

# INDEX

References given are to page numbers.

## **ARTISTIC WORKS, *see also* PROTECTABLE WORKS**

- architectural works, 54
- audio-visual works, 55
- derivative artistic works, 57
- digital works, 53
- drawing, 52
- generally, 49
- labels, 53
- maps, charts and plans, 53
- painting, 52
- photographs, 56
- plastic works, 52
- portraits and engravings, 56
- sculpture, 53
- trade-marks, 52
- typefaces, 53
- websites, 53
- works of artistic craftsmanship, 55

## **ASSIGNMENT AND LICENSING OF INDUSTRIAL DESIGN**

- assignment, 397
- generally, 396
- licences, 397

## **ASSIGNMENT OF COPYRIGHT**

- bankruptcy, 123
- clickthrough agreement, 119
- equitable assignment, 120
- equitable ownership, 120
- exchange of emails, 119
- formalities, 121
- future work, 117
- generally, 116
- multiple assignments, 122
- oral assignment, 119
- partial assignment, 117
- presumptions as to ownership, 125
- right of reversion, 122

- writing, assignment in, 118

## **AUTHOR RIGHTS**

- moral rights, 130
- performers performances, 134
- right of remuneration, 137
- right of restraint, 136
- United States, 133
- works, 130

## **AUTHORS, *see also* CREATORS**

- animals, 94
- cinematographic works, 95
- collective works, 90
- compilations, 90
- computer-generated works, 93
- editor, 89
- generally, 87
- joint authorship, 90
- photographs, 94

## **CINEMATOGRAPHIC WORKS**

- authors, 95
- conditions for copyright, 82
- dramatic works, 62
- performance embodied in, 208
- soundtracks, 62
- subsistence of copyright, 147

## **COLLECTIVE WORKS, *see also* PROTECTABLE WORKS**

- authors, 90
- generally, 66
- multiple rights, 67

## **COMMUNICATION SIGNALS, *see also* PROTECTABLE WORKS**

- conditions for copyright, 87
- copyright in, 209
- creators, 97
- defined, 209
- fixation, 209

**COMMUNICATION SIGNALS —**  
(*cont'd*)

- generally, 70
- ownership of copyright, 115
- subsistence of copyright, 152

**COMPILATIONS, *see also* PROTECTABLE WORKS**

- authors, 90
- compilation containing two or more categories, 64
- compilation of similar works, 65
- databases, 65
- directories, 66
- generally, 63
- literary compilations, 64
- selection or arrangement, 64

**COMPUTER PROGRAMS, *see also* PROTECTABLE WORKS**

- abstraction-filtration-comparison test, 41
- audio-visual programs, 55
- Canadian jurisprudence, 48
- defences to infringement
- encryption research, 305
- interoperability of computer programs, 305
- permitted acts, 304
- security, 305
- generally, 43
- idea vs. expression, 46
- instructions or statements, 45
- minor fixes, 49
- rental of, 203
- specific result, 45

**CONDITIONS FOR COPYRIGHT**

- communication signals, 87
- electronic publication, 80
- generally, 70
- performers' performances, 82
- published works, 81
- sound recordings, 85

- unpublished works, 81
- works, *see* CONDITIONS FOR COPYRIGHT — WORKS

**CONDITIONS FOR COPYRIGHT — WORKS, *see also* CONDITIONS FOR COPYRIGHT**

- cinematographic works, 82
- computer generated works, 75
- fixation, 75
- originality, 71
- exercise of skill and judgment, 72
- generally, 71
- mere copy of work, 71
- publication, 78 *see* PUBLICATION
- qualified author, 77

**COPYRIGHT**

- communication signals, *see* COMMUNICATION SIGNALS
- conditions for copyright *see* CONDITIONS FOR COPYRIGHT
- generally, 7, 70
- moral rights, *see* MORAL RIGHTS
- neighbouring rights, 35, 67
- new technologies, advance of, 220
- performers' performances, *see* PERFORMERS' PERFORMANCES
- purpose of copyright, 182
- registration, *see* REGISTRATION OF COPYRIGHT
- remuneration, *see* REMUNERATION, RIGHT TO
- sound recordings, *see* SOUND RECORDINGS
- statutory basis, 180
- works, *see* WORKS

**COPYRIGHT ACT**

- approach, 26
- balance, 25
- generally, 14
- influence of foreign law, 28

***COPYRIGHT ACT — (cont'd)***

- legislative amendment, 31
- linguistic inconsistency, 27
- other federal legislation, 15
- primary regulations, 14
- provincial legislation, 17
- relevance of treaties, 27
- rights generally, 180
- *Status of the Artist Act*, 16
- technological neutrality, 28

