news program or a news commentary program and performs it pursuant to [section 29.6](#), or
- (b) makes a copy of a work or other subject-matter communicated to the public by telecommunication and performs it pursuant to [section 29.7](#), the educational institution shall keep a record of the information prescribed by regulation in relation to the making of the copy, the destruction of it or any performance in public of it for which royalties are payable under this Act and shall, in addition, mark the copy in the manner prescribed by regulation.

#### Regulations

(2) The Board may, with the approval of the Governor in Council, make regulations

- (a) prescribing the information in relation to the making, destruction, performance and marking of copies that must be kept under [subsection \(1\)](#),
- (b) prescribing the manner and form in which records referred to in that subsection must be kept and copies destroyed or marked, and
- (c) respecting the sending of information to collective societies referred to in [section 71](#).

#### Literary Collections

30. 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.

### **LIBRARIES, ARCHIVES AND MUSEUMS**

#### Management and Maintenance of Collection

30.1—(1) 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, in accordance with the regulations made under subsection (4), 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 original is currently in an obsolete format or the technology required to use the original is unavailable;
- (d) for the purposes of internal record-keeping and cataloguing;
- (e) for insurance purposes or police investigations; or
- (f) if necessary for restoration.

#### Limitation

(2) [Paragraphs \(1\)\(a\) to \(c\)](#) do not apply where an appropriate copy is commercially available in a medium and of a quality that is appropriate for the purposes of [subsection \(1\)](#).

#### Destruction of Intermediate Copies

(3) If a person must make an intermediate copy in order to make a copy under [subsection \(1\)](#), the person must destroy the intermediate copy as soon as it is no longer needed.

#### Regulations

(4) The Governor in Council may make regulations with respect to the procedure for making copies under [subsection \(1\)](#).

#### Research or Private Study

30.2—(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, etc.

(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 make a copy under [subsection \(2\)](#) only on condition that

- (a) the person for whom the copy will be made has satisfied the library, archive or museum that the person will not use the copy for a purpose other than research or private study; and
- (b) the person is provided with a single copy of the work.

#### Patrons of Other Libraries, etc.

(5) A library, archive or museum or a person acting under the authority of a library, archive or museum may do, on behalf of a person who is a patron of another library, archive or museum, anything under [subsection \(1\)](#) or [\(2\)](#) in relation to printed matter that

it is authorized by this section to do on behalf of a person who is one of its patrons, but the copy given to the patron must not be in digital form.

#### 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.

#### Regulations

(6) The Governor in Council may, for the purposes of this section, make regulations

- (a) defining “newspaper” and “periodical”;
- (b) defining scholarly, scientific and technical periodicals;
- (c) prescribing the information to be recorded about any action taken under [subsection \(1\)](#) or [\(5\)](#) and the manner and form in which the information is to be kept; and
- (d) prescribing the manner and form in which the conditions set out in [subsection \(4\)](#) are to be met.

#### Copying Works Deposited in Archive

30.21—(1) It is not an infringement of copyright for an archive to make a copy, in accordance with [subsection \(3\)](#), of an unpublished work that is deposited in the archive after the coming into force of this section.

#### 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 only copy the work if
- (a) the person who deposited the work, if a copyright owner, does not prohibit copying;
  - (b) copying has not been prohibited by any other owner of copyright in the work; and
  - (c) the archive is satisfied that the person for whom it is made will use the copy only for purposes of research or private study and makes only one copy for that person.

#### Regulations

(4) The Governor in Council may prescribe the manner and form in which the conditions in [subsection \(3\)](#) may be met.

#### Where Copyright Owner Cannot Be Found

(5) Where an archive requires the consent of the copyright owner to copy an unpublished work deposited in the archive before the coming into force of this section but is unable to locate the owner, the archive may copy the work in accordance with [subsection \(3\)](#).

#### Notice

(6) The archive must make a record of any copy made under [subsection \(5\)](#), and keep it available for public inspection, as prescribed.

#### Posthumous Works

(7) It is not an infringement of copyright for an archive to make a copy, in accordance with [subsection \(3\)](#), of any work to which [subsection 7\(4\)](#) applies, if it was in the archive on the date of coming into force of this section.

## **MACHINES INSTALLED IN EDUCATIONAL INSTITUTIONS, LIBRARIES, ARCHIVES AND MUSEUMS**

#### No Infringement by Educational Institution, etc.

30.3—(1) 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.

#### Application

(2) [Subsection \(1\)](#) only applies if, in respect of a reprographic reproduction,

- (a) the educational institution, library, archive or museum has entered into an agreement with a collective society that is authorized by copyright owners to grant licences on their behalf;
- (b) the Board has, in accordance with [section 70.2](#), fixed the royalties and related terms and conditions in respect of a licence;
- (c) a tariff has been approved in accordance with [section 70.15](#); or
- (d) a collective society has filed a proposed tariff in accordance with [section 70.13](#).

#### Order

(3) Where a collective society offers to negotiate or has begun to negotiate an agreement referred to in [paragraph \(2\)\(a\)](#), the Board may, at the request of either party,

order that the educational institution, library, archive or museum be treated as an institution to which [subsection \(1\)](#) applies, during the period specified in the order.

#### Agreement with Copyright Owner

(4) Where an educational institution, library, archive or museum has entered into an agreement with a copyright owner other than a collective society respecting reprographic reproduction, [subsection \(1\)](#) applies only in respect of the works of the copyright owner that are covered by the agreement.

#### Regulations

(5) The Governor in Council may, for the purposes of [paragraph 1\(c\)](#), prescribe by regulation the manner of affixing and location of notices and the dimensions, form and contents of notices.

## **LIBRARIES, ARCHIVES AND MUSEUMS IN EDUCATIONAL INSTITUTIONS**

### Application to Libraries, etc. within Educational Institutions

30.4 For greater certainty, the exceptions to infringement of copyright provided for under [sections 29.4 to 30.3](#) and [45](#) also apply in respect of a library, archive or museum that forms part of an educational institution.

## **NATIONAL ARCHIVES OF CANADA**

### Copies for Archival Purposes

30.5 The National Archives of Canada may

- (a) make a copy of a recording, as defined in [section 8](#) of the *National Archives Act*, for the purposes of that section; and
- (b) at the time that a broadcasting undertaking, within the meaning of [subsection 2\(1\)](#) of the *Broadcasting Act*, communicates a work or other subject-matter to the public by telecommunication, make a copy for archival purposes of the work or other subject-matter that is included in that communication.

## **COMPUTER PROGRAMS**

### Permitted Acts

30.6 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 to

- (a) make a single reproduction of the copy by adapting, modifying or converting the computer program or translating it into another computer language if the person proves that the reproduced copy is

- (i) essential for the compatibility of the computer program with a particular computer,
  - (ii) solely for the person's own use, and
  - (iii) destroyed immediately after the person ceases to be the owner of the copy; or
- (b) make a single reproduction for backup purposes of the copy or of a reproduced copy referred to in [paragraph \(a\)](#) if the person proves that the reproduction for backup purposes is destroyed immediately when the person ceases to be the owner of the copy of the computer program.

## INCIDENTAL INCLUSION

### Incidental use

30.7 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.

## EPHEMERAL RECORDINGS

30.8—(1) It is not an infringement of copyright for a programming undertaking to fix or reproduce in accordance with this section a performer's performance or work, other than a cinematographic work, that is performed live or a sound recording that is performed at the same time as the performer's performance or work, if the undertaking

- (a) is authorized to communicate the performer's performance, work or sound recording to the public by telecommunication;
- (b) makes the fixation or the reproduction itself, for its own broadcasts;
- (c) does not synchronize the fixation or reproduction with all or part of another recording, performer's performance or work; and
- (d) does not cause the fixation or reproduction to be used in an advertisement intended to sell or promote, as the case may be, a product, service, cause or institution.

### Record Keeping

(2) The programming undertaking must record the dates of the making and destruction of all fixations and reproductions and any other prescribed information about the fixation or reproduction, and keep the record current.

### Right of Access by Copyright Owners

(3) The programming undertaking must make the record referred to in [subsection \(2\)](#) available to owners of copyright in the works, sound recordings or

performer's performances, or their representatives, within twenty-four hours after receiving a request.

#### Destruction

(4) The programming undertaking must destroy the fixation or reproduction within thirty days after making it, unless

- (a) the copyright owner authorizes its retention; or
- (b) it is deposited in an archive, in accordance with [subsection \(6\)](#).

#### Royalties

(5) Where the copyright owner authorizes the fixation or reproduction to be retained after the thirty days, the programming undertaking must pay any applicable royalty.

#### Archive

(6) Where the programming undertaking considers a fixation or reproduction to be of an exceptional documentary character, the undertaking may, with the consent of an official archive, deposit it in the official archive and must notify the copyright owner, within thirty days, of the deposit of the fixation or reproduction.

#### Definition of "official archive"

(7) In [subsection \(6\)](#), "official archive" means the National Archives of Canada or any archive established under the law of a province for the preservation of the official archives of the province.

#### Application

(8) This section does not apply where a licence is available from a collective society to make the fixation or reproduction of the performer's performance, work or sound recording.

#### Telecommunications by Networks

(9) A broadcasting undertaking, as defined in the *Broadcasting Act*, may make a single reproduction of a fixation or reproduction made by a programming undertaking and communicate it to the public by telecommunication, within the period referred to in [subsection \(4\)](#), if the broadcasting undertaking meets the conditions set out in [subsection \(1\)](#) and is part of a prescribed network that includes the programming undertaking.

#### Limitations

(10) The reproduction and communication to the public by telecommunication must be made

- (a) in accordance with [subsections \(2\) to \(6\)](#); and
- (b) within thirty days after the day on which the programming undertaking made the fixation or reproduction.

#### Definition of "programming undertaking"

(11) In this section, "programming undertaking" means

- (a) a programming undertaking as defined in the *Broadcasting Act*;
- (b) a programming undertaking described in [paragraph \(a\)](#) that originates programs within a network, as defined in the *Broadcasting Act*; or
- (c) a distribution undertaking as defined in the *Broadcasting Act*, in respect of the programs that it originates.

The undertaking must hold a broadcasting licence issued by the Canadian Radio-television and Telecommunications Commission under the *Broadcasting Act*.

#### Pre-recorded Recordings

30.9—(1) It is not an infringement of copyright for a broadcasting undertaking to reproduce in accordance with this section a sound recording, or a performer's performance or work that is embodied in a sound recording, solely for the purpose of transferring it to a format appropriate for broadcasting, if the undertaking

- (a) owns the copy of the sound recording, performer's performance or work and that copy is authorized by the owner of the copyright;
- (b) is authorized to communicate the sound recording, performer's performance or work to the public by telecommunication;
- (c) makes the reproduction itself, for its own broadcasts;
- (d) does not synchronize the reproduction with all or part of another recording, performer's performance or work; and
- (e) does not cause the reproduction to be used in an advertisement intended to sell or promote, as the case may be, a product, service, cause or institution.

#### Record Keeping

(2) The broadcasting undertaking must record the dates of the making and destruction of all reproductions and any other prescribed information about the reproduction, and keep the record current.

