

**OLA Superconference,
Toronto, January 28, 2016**

Copyright Update

Dr. Margaret Ann Wilkinson,
Professor, Director of IPIT Area
(Graduate Supervisory Status in
LIS, Law, & Health Information Science programs)
Western Law, Canada

Bi-monthly CLA Copyright Columns

(Wilkinson, General editor; CLA Copyright Committee peer-review)

Special thanks to Michael Ridley, Editor, Open Shelf.

1. Victoria Owen, “The Right to be Forgotten,” forthcoming...
2. Margaret Ann Wilkinson, Carolyn Soltau and Tierney GB Deluzio, “Copyright in Photographs in Canada since 2012,” (December 1, 2015) **Open Shelf**
3. Rob Tiessen, “The Public Lending Right in Canada: A Librarian’s Perspective,” (November 1, 2015) **Open Shelf**
4. John Tooth, Becky Smith & Jeannie Bail, “Unraveling the Complexity of Music Copyright” (October 1, 2015) **Open Shelf**
5. **Bobby Glushko & Rex Shoyama, “Unpacking Open Access: A Theoretical Framework for Understanding Open Access Initiatives,” 61(1) February 2015 at 8 [last issue *Feliciter*]**
6. Carolyn Soltau & Adam Farrell, **Copyright and the Canadian For-Profit Library,** 60(6) December 2014 at 8
7. Victoria Owen, **“The Librarian’s Role in the Interpretation of Copyright Law: Acting in the Public Interest,”** 60(5) October 2014 at 8
8. Robert Glushko, Rumi Graham, Ann Ludbrook & Heather Martin, **“Understanding ‘Large and Liberal’ in the Context of Higher Education,”** 60(4) August 2014 at 14
9. Margaret Ann Wilkinson, **“Copyright Users’ Rights in International Law,”** 60(3) June 2014 at 7
10. Sam Cheng & Christina Winter, **“Copyright Skills in Academic Libraries,”** 60(2) April 2014 at 8
11. John Tooth, **“Copyright for Schools and School Libraries,”** 60(1) February 2014 at 6
12. Rob Tiessen, **“The Definition of ‘Commercially Available,’”** 59(6) December 2013 at 14
13. Jeannie Bail & Brent Roe, **“Copyright and the Trans-Pacific Partnership,”** 59(5) October 2013 at 15

OLA Superconference 2016 comprehensive ©-related program:

Wednesday Jan 27

- **Canada's New Open Access Policy: Integrating Libraries into Open Scholarship (2:15 pm)**
- **Licensing: What to Keep, What to Cancel and How to Negotiate the Deal (4 pm)***

Thursday Jan 28

- **10 Things you should know about Copyright (11:20 am)***
- **OUR SESSION TOGETHER NOW***

Friday Jan 29

*** = presented by members of your OLA Copyright Users' Committee**

AGENDA: COPYRIGHT UPDATE 2016

- 1. The litigation situation**
2. The period of protection for photographs since 2012
3. 3D Printing: just a copyright issue?
4. The Copyright Board
5. Provincial disability legislation and its relationship with the Copyright Act
6. Progress at the international level

1. The litigation situation

- i. Copibec v Université Laval*
- ii. Access Copyright v York University*
- iii. CBC v Sodrac*
- iv. Witterick & Penguin Random House
Canada v Maltz (FC)*

(i) Copibec v Université Laval

Launched in the Quebec Superior Court by Société québécoise de gestion collective des droits de reproduction, operating as Copibec, and framed as an application for a **class action lawsuit** to be brought against Laval “on behalf of authors and publishers from Quebec, the rest of Canada and other countries around the world.”

- See “Copibec: \$4 Million Class Action Lawsuit Against Université Laval for Copyright Infringement,” (November 10, 2014)
- **I am advised through lawyers familiar with the case that the parties await the judge’s decision on the application to be certified as a class action – which should be released in a matter of weeks.**

(ii) Access Copyright v York University

Following up on last year's discussion of this case - Federal Court T-578-13

- This litigation continues to be very active
- Eventually, on April 1, 2014, the CMEC was told that it could not now become an Intervener in this case but could apply again later to become one (they had applied, as we noted last year, on January 21, 2014).
- Eventually, on July 30, 2014, court officer Prothonotary Aalto decided to **GRANT** York's application for the case to be split in two (bifurcated)

