Big Copyright News From the SCC

July 12, 2012

On July 12, 2012, the Supreme Court of Canada issued five decisions on copyright law dealing with:

- downloading video games and music,
- streaming musical works from the Internet,
- providing samples of music for previewing,
- teachers' photocopying of teaching materials for students, and
- musical works in movies.

A more detailed analysis of these decisions will follow.

Decision	Cite	Score	Majority/Dissenting	At Issue	The Result
Entertainment Software Association and Entertainment Software Association of Canada (ESAC) v. Society of Composers, Authors and Music Publishers of Canada (SOCAN)	2012 SCC 34	5/4	Abella & Moldaver (McLachlin C.J. and Deschamps, & Karakatsanis JJ)/Rothstein J (LeBel, Fish, & Cromwell JJ)	Downloading video games from the Internet, which games incorporate musical works where a royalty had already been paid for reproduction of the video game	It is not a "communication to the public" of the work so as to attract an additional "communication" tariff charge. "The Internet is simply a technological taxi that delivers a durable copy of the same work to the end user."
Rogers Communications Inc. v. SOCAN	2012 SCC 35	9/0	Rothstein J. (McLachlin C.J., LeBel, Deschamps, Fish, Cromwell, Moldaver and Karakatsanis JJ/Abella (on standard of review only)	Providing streaming of musical works from an online music service	As in *ESAC v. SOCAN*, downloads aren't "communications." Transmission of a single copy of a work to a single individual isn't "communication to the public" but a business of repeated transmission of the same work to different recipients is and attracts a tariff charge.
SOCAN v. Bell Canada	2012 SCC 36	9/0	Abella J. (McLachlin C.J., LeBel, Deschamps, Fish, Rothstein, Cromwell, Moldaver & Karakatsanis JJ.)	Providing previews of music (such as iTunes' 30-90 second excerpts before purchasing a song)	This is "fair dealing." It's "research" for the consumer to decide what to buy (research needn't be for creative purposes only). It's "fair" in that it is not a permanent copy (streamed and deleted) and the quantum of a few seconds is modest compared to the whole work. It's reasonably necessary research that helps make sales.

Alberta (Education) v. Canadian Copyright Licensing Agency (Access Copyright)	2012 SCC 37	5/4	Abella (McLachlin C.J., LeBel, , Moldaver & Karakatsanis JJ)/Rothstein J. (Deschamps, Fish & Cromwell JJ.)	Reproduction of copyrighted works in elementary and secondary schools by teachers for the use of students	Remitted to the Copyright Board for reconsideration. The photocopying was for the allowable purpose of research or private study. The “purpose” was for both instructing by the teacher and for “private study” by each student.
Re: *Sound v. Motion Picture Theatre Associations of Canada*	2012 SCC 38	9/0	LeBel J. (McLachlin C.J., Deschamps, Fish, Abella, Rothstein, Cromwell, Moldaver & Karakatsanis JJ. concurring)	Is the soundtrack to a movie a “sound recording” subject to public performance royalties when played in movie theatres or television services?	By definition, a pre-existing sound recording that is part of a soundtrack cannot be the subject of a tariff when the soundtrack accompanies the cinematographic work.