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### **FOX ON CANADIAN LAW OF COPYRIGHT AND INDUSTRIAL DESIGNS, 4<sup>th</sup> EDITION**

**John S. McKeown**

**Release No. 2, April 2024**

This comprehensive statement of Canadian law and practice has been the bedrock of Canadian copyright research and argument for more than half a century.

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This release features updates to case law and commentary in Chapters 3 (Canadian Copyright Legislation), Chapter 7 (Literary Works), Chapter 21 (Infringement of Copyright), Chapter 24 (Civil Remedies for Infringement of Copyright), Chapter 26 (the Copyright Board), Chapter 27 (Collective Administration of Performing Rights and of Communication Rights), and Chapter 32 (Breach of Confidence).

## Highlights

- **Chapter 3. Canadian Copyright Legislation — Canadian Legislative Reform — Other Legislative Issues — The Online Streaming Act** — Order Issuing Directions to the CRTC (Sustainable and Equitable Broadcasting Regulatory Framework) SOR 2023-239 in force December 18, 2023.
- **Chapter 7. Literary Works — Permanent Character-Fixation** — In *THI Systems Ltd v. Sheridan* [2023] EWCA Civ 1354, the UKCA agreed that a graphical user interface which enables communication between the computer program in use and a user can be protected as an artistic work, independently from the software which created it if the requirements relating to originality of the graphical user interface are satisfied.
- **Chapter 24. Civil Remedies for Infringement Of Copyright** — In *Seismotech IP Holdings Inc. v. Apple Canada Inc.* 2023 FC 1649, 2023 CarswellNat 5323 (F.C.) at paras. 46-48. the court reviewed the test for granting a Norwich order as discussed above but refused to grant the order sought for two reasons. First, the plaintiff had not raised a “bona fide” claim, because its statement of claim failed to provide any detail of the alleged infringement of its patents and the evidence provided on the motion did little to fill this gap. Second, it would not be in the public interest to allow the action to proceed in a manner that will effectively deprive the defendants of access to justice and any meaningful manner of defending the action. The court was not aware of any realistic manner of providing individual consumers with adequate legal representation in the defence of a complex claim of patent infringement that would be proportionate to their own potential liability. The plaintiff also explicitly declined to attempt to certify the action as a reverse class action.
- **Chapter 26. The Copyright Board** — Includes and updated discussion of the Board’s jurisdiction.
- **Chapter 32. Breach of Confidence** — In a non-employment context, the treatment of “know-how” may be different and such knowledge may be protected as confidential information if the relevant requirements are satisfied. *7868073 Canada Ltd. v. 1841978 Ontario Inc.*, 2022 ONSC 4557, 2022 CarswellOnt 19719 (Ont. S.C.J. [Commercial List]) at para. 170.

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