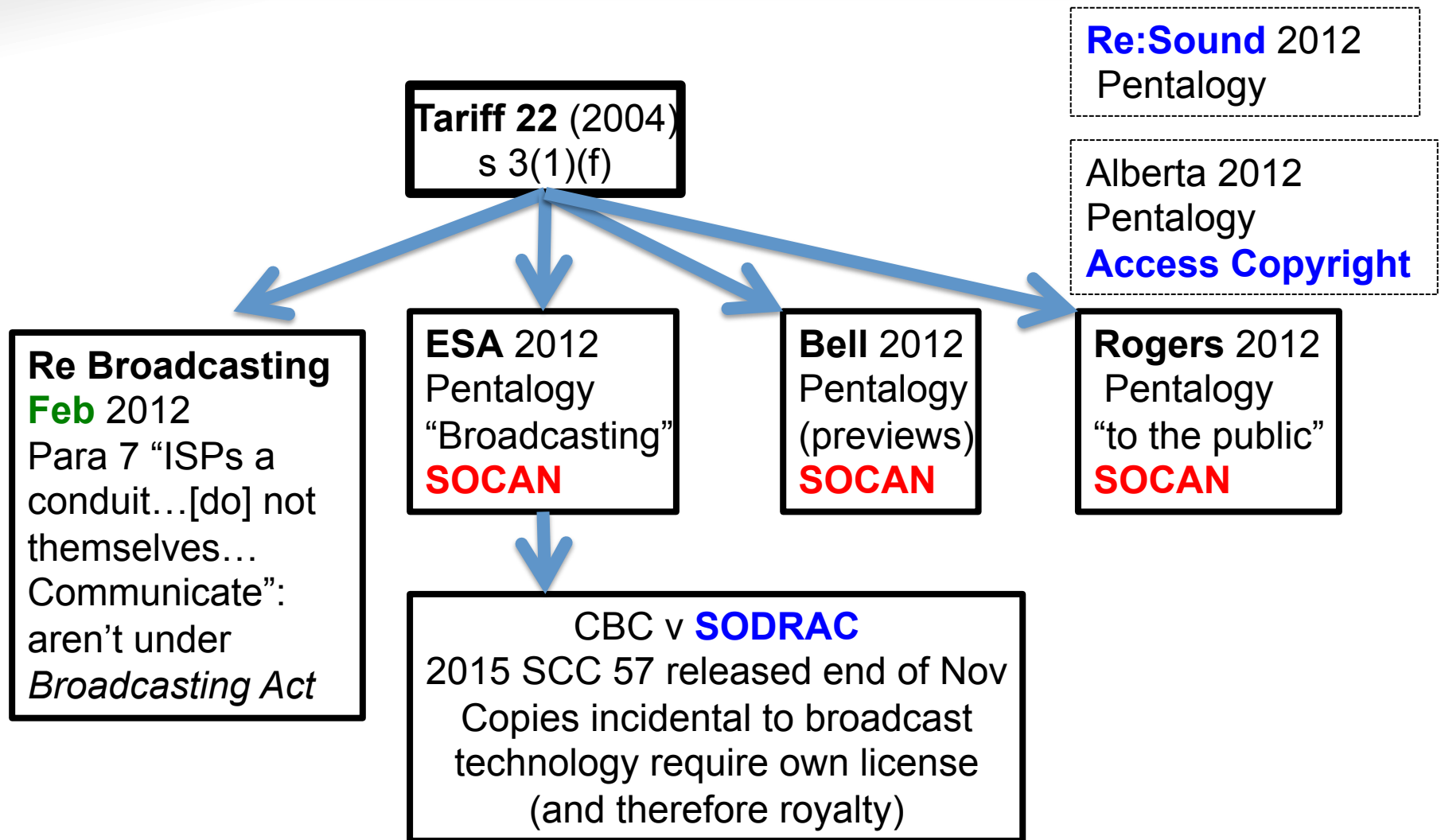
Most recent activity was just last week, on Wednesday January 20, there was further trial management activity as part of which, amongst other matters, an amendment of the bifurcation order described above is being considered for discussion in early February...

Adopt and Post **Institutional** Policy: use the text of the Law Society's Great Library policies as quote by the Chief Justice in CCH as your starting point.

- Why should your library probably not adopt a national or provincial or sectoral policy approach?
 - This is not negligence law: in negligence, a branch of tort law, evidence that you have met the standard of a competent professional, which means you have not been negligent, can mean pointing to the standard of similar professionals - and national or sector or regional policies to which you adhere can help provide this evidence.
 - This is copyright: the Great Library's policy in **CCH v LSUC** assisted the Law Society to establish evidence of *its institutional* general practice instead of having “to adduce evidence that every patron uses the material provided for in a fair dealing manner” (para 63)
- “Persons or institutions relying on ... fair dealing... need only prove... their own practices and policies were research-based [for s.29] and fair” (para 63, emphasis added)

	Théberge 2002	CCH 2004	SOCAN v CAIP 2004	Robertson 2004	Toblerone 2007	Crookes [Libel] 2011	ESA 2012	Rogers 2012	Bell 2012	Alberta (Education) 2012	Re:Sound 2012	re: Broadcasting Act 2012	Robinson 2013	National Gallery [status of the artist] 2014	
McLachlin	✓	M	✓	✘	✘	C	✓	✓	✓	✓	✓	✓	M	✓	
Major	✓	✓	✓	✓	M	✓	D	M	✓	D	✓	M	✓	M	Brown
Binnie	M	✓	M	✘	✓	✓	✓	✓	✓	✓	✓	✓	N/A	N/A	
Iacobucci	✓	✓	✓	✘	•	✓	M	✓	✓	✓	✓	✓	✓	✓	
Bastarache	N/A	✓	✓	✓	C	✓	✘	✓	✓	✘	✓	D	✓	✓	
Gonthier	N/A	✓	✓	✓	✓	C	✓	✓	✓	✘	✓	✓	N/A	✓	
LeBel	✘	✓	C	M	•	✓	✘	✓	✓	✓	M	✓	✓	✓	Côté
Arbour	N/A	✓	✓	D	D	M	M	C	C	M	✓	D	✓	✓	
L'Heureux Dubé	✘	✓	✓	M	C	C	✘	✓	✓	✘	✓	✓	✓		Gascon

