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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.

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].
Licence.
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\(^3\) 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 licenced.

\(^6\) 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.

\(^7\) Section 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 the dealing was “fair”, one should look at (1) the purpose of the 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).
applicable laws.

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\(^8\) 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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11 As clarified by the Supreme Court of Canada in Therberge v. Galerie d’Art du Petit Champlain Inc. (2002), SCC 34.

12 Professor David Vaver, suggests that “gratuitous licences 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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13 This is the rule of “estopple” as explained in Copyright Law (see above) at p. 242.

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