**COPYRIGHT AND INDUSTRIAL DESIGN**

- exceptions to exclusion, certain artistic works, 161
- exclusion from copyright infringement, 159
- interface between, 157
- United Kingdom, 170
- United States, 167
- useful articles, 158
- utilitarian features of useful articles, 166

**CREATORS**

- communication signals, 97
- generally, 96
- performers' performances, 96
- presumptions as to authorship and creatorship, 97
- sound recordings, 97
- works, *see* AUTHORS

**CROWN COPYRIGHT, 219****DEFENCES TO COPYRIGHT INFRINGEMENT**

- catch-all provisions exempting infringement claims, 313
- computer programs, *see* COMPUTER PROGRAMS
- educational institutions, exceptions for, *see* EDUCATIONAL INSTITUTIONS
- ephemeral recordings, 306

- exceptions for libraries, archives and museums, *see* LIBRARIES, ARCHIVES AND MUSEUMS
- ignorance of existence of copyright, 289
- incidental inclusion, 306
- independent creation, 288
- insubstantial copying, 288
- other statutes, exceptions from infringement in, 312
- perceptual disabilities, 310
- plaintiff not owner of copyright, 287
- statutory exemptions, *see* USERS' RIGHTS
- temporary reproductions, 306

**DEFENCES TO INFRINGEMENT OF INDUSTRIAL DESIGN**

- generally, 394
- no reason to suspect design was registered, 394

**DERIVATIVE WORKS, *see also* PROTECTABLE WORKS**

- exploitation rights, 67
- generally, 67

**DRAMATIC WORKS, *see also* PROTECTABLE WORKS**

- audio-visual works, 63
- choreographic works, 61
- cinematographic works, 62
- comedies, 60
- derivative dramatic works, 62
- electronic media works, 61
- farces, 60
- films, 62
- generally, 59
- operas, 60
- plays, 60
- radio sketches, 61
- television programs, 61
- tragedies, 63
- videotapes, 61

## **ECONOMIC RIGHTS**

- *Copyright Act*, 180
- works, 180

## **EDUCATIONAL INSTITUTIONS,** *see also* DEFENCES TO COPY- RIGHT INFRINGEMENT

- digital reproductions of works, 298
- lessons, 297
- literary collections, 297
- news and commentary, 296
- performance uses, 295
- reproduction for broadcast, 296
- right to display, 294
- tests and examinations, use for, 295
- works available through internet, 300

## **FAIR DEALING**

- analysis, *see* FAIR DEALING ANALYSIS
- *CCH Canadian Ltd. v. Law Society of Upper Canada*, 226
- fair dealing-related exceptions, 260
- backup copies, 260
- generally, 264
- non-commercial user-generated content (UGC), 260
- reproduction for later listening or viewing, 263
- reproduction for private purposes, 263
- foreign decisions, applicability of, 264
- generally, 223
- statutory context, 224

## **FAIR DEALING ANALYSIS**

- generally, 228
- step one — purpose of dealing, 229
- criticism, review and news reporting, 234
- dealing, 241
- education, 237

- parody or satire, 238
- private study, 233
- research, 230
- step two — fairness of dealing, 242
- alternatives to dealing, 252
- amount of dealing, 249
- application of fair dealing framework, 259
- character of dealing, 247
- effect of dealing on work, 255
- nature of work, 254
- purpose of dealing, 244

## **FIXATION**

- communication signals, 209
- performers' performances, 206
- works, 75

## **HISTORY OF COPYRIGHT LAW**

- 1709 *Statute of Anne*, 11
- 1911 *British Copyright Act*, 12
- *British Copyright Act*, 1842, 12
- *Combatting Counterfeit Products Act*, 12
- *Copyright Act*, 1924, 12
- *Copyright Modernization Act*, 12
- *Economic Action Plan 2015 Act No. 1*, 12
- first legislation in Canada, 12
- *United States-Mexico-Canada Agreement*, 12

## **INDUSTRIAL DESIGN**

- defined, 365
- exclusive right, 389
- generally, 360
- history, 362
- infringement, *see* INFRINGEMENT OF INDUSTRIAL DESIGN
- methods of manufacture, no protection for, 370
- novelty and originality, interplay between, 372

**INDUSTRIAL DESIGN** (*cont'd*)

- novelty, 371
- originality, 372
- originality and authorship, 377
- registration, *see* REGISTRATION OF INDUSTRIAL DESIGN
- utilitarian features, no protection for, 360