Tariff 22 (SOCAN v CAIP) SCC 2004 and its SCC descendants:



(iii) *CBC v SODRAC* 2015 SCC 57 (full court, 9, sitting)
- decision released Nov. 26, 2015 (106 pp; 195 paras)

- Whether copies incidental to broadcast technology require their own license (and therefore royalty)
- Rothstein wrote the majority judgment, with Chief Justice McLachlin, Cromwell, Moldaver, Wagner, Gascon & Côté concurring:
 - Yes, this aspect of broadcast involves its own set of copyright rights and requires its own license (but the court disagreed with how the Copyright Board had calculated these and sent the case back down to the Copyright Board for recalculation)
 - **Majority Decision favours rights holders;**
- Abella and Karakatsanis wrote separate dissenting judgments but agreed with others on the copyright issues:
 - **Both Minority judgments favour users.**

(iv) *Maltz v Witterick et al* (Federal Court T-500-14)

- **Heard on January 11, 2016 by Justice Boswell who reserved his decision: decision pending;**
- Applicants journalist Judy Maltz and filmmakers Barbara Bird & Richie Sherman allege that their copyrights and moral rights in a 2009 documentary *No.4 Street of Our Lady* have been infringed by respondent author Jenny Witterick (and her publisher Penguin Canada) by young adult novel *My Mother's Secret*. Initially, in March 2013, Witterick self-published the book, which landed on the Globe and Mail's nonfiction best-seller list (at which point Penguin published it).
- The decision is expected to deal with whether, though both may arise from the same historical facts, the documentary and the book each enjoy separate copyright protection as separate works or whether the later book is an infringement of the copyright held in the earlier documentary.
- To check the status of the matter at any time, search, using the case number above, in the Federal Court database at http://cas-cdc-www02.cas-satj.gc.ca/IndexingQueries/infp_queries_e.php

AGENDA: COPYRIGHT UPDATE 2016

1. The litigation situation
- 2. The period of protection for photographs since 2012**
3. 3D Printing: just a copyright issue?
4. The Copyright Board
5. Provincial disability legislation and its relationship with the Copyright Act
6. Progress at the international level

Last year I reported “Some ambiguity amongst commentators about the period of protection for photographs”: research resolves ambiguity from multiples perspectives ... all photos the same

- Urged on by a number of you, I fully researched this matter during the past summer (with the assistance of my Law Student Research Assistant Tierney DB Deluzio). We published our findings both in our LIS literature (see the **Open Shelf** column listed on 2nd slide earlier) and in the law literature: for a number of reasons, [the following position is the one supported by the legal evidence](#).
- The Copyright Act s 10 (special periods of copyright in photos) having now been repealed, the general provision (s 6) governing the period of protection in all other works now governs photographs and all photographs in Canada now enjoy protection for the life their photographer + 50 years
- **The following rule applies to all photographs in Canada: if their photographers are alive or have been dead for less than 50 years, the photographs are in copyright; if their photographers died more than 50 years ago, copyright will continue for 50 years after December 31st of their year of death, after which time the photographs will be out of copyright.**

As well as the **Open Shelf** column, see, in the law literature, Margaret Ann Wilkinson & Tierney GB Deluzio, “The Term of Copyright Protection in Photographs,” (2016) 31 *Canadian Intellectual Property Review*, 95-109 (journal of the **Intellectual Property Institute of Canada [IPIC]** and findable, inter alia, through its website).

All photographs in Canada are to be treated exactly the same under the Copyright Act as any other work in terms of length of protection. The law is that s 6 of the Copyright Act is now the only law governing the period of protection in all works, including all photographs because

1. Any **transitional provisions passed by Parliament** to assist with the coming into force of the Act **cannot be interpreted by the courts in a way that changes the meaning of those provisions appearing in the Copyright Act** itself (different interpretations of the period of protection in photographs than the one stated here appear to have relied on transitional provisions);
2. The Copyright Act s 6 says **copyright “subsists” in works for 50 years** after the author’s death, and, since the 2012 amendments, does so in photographs as well; the courts have long said that because copyright subsists, it is because “without any act beyond the creation of [the photograph] it is acquired by the author” and therefore **copyright must subsist for photographer authors for as long as copyright does in any other work.**

Please examine our peer-reviewed publications and their evidence for yourself (before accepting instead un-footnoted, un-sourced pieces like CIPPIC's current post "Copyright and Privacy in Photography")

