

Federal Court



Cour fédérale

Date: 20160329

Docket: T-646-15

Citation: 2016 FC 294

Ottawa, Ontario, March 29, 2016

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

CANADIAN STANDARDS ASSOCIATION

Applicant

and

**P.S. KNIGHT CO. LTD. AND GORDON
KNIGHT**

Respondents

AMENDED JUDGMENT AND REASONS

I. Introduction

[1] This is an application under Rules 61 and 300 of the *Federal Court Rules*, SOR/98-106, and the *Copyright Act*, RSC 1985, c C-42 [the *Copyright Act*] by the Canadian Standards Association [“the CSA”] for the following relief relating to an alleged copyright infringement by

P.S. Knight Co. Ltd. and Gordon Knight [collectively “Knight”] of the 2015 version of the *Canadian Electrical Code Part I* [“the CSA Code” or “the Code”]:

- (a) a declaration that Knight has infringed copyright in the CSA Code;
- (b) an injunction restraining Knight (and related companies, employees, officers, directors, etc.) from doing any act in relation to the CSA Code (specifically those enumerated in the *Copyright Act* sections 3 and 27) without permission;
- (c) delivery up of all copies of the alleged copy pursuant to section 38 of the *Copyright Act*;
- (d) damages including profits, or in the alternative, an award of statutory damages in the sum of \$20,000 per work infringed pursuant to section 38.1 of the *Copyright Act*;
- (e) aggravated, exemplary and punitive damages;
- (f) pre- and post-judgment interest;
- (g) costs; and
- (h) such further and other relief as this Honourable Court may deem just.

II. Background

[2] The Applicant CSA is a standards development, testing and certification organization with headquarters in Rexdale, Ontario that develops standards in fields such as health and safety, preserving the environment and facilitating trade. The CSA claims copyright ownership in its publication, the 2015 CSA Code. The 23rd edition of the CSA Code, published in early 2015, is the subject of this application and is allegedly being infringed [the “2015 CSA Code”].

[3] The Respondents, P.S. Knight Co Ltd. [“Knight Co”] and its president and director Gordon Knight are commercial competitors of the CSA based in Alberta. Prior to the company’s

incorporation in British Columbia in 1985, Peter Knight, Gordon Knight's father, published the *Electrical Code Simplified* book [the "ECS"] and publication of subsequent editions of this book has continued under Knight Co.

[4] Peter Knight is no longer involved with Knight Co, and due to health reasons did not provide evidence in this proceeding.

[5] The CSA Code and the ECS are different publications that serve different purposes. The CSA Code is a complete code of electrical standards, some 700 pages in length, while the ECS is an annotated, shorter, simplified version of those standards, and is intended to be an instructional guide. The ECS quotes excerpts from the CSA Code.

[6] The CSA Code is written in consultation with various stakeholders. The CSA has obtained assignments of copyright from a number of authors since at least 2010, although Knight disputes the completeness of these assignments. Editions of the Code are repetitive and based on previous versions, and therefore Knight's position is that the CSA did not obtain valid copyright over the entire work, given the lack of assignments from earlier contributors. Further, Knight asserts that since 2010 not all contributors as authors have provided written assignments.

[7] The CSA has registered the copyright for the 2015 edition of the Code and a Copyright notice is made by the CSA in the publication.

[8] When the first ECS book was developed in the 1960's by Peter Knight, he had a good working relationship with CSA: he was provided with advanced copies of changes to the CSA Code, and he in turn provided CSA with copies of the ECS. The ECS focussed on the residential market in British Columbia.

[9] In letters dated November and December 1968, the CSA advised Peter Knight to avoid any infringement of the CSA's copyright in the Code and to ensure that attribution of CSA copyright ownership of the excerpts from the CSA Code used in the ECS was included in Peter Knight's versions of the ECS.

[10] In one of the letters, Peter Knight wrote that he was "very careful to avoid any infringement of C.S.A.'s copyright".

[11] In 1969, a letter sent to Peter Knight gave him permission to quote from the CSA Code, provided he recognizes the CSA as the source. This permitted right to use excerpts from the Code was purportedly assigned from Peter Knight to Knight Co after it was incorporated in the 1970's to 1980's. The CSA did not have knowledge or approve of this assignment at the time of the alleged assignment. The only evidence of such an assignment was given by Gordon Knight in his affidavit.

