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2 The Canadian Copyright Act uses the term “cinematographic work” to describe motion pictures. A cinematographic work “includes any work expressed by any process analogous to cinematography, whether or not accompanied by a soundtrack.” [s.2 of the Copyright Act]

3 Following the wording of the definition of “Work” under Copyright Act s. 2.

4 With the addition of the “private copying” of a musical work, as per s.80 of the Copyright Act, the definition of a musical work needs to be included in the licence.

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7 s. 29 of the Copyright Act provides that “Fair Dealing for the purpose of research or private study does not infringe copyright”. The Supreme Court of Canada in the recent decision of CCH Canadian Ltd. v. Law Society of Upper Canada held that:

- To fit within s. 29, the dealing must be (1) for the purpose of either research or private study; and (2) fair.
- “Research” is to be given a large and liberal interpretation. It is not limited to non-commercial or private contexts.
- To determine whether a dealing was “fair”, one should look at (1) the purpose of dealing; (2) the character of the dealing; (3) the amount of the dealing; (4) alternatives to the dealing; (5) the nature of the work; and (6) the effect of the dealing on the work.

Educational institutions, libraries, archives and museums are specifically exempted from copyright infringement in certain circumstances (ss. 29.4-30 (educational institutions) and ss. 30.1-30.5). See also “computer programs” (s. 30.6), “incidental inclusion” (s. 30.7) and “ephemeral recordings” (s. 30.8).

8 The Copyright Act does not use the term “phonorecord”. The closest language used is “soundrecording”.

A soundrecording is defined in s.2 of the Copyright Act as “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”
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(c) communicating to the public by telecommunication; or
(d) performing, or causing to be performed, in public.

10 Importing the language of Copyright Act s. 3 for moral rights.

11 As clarified by the Supreme Court of Canada in Therberge v. Galerie d’Art du Petit Champlain Inc. (2002), SCC 34.
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The Copyright Board of Canada chose to hold two phases of hearings in order to establish this system. The first phase, which pertained to the legal issues surrounding the tariff, took place in 1999. The second phase, addresses the format, structure and responsibility/liability for payment of fees. SOCAN (the Society of Composers, Authors and Music Publishers of Canada) is seeking to assign this liability to Internet service providers and similar intermediaries. This matter is currently awaiting judgment from the Supreme Court of Canada, Society of Composers, Authors and Music Publishers of Canada v. Canadian Assn. of Internet Providers, [2002] 4 F.C. 3, 2002 FCA 166.

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14 Professor David Vaver, suggests that “gratuitous license may be withdrawn at any time, even if it has a stated expiration date, although reasonable notice is usual”. D. Vaver, Copyright Law (Toronto: Irwin Law, 2000) at p. 241.
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