**INDUSTRIAL DESIGN AND COPYRIGHT**, *see* **COPYRIGHT AND INDUSTRIAL DESIGN****INFRINGEMENT OF COPYRIGHT**

- colourable imitation, 280
- defences, *see* DEFENCES TO COPYRIGHT INFRINGEMENT
- generally, 271
- geographical infringement, 284
- “infringing” defined, 280
- primary infringement, 272
- computer stored information, 279
- copying substantial part, 274
- exact copy, 274
- reproduction, 273
- proving access to original, 283
- remedies, *see* REMEDIES FOR COPYRIGHT INFRINGEMENT
- secondary infringement, 282
- possession for purpose of sale or distribution, 283
- telecommunication to public, 281

**INFRINGEMENT OF INDUSTRIAL DESIGN**

- action for infringement, 390
- assessing infringement, 391
- defences, *see* DEFENCES TO INFRINGEMENT OF INDUSTRIAL DESIGN
- infringement of exclusive right, 390
- presumption of validity, 393
- reasonable compensation, no provision for, 394

- remedies, *see* REMEDIES FOR INFRINGEMENT OF INDUSTRIAL DESIGN
- situs of industrial design, 401

**INTEGRATED CIRCUIT TOPOGRAPHIES AND COPYRIGHT**, 155**INTERNATIONAL LAW**

- Beijing Treaty, 22
- Berne Convention, 19
- Broadcast Treaty, 22
- Copyright Treaty, 21
- generally, 17
- Geneva Convention, 21
- Marakesh Treaty, 22
- ministerial notice, 23
- national treatment, 21
- Performance and Phonogram Treaty, 21
- regional treaties, 22
- Rome Convention, 20
- TRIPS Agreement, 20
- Universal Copyright Convention, 19
- Vienna Agreement, 21

**LIBRARIES, ARCHIVES AND MUSEUMS**, *see also* DEFENCES TO COPYRIGHT INFRINGEMENT

- copy machines installed in educational institutions, libraries, archives and museums, 303
- generally, 300
- libraries, archives and museums in educational institutions, 304
- Library and Archives of Canada, 304

**LITERARY WORKS**, *see also* PROTECTABLE WORKS

- defined, 38
- derivative literary works, 42
- generally, 38
- literary entertainment works, 41

**LITERARY WORKS** — (*cont'd*)

- translations of literary works, 42

**MINISTERIAL NOTICE, 23**

**MORAL RIGHTS**

- economic rights, distinct from, 210
- generally, 210
- performers, 135
- performers' performances, 134, 211
- right of attribution, 211
- right of integrity, 213
- works, 130

**MUSICAL WORK, *see also* PROTECTABLE WORKS**

- derivative musical works, 59
- generally, 58
- songs, 59

**ORIGINALITY**

- copyright
- exercise of skill and judgment, 72
- generally, 71
- mere copy of work, 71
- industrial design
- novelty, 371
- novelty and originality, interplay between, 372
- originality, 372
- originality and authorship, 377

**OWNERSHIP**

- basic rule, 98
- cinematographic works, 114
- commissioned engravings, 113
- commissioned photographs, 111
- commissioned portraits, 114
- commissioned works, 104
- communications signals, 115
- co-ownership, 99
- compilations, 115
- computer-generated works, 115
- crown prerogative, 109
- employees, 100
- governments, 105

- independent contractors, 104
- joint authorship, 99
- performers' performances, 115
- photographs, 110
- sound recordings, 115

**PATENTS**

- copyright, overlap with, 105
- industrial design, overlap with, 397

**PERFORMERS' PERFORMANCES, *see also* PROTECTABLE WORKS**

- cinematographic work, performance embodied in, 208
- conditions for copyright, 82
- copyright in, 206
- creators, 96
- defined, 207
- fixation, 207
- generally, 68
- moral rights, 134
- ownership of copyright, 115
- performances not protected, 68
- remuneration, right to, 216
- rental of sound recordings of performance, 208
- subsistence of copyright, 149, 207
- WIPO Performances and Phonograms Treaty, 207, 208

**PHOTOGRAPHS**

- authors, 94
- generally, 56
- ownership of copyright, 110
- commissioned photographs, 111
- photographs, 110
- registration of industrial design, 364, 380
- subsistence of copyright, 147