[12] In 1974, the ECS was expanded to include the industrial market and the ECS was split into two books: ECS Book I covered residential electrical code and ECS Book II covered industrial electrical code.

[13] The CSA began to sell its own annotated version of the Code in 1990.

[14] In 2004, negotiations between Knight Co and the CSA resulted in an offer by the CSA to purchase Knight Co for what Gordon Knight claimed was “a mere 20% of the value of Knight Co.’s inventory at the time of the offer”. The offer was refused.

[15] Following these negotiations, the relationship between the parties deteriorated. The CSA stopped providing advanced copies of the CSA Code to Knight and sent letters reminding Knight of their copyright in the Code. By letter dated July 12, 2007, the CSA offered to grant a license to Peter Knight personally to reproduce excerpts from the Code, subject to certain conditions, that could not be assigned or transferred to any other person or legal entity. The proposed license terms were “limited, personal (to P. Knight), revocable, non-transferable, non-divisible, non-sublicensable, non-assignable, non-exclusive, royalty free and consideration free”, constituting a “bare permission”.

[16] No response to that letter was received by the CSA.

[17] Peter Knight retired in 2010 and sold Knight Co to Gordon Knight. In 2011, the CSA wrote to Knight Co to make clear that any license that may have existed was terminated.

[18] The next edition of the CSA Code was published in 2012. The CSA learned that Knight was intending to put out a new version of the ECS, which is the subject of a related action in Court file T-1178-12, yet to be scheduled for a hearing. After that action was commenced, the

relationship between the parties worsened, and Gordon Knight started a website that criticizes the CSA. The CSA launched a defamation proceeding in the Ontario Superior Court, which is currently pending.

[19] The CSA Code has been incorporated by reference in the laws of most, if not all, provinces. In particular, Knight points to the *Electrical Code Regulations*, Alta Reg 209/2006, s 3(a) made under the *Safety Codes Act*, RSA 2000, c S-1. Those regulations declare the CSA Code in force in the Province of Alberta in respect of electrical systems. In Ontario, the CSA Code has been declared in force, with some amendments, and other provinces have also adopted the CSA Code into their legislation.

[20] In 2013, Gordon Knight lobbied a Member of Parliament to ask questions in the House of Commons relating to how the federal government viewed the CSA. In response, the Minister of Industry stated that the CSA is not a regulatory entity, but rather a not-for-profit-membership-based association. The Minister also stated that standards belong to the CSA and that they may need to be purchased unless an agreement is made with the CSA for free public access.

[21] Knight has now produced and threatens to distribute, as of March 1, 2016, what the CSA claims is essentially an identical copy of the CSA Code [“the Knight Code”]. This is the alleged infringing work at issue. Knight does not deny that the Knight Code is a substantial copy of the CSA Code.

[22] Knight has admitted that Knight's interest in publishing the Knight Code is purely commercial, and offers to sell the Knight Code at about one third of the price the CSA charges for the CSA Code.

[23] The evidence in this application consists of two affidavits and cross-examinations on those affidavits. The CSA's affiant is Doug Morton, Director, Government Relations and Standards Policy & Accreditation, CSA Standards. Knight's affiant is Gordon Knight, President, owner, and sole shareholder of Knight Co.

III. Relevant legislation

[24] The relevant provisions of the Act are attached hereto as Annex A.

IV. Issues

[25] The issues are:

- A. Does copyright subsist in the 2015 version of the CSA Code?
- B. If copyright does subsist in the 2015 CSA Code, does the CSA own valid copyright in that Code?
- C. Does Knight have a defence either:
 - i. because of a license, or
 - ii. because the reproduction is a fair dealing?
- D. What, if any, remedies should be granted to CSA?

V. Analysis

A. *Does copyright subsist in the 2015 version of the CSA Code?*

[26] Knight attacks the subsistence of copyright in the CSA Code on a number of grounds.

(1) Section 53 presumption of the *Copyright Act*

[27] Knight's position is that the CSA cannot rely on the presumption in section 53 of the *Copyright Act*, given that the registration is dated three days after this action was commenced, and three months after publication of the 2015 CSA Code. Accordingly, Knight argues that there is no evidence that registration was obtained in the normal course of business.

