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# Considering Copyright

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# Considering Copyright

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## Topics of Interest:

- The Latest from the Supreme Court
  - Robertson v. Thomson – October 2006
  - Vis-à-vis the earlier Law Society decision...
- Access Copyright matters
  - License renewals
  - Current proceeding before the Copyright Board of Canada
- The Latest from Parliament
  - Copyright in the Criminal Code – Summer 2007
  - Introduction of a new bill
    - CLA and OLA in lobbying

# Considering Copyright – the Courts

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# Canadian Supreme Court on Copyright

(majority & minority)

THÉBERGE 2002 (7 sitting)	CCH v LSUC March 2004 UNANIMOUS	SOCAN June 2004 ALL CONCUR	ROBERTSON v. THOMSON Heard December 14, 2005. Decision expected... BUT	ROBERTSON v. THOMSON "rehearing" held April 18, 2006. Released October 10, 2006.
McLachlin, CJ	McLachlin, CJ *	McLachlin, CJ	McLachlin, CJ	McLachlin, CJ
Major	Major	Major	Major – retiring –	ROTHSTEIN
Binnie *	Binnie	Binnie *	Binnie	Binnie
	Arbour	Arbour	ABELLA	ABELLA*
Iacobucci	Iacobucci	Iacobucci	CHARRON	CHARRON
	Bastarache	Bastarache	Bastarache	Bastarache
LeBel	LeBel	LeBel (*concur)	LeBel	LeBel**
L'Heureux-Dubé	FISH	Fish	Fish	Fish**
Gonthier *	DESCHAMPS	Deschamps	Deschamps	Deschamps

## Who was involved in each case ? What was at stake ?

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### *Théberge v. Galerie d'Art...*

The issue **did not involve users' rights** directly, although the public ultimately were the market for the posters involved: the *lis* was between artist who had given a certain license to the gallery and the gallery ... Théberge lost

### *SOCAN "Tariff 22" ...*

The issue **did not involve users' rights** directly, although ultimately the public were being given access to songs through the activities of the ISPs (internet service providers) : the issue was whether SOCAN, representing music rightsholder, could have a tariff (royalties) from ISPs for their reproduction, as middlepersons, of songs being made available on the internet ... SOCAN lost

### *Robertson v. Thomson*

The issue **did not involve users' rights** directly, although the public ultimately consumes the newspapers and online products that were at issue: the *lis* was between contributors (Robertson) –who had given a certain license already to the publisher Thomson for use in the newspaper (*Globe & Mail*) -- and the newspaper publisher (Thomson)... mixed result

**Only the *Law Society* case has involved users rights directly... (the publishers lost)**

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## What might this mean for librarians?

CREATORS	INTERMEDIARIES	USERS
Théberge	Galerie d'Art *	
	CCH (legal publishers)	Librarians (agents) – Users *
SOCAN music collective – for artists (creators) and producers (intermediaries)	ISPs *	
Robertson *	Thomson Globe & Mail (also a creator of the collected work or compilation)	

## What was the Supreme Court's attitude in *Robertson v. Thomson* ?

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Thomson had permission for CD-ROM presentation, because retrieval preserved newspaper context...

-- minority agrees in the result, but not with the reasoning

Thomson had no permission for InfoGlobe database because retrieval was of underlying article (Robertson's work) since retrieval did not preserve context of the compiled work (the newspaper)

– here minority completely disagrees with analytic tack of majority – would have found permission for Thomson...

## What was the Supreme Court's attitude in *Robertson v. Thomson* ?

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Majority affirms **technological neutrality** of the Act...” if an act is an infringement in the “real world”, it is an infringement if it occurs in the electronic environment”

-- Robertson won: the newspaper is a “collected work” and a “compilation” (the court focussed on compilation not collective work in its analysis...)

Majority says that the “process” is not important to the decision – just the **“context”** of the presentation of the articles in the different products...- *distinguishes the Supreme Court's approach in Tariff 22*

...the minority in says the “process” approach, emphasizing originality should have been used...

... the minority criticizes the majority's application of technological neutrality and says the “context” approach is not media neutral

# Considering Copyright – Rightsholders’ Collectives

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# Reprographic Reproduction (2005-2009)

## Access Copyright Tariff for Educational Institutions

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-- A tariff sought for all schools K-12 in all provinces except Quebec

The Copyright Board of Canada has been asked by the parties to establish what should be paid for school photocopying...

