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ROBIC CANADIAN COPYRIGHT ACT ANNOTATED

Release No. 2, February 2025

This publication is a comprehensive reference work that provides guidance through annotation of the Act along with interpretation of case law and authorities. Special attention is given to software issues, the Copyright Board, and the interface between industrial designs, designs protected by copyrights and those not protected because of their functionality.

What's new in this Update

This release features updates to the following sections: § 79 Definitions, § 80 Copying for Private Use, § 81 Right of Remuneration, § 82 Liability to Pay Levy, § 84 Distribution of Levies Paid, § 85 Reciprocity, § 86 Where No Levy Payable, § 87 Regulations, and § 88 Right of Recovery.

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Highlights

§ 79 Definitions—§ 6.1 Canada—The case law in this section has been updated in this release. The following is an example of a recent case added to this section:

CPCC—Private Copying Tariff (2022-2024), 2021 CarswellNat 5951 (Cop Bd; 2021-12-17), the Board.

[15] After reviewing court decisions and reference resources, and consideration of the principles of statutory interpretation, including the purpose of the regime, the Board concluded that “ordinarily” bore a connotation of consistency and regularity rather than quantity or frequency. As such, for an activity to be ordinary, it did not have to be a person’s main activity, as long it was an activity that was not rare, abnormal, or minimal. [Fn7 Private Copying (1999-2000) (17 December 1999), online: Copyright Board [Private Copying (1999–2000, at 29)]

[16] Applying this broad interpretation to the context of the Act, the Board concluded that ordinary use, as referred to in the definition of audio recording medium, meant that only those media clearly not being used to copy music would not be subject to a levy. Thus, the notion of ordinariness had to be interpreted as including all non-negligible uses. [Fn8 Private Copying (1999-2000) (17 December 1999), at 30)] The Board added that since the definition of audio recording medium referred to ordinary use by individual consumers, the analysis had to focus on those who use the medium rather than on those who use other media to copy music. [Fn9 Private Copying (1999-2000) (17 December 1999), online: Copyright Board [Private Copying (1999–2000, at 31)]

[...]

[18] The Board’s evaluation of evidence pertaining to private copying may comprise both qualitative and quantitative considerations. [...]

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