#### Right of Access by Copyright Owners

(3) The broadcasting undertaking must make the record referred to in [subsection \(2\)](#) available to owners of copyright in the sound recordings, performer's performances or works, or their representatives, within twenty-four hours after receiving a request.

#### Destruction

(4) The broadcasting undertaking must destroy the reproduction when it no longer possesses the sound recording or performer's performance or work embodied in the sound recording, or at the latest within thirty days after making the reproduction, unless the copyright owner authorizes the reproduction to be retained.

#### Royalty

(5) If the copyright owner authorizes the reproduction to be retained, the broadcasting undertaking must pay any applicable royalty.

## Application

(6) This section does not apply if a licence is available from a collective society to reproduce the sound recording, performer's performance or work.

## Definition of "broadcasting undertaking"

(7) In this section, "broadcasting undertaking" means a broadcasting undertaking as defined in the *Broadcasting Act* that holds a broadcasting licence issued by the Canadian Radio-television and Telecommunications Commission under that Act.

(2) [Section 30](#) of the Act, as enacted by [subsection \(1\)](#) of this section, does not apply in respect of collections referred to in [section 30](#) that are published before the coming into force of [section 30](#). Such collections continue to be governed by [paragraph 27\(2\)\(d\)](#) of the Act as it read before the coming into force of [section 15](#) of this Act.

19. The Act is amended by adding the following after [section 31](#):

## PERSONS WITH PERCEPTUAL DISABILITIES

### Reproduction in Alternate Format

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

- (a) make a copy or sound recording of 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; or
- (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.

### Limitation

(3) [Subsection \(1\)](#) does not apply where the work or sound recording is commercially available in a format specially designed to meet the needs of any person referred to in that subsection, within the meaning of [paragraph \(a\)](#) of the definition "commercially available".

## STATUTORY OBLIGATIONS

### No Infringement

32.1—(1) It is not an infringement of copyright for any person

- (a) to disclose, pursuant to the *Access to Information Act*, a record within the meaning of that Act, or to disclose, pursuant to any like Act of the legislature of a province, like material;
- (b) to disclose, pursuant to the *Privacy Act*, personal information within the meaning of that Act, or to disclose, pursuant to any like Act of the legislature of a province, like information;
- (c) to make a copy of an object referred to in **section 14** of the *Cultural Property Export and Import Act*, for deposit in an institution pursuant to a direction under that section; and
- (d) to make a fixation or copy of a work or other subject-matter in order to comply with the *Broadcasting Act* or any rule, regulation or other instrument made under it.

#### Limitation

(2) Nothing in [paragraph \(1\)\(a\)](#) or [\(b\)](#) authorizes a person to whom a record or information is disclosed to do anything that, by this Act, only the owner of the copyright in the record, personal information or like information, as the case may be, has a right to do.

#### Destruction of Fixation or Copy

(3) Unless the *Broadcasting Act* otherwise provides, a person who makes a fixation or copy under [paragraph \(1\)\(d\)](#) shall destroy it immediately on the expiration of the period for which it must be kept pursuant to that Act, rule, regulation or other instrument.

## MISCELLANEOUS

### Permitted Acts

32.2—(1) It is not an infringement of copyright

- (a) for an author of an artistic work who is not the owner of the copyright in the work to use any mould, cast, sketch, plan, model or study made by the author for the purpose of the work, if the author does not thereby repeat or imitate the main design of the work;
- (b) for any person to reproduce, in a painting, drawing, engraving, photograph or cinematographic work
  - (i) an architectural work, provided the copy is not in the nature of an architectural drawing or plan, or
  - (ii) a sculpture or work of artistic craftsmanship or a cast or model of a sculpture or work of artistic craftsmanship, that is permanently situated in a public place or building;
- (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; or
- (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.

#### Further Permitted Acts

(2) It is not an infringement of copyright for a person to do any of the following acts without motive of gain at any agricultural or agricultural-industrial exhibition or fair that receives a grant from or is held by its directors under federal, provincial or municipal authority:

- (a) the live performance in public of a musical work;
- (b) the performance in public of a sound recording embodying a musical work or a performer's performance of a musical work; or
- (c) the performance in public of a communication signal carrying
  - (i) the live performance in public of a musical work, or
  - (ii) a sound recording embodying a musical work or a performer's performance of a musical work.

#### Further Permitted Acts

(3) No religious organization or institution, educational institution and no charitable or fraternal organization shall be held liable to pay any compensation for doing any of the following acts in furtherance of a religious, educational or charitable object:

- (a) the live performance in public of a musical work;
- (b) the performance in public of a sound recording embodying a musical work or a performer's performance of a musical work; or
- (c) the performance in public of a communication signal carrying
  - (i) the live performance in public of a musical work, or
  - (ii) a sound recording embodying a musical work or a performer's performance of a musical work.

### *Interpretation*

#### No Right to Equitable Remuneration

32.3 For the purposes of [sections 29 to 32.2](#), an act that does not infringe copyright does not give rise to a right to remuneration conferred by [section 19](#). Compensation for Acts Done before Recognition of Copyright of Performers and Broadcasters

#### Certain Rights and Interests Protected

32.4—(1) Notwithstanding [section 27](#), where a person has, before the later of January 1, 1996 and the day on which a country becomes a WTO member, incurred an expenditure or liability in connection with, or in preparation for, the doing of an act that would have infringed copyright under [section 26](#) commencing on the later of those days, had that country been a WTO member, any right or interest of that person that

- (a) arises from or in connection with the doing of that act, and
- (b) is subsisting and valuable on the later of those days is not prejudiced or diminished by reason only that that country has become a WTO member, except as provided by an order of the Board made under [subsection 78\(3\)](#).

#### Compensation

(2) Notwithstanding [subsection \(1\)](#), a person's right or interest that is protected by that subsection terminates if and when the owner of the copyright pays that person such compensation as is agreed to between the parties or, failing agreement, as is determined by the Board in accordance with [section 78](#).

#### Limitation

(3) Nothing in [subsections \(1\)](#) and [\(2\)](#) affects any right of a performer available in law or equity.

#### Certain Rights and Interests Protected

32.5—(1) Notwithstanding [section 27](#), where a person has, before the later of the coming into force of Part II and the day on which a country becomes a Rome Convention country, incurred an expenditure or liability in connection with, or in preparation for, the doing of an act that would have infringed copyright under [section 15](#) or [21](#) commencing on the later of those days, had Part II been in force or had that country been a Rome Convention country, any right or interest of that person that

- (a) arises from or in connection with the doing of that act, and
- (b) is subsisting and valuable on the later of those days is not prejudiced or diminished by reason only that [Part II](#) has come into force or that the country has become a Rome Convention country, except as provided by an order of the Board made under [subsection 78\(3\)](#).

#### Compensation

(2) Notwithstanding [subsection \(1\)](#), a person's right or interest that is protected by that subsection terminates if and when the owner of the copyright pays that person such compensation as is agreed to between the parties or, failing agreement, as is determined by the Board in accordance with [section 78](#).

#### Limitation

(3) Nothing in [subsections \(1\)](#) and [\(2\)](#) affects any right of a performer available in law or equity.

#### Compensation for Acts Done before Recognition of Copyright or Moral Rights

## Certain Rights and Interests Protected

33.—(1) Notwithstanding [subsections 27\(1\), \(2\) and \(4\)](#) and [sections 27.1, 28.1 and 28.2](#), where a person has, before the later of January 1, 1996 and the day on which a country becomes a treaty country, incurred an expenditure or liability in connection with, or in preparation for, the doing of an act that would have infringed a copyright owner's copyright or an author's moral rights had that country been a treaty country, any right or interest of that person that

- (a) arises from or in connection with the doing of that act, and
- (b) is subsisting and valuable on the latest of those days is not prejudiced or diminished by reason only that that country has become a treaty country, except as provided by an order of the Board made under [subsection 78\(3\)](#).

### Compensation

(2) Notwithstanding [subsection \(1\)](#), a person's right or interest that is protected by that subsection terminates, as against the copyright owner or author, if and when that copyright owner or the author, as the case may be, pays that person such compensation as is agreed to between the parties or, failing agreement, as is determined by the Board in accordance with [section 78](#).

## PART IV REMEDIES

20.—(1) [Sections 34 to 39](#) of the Act are replaced by the following:

### Copyright

34.—(1) Where copyright has been infringed, the owner of the copyright is, subject to this Act, entitled to all remedies by way of injunction, damages, accounts, delivery up and otherwise that are or may be conferred by law for the infringement of a right.

### Moral Rights

(2) In any proceedings for an infringement of a moral right of an author, the court may grant to the author or to the person who holds the moral rights by virtue of [subsection 14.2\(2\) or \(3\)](#), as the case may be, all remedies by way of injunction, damages, accounts, delivery up and otherwise that are or may be conferred by law for the infringement of a right.

### Costs

(3) The costs of all parties in any proceedings in respect of the infringement of a right conferred by this Act shall be in the discretion of the court.

### Summary Proceedings

(4) The following proceedings may be commenced or proceeded with by way of application or action and shall, in the case of an application, be heard and determined without delay and in a summary way:

- (a) proceedings for infringement of copyright or moral rights;
- (b) proceedings taken under [section 44.1, 44.2 or 44.4](#); and

- (c) proceedings taken in respect of
  - (i) a tariff certified by the Board under [Part VII](#) or [VIII](#), or
  - (ii) agreements referred to in [section 70.12](#).

#### Practice and Procedure

(5) The rules of practice and procedure, in civil matters, of the court in which proceedings are commenced by way of application apply to those proceedings, but where those rules do not provide for the proceedings to be heard and determined without delay and in a summary way, the court may give such directions as it considers necessary in order to so provide.

#### Actions

(6) The court in which proceedings are instituted by way of application may, where it considers it appropriate, direct that the proceeding be proceeded with as an action.

#### Meaning of “application”

(7) In this section, “application” means a proceeding that is commenced other than by way of a writ or statement of claim.

#### Presumptions Respecting Copyright and Ownership

34.1—(1) In any proceedings for infringement of copyright in which the defendant puts in issue either the existence of the copyright or the title of the plaintiff thereto,

- (a) copyright shall be presumed, unless the is proved, to subsist in the work, performer’s performance, sound recording or communication signal, as the case may be; and
- (b) the author, performer, maker or broadcaster, as the case may be, shall, unless the contrary is proved, be presumed to be the owner of the copyright.

#### Where No Grant Registered

(2) Where any matter referred to in [subsection \(1\)](#) is at issue and no assignment of the copyright, or licence granting an interest in the copyright, has been registered under this Act,

- (a) if a name purporting to be that of
  - (i) the author of the work,
  - (ii) the performer of the performer’s performance,
  - (iii) the maker of the sound recording, or
  - (iv) the broadcaster of the communication signal

is printed or otherwise indicated thereon in the usual manner, the person whose name is so printed or indicated shall, unless the contrary is proved, be presumed to be the author, performer, maker or broadcaster;

- (b) if

- (i) no name is so printed or indicated, or if the name so printed or indicated is not the true name of the author, performer, maker or broadcaster or the name by which that person is commonly known, and
- (ii) a name purporting to be that of the publisher or owner of the work, performer's performance, sound recording or communication signal is printed or otherwise indicated thereon in the usual manner,

the person whose name is printed or indicated as described in [subparagraph \(ii\)](#) shall, unless the contrary is proved, be presumed to be the owner of the copyright in question; and

- (c) if, on a cinematographic work, a name purporting to be that of the maker of the cinematographic work appears in the usual manner, the person so named shall, unless the contrary is proved, be presumed to be the maker of the cinematographic work.