3. There is **no evidence in the historical record leading to the 2012 amendments to the Copyright Act that Parliament intended photographs to have any period of protection other than that enjoyed by the authors of any other kind of work**, indeed, the **Official Summary** affixed to the Act says "this enactment amends the Copyright Act to... (f) give photographers the same rights as other creators." And the Honourable James Moore (then **Minister** of Canadian Heritage and Official Languages) said, when **introducing the 2012 amendments** "Canadian photographers will benefit from the same authorship rights as creators."
4. Finally, the **Preamble** to the 2012 Copyright Amendment Act said that "copyright protection is enhanced when when countries adopt coordinated approaches, based on internationally recognized norms." This is important because the federal **Interpretation Act** requires courts to read this Preamble as part of the Copyright Interpretation Act, to assist in explaining its purport and object. In turn, Parliament's Preamble makes Canada's commitment to internationally recognized copyright norms important – and Canada has signed the **WIPO Copyright Treaty** which requires Canada to provide for protection of photographs for the life of the author plus 50 years.



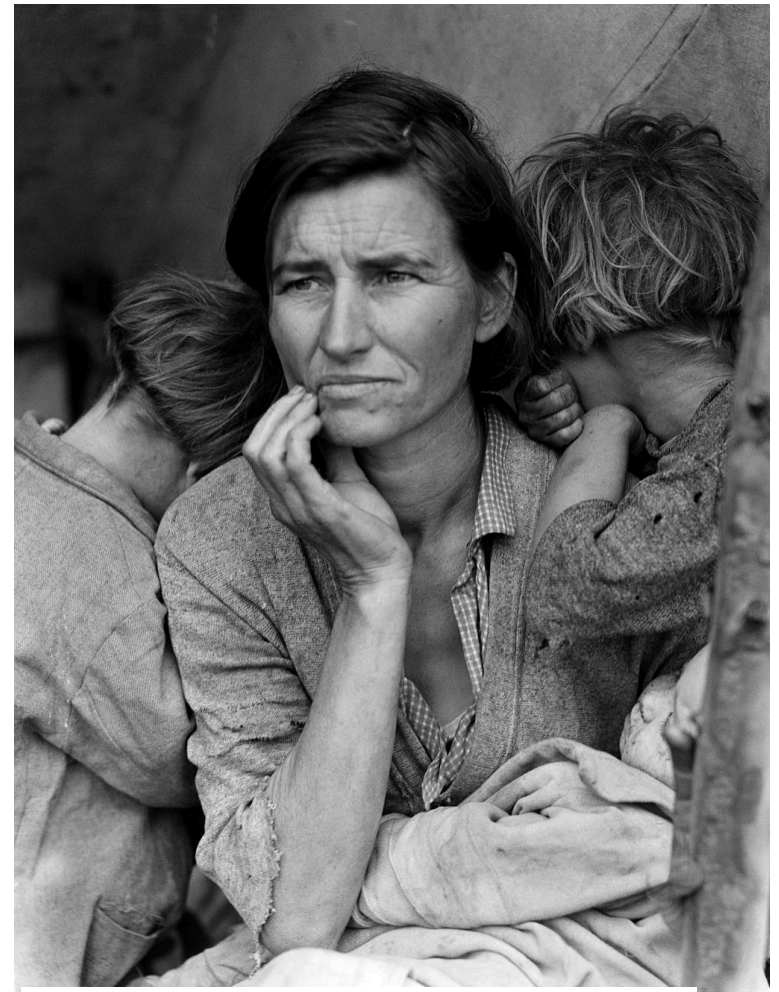
Dorothea Lange

(May 26, 1895 – October 11, 1965)

Known for her Depression-era work for the US Farm Security Administration (FSA).

Ms. Lange died in 1965.

As of December 31st 2015, her photographs have been out of copyright in Canada – but will be in copyright for another 20 years in the US.



An example of her work

Photographs (Continued)