[28] The CSA relies on the presumptions in sections 34.1 and 53 of the *Copyright Act* and cites *Planification-Organisation-Publications Systèmes (POPS) Ltée v 9054-8181 Québec Inc*, 2014 FCA 135 at para 68 [*POPS*], which states that the Court can rely on the certificate of registration as evidence of a copyright in the absence of credible evidence to the contrary. The CSA states that they obtained the copyright registration in the ordinary course of business and not on the eve of trial, a tactic criticised by the Federal Court of Appeal in *CCH Canadian Ltd v Law Society of Upper Canada*, 2004 SCC 13 [*CCH*].

[29] I find that the CSA is not entitled to rely on the presumptions of validity and ownership under the copyright registration obtained. The Copyright was not registered until three days after this application was started. No previous copyright registration in earlier versions was made.

This registration of the 2015 CSA Code can hardly be said to have been made in the ordinary course of business.

[30] That being said, even without any presumption arising from registration, for validity or ownership, section 34.1(2)(a) of the *Copyright Act* provides that if the name of the author is indicated on the work in the usual manner, there is a presumption that the author owns valid copyright. The inside cover of the CSA Code contains such information and given the evidence discussed below, I find that the CSA has the benefits of the presumption of ownership, and has also proven valid copyright subsisting in the 2015 CSA Code.

(2) Skill and judgment

[31] Knight argues as well that the CSA did not exercise sufficient skill and judgment in compiling the works of others in the form of the Code and that the Code is not sufficiently original to justify copyright protection. In *More v Bauer Nike Hockey Inc*, 2010 BCSC 1395 [Bauer], the British Columbia Supreme Court discussed at paragraphs 77-83 that the CSA develops their standards by using technical committees consisting of volunteer members, to which the CSA provides non-voting, consultative or administrative support.

[32] However, the affidavit evidence of Mr. Morton demonstrates that developing the CSA Code does in fact involve significant skill and judgment (*CCH*, above, at para 16). Moreover, Peter Knight acknowledged copyright in a letter dated December 3, 1968, where he stated that in the development of the ECS he was “very careful to avoid any infringement of C.S.A.’s copyright.”

[33] Moreover, the 2015 CSA Code is an improvement over a previous work. An improvement is an original work and capable of separate copyright when the additions and improvements to a previous work are substantial (*DRG Inc v Datafile Ltd*, [1988] 2 FC 243 (FCTD); aff'd [1991] FCJ No 144 (FCA), quoting from Fox, *The Canadian Law of Copyright and Industrial Design*, (2nd ed 1967), at p. 4). The evidence of Mr. Morton is that thousands of hours went into the production of the latest edition of the CSA Code. This constitutes a substantial undertaking of skill and judgment. Given the evidence that the CSA has obtained the assignments from many, if not all, the authors who contributed to those improvements, the CSA owns the copyright in the current 2015 edition to the extent these authors' additions and improvements are manifest in the 2015 CSA Code.

(3) Legislation Bar

[34] Knight also argues that the CSA is a government organization and that because the Code is incorporated by reference into the Provincial laws, the Crown owns the copyright, not the CSA. Knight relies on the decision in *Bauer*, above, where the B.C. Supreme Court held, at paragraphs 72-73, that the CSA is accredited and supervised by the Standards Council of Canada, a federal Crown corporation.

[35] The Program Requirements for the accreditation of Standards Development Organizations and for the Approval of National Standards of Canada states that standards development organizations (including the CSA) must have a process for standards development and keep the Standards Council updated on these procedures. The standards must only be published with approval in accordance with the requirements of the standards development

organization. As such, Knight submits the CSA is controlled by the Standards Council and section 12 of the *Copyright Act* does apply, as Ontario published the Code.

[36] In reply, the CSA points out that the Ontario publication is an amended version and not the CSA Code in issue, and that it is actually the CSA who publishes even the Ontario Code. The CSA also notes that the provinces seek permission from the CSA before referencing or reproducing the CSA Code. Section 12 of the *Copyright Act* provides that ownership of copyright belongs to Her Majesty when it “is, or has been, prepared or published by or under the direction or control of Her Majesty or any government department”. Absent these conditions, copyright does not belong to the Crown.

[37] The CSA is not a government organization or under government control. Mr. Morton provides cogent evidence that the CSA is an independent association in the form of a corporate profile. Moreover, the House of Commons has commented that the CSA is independent of the government. Provincial governments also ask permission from the CSA before referencing or reproducing the CSA Code.