#### Liability for Infringement

35.—(1) Where a person infringes copyright, the person is liable to pay such damages to the owner of the copyright as the owner has suffered due to the infringement and, in addition to those damages, such part of the profits that the infringer has made from the infringement and that were not taken into account in calculating the damages as the court considers just.

#### Proof of Profits

- (2) In proving profits,
  - (a) the plaintiff shall be required to prove only receipts or revenues derived from the infringement; and
  - (b) the defendant shall be required to prove every element of cost that the defendant claims.

#### Protection of Separate Rights

36.—(1) Subject to this section, the owner of any copyright, or any person or persons deriving any right, title or interest by assignment or grant in writing from the owner, may individually for himself or herself, as a party to the proceedings in his or her own name, protect and enforce any right that he or she holds, and, to the extent of that right, title and interest, is entitled to the remedies provided by this Act.

#### Where Copyright Owner to Be Made Party

(2) Where proceedings referred to in [subsection \(1\)](#) are taken by a person other than the copyright owner, the copyright owner must be made a party to those proceedings, except

- (a) in respect of proceedings taken under [section 44.1](#), [44.2](#) or [44.4](#);
- (b) in respect of interlocutory proceedings unless the court is of the opinion that the interests of justice require the copyright owner to be a party; and

- (c) in any other case, if the court is of the opinion that the interests of justice do not require the copyright owner to be a party.

#### Owner's Liability for Costs

(3) A copyright owner who is made a party to proceedings pursuant to [subsection \(2\)](#) is not liable for any costs unless the copyright owner takes part in the proceedings.

#### Apportionment of Damages, Profits

(4) Where a copyright owner is made a party to proceedings pursuant to [subsection \(2\)](#), the court, in awarding damages or profits, shall, subject to any agreement between the person who took the proceedings and the copyright owner, apportion the damages or profits referred to in [subsection 35\(1\)](#) between them as the court considers appropriate.

#### Concurrent Jurisdiction of Federal Court

37. The Federal Court has concurrent jurisdiction with provincial courts to hear and determine all proceedings, other than the prosecution of offences under [section 42](#) and [43](#), for the enforcement of a provision of this Act or of the civil remedies provided by this Act.

#### Recovery of Possession of Copies, Plates

38.—(1) Subject to [subsection \(2\)](#), the owner of the copyright in a work or other subject-matter may

- (a) recover possession of all infringing copies of that work or other subject-matter, and of all plates used or intended to be used for the production of infringing copies, and
- (b) take proceedings for seizure of those copies or plates before judgment if, under the law of Canada or of the province in which those proceedings are taken, a person is entitled to take such proceedings, as if those copies or plates were the property of the copyright owner.

#### Powers of Court

(2) On application by

- (a) a person from whom the copyright owner has recovered possession of copies or plates referred to in [subsection \(1\)](#),
  - (b) a person against whom proceedings for seizure before judgment of copies or plates referred to in subsection (1) have been taken, or
  - (c) any other person who has an interest in those copies or plates,
- a court may order that those copies or plates be destroyed, or may make any other order that it considers appropriate in the circumstances.

#### Notice to Interested Persons

(3) Before making an order under subsection (2), the court shall direct that notice be given to any person who has an interest in the copies or plates in question, unless the court is of the opinion that the interests of justice do not require such notice to be given.

Circumstances Court to Consider

(4) In making an order under [subsection \(2\)](#), the court shall have regard to all the circumstances, including

- (a) the proportion, importance and value of the infringing copy or plate, as compared to the substrate or carrier embodying it; and
- (b) the extent to which the infringing copy or plate is severable from, or a distinct part of, the substrate or carrier embodying it.

Limitation

(5) Nothing in this Act entitles the copyright owner to damages in respect of the possession or conversion of the infringing copies or plates.

#### Statutory Damages

38.1—(1) Subject to this section, a copyright owner may elect, at any time before final judgment is rendered, to recover, instead of damages and profits referred to in [subsection 35\(1\)](#), an award of statutory damages for all infringements involved in the proceedings, with respect to any one work or other subject-matter, for which any one infringer is liable individually, or for which any two or more infringers are liable jointly and severally, in a sum of not less than \$500 or more than \$20,000 as the court considers just.

Where Defendant Unaware of Infringement

(2) Where a copyright owner has made an election under [subsection \(1\)](#) and the defendant satisfies the court that the defendant was not aware and had no reasonable grounds to believe that the defendant had infringed copyright, the court may reduce the amount of the award to less than \$500, but not less than \$200.

Special Case

(3) Where

- (a) there is more than one work or other subject-matter in a single medium, and
- (b) the awarding of even the minimum amount referred to in [subsection \(1\)](#) or [\(2\)](#) would result in a total award that, in the court's opinion, is grossly out of proportion to the infringement,

the court may award, with respect to each work or other subject-matter, such lower amount than \$500 or \$200, as the case may be, as the court considers just.

Collective Societies

(4) Where the defendant has not paid applicable royalties, a collective society referred to in [section 67](#) may only make an election under this section to recover, in lieu of any other remedy of a monetary nature provided by this Act, an award of statutory

damages in a sum of not less than three and not more than ten times the amount of the applicable royalties, as the court considers just.

#### Factors to Consider

(5) In exercising its discretion under [subsections \(1\) to \(4\)](#), the court shall consider all relevant factors, including

- (a) the good faith or bad faith of the defendant;
- (b) the conduct of the parties before and during the proceedings; and
- (c) the need to deter other infringements of the copyright in question.

#### No Award

(6) No statutory damages may be awarded against

- (a) an educational institution or a person acting under its authority that has committed an act referred to in [section 29.6](#) or [29.7](#) and has not paid any royalties or complied with any terms and conditions fixed under this Act in relation to the commission of the act;
- (b) an educational institution, library, archive or museum that is sued in the circumstances referred to in [section 38.2](#); or
- (c) a person who infringes copyright under [paragraph 27\(2\)\(e\)](#) or [section 27.1](#), where the copy in question was made with the consent of the copyright owner in the country where the copy was made.

#### Exemplary or Punitive Damages Not Affected

(7) An election under [subsection \(1\)](#) does not affect any right that the copyright owner may have to exemplary or punitive damages.

#### Maximum Amount That May Be Recovered

38.2—(1) An owner of copyright in a work who has not authorized a collective society to authorize its reprographic reproduction may recover, in proceedings against an educational institution, library, archive or museum that has reproduced the work, a maximum amount equal to the amount of royalties that would have been payable to the society in respect of the reprographic reproduction, if it were authorized, either

- (a) under any agreement entered into with the collective society; or
- (b) under a tariff certified by the Board pursuant to [section 70.15](#).

#### Agreements with More than One Collective Society

(2) Where agreements respecting reprographic reproduction have been signed with more than one collective society or where more than one tariff applies or where both agreements and tariffs apply, the maximum amount that the copyright owner may recover is the largest amount of the royalties provided for in any of those agreements or tariffs.

#### Application

(3) [Subsections \(1\)](#) and [\(2\)](#) apply only where

- (a) the collective society is entitled to authorize, or the tariff provides for the payment of royalties in respect of, the reprographic reproduction of that category of work; and
- (b) copying of that general nature and extent is covered by the agreement or tariff.

#### Injunction Only Remedy When Defendant Not Aware of Copyright

39.—(1) Subject to [subsection \(2\)](#), in any proceedings for infringement of copyright, the plaintiff is not entitled to any remedy other than an injunction in respect of the infringement if the defendant proves that, at the date of the infringement, the defendant was not aware and had no reasonable ground for suspecting that copyright subsisted in the work or other subject-matter in question.

#### Exception Where Copyright Registered

(2) [Subsection \(1\)](#) does not apply if, at the date of the infringement, the copyright was duly registered under this Act.

#### Wide Injunction

39.1—(1) When granting an injunction in respect of an infringement of copyright in a work or other subject-matter, the court may further enjoin the defendant from infringing the copyright in any other work or subject-matter if

- (a) the plaintiff is the owner of the copyright or the person to whom an interest in the copyright has been granted by licence; and
- (b) the plaintiff satisfies the court that the defendant will likely infringe the copyright in those other works or subject-matter unless enjoined by the court from doing so.

#### Application of Injunction

(2) An injunction granted under [subsection \(1\)](#) may extend to works or other subject-matter

- (a) in respect of which the plaintiff was not, at the time the proceedings were commenced, the owner of the copyright or the person to whom an interest in the copyright has been granted by licence; or

that did not exist at the time the proceedings were commenced.

(2) [Section 38](#) of the *Copyright Act*, as it read immediately before the coming into force of [subsection \(1\)](#) of this section, continues to apply in respect of proceedings commenced but not concluded before the coming into force of [subsection \(1\)](#) of this section.

(3) [Section 38.1](#) of the *Copyright Act*, as enacted by [subsection \(1\)](#) of this section, only applies

- (a) to proceedings commenced after the date of the coming into force of that subsection; and

(b) where the infringement to which those proceedings relate occurred after that date.

(4) [Section 39.1](#) of the *Copyright Act*, as enacted by [subsection \(1\)](#) of this section, applies in respect of

- (a) proceedings commenced but not concluded before the coming into force of [subsection \(1\)](#) of this section; and
- (b) proceedings commenced after the coming into force of [subsection \(1\)](#) of this section.

21. [Subsection 40\(2\)](#) of the Act is replaced by the following:

#### Certain Remedies Inapplicable

(2) [Sections 38](#) and [42](#) do not apply in any case in respect of which subsection (1) applies.

22.—(1) [Section 41](#) of the Act is replaced by the following:

#### Limitation Period for Civil Remedies

41.—(1) Subject to [subsection \(2\)](#), a court may not award a remedy in relation to an infringement unless

- (a) in the case where the plaintiff knew, or could reasonably have been expected to know, of the infringement at the time it occurred, the proceedings for infringement are commenced within three years after the infringement occurred; or
- (b) in the case where the plaintiff did not know, and could not reasonably have been expected to know, of the infringement at the time it occurred, the proceedings for infringement are commenced within three years after the time when the plaintiff first knew, or could reasonably have been expected to know, of the infringement.

#### Restriction

(2) The court shall apply the limitation period set out in [paragraph \(1\)\(a\)](#) or [\(b\)](#) only in respect of a party who pleads a limitation period.

(2) [Subsection \(1\)](#) applies in respect of

- (a) proceedings commenced but not concluded before this section comes into force; and
- (b) proceedings commenced after this section comes into force.