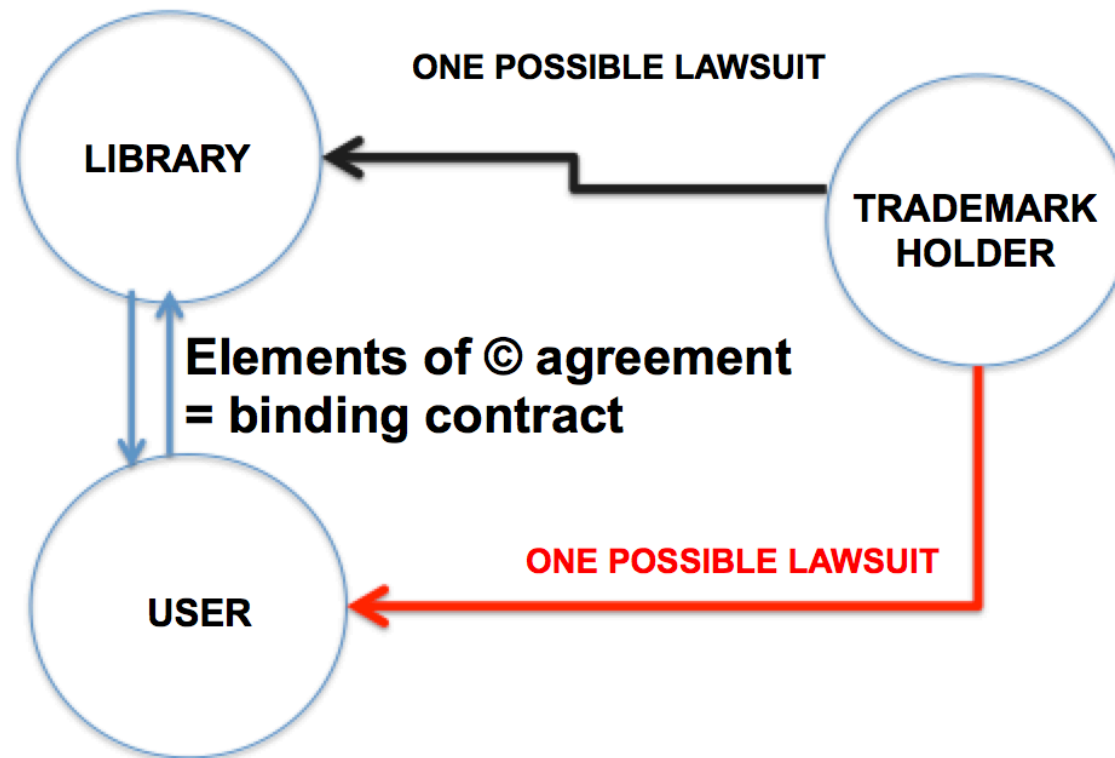
- It seems Transitional Provisions about photos in the *Copyright Modernization Act, 2012*, provisions that do not appear in the *Copyright Act* but are still law, seem to have been misinterpreted by some commentators (ss 59, 60), but it is clear, when recourse is had to multiple sources of authority about the role of legislative Transitional Provisions and about the Copyright Amendment Act, the effect of s 6 of the Copyright Act becomes clear: all photographs whose authors are alive or have died within the past 50 years (calculated from the end of this year) are to be treated the same way and are in copyright.
- The Transitional Provisions do not create some sort of sliding scale of periods of protection in photos depending upon how old the photo is – they clarify that, where a photo was owned by a corporation *ab initio* (from the beginning) under the pre-2012 law (now removed from the *Copyright Act*), the period of protection going forward now from 2012 is still going to be the same “life of the photographer + 50 years” that a photo owned by a photographer *ab initio* had before 2012 and still has.

AGENDA: COPYRIGHT UPDATE 2016

1. The litigation situation
2. The period of protection for photographs since 2012
- 3. 3D Printing: just a copyright issue?**
4. The Copyright Board
5. Progress at the international level

If a contract is about copyright only, it will have no effect on other types of lawsuits, for instance, if launched.

This is a concern for libraries involved in 3D Printing: see slides from December 4, 2015 workshop from [OLA Copyright Users' Committee](#)



Here is a link to the OLA's **3-D printing workshop**

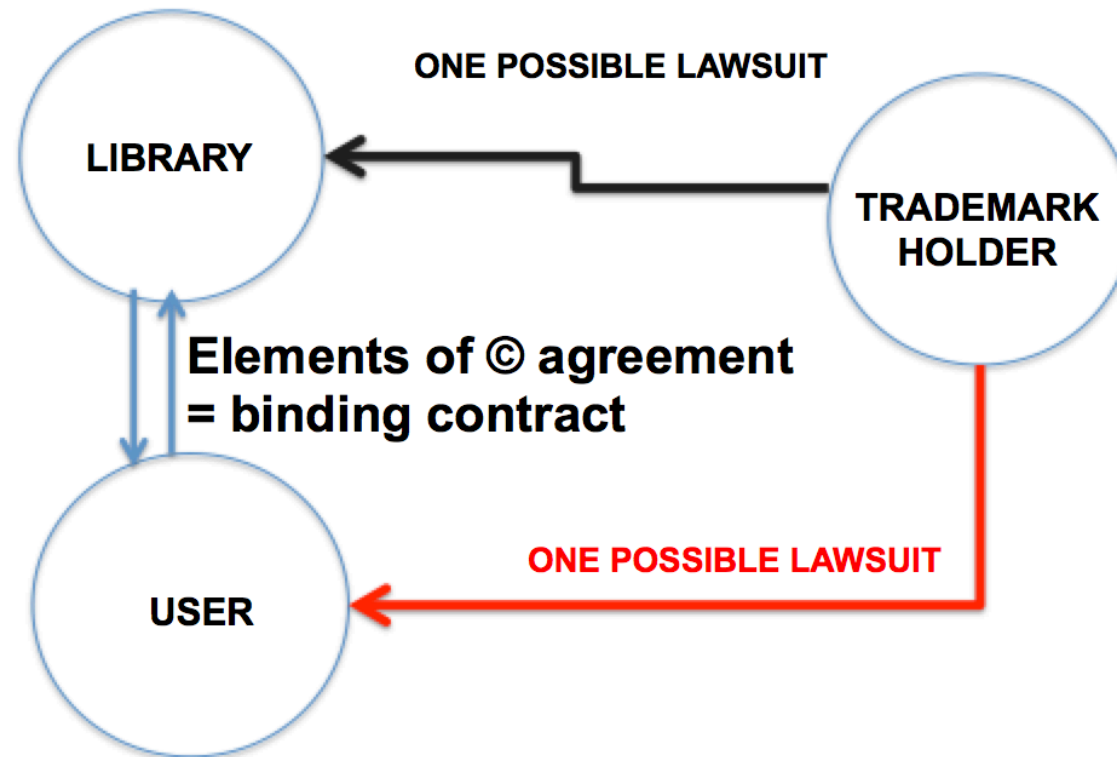
- [http://www.accessola.org/web/OLA/Events/Signature Events/Copyright Symposium/Program/OLA/Events/Signature events/Copyright Symposium event/Program.aspx?hkey=057afd6b-2583-4b04-ac0c-42b56eccbfc7](http://www.accessola.org/web/OLA/Events/Signature%20Events/Copyright%20Symposium/Program/OLA/Events/Signature%20events/Copyright%20Symposium%20event/Program.aspx?hkey=057afd6b-2583-4b04-ac0c-42b56eccbfc7)
- The Workshop was presented by all the members of the OLA Copyright Users' Committee, joined by 3 lawyers from the Anissimoff Mann firm.
- 3D Printers are not analogous to photocopiers.
- If “**3D Printing**” had become known as “**personal manufacturing**,” more people would have realized that it engages many more areas of law than simply copyright.