[38] Further, there is no evidence that any level of the Crown claims ownership. In addition to the statements made in the House of Commons, Gordon Knight has provided no evidence that the Crown can be reasonably found to own the 2015 CSA Code. There is also no evidence the CSA is controlled by any level of government, or that the standards in the CSA Code are not approved by the Standards Council of Canada. The CSA is accredited by the Standards Council, which is different than being under their control.

[39] Copyright is a creature of statute, and the rights and remedies provided in the *Copyright Act* are exhaustive (*CCH*). Copyright in the CSA Code therefore only belongs to the Crown if the requirements set out in section 12 of the *Copyright Act* are met; namely, the Code must have been “prepared or published by or under the direction or control of Her Majesty or any government department”, which is simply not the case. Reference to the CSA Code in legislation does not constitute preparation or publishing by the government or under their direction.

[40] In considering the above evidence in light of the fact that the CSA has undertaken significant effort and expense to produce and publish the CSA Code, it would be contrary to a purposive construction of the *Copyright Act* to strip the CSA of its rights in the 2015 CSA Code simply because certain provinces have incorporated it into law.

B. *Public Policy*

[41] Knight also advances a public policy argument. In *R v Edwards, A Unit of SPX Canada Inc*, 2002 CarswellOnt 2083 (WL Can) (Ont Ct J) [*Edwards*], the Ontario Court of Justice held the CSA Code is law and that a violation of it would constitute an offence. In *BC Jockey Club v Standen (Winbar Publications)*, (1985) 22 DLR (4th) 467 (BC CA), the concurring judgement added that there may be situations where material becomes part of the public domain: a judge’s reasons may be such an example. By extension, Knight argues that law incorporated by reference would form part of the public domain and could not be copyrighted. Knight also points to an Order of the federal government that anyone may, without charge or request for permission, reproduce federal law (*Reproduction of Federal Law Order*, SI/97-5, (1997) C Gaz II, 444).

[42] The CSA has invested significant resources into developing the Code. While the amount of money they recover in selling the Code may exceed those costs, excess revenue is used in the development of other Codes, an activity that is in the public interest of society. Further, the CSA Code is a voluntary standard and legislatures are not required to enact it as law.

[43] Not only has the federal Crown acknowledged in open Parliament that the CSA is the owner of copyright in its Code and other standards, even when referenced in legislation, but there is also no evidence whatsoever that the Crown in the Right of Alberta, or any other Province, claims to own copyright in the CSA Code. Provincial government authorities request the CSA's permission to copy portions of the CSA Code.

C. *If copyright does subsist in the 2015 CSA Code, does the CSA own valid copyright in that Code?*

[44] Knight submits that the copyright in the CSA Code belongs to third parties. The CSA is a corporation that only facilitates creation of the Code. Accordingly, the only way the CSA owns copyright is if it was assigned to the CSA or if it was developed by employees. Given it was developed by volunteer committees and there was no evidence of assignment in the 83 years preceding 2010, only 5% of the authors have been named.

[45] Knight provides two examples of unnamed authors. Gordon Knight affirmed that his father had contributed to the CSA Code and argues that the Court should infer this is true, even in the absence of Peter Knight's testimony. The second example given is Ms. Annie Pereira, who is acknowledged in the front of the 2012 CSA Code for her contributions in eight editions.

However, the evidence fails to prove either person contributed as author; there is no non-hearsay evidence regarding Peter Knight's contribution, and Ms. Pereira's contributions are not specified.

[46] Knight relies primarily on three cases to have the Court find that the CSA does not own copyright. In *Kennedy v Ruminski*, 2014 FC 526, the parties had entered into a written agreement that provided for a sharing of intellectual property relating to software programs. The respondent employee obtained copyright registrations relating to software that did not reflect the applicant employer's interest and refused to tell the applicant what the certificate of registration covered. In discussing the evidentiary burden, the Court found that the applicant had established an interest in the certificates, and therefore the respondent was required to show that the certificates only covered the portion of the work that pre-dated his employment. The respondent could not do so, and the Registrar of Copyrights was directed to amend the register to reflect joint ownership in the software.

[47] In *POPS*, above, the Court found that a certificate could be struck because it contained the incorrect first author. In *Kelley Estate v Roy*, 2002 FCT 950, the Court expunged a registration where the balance of the evidence overcame the presumptions in the *Copyright Act*.