Previous contracts were negotiated between the parties without the Copyright Board's involvement...

There would not be a fee per student as in previous contracts since the Board has no jurisdiction to make such an order – schools would now be assessed for copies made that are covered by the licence...

One key question will be how users' rights to fair dealing factor into the appropriate compensation for rightsholders... **Very important to the question of the appropriate amounts to be involved in future library contracts...**

[I have been privileged to participate in the Board hearing process, particularly with respect to this issue...]

The amount paid would only permit photocopying, not digital copies or other formats...

Reserved decision now – expected late March or April...

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# Considering Copyright -- Parliament

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# An Act to Amend the Criminal Code (unauthorized recording of a movie), S.C.2007, c.28

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- Received Royal Assent June 22, 2007
- Charges laid in Montreal this fall against a gentleman recording
- Introduces new s.432 to the Criminal Code (not the Copyright Act)
- Applies to recording the movie itself or recording the sound track
  
- For simply recording the maximum penalties are
  - Up to 2 years if the Crown chooses to proceed by indictment
  - Or less if the Crown chooses to seek summary conviction
  - Plus forfeiture of equipment used (if that equipment belongs to the person convicted...)
  
- For recording for sale the maximum penalty on indictment is
  - Up to 5 years in jail if the Crown chooses to proceed by indictment...
  - Or less if the Crown proceeds for summary conviction...
  - Plus forfeiture

# CLA AGM May 26, 2007 – Resolution 2

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MOVED: Rob Tiessen

On behalf of the Copyright Working Group, Committee on Intellectual Property and Public Access

[PREAMBLE]

Whereas libraries are institutions that foster wealth and learning in their communities by providing access to knowledge and preserving our shared heritage; and

Whereas the federal government is committed to introducing significant changes to the Copyright Act; and

Whereas these changes to the Act have the potential to unduly constrain how individuals and the libraries which serve them are able to use content; and

Whereas the Supreme Court of Canada has recognized the importance of user rights in its legal decisions; and

Whereas it is the position of the Canadian Library Association/Association canadienne des bibliothèques that copyright should be neutral in regards to technology or format;

Therefore be it resolved that it is the position of the Canadian Library Association/Association canadienne des bibliothèques that any new copyright legislation:

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- **Protect the broad interpretation of fair dealing as a user's right in the spirit of the Great Library of the Law Society of Upper Canada's victory in the CCH Canadian v. Law Society of Upper Canada Supreme Court of Canada decision;**
- **Ensure that any legal protection of technological protection measures should be specifically limited to acts of infringement, should not include device prohibitions, and should not impinge on the exercise of fair dealing or other user rights;**
- **Recognize that government documents and government data belongs to all Canadians and that all Canadians should have liberal access to these materials;**
- **Recognize that exceptions for print-disabled individuals must ensure that these individuals have the same ability as others to access content.**

CARRIED

## Following up from the Resolution -

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- CLA sent letters to relevant federal Ministers in September, 2007
- OLA sent letters to relevant provincial Ministers in November, 2007
- Other provincial associations sent letters to relevant provincial players during the fall, 2007
- Throughout the fall, 2007, Rob Tiessen, University of Calgary, Chair of the Copyright Committee, had various conversations with appropriate copyright-interested parties...
- There was a flurry of anticipation for a federal bill before Christmas...

## CLA AGM RESOLUTION:

## CLA draft lobbying package:

1. Protect a broad interpretation of fair dealing as a users' right...
2. TPMs should be limited to infringing acts...
3. Government documents and data belong to all Canadians and all Canadians should have liberal access;
4. Exceptions for the print disabled must ensure equitable access...

Punish infringing behaviour but allow circumvention of TPMs for legitimate purposes [fair dealing];

Government documents and data belong to all Canadians and all Canadians should have liberal access;

Legislation is required to give persons with perceptual disabilities access equity;

Avoid US DMCA lack of distinction between individuals making single copies and those illegally profiting --heavy penalties for both...

# Considering copyright as we move forward...

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There is anticipation that a new bill into Parliament will now be introduced by mid-February...

Please stay tuned and try to support your associations as they work to represent libraries' interests, patrons' interests and the public interest in these many varied processes involving copyright...

Thank you...