23. The heading before [section 42](#) of the Act is replaced by the following:

#### Criminal Remedies

24.—(1) Paragraphs [42\(1\)\(a\)](#) to [\(e\)](#) of the Act are replaced by the following:

- (a) makes for sale or rental an infringing copy of a work or other subject-matter in which copyright subsists,

- (b) sells or rents out, or by way of trade exposes or offers for sale or rental, an infringing copy of a work or other subject-matter in which copyright subsists,
- (c) distributes infringing copies of a work or other subject-matter in which copyright subsists, either for the purpose of trade or to such an extent as to affect prejudicially the owner of the copyright,
- (d) by way of trade exhibits in public an infringing copy of a work or other subject-matter in which copyright subsists, or
- (e) imports for sale or rental into Canada any infringing copy of a work or other subject-matter in which copyright subsists

(2) Paragraphs 42(2)(a) and (b) of the Act are replaced by the following:

- (a) makes or possesses any plate that is specifically designed or adapted for the purpose of making infringing copies of any work or other subject-matter in which copyright subsists, or
- (b) for private profit causes to be performed in public, without the consent of the owner of the copyright, any work or other subject-matter in which copyright subsists

(3) Subsection 42(3) of the Act is replaced by the following:

#### Power of Court to Deal with Copies or Plates

(3) The court before which any proceedings under this section are taken may, on conviction, order that all copies of the work or other subject-matter that appear to it to be infringing copies, or all plates in the possession of the offender predominantly used for making infringing copies, be destroyed or delivered up to the owner of the copyright or otherwise dealt with as the court may think fit.

#### Limitation Period

(4) Proceedings by summary conviction in respect of an offence under this section may be instituted at any time within, but not later than, two years after the time when the offence was committed.

#### Parallel Importation of Books

(5) No person may be prosecuted under this section for importing a book or dealing with an imported book in the manner described in [section 27.1](#).

25. [Section 43.1](#) of the Act is repealed.

26. The heading before [section 44](#) of the Act is replaced by the following:

#### Importation

27.—(1) The portion of [subsection 44.1\(1\)](#) of the Act before the definition “court” is replaced by the following:

#### Definitions

44.1—(1) In this section and [sections 44.2](#) and [44.3](#),

(2) [Subsection 44.1\(2\)](#) of the Act is replaced by the following:

#### Power of Court

(2) A court may make an order described in [subsection \(3\)](#) where the court is satisfied that

- (a) copies of the work are about to be imported into Canada, or have been imported into Canada but have not yet been released;
- (b) either
  - (i) copies of the work were made without the consent of the person who then owned the copyright in the country where the copies were made, or
  - (ii) the copies were made elsewhere than in a country to which this Act extends; and
- (c) the copies would infringe copyright if they were made in Canada by the importer and the importer knows or should have known this.

#### Who May Apply

(2.1) A court may make an order described in [subsection \(3\)](#) on application by the owner or exclusive licensee of copyright in a work in Canada.

(3) [Subsection 44.1\(4\)](#) of the English version of the Act is replaced by the following:

#### How Application Made

(4) An application for an order made under [subsection \(2\)](#) may be made in an action or otherwise, and either on notice or *ex parte*, except that it must always be made on notice to the Minister.

(4) [Subsections 44.1\(8\)](#) and [\(9\)](#) of the Act are replaced by the following:

#### Where Applicant Fails to Commence an Action

(8) Unless an order made under [subsection \(2\)](#) provides otherwise, the Minister shall, subject to the *Customs Act* and to any other Act of Parliament that prohibits, controls or regulates the importation or exportation of goods, release the copies of the work without further notice to the applicant if, two weeks after the applicant has been notified under [subparagraph \(3\)\(a\)\(ii\)](#), the applicant has not notified the Minister that the applicant has commenced a proceeding for a final determination by the court of the issues referred to in [paragraphs \(2\)\(b\)](#) and [\(c\)](#).

#### Where Court Finds in Plaintiff's Favour

(9) Where, in a proceeding commenced under this section, the court finds that the circumstances referred to in [paragraphs \(2\)\(b\)](#) and [\(c\)](#) existed, the court may make any order that it considers appropriate in the circumstances, including an order that the copies

of the work be destroyed, or that they be delivered up to the plaintiff as the plaintiff's property absolutely.

28. [Sections 44.2](#) and [45](#) of the Act are replaced by the following:

#### Importation of Books

44.2—(1) A court may, subject to this section, make an order described in [subsection 44.1\(3\)](#) in relation to a book where the court is satisfied that

- (a) copies of the book are about to be imported into Canada, or have been imported into Canada but have not yet been released;
- (b) copies of the book were made with the consent of the owner of the copyright in the book in the country where the copies were made, but were imported without the consent of the owner in Canada of the copyright in the book; and
- (c) the copies would infringe copyright if they were made in Canada by the importer and the importer knows or should have known this.

#### Who May Apply

(2) A court may make an order described in [subsection 44.1\(3\)](#) in relation to a book on application by

- (a) the owner of the copyright in the book in Canada;
- (b) the exclusive licensee of the copyright in the book in Canada; or
- (c) the exclusive distributor of the book.

#### Limitation

(3) [Subsections \(1\)](#) and [\(2\)](#) only apply where there is an exclusive distributor of the book and the acts described in those subsections take place in the part of Canada or in respect of the particular sector of the market for which the person is the exclusive distributor.

#### Application of Certain Provisions

(4) [Subsections 44.1\(3\) to \(10\)](#) apply, with such modifications as the circumstances require, in respect of an order made under [subsection \(1\)](#).

#### Limitation

44.3 No exclusive licensee of the copyright in a book in Canada, and no exclusive distributor of a book, may obtain an order under [section 44.2](#) against another exclusive licensee of the copyright in that book in Canada or against another exclusive distributor of that book.

#### Importation of Other Subject-Matter

44.4 [Section 44.1](#) applies, with such modifications as the circumstances require, in respect of a sound recording, performer's performance or communication signal, where a fixation or a reproduction of a fixation of it

- (a) is about to be imported into Canada, or has been imported into Canada but has not yet been released;
- (b) either
  - (i) was made without the consent of the person who then owned the copyright in the sound recording, performer's performance or communication signal, as the case may be, in the country where the fixation or reproduction was made, or
  - (ii) was made elsewhere than in a country to which Part II extends; and
- (c) would infringe the right of the owner of copyright in the sound recording, performer's performance or communication signal if it was made in Canada by the importer and the importer knows or should have known this.

#### Exceptions

45.—(1) 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.

#### Satisfactory Evidence

(2) An officer of customs may, in the officer's discretion, require a person seeking to import a copy of a work or other subject-matter under this section to produce satisfactory evidence of the facts necessary to establish the person's right to import the copy.

29. The heading before [section 46](#) of the Act is replaced by the following:

## PART V ADMINISTRATION

### *Copyright Office*

30. **Subsection 53(2)** of the Act is replaced by the following:

#### Owner of Copyright

(2) A certificate of registration of copyright is evidence that the copyright subsists and that the person registered is the owner of the copyright.

#### Assignee

(2.1) A certificate of registration of an assignment of copyright is evidence that the right recorded on the certificate has been assigned and that the assignee registered is the owner of that right.

#### Licensee

(2.2) A certificate of registration of a licence granting an interest in a copyright is evidence that the interest recorded on the certificate has been granted and that the licensee registered is the holder of that interest.

31.—(1) **Subsections 54(1)** and **(2)** of the Act are replaced by the following:

#### Register of Copyrights

54.—(1) The Minister shall cause to be kept at the Copyright Office a register to be called the Register of Copyrights in which may be entered

- (a) the names or titles of works and of other subject-matter in which copyright subsists;
- (b) the names and addresses of authors, performers, makers of sound recordings, broadcasters, owners of copyright, assignees of copyright, and persons to whom an interest in copyright has been granted by licence; and
- (c) such other particulars as may be prescribed by regulation.

(2) **Subsections 54(4)** and **(5)** of the Act are replaced by the following:

#### Indices

(4) There shall also be kept at the Copyright Office such indices of the Register established under this section as may be prescribed by regulation.

#### Inspection and Extracts

(5) The Register and indices established under this section shall at all reasonable times be open to inspection, and any person is entitled to make copies of or take extracts from the Register.

32. **Sections 55** and **56** of the Act are replaced by the following:

## Copyright in Works

55.—(1) Application for the registration of a copyright in a work may be made by or on behalf of the author of the work, the owner of the copyright in the work, an assignee of the copyright, or a person to whom an interest in the copyright has been granted by licence.

### Application for Registration

(2) An application under [subsection \(1\)](#) must be filed with the Copyright Office, be accompanied by the fee prescribed by or determined under the regulations, and contain the following information:

- (a) the name and address of the owner of the copyright in the work;
- (b) a declaration that the applicant is the author of the work, the owner of the copyright in the work, an assignee of the copyright, or a person to whom an interest in the copyright has been granted by licence;
- (c) the category of the work;
- (d) the title of the work;
- (e) the name of the author and, if the author is dead, the date of the author's death, if known;
- (f) in the case of a published work, the date and place of the first publication; and
- (g) any additional information prescribed by regulation.

## Copyright in Subject-Matter Other than Works

56.—(1) Application for the registration of a copyright in subject-matter other than a work may be made by or on behalf of the owner of the copyright in the subject-matter, an assignee of the copyright, or a person to whom an interest in the copyright has been granted by licence.

### Application for Registration

(2) An application under [subsection \(1\)](#) must be filed with the Copyright Office, be accompanied by the fee prescribed by or determined under the regulations, and contain the following information:

- (a) the name and address of the owner of the copyright in the subject-matter;
- (b) a declaration that the applicant is the owner of the copyright in the subject-matter, an assignee of the copyright, or a person to whom an interest in the copyright has been granted by licence;
- (c) whether the subject-matter is a performer's performance, a sound recording or a communication signal;
- (d) the title, if any, of the subject-matter;
- (e) the date of

- (i) in the case of a performer's performance, its first fixation in a sound recording or, if it is not fixed in a sound recording, its first performance,
  - (ii) in the case of a sound recording, the first fixation, or
  - (iii) in the case of a communication signal, its broadcast; and
- (f) any additional information prescribed by regulation.

#### Recovery of Damages

56.1 Where a person purports to have the authority to apply for the registration of a copyright under [section 55](#) or [56](#) on behalf of another person, any damage caused by a fraudulent or erroneous assumption of such authority is recoverable in any court of competent jurisdiction.

33.—(1) [Subsection 57\(1\)](#) of the Act is replaced by the following:

#### Registration of Assignment or Licence

57.—(1) The Registrar of Copyrights shall register an assignment of copyright, or a licence granting an interest in a copyright, on being furnished with

- (a) the original instrument or a certified copy of it, or other evidence satisfactory to the Registrar of the assignment or licence; and
- (b) the fee prescribed by or determined under the regulations.

(2) [Subsection 57\(3\)](#) of the Act is replaced by the following:

#### When Assignment or Licence Is Void

(3) Any assignment of copyright, or any licence granting an interest in a copyright, shall be adjudged void against any subsequent assignee or licensee for valuable consideration without actual notice, unless the prior assignment or licence is registered in the manner prescribed by this Act before the registering of the instrument under which the subsequent assignee or licensee claims.

34.—(1) [Subsections 58\(1\)](#) and [\(2\)](#) of the Act are replaced by the following:

#### Execution of Instruments

58.—(1) Any assignment of copyright, or any licence granting an interest in a copyright, may be executed, subscribed or acknowledged at any place in a treaty country or a Rome Convention country by the assignor, licensor or mortgagor, before any notary public, commissioner or other official or the judge of any court, who is authorized by law to administer oaths or perform notarial acts in that place, and who also subscribes their signature and affixes thereto or impresses thereon their official seal or the seal of the court of which they are such judge.

