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ROBIC CANADIAN COPYRIGHT ACT ANNOTATED

Release No. 8, August 2026

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 2W2. Work and 2.5. What Constitutes Rental.

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Highlights

2W2. Work—§ 2W2:6.0 Case Law—6.1 *Canada*—6.1.2 Titles—The following is an excerpt from this section—

Rai v. Meta Platforms, Inc., 2024 CarswellBC 2234 (B.C. S.C.; 2024-08-02) Forth J.

> [54] Further, I accept that the plaintiff has not copyrighted the name "Bobby Dazzler" as provided for in Winkler v. Hendley, 2021 FC 498 at para. 147:
>
> [147] As the plaintiffs point out, the definition of "work" in section 2 of the Copyright Act provides that a "work includes the title thereof when such title is original and distinctive." At the same time, this does not make the title a separate work. Rather, it forms only part of the work as a whole: Francis, Day & Hunter Ltd v Twentieth Century Fox Corp Ltd et al, [1939] 4 DLR 353, 1939 CanLII 276 (UK JCPC) at pp 359–360.
>
> [55] It is clear that simply the name "Bobby Dazzler" is not an original name, nor is it an original work in which copyright subsists: Albo v. The Winnipeg Free Press et al., 2019 MBQB 34 at para. 63(e).

Cavan Speciality Advertising Ltd. v. Les Promotions Universelles Inc., 2025 CarswellNat 1268 F.C.; 2025-01-31) Gascon J.

> [81] In the same vein, the Cavan Design's tagline could be covered by copyright protection in its capacity as the title of the work. The definition of "work" at section 2 of the Copyright Act provides that a "work includes the title thereof when such title is original and distinctive." While this does not make the title a separate work — it is rather part of the work as a whole, it may form a part or the entirety of the "substantial part" reproduced, thus contributing to a finding of infringement (Winkler v Hendley, 2021 FC 498 at paras 147, 151 [Winkler], citing Francis, Day & Hunter Ltd v Twentieth Century Fox Corp Ltd et al, 1939 CanLII 276 (UK JCPC), [1939] 4 DLR 353 at pp 359–360). In the words of my colleague, Justice Nicholas McHaffie, "[w]hile the title may be qualitatively important in the determination of whether there is a substantial taking, the issue remains whether there has been a substantial taking of the work as a whole, rather than simply a substantial portion of the title" (Winkler at para 151).

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