Brief conclusions from OLA's 3D print workshop:

1. There are various users' rights exceptions available to individuals and libraries in connection with many **COPYRIGHT** aspects of 3D Printing processes – and a number of libraries have developed good documentation to insulate themselves further from copyright liability not excepted.
2. There is, however, **potential for liability** for infringement by users and libraries in the areas of **TRADEMARK** and **PATENT** (where there are no “users' rights exceptions in the statutes). No libraries were discovered to have developed any adequate documentation to insulate themselves from liability in either of these areas.
3. To limited extent, there may also be a **risk of liability** for libraries through an area of law known as **economic tort**.
4. Finally, there is potential for liability for infringement by users and libraries in the intellectual property law area of **INDUSTRIAL DESIGN** but because very few potential owners of industrial design protection actually avail themselves of it – and the protection if held is only for 10 years, so if libraries can satisfy themselves that there is no registration on something that would be industrial design – or that there is a registration and it is more than 10 years old – the library would not need to worry about that infringement because the design would be in the public domain and available for any use, including 3D printing.

If a contract is between a library and its user only, it will have no effect on other types of lawsuits involving persons not party to that agreement (for instance the owners of trademarks or patents).

This is a concern for libraries involved in 3D Printing: see slides from December 4, 2015 workshop from [OLA Copyright Users' Committee](#)



AGENDA: COPYRIGHT UPDATE 2016

1. The litigation situation
2. The period of protection for photographs since 2012
3. 3D Printing: just a copyright issue?
- 4. The Copyright Board**
5. Provincial disability legislation and its relationship with the Copyright Act
6. Progress at the international level

3. The Copyright Board

Again this year we will look at tariffs filed by Access Copyright that affect libraries in three sectors:

- i. Provincial and Territorial Governments,
- ii. Public K-12 Schools except in Quebec ,and
- iii. Post-secondary Institutions except in Quebec.

For updates throughout the year, visit the Board's homepage at

<http://www.cb-cda.gc.ca/home-accueil-e.html>

i. Provincial and Territorial Government TARIFF

May 15, 2015: Access Copyright – Provincial and Territorial Governments Tariff (2005-2014, then, on an interim basis, until a new tariff is certified) **[does not apply to the Quebec government because the collective dealing with Quebec is Copibec, not Access Copyright]**

- 11.56 cents per employee, per year **2005-9** (Board found would likely generate for Access Copyright **\$14,000/yr**, not counting from Ontario or NWT);
- then 49.71 cents per employee, per year **2010-14** (Board found would likely generate for Access Copyright **\$60,000/yr**, again not counting from Ontario or NWT)
- Ontario & NWT withdrew from the proceedings but are still covered by the Tariff...

ii. Public K-12 Schools except in Quebec

- Recall Quebec schools deal with Copibec (not Access Copyright)
- All other schools were included in Access Copyright's application to the Copyright Board for a Tariff 2013-2015 filed (published in the Canada Gazette) June 16, 2012 ...
 - Subject of an Interim Tariff ordered by the Board May 29, 2013
 - This Interim Tariff being in place, Access Copyright can sue public school boards or other public school entities for photocopying without a license.
- **Just as it did last year, the Copyright Board currently still lists this Tariff for 2010-2015 as “Under Advisement”**
- **In addition, Access Copyright on May 9, 2015, filed a Proposed Tariff with the Board for Educational Institutions (2016-2019)**

As last year, CMEC continues to believe public schools and Access Copyright have no connection...