#### Execution of Instruments

(2) Any assignment of copyright, or any licence granting an interest in a copyright, may be executed, subscribed or acknowledged by the assignor, licensor or mortgagor, in

any other foreign country before any notary public, commissioner or other official or the judge of any court of the foreign country, who is authorized to administer oaths or perform notarial acts in that foreign country and whose authority shall be proved by the certificate of a diplomatic or consular officer of Canada performing their functions in that foreign country.

(2) [Subsection 58\(4\)](#) of the Act is replaced by the following:

Other Testimony

(4) The provisions of [subsections \(1\)](#) and [\(2\)](#) shall be deemed to be permissive only, and the execution of any assignment of copyright, or any licence granting an interest in a copyright, may in any case be proved in accordance with the applicable rules of evidence.

35. The Act is amended by adding the following after [section 59](#):

## **PART VI MISCELLANEOUS PROVISIONS**

36. The heading before [section 61](#) of the Act is replaced by the following:  
Clerical Errors

37.—(1) The heading before [section 62](#) of the English version of the Act is replaced by the following:

*Regulations*

(2) [Subsection 62\(1\)](#) of the Act is replaced by the following:

Regulations

62.—(1) The Governor in Council may make regulations

- (a) prescribing anything that by this Act is to be prescribed by regulation; and
- (b) generally for carrying out the purposes and provisions of this Act.

38. [Section 63](#) of the Act and the heading before it are replaced by the following:

Industrial Designs and Topographies

39. [Paragraph 64\(3\)\(g\)](#) of the Act is replaced by the following:

- (g) such other work or article as may be prescribed by regulation.

40. [Subsection 64.1\(2\)](#) of the Act is replaced by the following:

Exception

(2) Nothing in [subsection \(1\)](#) affects

- (a) the copyright, or
- (b) the moral rights, if any,

in any sound recording, cinematograph film or other contrivance by means of which a work may be mechanically reproduced or performed.

41. The Act is amended by adding the following before the heading “copyright board” before [section 66](#):

## **PART VII COPYRIGHT BOARD AND COLLECTIVE ADMINISTRATION OF COPYRIGHT**

42. [Section 66.52](#) of the act is replaced by the following:

### Variation of Decisions

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

43. The Act is amended by adding the following after [section 66.7](#):

### Distribution, Publication of Notices

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

44. The Act is amended by adding the following after [section 66.9](#):

### Regulations

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

- (a) in establishing fair and equitable royalties to be paid pursuant to this Act; and
- (b) in rendering its decisions in any matter within its jurisdiction.

45. The heading before [section 67](#) and [sections 67 to 68](#) of the Act are replaced by the following:

### *Collective Administration of Performing Rights and of Communication Rights*

#### Public Access to Repertoires

67. Each collective society that carries on

- (a) the business of granting licences or collecting royalties for the performance in public of musical works, dramatico-musical works, performer’s performances of such works, or sound recordings embodying such works, or

- (b) the business of granting licences or collecting royalties for the communication to the public by telecommunication of musical works, dramatico-musical works, performer's performances of such works, or sound recordings embodying such works, other than the communication of musical works or dramatico-musical works in a manner described in [subsection 31\(2\)](#),

must answer within a reasonable time all reasonable requests from the public for information about its repertoire of works, performer's performances or sound recordings, that are in current use.

#### Filing of Proposed Tariffs

67.1—(1) Each collective society referred to in [section 67](#) shall, on or before the March 31 immediately before the date when its last tariff approved pursuant to [subsection 68\(3\)](#) expires, file with the Board a proposed tariff, in both official languages, of all royalties to be collected by the collective society.

#### Where No Previous Tariff

(2) A collective society referred to in [subsection \(1\)](#) in respect of which no tariff has been approved pursuant to [subsection 68\(3\)](#) shall file with the Board its proposed tariff, in both official languages, of all royalties to be collected by it, on or before the March 31 immediately before its proposed effective date.

#### Effective Period of Tariffs

(3) A proposed tariff must provide that the royalties are to be effective for periods of one or more calendar years.

#### Prohibition of Enforcement

(4) Where a proposed tariff is not filed with respect to the work, performer's performance or sound recording in question, no action may be commenced, without the written consent of the Minister, for

- (a) the infringement of the rights, referred to in section 3, to perform in public or to communicate to the public by telecommunication, the work, performer's performance or sound recording; or
- (b) the recovery of royalties referred to in [section 19](#).

#### Publication of Proposed Tariffs

(5) As soon as practicable after the receipt of a proposed tariff filed pursuant to [subsection \(1\)](#), the Board shall publish it in the *Canada Gazette* and shall give notice that, within sixty days after the publication of the tariff, prospective users or their representatives may file written objections to the tariff with the Board.

#### Board to Consider Proposed Tariffs and Objections

68.—(1) The Board shall, as soon as practicable, consider a proposed tariff and any objections thereto referred to in [subsection 67.1\(5\)](#) or raised by the Board, and

- (a) send to the collective society concerned a copy of the objections so as to permit it to reply; and

(b) send to the persons who filed the objections a copy of any reply thereto.

#### Criteria and Factors

(2) In examining a proposed tariff for the performance in public or the communication to the public by telecommunication of performer's performances of musical works, or of sound recordings embodying such performer's performances, the Board

(a) shall ensure that

- (i) the tariff applies in respect of performer's performances and sound recordings only in the situations referred to in [subsections 20\(1\) and \(2\)](#),
- (ii) the tariff does not, because of linguistic and content requirements of Canada's broadcasting policy set out in [section 3](#) of the *Broadcasting Act*, place some users that are subject to that Act at a greater financial disadvantage than others, and
- (iii) the payment of royalties by users pursuant to [section 19](#) will be made in a single payment; and

(b) may take into account any factor that it considers appropriate.

#### Certification

(3) The Board shall certify the tariffs as approved, with such alterations to the royalties and to the terms and conditions related thereto as the Board considers necessary, having regard to

- (a) any objections to the tariffs under [subsection 67.1\(5\)](#); and
- (b) the matters referred to in [subsection \(2\)](#).

#### Publication of Approved Tariffs

(4) The Board shall

- (a) publish the approved tariffs in the *Canada Gazette* as soon as practicable; and
- (b) send a copy of each approved tariff, together with the reasons for the Board's decision, to each collective society that filed a proposed tariff and to any person who filed an objection.

#### Special and Transitional Royalty Rates

68.1—(1) Notwithstanding the tariffs approved by the Board under [subsection 68\(3\)](#) for the performance in public or the communication to the public by telecommunication of performer's performances of musical works, or of sound recordings embodying such performer's performances,

- (a) wireless transmission systems, except community systems and public transmission systems, shall pay royalties as follows:

- (i) in respect of each year, \$100 on the first 1.25 million dollars of annual advertising revenues, and
  - (ii) on any portion of annual advertising revenues exceeding 1.25 million dollars,
    - (A) for the first year following the coming into force of this section, thirty-three and one third per cent of the royalties set out in the approved tariff for that year,
    - (B) for the second year following the coming into force of this section, sixty-six and two thirds per cent of the royalties set out in the approved tariff for that year, and
    - (C) for the third year following the coming into force of this section, one hundred per cent of the royalties set out in the approved tariff for that year;
- (b) community systems shall pay royalties of \$100 in respect of each year; and
- (c) public transmission systems shall pay royalties, in respect of each of the first three years following the coming into force of this section, as follows:
- (i) for the first year following the coming into force of this section, thirty-three and one third per cent of the royalties set out in the approved tariff for that year,
  - (ii) for the second year following the coming into force of this section, sixty-six and two thirds per cent of the royalties set out in the approved tariff for that year, and
  - (iii) for the third year following the coming into force of this section, one hundred per cent of the royalties set out in the approved tariff for that year.

#### Effect of Paying Royalties

(2) The payment of the royalties set out in subsection (1) fully discharges all liabilities of the system in question in respect of the approved tariffs.

#### Definition of “advertising revenues”

(3) The Board may, by regulation, define “advertising revenues” for the purposes of subsection (1).

#### Preferential Royalty Rates

(4) The Board shall, in certifying a tariff as approved under subsection 68(3), ensure that there is a preferential royalty rate for small cable transmission systems.

#### Regulations

(5) The Governor in Council may make regulations defining “small cable transmission system”, “community system”, “public transmission system” and “wireless transmission system” for the purposes of this section.

## Effect of Fixing Royalties

68.2—(1) Without prejudice to any other remedies available to it, a collective society may, for the period specified in its approved tariff, collect the royalties specified in the tariff and, in default of their payment, recover them in a court of competent jurisdiction.

### Proceedings Barred if Royalties Tendered or Paid

(2) No proceedings may be brought for

- (a) the infringement of the right to perform in public or the right to communicate to the public by telecommunication, referred to in section 3, or
- (b) the recovery of royalties referred to in section 19

against a person who has paid or offered to pay the royalties specified in an approved tariff.

### Continuation of Rights

(3) Where a collective society files a proposed tariff in accordance with subsection 67.1(1),

- (a) any person entitled to perform in public or communicate to the public by telecommunication those works, performer's performances or sound recordings pursuant to the previous tariff may do so, even though the royalties set out therein have ceased to be in effect, and
- (b) the collective society may collect the royalties in accordance with the previous tariff,  
until the proposed tariff is approved.

## *Public Performances in Places Other than Theatres*

46. The heading before section 70.1 and sections 70.1 and 70.2 of the Act are replaced by the following:

### *Collective Administration in Relation to Rights under Sections 3, 15, 18 and 21*

#### *Collective Societies*

### Collective Societies

70.1 Sections 70.11 to 70.16 apply in respect of a collective society that operates

- (a) a licensing scheme, applicable in relation to a repertoire of works of more than one author, pursuant to which the society sets out the classes of uses for which and the royalties and terms and conditions on which it agrees to authorize the doing of an act mentioned in section 3 in respect of those works;

- (a.1) a licensing scheme, applicable in relation to a repertoire of performer's performances of more than one performer, pursuant to which the society sets out the classes of uses for which and the royalties and terms and conditions on which it agrees to authorize the doing of an act mentioned in section 15 in respect of those performer's performances;
- (b) a licensing scheme, applicable in relation to a repertoire of sound recordings of more than one maker, pursuant to which the society sets out the classes of uses for which and the royalties and terms and conditions on which it agrees to authorize the doing of an act mentioned in section 18 in respect of those sound recordings; or
- (c) a licensing scheme, applicable in relation to a repertoire of communication signals of more than one broadcaster, pursuant to which the society sets out the classes of uses for which and the royalties and terms and conditions on which it agrees to authorize the doing of an act mentioned in section 21 in respect of those communication signals.

#### Public Information

70.11 A collective society referred to in section 70.1 must answer within a reasonable time all reasonable requests from the public for information about its repertoire of works, performer's performances, sound recordings or communication signals.

#### Tariff or Agreement

70.12 A collective society may, for the purpose of setting out by licence the royalties and terms and conditions relating to classes of uses,

- (a) file a proposed tariff with the Board; or
- (b) enter into agreements with users.

