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[1] The language of this clause has been changed to reflect the specification of the types of works included in the *Copyright Act* that have adaptations, i.e. derivative works.

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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.

[5] Canada is a signatory of the Berne Convention for the Protection of Literary and Artistic Works which recognizes two moral rights - the right of paternity, and the right of integrity. The right of paternity is the right to be acknowledged as the author of one's work. The right of integrity is the right to object to unjustified modification of one's work which would prejudice the reputation of the author. In Canada, an author also has the right to remain anonymous. The Canadian *Copyright Act* further affords the right of association which allows the author to control the use of their work in association with a product, service, cause or institution. In Canada, moral rights apply automatically to the author of copyright work. Moral rights can be waived (either expressly or by implication) but cannot be assigned or licensed.

[6] Canada uses the concept of "Fair Dealings" as opposed to "Fair Use". Fair dealings with a work are a set of exceptions to copyright as set out in ss. 29-32.2 of the *Copyright Act*.

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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 is 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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[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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[12] Canada is in the process of establishing a compulsory licensing system for the public performance of musical works by means of any telecommunication service whose transmission can be independently accessed; webcasting is specifically included. This licensing system is referred to as *Tariff 22*.

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.

Until such a compulsory licensing system is in place, a Canadian version of the Creative Commons licence should not make mention of it.

[13] The Canadian legal system does not use the language "publicity rights" for its personae/privacy tort. Rather, it is a "personality right". Therefore the language of this clause was changed.

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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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