- “education” now part of “fair dealing” and legislated “educational institution” exceptions exist
- CMEC believes Canadian public schools (and their libraries) are doing nothing that requires permission from Access Copyright (neither through licensing nor tariff) [see John Tooth *Feliciter* column, above)...
- CMEC widely distributes in school systems the following booklet: Wanda Noel & Jordan Snell, *Copyright Matters! Some Key Questions & Answers for Schools*, 3rd ed (CMEC, 2012) available at <http://cmec.ca>

iii. Post Secondary Institutions

1. The Board lists the Proposed Tariff for

Access Copyright Post Secondary Education Institutions (2011-13 and 2014-17) as “Under Advisement”

2. Although the Board would have become involved after Copibec filed the following, the Board website no longer indicates any involvement in the matter:

“Statement of Proposed Royalties to Be Collected by **Quebec** Reproduction Rights Collective Administration Society (**COPIBEC**) for the Reproduction and Authorization to Reproduce, in Canada, for the Years 2015-2019, the Works in its Repertoire by **Universities** and Persons Acting Under Their Authority,” [June 28, 2014] *Supplement Canada Gazette*, Pt.1.

It is my understanding that the COPIBEC Tariff application was withdrawn during this past year when licensing negotiations between Copibec and Quebec universities became more widespread (isolating Laval as the only major “opt out” institution in the province)...

Adopting and Posting **Institutional** Policy

- Why not adopt a national or provincial or sectoral policy approach?
 - This is not negligence law: in negligence, a branch of tort law, evidence that you have met the standard of a competent professional, which means you have not been negligent, can mean pointing to the standard of similar professionals - and national or sectoral or regional policies to which you adhere can help provide this evidence.
 - This is copyright: the Great Library's policy in **CCH v LSUC** assisted the Law Society to establish evidence of *its institutional* general practice instead of having “to adduce evidence that every patron uses the material provided for in a fair dealing manner” (para 63)
- “Persons or institutions relying on ... fair dealing... need only prove... their own practices and policies were research-based [for s.29] and fair” (para 63, emphasis added)

AGENDA: COPYRIGHT UPDATE 2016

1. The litigation situation
2. The period of protection for photographs since 2012
3. 3D Printing: just a copyright issue?
4. The Copyright Board
- 5. Provincial disability legislation and its relationship with the Copyright Act**
6. Progress at the international level

Current State of Provincial Accessibility Legislation

[from Bird, Owens & Wilkinson Superconference session on “Licenses: What to Keep; What to Cancel & How to Negotiate the Deal” (with thanks to Corinne Abba)]

- Ontario
 - Accessibility for Ontarians with Disabilities Act (AODA) – 2005
- Manitoba
 - Accessibility for Manitobans Act (AMA) – 2013
- In Progress:
 - British Columbia
 - Nova Scotia
- No legislation currently contemplated in Newfoundland & Labrador, Prince Edward Island, New Brunswick, Quebec, Saskatchewan, Alberta

Constitutionally, since 1867, only Parliament has been able to legislate copyright, not provinces...

- To the extent that provincial disability legislation appears to legislate copyright, such legislation will be declared by courts to be of no force and effect.
- Arguing that a library took action pursuant to the dictates of provincial disability legislation will prove to be no defence when a rights holder sues for infringement of copyright.

Contract law “trumps” the Copyright Act: licensing, used effectively by libraries, will allow libraries to achieve their accessibility goals despite Copyright Act rightsholder rights.

- Very little of library acquisition takes place through contracts for outright sale of material to the library – much more often, an acquisition takes place through a license (another form of contract) to access a given resource over a term of years;
- In licenses, it is possible to negotiate with the vendor to relinquish such rights as are necessary to allow the library to meet with its provincial disability obligations (if there is such a provincial law, for instance, the AODA in Ontario, in place);
- It is also possible to negotiate for advantages for those with disabilities even where there is no provincial legislation in place related to the matter – just simply because your library would like such rights from a vendor in order to better serve clients...

For instance, language from IFLA's Model Treaty ["TLIB"] might be negotiated into a contract by a library (see Article 10 at http://www.ifla.org/files/assets/hq/topics/exceptions-limitations/tlib_v4_4.pdf)

- 1) It shall be permitted for libraries and archives, as "authorised entities" within Article 2 of the Marrakesh Treaty, to make an accessible format copy of a work, obtain from another authorized entity an accessible format copy, and supply those copies to beneficiary persons by any means, including by non-commercial lending or by electronic communication by wire or wireless means, and undertake any intermediate steps to achieve those objectives, without the authorization of the copyright rightholder, when all of the following conditions are met:
 - (i) the authorized entity wishing to undertake said activity has lawful access to that work or a copy of that work;
 - (ii) the work is converted to an accessible format copy, which may include any means needed to navigate information in the accessible format, but does not introduce changes other than those needed to make the work accessible to the beneficiary person;
 - (iii) such accessible format copies are supplied exclusively to be used by beneficiary persons;
 - and (iv) the activity is undertaken on a non-profit basis;
- 2) [sic: the draft contains no language here]
- 3) Where a work, or material protected by related rights, has been made in an accessible form under paragraph (1), this shall not prevent further accessible forms of any type from being made for, and supplied to, any other persons with a disability by any means, including digital transmission.
- 4) Any accessible copy of a work, or of material protected by related rights, made under paragraphs (1) and (2)[sic], may be transferred or loaned to any other library or archive.