## **TARIFFS**

#### Filing of Proposed Tariffs

70.13—(1) Each collective society referred to in section 70.1 may, on or before the March 31 immediately before the date when its last tariff approved pursuant to subsection 70.15(1) expires, file with the Board a proposed tariff, in both official languages, of royalties to be collected by the collective society for issuing licences.

#### Where No Previous Tariff

(2) A collective society referred to in subsection (1) in respect of which no tariff has been approved pursuant to subsection 70.15(1) shall file with the Board its proposed tariff, in both official languages, of all royalties to be collected by it for issuing licences, on or before the March 31 immediately before its proposed effective date.

### Application of Certain Provisions

70.14 Where a proposed tariff is filed under section 70.13, subsections 67.1(3) and (5) and subsection 68(1) apply, with such modifications as the circumstances require.

#### Certification

70.15—(1) The Board shall certify the tariffs as approved, with such alterations to the royalties and to the terms and conditions related thereto as the Board considers necessary, having regard to any objections to the tariffs.

#### Application of Certain Provisions

(2) Where a tariff is approved under subsection (1), subsections 68(4) and 68.2(1) apply, with such modifications as the circumstances require.

#### Distribution, Publication of Notices

70.16 Independently of any other provision of this Act relating to the distribution or publication of information or documents by the Board, the Board shall notify persons affected by a proposed tariff, by

- (a) distributing or publishing a notice, or
  - (b) directing another person or body to distribute or publish a notice,
- in such manner and on such terms and conditions as the Board sees fit.

#### Prohibition of Enforcement

70.17 Subject to section 70.19, no proceedings may be brought for the infringement of a right referred to in section 3, 15, 18 or 21 against a person who has paid or offered to pay the royalties specified in an approved tariff.

#### Continuation of Rights

70.18 Subject to section 70.19, where a collective society files a proposed tariff in accordance with section 70.13,

- (a) any person authorized by the collective society to do an act referred to in section 3, 15, 18 or 21, as the case may be, pursuant to the previous tariff may do so, even though the royalties set out therein have ceased to be in effect, and
- (b) the collective society may collect the royalties in accordance with the previous tariff,

until the proposed tariff is approved.

#### Where Agreement Exists

70.19 If there is an agreement mentioned in paragraph 70.12(b), sections 70.17 and 70.18 do not apply in respect of the matters covered by the agreement.

## Agreement

70.191 An approved tariff does not apply where there is an agreement between a collective society and a person authorized to do an act mentioned in section 3, 15, 18 or 21, as the case may be, if the agreement is in effect during the period covered by the approved tariff.

## **FIXING OF ROYALTIES IN INDIVIDUAL CASES**

### Application to Fix Amount of Royalty, etc.

70.2—(1) Where a collective society and any person not otherwise authorized to do an act mentioned in section 3, 15, 18 or 21, as the case may be, in respect of the works, sound recordings or communication signals included in the collective society's repertoire are unable to agree on the royalties to be paid for the right to do the act or on their related terms and conditions, either of them or a representative of either may, after giving notice to the other, apply to the Board to fix the royalties and their related terms and conditions. Fixing Royalties, etc.

(2) The Board may fix the royalties and their related terms and conditions in respect of a licence during such period of not less than one year as the Board may specify and, as soon as practicable after rendering its decision, the Board shall send a copy thereof, together with the reasons therefor, to the collective society and the person concerned or that person's representative.

47. Section 70.4 of the Act and the heading following it are replaced by the following:

### Effect of Board Decision

70.4 Where any royalties are fixed for a period pursuant to subsection 70.2(2), the person concerned may, during the period, subject to the related terms and conditions fixed by the Board and to the terms and conditions set out in the scheme and on paying or offering to pay the royalties, do the act with respect to which the royalties and their related terms and conditions are fixed and the collective society may, without prejudice to any other remedies available to it, collect the royalties or, in default of their payment, recover them in a court of competent jurisdiction.

## **EXAMINATION OF AGREEMENTS**

48.—(1) Subsection 70.5(2) of the Act is replaced by the following:

### Filing Agreement with the Board

(2) Where a collective society concludes an agreement to grant a licence authorizing a person to do an act mentioned in section 3, 15, 18 or 21, as the case may be, the collective society or the person may file a copy of the agreement with the Board within fifteen days after it is concluded.

(2) Subsection 70.5(3) of the French version of the Act is replaced by the following:

(3) L'article 45 de la *Loi sur la concurrence* ne s'applique pas aux redevances et aux modalités afférentes objet de toute entente déposée conformément au paragraphe (2).

49. Subsection 70.6(1) of the French version of the Act is replaced by the following:

70.6—(1) Dès que possible, la Commission procède à l'examen de la demande et, après avoir donné au directeur et aux parties la possibilité de faire valoir leurs arguments, elle peut modifier les redevances et les modalités afférentes objet de l'entente, et en fixer de nouvelles; l'article 70.4 s'applique, compte tenu des adaptations nécessaires, à cette fixation.

50. The heading before section 70.61 and section 70.61 to 71 of the Act are replaced by the following:

### *Royalties in Particular Cases*

#### Filing of Proposed Tariffs

71.—(1) Each collective society that carries on the business of collecting royalties referred to in subsection 29.6(2), 29.7(2) or (3) or paragraph 31(2)(d) shall file with the Board a proposed tariff, but no other person may file any such tariff.

#### Times for Filing

- (2) A proposed tariff must be
- (a) in both official languages; and
  - (b) filed on or before the March 31 immediately before the date that the approved tariff ceases to be effective.

#### Where No Previous Tariff

(3) A collective society in respect of which no proposed tariff has been certified pursuant to paragraph 73(1)(d) shall file its proposed tariff on or before the March 31 immediately before its proposed effective date.

#### Effective Period of Tariffs

(4) A proposed tariff must provide that the royalties are to be effective for periods of one or more calendar years.

#### Publication of Proposed Tariffs

72.—(1) As soon as practicable after the receipt of a proposed tariff filed pursuant to section 71, the Board shall publish it in the Canada Gazette and shall give notice that, within sixty days after the publication of the tariff, prospective retransmitters, educational institutions, persons with perceptual disabilities or their representatives may file written objections to the tariff with the Board.

#### Board to Consider Proposed Tariffs and Objections

(2) The Board shall, as soon as practicable, consider a proposed tariff and any objections thereto referred to in subsection (1) or raised by the Board, and

- (a) send to the collective society concerned a copy of the objections so as to permit it to reply; and
- (b) send to the persons who filed the objections a copy of any reply thereto.

#### Certification

73.—(1) On the conclusion of its consideration of proposed tariffs, the Board shall

- (a) establish
  - (i) a manner of determining the royalties to be paid by retransmitters, educational institutions and any person making more than one copy or sound recording of a literary, musical or dramatic work in order to accommodate the needs of a person with a perceptual disability, and
  - (ii) such terms and conditions related to those royalties as the Board considers appropriate;
- (b) determine the portion of the royalties referred to in paragraph (a) that is to be paid to each collective society;
- (c) vary the tariffs accordingly; and
- (d) certify the tariffs as the approved tariffs, whereupon the tariffs become for the purposes of this Act the approved tariffs.

#### No Discrimination

(2) For greater certainty, the Board, in establishing a manner of determining royalties under paragraph (1)(a) or in apportioning them under paragraph (1)(b), may not discriminate between owners of copyright on the ground of their nationality or residence.

#### Publication of Approved Tariffs

(3) The Board shall publish the approved tariffs in the *Canada Gazette* as soon as practicable and send a copy of each approved tariff, together with the reasons for the Board's decision, to each collective society that filed a proposed tariff and to any person who filed an objection.

#### Special Case

74.—(1) The Board shall, in establishing a manner of determining royalties under paragraph 73(1)(a), ensure that there is a preferential rate for small retransmission systems.

#### Regulations

(2) The Governor in Council may make regulations defining “small retransmission systems” for the purpose of subsection (1).

#### Effect of Fixing Royalties

75. Without prejudice to any other remedies available to it, a collective society may, for the period specified in its approved tariff, collect the royalties specified in the tariff and, in default of their payment, recover them in a court of competent jurisdiction.

#### Claims by Non-Members

76.—(1) An owner of copyright who does not authorize a collective society to collect, for that person's benefit, royalties referred to in paragraph 31(2)(d) is, if the work is communicated to the public by telecommunication during a period when an approved tariff that is applicable to that kind of work is effective, entitled to be paid those royalties by the collective society that is designated by the Board, of its own motion or on application, subject to the same conditions as those to which a person who has so authorized that collective society is subject.

#### Royalties That May Be Recovered

(2) An owner of copyright who does not authorize a collective society to collect, for that person's benefit, royalties referred to in subsection 29.6(2) or 29.7(2) or (3) is, if such royalties are payable during a period when an approved tariff that is applicable to that kind of work or other subject-matter is effective, entitled to be paid those royalties by the collective society that is designated by the Board, of its own motion or on application, subject to the same conditions as those to which a person who has so authorized that collective society is subject.

#### Exclusion of Remedies

(3) The entitlement referred to in subsections (1) and (2) is the only remedy of the owner of the copyright for the payment of royalties for the communication, making of the copy or sound recording or performance in public, as the case may be.

#### Regulations

(4) The Board may, for the purposes of this section,

- (a) require a collective society to file with the Board information relating to payments of royalties collected by it to the persons who have authorized it to collect those royalties; and
- (b) by regulation, establish periods of not less than twelve months within which the entitlements referred to in subsections (1) and (2) must be exercised, in the case of royalties referred to in
  - (i) paragraph 29.6(2)(a), beginning on the expiration of the year during which no royalties are payable under that paragraph,
  - (ii) paragraph 29.6(2)(b), beginning on the performance in public,
  - (iii) subsection 29.7(2), beginning on the making of the copy,
  - (iv) subsection 29.7(3), beginning on the performance in public, or
  - (v) paragraph 31(2)(d), beginning on the communication to the public by telecommunication.

## *Owners Who Cannot Be Located*

### Circumstances in Which Licence May Be Issued by Board

77.—(1) Where, on application to the Board by a person who wishes to obtain a licence to use

- (a) a published work,
- (b) a fixation of a performer's performance,
- (c) a published sound recording, or
- (d) a fixation of a communication signal

in which copyright subsists, the Board is satisfied that the applicant has made reasonable efforts to locate the owner of the copyright and that the owner cannot be located, the Board may issue to the applicant a licence to do an act mentioned in section 3, 15, 18 or 21, as the case may be.

### Conditions of Licence

(2) A licence issued under subsection (1) is non-exclusive and is subject to such terms and conditions as the Board may establish.

### Payment to Owner

(3) The owner of a copyright may, not later than five years after the expiration of a licence issued pursuant to subsection (1) in respect of the copyright, collect the royalties fixed in the licence or, in default of their payment, commence an action to recover them in a court of competent jurisdiction.

### Regulations

(4) The Copyright Board may make regulations governing the issuance of licences under subsection (1).

### Compensation for Acts Done before Recognition of Copyrightor Moral Rights

#### Board May Determine Compensation

78.—(1) Subject to subsection (2), for the purposes of subsections 32.4(2), 32.5(2) and 33(2), the Board may, on application by any of the parties referred to in one of those provisions, determine the amount of the compensation referred to in that provision that the Board considers reasonable, having regard to all the circumstances, including any judgment of a court in an action between the parties for the enforcement of a right mentioned in subsection 32.4(3) or 32.5(3).