**PROTECTABLE, WHAT IS NOT, 25**

**PROTECTABLE WORKS**

- artistic works, *see* ARTISTIC WORKS

**PROTECTABLE WORKS — (cont'd)**

- collective works, *see* COLLECTIVE WORKS
- communication signals, *see* COMMUNICATION SIGNALS
- compilations, *see* COMPILATIONS
- computer programs, *see* COMPUTER PROGRAMS
- derivative works, *see* DERIVATIVE WORKS
- dramatic works, *see* DRAMATIC WORKS
- generally, 35
- literary works, *see* LITERARY WORKS
- musical works, *see* MUSICAL WORKS
- performers' performances, *see* PERFORMERS' PERFORMANCES
- presumption as to subsistence of copyright,
- sound recordings, *see* SOUND RECORDINGS

**PUBLICATION, *see also* CONDITIONS FOR COPYRIGHT — WORKS**

- electronic publication, 78
- generally, 78
- published works, 81
- unpublished works, 81
- works, 193

**REGISTRATION OF COPYRIGHT**

- application, 127
- effect of registration, 128
- generally, 126
- notice, 129

**REGISTRATION OF INDUSTRIAL DESIGN**

- application, 378

- • description, 379
- • drawings and photographs, 380
- • title, 378
- disputes over registrability, 387
- examination, 384
- generally, 378
- priority, 383
- proprietor, 380
- reinstatement of application, 385
- term, 386
- territory, 387
- time for filing, 381
- variants, 385

**REMEDIES FOR COPYRIGHT INFRINGEMENT**

- conversion, 351
- damages, 322
- • exemplary damages, 325
- • high range, 340
- • low range, 344
- • mid-range, 343
- • no reasonable ground to believe copyright subsisted, 325
- • statutory damages, 332
- generally, 314
- injunctions, 315
- • Anton Piller orders, 319
- • delivery up of infringing copies and plates, 321
- • interim and interlocutory injunctions, 317
- • permanent injunctions, 320
- • wide injunctions, 321
- profits, 349
- standing of plaintiff, 314

**REMEDIES FOR INFRINGEMENT OF INDUSTRIAL DESIGN**

- accounting for profits, 396
- damages, 395
- declarations of non-infringement, 396
- generally, 395

**REMEDIES FOR INFRINGEMENT  
OF INDUSTRIAL DESIGN —**  
(*cont'd*)

- interlocutory relief, 395
- permanent injunction, 396

**REMUNERATION, RIGHT TO**

- generally, 137
- requirements, 137
- reproduction for private use of musical works, sound recordings and performers' performances, 217
- royalties, 137
- royalties for retransmission of distant signals, 216
- sound recordings, 137
- sound recordings, equitable remuneration for, 214

**REPRODUCTION RIGHT, 187**

**RESTRAINT, RIGHT OF**

- generally, 136

**SOUND RECORDINGS, *see also*  
PROTECTABLE WORKS**

- conditions for copyright, 85
- copyright in, 208
- creators, 97
- defined, 208
- distribution rights, 209
- generally, 68
- ownership of copyright, 115
- remuneration, right to, 137, 214
- rental of sound recordings of musical works, 203
- rental of sound recordings of performance, 208
- soundtrack of cinematographic work, 69
- subsistence of copyright, 151
- videotape or DVD, 69
- WIPO Performances and Phonograms Treaty, 175

**SUBSISTENCE OF COPYRIGHT**

- abandonment, 153
- anonymous and pseudonymous works, 143
- cinematographic works, 147
- communication signals, 152
- generally, 141
- government works, 146
- performers' performances, 149
- photographs, 147
- posthumous works, 144
- sound recordings, 151
- works of joint authorship, 143, 146

**TRADEMARKS**

- copyright, overlap with, 154
- industrial design, overlap with, 397
- distinguishing guise, 398
- passing off, 398

**USERS' RIGHTS, *see also* DE-  
FENCES TO COPYRIGHT IN-  
FRINGEMENT**

- acts undertaken without motive of gain, 292
- backup copies, 293
- fair dealing, 289
- generally, 289
- non-commercial user generated works, 292
- reproduction for later listening or viewing, 293
- reproduction for private purposes, 292

**WORKS**

- authorization, 204
- bundle of separate rights, 184
- categories of rights, 186
- communication to public by telecommunication, 197
- conditions for copyright, 71
- copyright in, 184
- distribution, 204



WORKS — (*cont'd*)

- form of expression of ideas conveyed, 184
- media neutrality, 186
- public exhibition of an artistic work, 203
- public performance, 193
- publication, 193
- rental of computer programs, 203
- rental of sound recordings of musical works, 203
- reproduction right, 187