If the IFLA text on the preceding slide is to be used in a contract, it will be important to also negotiate in the definitions related to it, appearing in Article 1 of TLIB:

“Accessible format” means a copy of a work in an alternative manner or form which gives a beneficiary person access to the work, including to permit the person to have access as feasibly and comfortably as a person without visual impairment or other print disability. The accessible format copy is used exclusively by beneficiary persons and it must respect the integrity of the original work, taking due consideration of the changes needed to make the work accessible in the alternative format and of the accessibility needs of the beneficiary persons;

[This definition corresponds with that found in Article 2 of the Marrakesh Treaty]

“Disability” means physical, mental, sensory, or cognitive incapacity that requires an accessible format of a work or of materials protected by related rights.

AGENDA: COPYRIGHT UPDATE 2016

1. The litigation situation
2. The period of protection for photographs since 2012
3. 3D Printing: just a copyright issue?
4. The Copyright Board
5. Provincial disability legislation and its relationship with the Copyright Act
- 6. Progress at the international level**

5. Progress at the international level

Marrakesh Treaty to Facilitate Access to Published Works for Persons who are Blind, Visually Impaired, or otherwise Print Disabled

- Adopted by the World Intellectual Property Organization (WIPO) – an agency of the United Nations – June 27, 2013 – over 80 signatories (not Canada)
- To come into force as soon as **20** nations have ratified it (see Article 18) – to date, **13** ratifications or accessions –
 - India (June 24, '14)
 - Mali (June 24, '14)
 - El Salvador (Oct.1, '14)
 - United Arab Emirates (Oct.15, '14)
 - Uruguay (Dec.1, '14)
 - Australia (Dec.10, '14)
 - Paraguay (Jan.20, '15)
 - Singapore (Mar.30, '15)
 - Argentina (Apr.1, '15)
 - Mexico (July 29, '15)
 - Mongolia (Sept.23, '15)
 - South Korea (Oct.8, '15)
 - Brazil (Dec.11, '15)

WIPO Limitations & Exceptions for Libraries & Archives

- Proposed treaty on “Limitations and Exceptions for Libraries and Archives” being shepherded among NGOs by IFLA
 - Still at committee stage (Standing Committee on Copyright and Related Rights (SCCR)) at WIPO in Geneva
 - CLA has standing as an NGO and attends...
- There is controversy amongst nations about the nature of the international instrument that is suitable for Libraries and Archives – with some resisting the creation of a treaty and wanting something much less strong.

SCCR Session	Outcome	Dates Held	End Status on Libraries & Archives
26 th	Committee Conclusions	Dec 16-18, 2013	Text-based toward legal instrument
27 th	Chair's Conclusions	Apr 27-May 2, 2014	Toward legal instrument- no agreement on basis of work
28 th	Chair's Conclusions	Jun 30-Jul 4. 2014	Just maintained on agenda
29 th	Chair's Summary	Dec 8-12, 2014	Work done on texts, maintained on agenda
30 th	Chair's Summary	Jun 29- Jul 3, 2015	<p>"Study on Copyright Limitations and Exceptions for Libraries and Archives: Updated and Revised" by Kenneth D. Crews – received as an Exhibit to the SCCR [SCCR/30/3]</p> <p>Maintained on agenda</p>
31 st	Chair's Summary	Dec 7-11, 2015	Maintained on agenda

Thank you.

...Some resources:

1. Information about WIPO SCCR meetings, including documents from them:
http://www.wipo.int/meetings/en/topic.jsp?group_id=62
2. **Copyright Board of Canada** <http://www.cb-cda.gc.ca/>
3. Margaret Ann Wilkinson, “The Context of the Supreme Court’s Copyright Cases,” Chapter 3 in Michael Geist (ed) *The Copyright Pentalogy: How the Supreme Court of Canada Shook the Foundations of Canadian Copyright Law* (Ottawa: University of Ottawa Press, 2013), 71. Accessible at
<http://www.press.uottawa.ca/the-copyright-pentalogy>
4. Margaret Ann Wilkinson and Tierney GB Deluzio, “The Term of Copyright Protection in Photographs,” (2016) 31 *Canadian Intellectual Property Review*, 95-109.
5. Margaret Ann Wilkinson, “International Copyright: *Marrakesh* and the future of users’ rights exceptions,” Mark Perry (ed) *Flux in the Force: Intellectual Property Facing the 21st Century* (New York: Springer, 2016) – *in press*.
6. *Feliciter* Copyright Columns listed at the outset of this presentation (ending with last regular *Feliciter* issue – 61(1) February 2015).
7. Open Shelf Copyright Columns listed at the outset of this presentation – Beginning in October 2015 with at least one more coming up in this year...