### Limitation

(2) The Board shall not

- (a) proceed with an application under subsection (1) where a notice is filed with the Board that an agreement regarding the matters in issue has been reached;  
or

- (b) where a court action between the parties for enforcement of a right referred to in subsection 32.4(3) or 32.5(3), as the case may be, has been commenced, continue with an application under subsection (1) until the court action is finally concluded.

#### Interim Orders

(3) Where The Board Proceeds With An Application Under Subsection (1), It May, For The Purpose Of Avoiding Serious Prejudice To Any Party, Make An Interim Order Requiring A Party To Refrain From Doing Any Act Described In The Order Until The Determination Of Compensation Is Made Under Subsection (1).

## PART VIII PRIVATE COPYING

### INTERPRETATION

#### Definitions

79. In this Part,

“audio recording medium”

«*support audio*»

“audio recording medium” means a recording medium, regardless of its material form, onto which a sound recording may be reproduced and that is of a kind ordinarily used by individual consumers for that purpose, excluding any prescribed kind of recording medium;

“blank audio recording medium”

«*support audio vierge*»

“blank audio recording medium” means

(a) an audio recording medium onto which no sounds have ever been fixed, and

(b) any other prescribed audio recording medium;

“collecting body”

«*organisme de perception*»

“collecting body” means the collective society, or other society, association or corporation, that is designated as the collecting body under subsection 83(8);

“eligible author”

«*auteur admissible*»

“eligible author” means an author of a musical work, whether created before or after the coming into force of this Part, that is embodied in a sound recording, whether made before or after the coming into force of this Part, if copyright subsists in Canada in that musical work;

“eligible maker”

«*producteur admissible*»

“eligible maker” means a maker of a sound recording that embodies a musical work, whether the first fixation of the sound recording occurred before or after the coming into force of this Part, if

- (a) both the following two conditions are met:
  - (i) the maker, at the date of that first fixation, if a corporation, had its headquarters in Canada or, if a natural person, was a Canadian citizen or permanent resident of Canada within the meaning of the *Immigration Act*, and
  - (ii) copyright subsists in Canada in the sound recording, or
- (b) the maker, at the date of that first fixation, if a corporation, had its headquarters in a country referred to in a statement published under section 85 or, if a natural person, was a citizen, subject or permanent resident of such a country;

“eligible performer”

«*artiste-interprète admissible*»

“eligible performer” means the performer of a performer’s performance of a musical work, whether it took place before or after the coming into force of this Part, if the performer’s performance is embodied in a sound recording and

- (a) both the following two conditions are met:
  - (i) the performer was, at the date of the first fixation of the sound recording, a Canadian citizen or permanent resident of Canada within the meaning of the *Immigration Act*, and
  - (ii) copyright subsists in Canada in the performer’s performance, or
- (b) the performer was, at the date of the first fixation of the sound recording, a citizen, subject or permanent resident of a country referred to in a statement published under section 85;

“prescribed”

## *Version anglaise seulement*

“prescribed” means prescribed by regulations made under this Part.

### *Copying for Private Use*

#### Where No Infringement of Copyright

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

- (a) a musical work embodied in a sound recording,
- (b) a performer’s performance of a musical work embodied in a sound recording, or
- (c) a sound recording in which a musical work, or a performer’s performance of a musical work, is embodied

onto an audio recording medium for the private use of the person who makes the copy does not constitute an infringement of the copyright in the musical work, the performer’s performance or the sound recording.

#### Limitation

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

- (a) selling or renting out, or by way of trade exposing or offering for sale or rental;
- (b) distributing, whether or not for the purpose of trade;
- (c) communicating to the public by telecommunication; or
- (d) performing, or causing to be performed, in public.

### *Right of Remuneration*

#### Right of Remuneration

81.—(1) Subject to and in accordance with this Part, eligible authors, eligible performers and eligible makers have a right to receive remuneration from manufacturers and importers of blank audio recording media in respect of the reproduction for private use of

- (a) a musical work embodied in a sound recording;
- (b) a performer’s performance of a musical work embodied in a sound recording; or
- (c) a sound recording in which a musical work, or a performer’s performance of a musical work, is embodied.

### Assignment of Rights

(2) Subsections 13(4) to (7) apply, with such modifications as the circumstances require, in respect of the rights conferred by subsection (1) on eligible authors, performers and makers.

## **LEVY ON BLANK AUDIO RECORDING MEDIA**

### Liability to Pay Levy

82.—(1) Every person who, for the purpose of trade, manufactures a blank audio recording medium in Canada or imports a blank audio recording medium into Canada

- (a) is liable, subject to subsection (2) and section 86, to pay a levy to the collecting body on selling or otherwise disposing of those blank audio recording media in Canada; and
- (b) shall, in accordance with subsection 83(8), keep statements of account of the activities referred to in paragraph (a), as well as of exports of those blank audio recording media, and shall furnish those statements to the collecting body.

### No Levy for Exports

(2) No levy is payable where it is a term of the sale or other disposition of the blank audio recording medium that the medium is to be exported from Canada, and it is exported from Canada.

### Filing of Proposed Tariffs

83.—(1) Subject to subsection (14), each collective society may file with the Board a proposed tariff for the benefit of those eligible authors, eligible performers and eligible makers who, by assignment, grant of licence, appointment of the society as their agent or otherwise, authorize it to act on their behalf for that purpose, but no person other than a collective society may file any such tariff.

#### Collecting Body

(2) Without limiting the generality of what may be included in a proposed tariff, the tariff may include a suggestion as to whom the Board should designate under paragraph (8)(d) as the collecting body.

#### Times for Filing

(3) Proposed tariffs must be in both official languages and must be filed on or before the March 31 immediately before the date when the approved tariffs cease to be effective.

#### Where No Previous Tariff

(4) A collective society in respect of which no proposed tariff has been certified pursuant to paragraph (8)(c) shall file its proposed tariff on or before the March 31 immediately before its proposed effective date.

#### Effective Period of Levies

(5) A proposed tariff must provide that the levies are to be effective for periods of one or more calendar years.

#### Publication of Proposed Tariffs

(6) As soon as practicable after the receipt of a proposed tariff filed pursuant to subsection (1), the Board shall publish it in the *Canada Gazette* and shall give notice that, within sixty days after the publication of the tariff, any person may file written objections to the tariff with the Board.

#### Board to Consider Proposed Tariffs and Objections

(7) The Board shall, as soon as practicable, consider a proposed tariff and any objections thereto referred to in subsection (6) or raised by the Board, and

- (a) send to the collective society concerned a copy of the objections so as to permit it to reply; and
- (b) send to the persons who filed the objections a copy of any reply thereto.

#### Duties of Board

(8) On the conclusion of its consideration of the proposed tariff, the Board shall

- (a) establish, in accordance with subsection (9),
  - (i) the manner of determining the levies, and
  - (ii) such terms and conditions related to those levies as the Board considers appropriate, including, without limiting the generality of the foregoing, the form, content and frequency of the statements of account mentioned in subsection 82(1), measures for the protection of confidential information contained in those statements, and the times at which the levies are payable,
- (b) vary the tariff accordingly,
- (c) certify the tariff as the approved tariff, whereupon that tariff becomes for the purposes of this Part the approved tariff, and
- (d) designate as the collecting body the collective society or other society, association or corporation that, in the Board's opinion, will best fulfil the objects of sections 82, 84 and 86,

but the Board is not obligated to exercise its power under paragraph (d) if it has previously done so, and a designation under that paragraph remains in effect until the Board makes another designation, which it may do at any time whatsoever, on application.

#### Factors Board to Consider

(9) In exercising its power under paragraph (8)(a), the Board shall satisfy itself that the levies are fair and equitable, having regard to any prescribed criteria.

#### Publication of Approved Tariffs

(10) The Board shall publish the approved tariffs in the *Canada Gazette* as soon as practicable and shall send a copy of each approved tariff, together with the reasons for the Board's decision, to the collecting body, to each collective society that filed a proposed tariff, and to any person who filed an objection.

#### Authors, etc., Not Represented by Collective Society

(11) An eligible author, eligible performer or eligible maker who does not authorize a collective society to file a proposed tariff under subsection (1) is entitled, in relation to

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

as the case may be, to be paid by the collective society that is designated by the Board, of the Board's own motion or on application, the remuneration referred to in section 81 if such remuneration is payable during a period when an approved tariff that is applicable to that kind of work, performer's performance or sound recording is effective, subject to the same conditions as those to which a person who has so authorized that collective society is subject.

#### Exclusion of Other Remedies

(12) The entitlement referred to in subsection (11) is the only remedy of the eligible author, eligible performer or eligible maker referred to in that subsection in respect of the reproducing of sound recordings for private use.

#### Powers of Board

- (13) The Board may, for the purposes of subsections (11) and (12),
- (a) require a collective society to file with the Board information relating to payments of moneys received by the society pursuant to section 84 to the persons who have authorized it to file a tariff under subsection (1); and
  - (b) by regulation, establish the periods, which shall not be less than twelve months, beginning when the applicable approved tariff ceases to be effective, within which the entitlement referred to in subsection (11) must be exercised.

#### Single Proposed Tariff

(14) Where all the collective societies that intend to file a proposed tariff authorize a particular person or body to file a single proposed tariff on their behalf, that person or body may do so, and in that case this section applies, with such modifications as the circumstances require, in respect of that proposed tariff.

## **DISTRIBUTION OF LEVIES PAID**

## Distribution by Collecting Body

84. As soon as practicable after receiving the levies paid to it, the collecting body shall distribute the levies to the collective societies representing eligible authors, eligible performers and eligible makers, in the proportions fixed by the Board.

### Reciprocity

85.—(1) Where the Minister is of the opinion that another country grants or has undertaken to grant to performers and makers of sound recordings that are Canadian citizens or permanent residents of Canada within the meaning of the *Immigration Act* or, if corporations, have their headquarters in Canada, as the case may be, whether by treaty, convention, agreement or law, benefits substantially equivalent to those conferred by this Part, the Minister may, by a statement published in the *Canada Gazette*,

- (a) grant the benefits conferred by this Part to performers or makers of sound recordings that are citizens, subjects or permanent residents of or, if corporations, have their headquarters in that country; and
- (b) declare that that country shall, as regards those benefits, be treated as if it were a country to which this Part extends.

### Reciprocity

(2) Where the Minister is of the opinion that another country neither grants nor has undertaken to grant to performers or makers of sound recordings that are Canadian citizens or permanent residents of Canada within the meaning of the *Immigration Act* or, if corporations, have their headquarters in Canada, as the case may be, whether by treaty, convention, agreement or law, benefits substantially equivalent to those conferred by this Part, the Minister may, by a statement published in the *Canada Gazette*,

- (a) grant the benefits conferred by this Part to performers or makers of sound recordings that are citizens, subjects or permanent residents of or, if corporations, have their headquarters in that country, as the case may be, to the extent that that country grants those benefits to performers or makers of sound recordings that are Canadian citizens or permanent residents of Canada within the meaning of the *Immigration Act* or, if corporations, have their headquarters in Canada; and
- (b) declare that that country shall, as regards those benefits, be treated as if it were a country to which this Part extends.

### Application of Act

(3) Any provision of this Act that the Minister specifies in a statement referred to in subsection (1) or (2)

- (a) applies in respect of performers or makers of sound recordings covered by that statement, as if they were citizens of or, if corporations, had their headquarters in Canada; and
- (b) applies in respect of a country covered by that statement, as if that country were Canada.

## Application of Act

(4) Subject to any exceptions that the Minister may specify in a statement referred to in subsection (1) or (2), the other provisions of this Act also apply in the way described in subsection (3).

## EXEMPTION FROM LEVY

### Where No Levy Payable

86.—(1) No levy is payable under this Part where the manufacturer or importer of a blank audio recording medium sells or otherwise disposes of it to a society, association or corporation that represents persons with a perceptual disability.

### Refunds

(2) Where a society, association or corporation referred to in subsection (1)

- (a) purchases a blank audio recording medium in Canada from a person other than the manufacturer or importer, and
- (b) provides the collecting body with proof of that purchase, on or before June 30 in the calendar year following the calendar year in which the purchase was made,

the collecting body is liable to pay forthwith to the society, association or corporation an amount equal to the amount of the levy paid in respect of the blank audio recording medium purchased.

### If Registration System Exists

(3) If regulations made under paragraph 87(a) provide for the registration of societies, associations or corporations that represent persons with a perceptual disability, subsections (1) and (2) shall be read as referring to societies, associations or corporations that are so registered.

## REGULATIONS

### Regulations

87. The Governor in Council may make regulations

- (a) respecting the exemptions and refunds provided for in section 86, including, without limiting the generality of the foregoing,
  - (i) regulations respecting procedures governing those exemptions and refunds,
  - (ii) regulations respecting applications for those exemptions and refunds, and
  - (iii) regulations for the registration of societies, associations or corporations that represent persons with a perceptual disability;

- (b) prescribing anything that by this Part is to be prescribed; and
- (c) generally for carrying out the purposes and provisions of this Part.

## **CIVIL REMEDIES**

### Right of Recovery

88.—(1) Without prejudice to any other remedies available to it, the collecting body may, for the period specified in an approved tariff, collect the levies due to it under the tariff and, in default of their payment, recover them in a court of competent jurisdiction.

#### Failure to Pay Royalties

(2) The court may order a person who fails to pay any levy due under this Part to pay an amount not exceeding five times the amount of the levy to the collecting body. The collecting body must distribute the payment in the manner set out in section 84.

#### Order Directing Compliance

(3) Where any obligation imposed by this Part is not complied with, the collecting body may, in addition to any other remedy available, apply to a court of competent jurisdiction for an order directing compliance with that obligation.

#### Factors to Consider

- (4) Before making an order under subsection (2), the court must take into account
- (a) whether the person who failed to pay the levy acted in good faith or bad faith;
  - (b) the conduct of the parties before and during the proceedings; and
  - (c) the need to deter persons from failing to pay levies.

## **PART IX GENERAL PROVISIONS**

### No Copyright, etc., Except by Statute

89. No person is entitled to copyright otherwise than under and in accordance with this Act or any other Act of Parliament, but nothing in this section shall be construed as abrogating any right or jurisdiction in respect of a breach of trust or confidence.

#### Interpretation

90. No provision of this Act relating to

- (a) copyright in performer's performances, sound recordings or communication signals, or
- (b) the right of performers or makers to remuneration

shall be construed as prejudicing any rights conferred by Part I or, in and of itself, as prejudicing the amount of royalties that the Board may fix in respect of those rights.

## Adherence to Berne and Rome Conventions

91. The Governor in Council shall take such measures as are necessary to secure the adherence of Canada to

- (a) the Convention for the Protection of Literary and Artistic Works concluded at Berne on September 9, 1886, as revised by the Paris Act of 1971; and
- (b) the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations, done at Rome on October 26, 1961.

## Review of Act

92.—(1) Within five years after the coming into force of this section, the Minister shall cause to be laid before both Houses of Parliament a report on the provisions and operation of this Act, including any recommendations for amendments to this Act.

### Reference to Parliamentary Committee

(2) The report stands referred to the committee of the House of Commons, or of both Houses of Parliament, that is designated or established for that purpose, which shall

- (a) as soon as possible thereafter, review the report and undertake a comprehensive review of the provisions and operation of this Act; and

report to the House of Commons, or to both Houses of Parliament, within one year after the laying of the report of the Minister or any further time that the House of Commons, or both Houses of Parliament, may authorize.

51. Schedule III to the Act is repealed.

52.—(1) The French version of the Act is amended by replacing the word “droits” with the word “redevances”, with such modifications as the circumstances require, in the following provisions:

- (a) subsection 28.01(2) (renumbered as subsection 31(2)); and
- (b) paragraph 60(2)(b).

(2) Subsection 69(2) of the French version of the Act is amended by replacing the reference to “aucun droit” with a reference to “aucune redevance”.

## General

53. The levies in the first tariffs certified under paragraph 83(8)(c) of the *Copyright Act*, as enacted by section 50 of this Act, become effective at the beginning of the first calendar year following the coming into force of that paragraph, regardless of when the tariffs are so certified, and are effective for a period of two calendar years.

53.1 Notwithstanding subsection 67.1(2) and section 70.13 of the *Copyright Act*, as enacted by sections 45 and 46 of this Act, the date for the filing of the first proposed tariffs under those sections shall be on or before September 1 of the year of the coming into force of this section.

54. For greater certainty, all notices published under subsection 5(2) of the *Copyright Act* before the coming into force of this section are deemed to have been validly made and to have had force and effect in accordance with their terms.

54.1 Section 6 of the *Copyright Act* applies to a photograph in which copyright subsists on the date of the coming into force of this section, if the author is

- (a) a natural person who is the author of the photograph referred to in subsection 10(2) of the *Copyright Act*, as enacted by section 7 of this Act; or
- (b) the natural person referred to in subsection 10(1.1) of the *Copyright Act*, as enacted by section 7 of this Act.

55.—(1) Part II of the *Copyright Act*, as enacted by section 14 of this Act, shall be construed as a replacement for subsections 5(3) to (6) and section 11 of the *Copyright Act* as those provisions read immediately before the coming into force of subsection 5(3) and section 8, respectively, of this Act.

(2) The rights conferred by Part II of the *Copyright Act*, as enacted by section 14 of this Act, shall not be construed as diminishing the rights conferred by subsections 5(3) to (6) and section 11 of the *Copyright Act* as those provisions read immediately before the coming into force of subsection 5(3) and section 8, respectively, of this Act, in relation to records, perforated rolls and other contrivances by means of which sounds may be mechanically reproduced that were made before the coming into force of subsection 5(3) and section 8, respectively, of this Act.

(3) Where an assignment of copyright or a grant of any interest therein

- (a) was made before the coming into force of Part II of the *Copyright Act*, as enacted by section 14 of this Act, and
- (b) was made by the maker of a sound recording who was a natural person,

subsections 14(1) and (2) of the *Copyright Act* continue to apply in respect of that assignment or grant, with such modifications as the circumstances require, as if the sound recording was the work referred to in those subsections and the maker of the sound recording was its author.

56. Nothing in this Act shall be construed as diminishing the right conferred by section 14.01 of the *Copyright Act* as that section read immediately before the coming into force of section 12 of this Act.

57. For greater certainty, the amendments to the *Copyright Act* that eliminate references to “British subject” and “Her Majesty’s Realms and Territories” do not affect any copyright or moral rights that subsisted in Canada immediately before the coming into force of those amendments.

58. Nothing in this Act shall be construed as reviving a copyright that expired before the coming into force of this section.

58.1 No agreement concluded before April 25, 1996 that assigns a right or grants an interest by licence in a right that would be a copyright or a right to remuneration under

this Act shall be construed as assigning or granting any rights conferred for the first time by this Act, unless the agreement specifically provides for the assignment or grant.

#### Repeals

59. Subsection 42(3) of the *Copyright Act*, chapter C-30 of the Revised Statutes of Canada, 1970, is repealed.

60. Section 51 of the *Copyright Act*, chapter 55 of the Revised States of Canada, 1952, is repealed.

#### *Coming into Force*

##### Coming into Force

61. Except as provided by section 62, this Act or any provisions of this Act, or any provisions of the Copyright Act as enacted or amended by this Act, comes into force on a day or days to be fixed by order of the Governor in Council.

##### Coming into Force

62.—(1) The following provisions come into force or are deemed to have come into force on June 30, 1996:

- (a) the definitions “exclusive distributor”, “educational institution” and “library, archive or museum” in section 2 of the *Copyright Act*, as enacted by subsection 1(5) of this Act;
- (b) section 2.6 of the *Copyright Act*, as enacted by section 2 of this Act;
- (c) section 27.1 of the *Copyright Act*, as enacted by section 15 of this Act; and
- (d) section 45 of the *Copyright Act*, as enacted by section 28 of this Act.

(2) Notwithstanding subsection (1), the definition “exclusive distributor” referred to in paragraph (1)(a) shall be read as follows during the period beginning on June 30, 1996 and ending on the day that is sixty days after the day on which this Act is assented to:

“exclusive distributor”

«*distributeur exclusif*»

“exclusive distributor” means, in relation to a book, a person who has, before or after the coming into force of this definition, been appointed in writing, by the owner or exclusive licensee of the copyright in the book in Canada, as

- (a) the only distributor of the book in Canada or any part of Canada, or
- (b) the only distributor of the book in Canada or any part of Canada in respect of a particular sector of the market.

(3) Notwithstanding paragraph (1)(d), paragraph 45(1)(e) of the *Copyright Act*, as enacted by section 28 of this Act, shall be read as follows for the period beginning on

June 30, 1996 and ending on the day that is sixty days after the day on which this Act is assented to:

- (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.

63.—(1) No exclusive distributor, within the meaning assigned to that expression by subsection 62(2) of this Act, copyright owner or exclusive licensee is entitled to a remedy referred to in the *Copyright Act* in relation to an infringement referred to in subsection 27.1(1) or (2) of that Act, as enacted by section 15 of this Act, during the period beginning on June 30, 1996 and ending on the day on which this Act is assented to, unless

- (a) before the infringement occurred, notice in writing has been given to the person referred to in subsection 27.1(1) or (2) of that Act, as enacted by section 15 of this Act, as the case may be, that
  - (i) there is an exclusive distributor of the book in Canada, and
  - (ii) section 27.1 of that Act came into force or was deemed to have come into force on June 30, 1996; and
- (b) in the case of an infringement referred to in section 27.1 of that Act, as enacted by section 15 of this Act, the remedy is only in relation to a book that was imported during that period and forms part of the inventory of the person referred to in section 27.1 of that Act on the day on which this Act is assented to.

(2) No exclusive distributor, copyright owner or exclusive licensee is entitled to a remedy referred to in subsection (1) against an educational institution, library, archive or museum.

(3) For greater certainty, the expiration of the period referred to in subsection 62(2) of this Act does not affect the right of an exclusive distributor to continue, after the expiration of that period, legal proceedings validly commenced during that period.

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