[48] Knight invites the Court to draw an adverse inference from all the evidence, including the lack of assignments, and either expunge the certificate of registration relied upon by the Applicant or at least discount the certificate as evidence of copyright. In reply, the CSA submits that at most the above case law relied on by Knight would not invalidate the copyright, but only

relate to the question of joint ownership. While the certificate may need to be amended, it does not mean that the CSA does not have valid ownership of copyright in the 2015 CSA Code.

[49] Knight also states that because they have raised arguments about the propriety of the assignment evidence, which consists only of a bald statement by Mr. Morton, the onus is on the CSA to produce the assignments. Knight relies on *Eli Lilly & Co v Nu-Pharm Inc*, [1997] 1 FC 3 (FCA) [*Eli Lilly*] for the proposition that while the general rule is that the party who asserts must prove, the onus shifts if the subject-matter lies within the knowledge of the other party. As the CSA has not produced the affidavits proving assignment, the Court should draw an adverse inference.

[50] In reply, the CSA submits that the purpose of such an evidentiary onus is so that the party having control over the documents is obliged to produce them. In this case, the CSA had provided the assignments to Knight in discovery in related litigation, and because Knight could have just as easily presented them as evidence, there should be no adverse inference drawn.

[51] Mr. Morton has affirmed that the CSA has obtained executed assignments from those authors who contributed to improvements in the 2012 and 2015 editions, which were provided to Knight in discovery. The only evidence to the contrary provided by Knight relates to uncertain and unsubstantiated assertions that Peter Knight, and possibly Annie Pereira, may have contributed to earlier editions of the CSA Code, although neither contributed to the 2015 CSA Code. Knight has not presented any reliable evidence to challenge the authorship provided by the CSA of additions to the 2015 CSA Code made by authors who assigned their rights in their

contributions to the CSA in order to trigger reversing the onus as discussed in *Eli Lilly*, above. Even if Knight had provided some evidence, disclosure of the assignments to Knight during discovery makes Knight the most appropriate party to have put those facts and arguments into evidence, and they failed to do so.

[52] The CSA argues that there is no credible evidence to dispute the CSA's ownership. Gordon Knight's evidence is qualified with phrases such as "it is my belief" and "it appears", and contains no direct personal knowledge. Gordon Knight acknowledged that his belief was based on "intellectual and experiential understanding", not on any direct or substantial facts. Gordon Knight was not present at the drafting of the CSA Code and is not in a position to be able to question the assignments. I agree that based on the evidence before the Court, the CSA has established its ownership of copyright in the 2015 CSA Code, at least insofar as the subject matter contributed by the authors to the 2015 CSA version of the Code was assigned to the CSA.

[53] Accordingly, I find that on a balance of probabilities there is no reasonable evidence before the Court to dispute the validity of ownership by the CSA in the original content in the 2015 CSA Code assigned to the CSA.

D. *Does Knight have a defence (1) because of a Licence, or (2) because the Knight Code reproduction is fair dealing?*

(1) The Licence

[54] Knight believes that the correspondence between the CSA and Peter Knight in the 1960's constitutes a subsisting perpetual license to reproduce any version of the CSA Code. Knight

argues that because it was granted for consideration, the dissemination and promotion of the Code cannot be unilaterally revoked.

[55] I disagree. The letters (the purported license) only allowed Peter Knight to quote from the Code and not to reproduce it in its entirety. They also do not relate to future versions of the Code and there is no evidence of any valid license in writing having been assigned to Knight Co or Gordon Knight. Even if there were a license, the CSA put Knight on notice that any such license would be terminated at least as early as 2005 and repeatedly thereafter.

[56] Moreover, as the CSA rightfully points out, Peter Knight's purported letters with the CSA in 1969:

- (a) are addressed to a non-party, Peter Knight;
- (b) do not purport to confer on Peter Knight any right to assign his alleged permission to these Respondents, nor was the CSA ever provided with notice that Peter Knight purported to assign it, nor is there any written record that such assignment ever took place;
- (c) pertain to a handmade booklet Peter Knight was making in 1969 and not a copy-cat Code book of these Respondents in 2015/2016;
- (d) the 1969 letters at best provided a permission to "quote from" CSA's 1969 Code provided the source is properly given; not to "copy the entirety of" CSA's 2015 Code while passing it off as their work;
- (e) the 1969 letters are not capable of being read as a perpetual and non-revocable license. The CSA provided notice of termination in both 2007 and 2011 to Knight, which constitutes reasonable notice of termination for a permission, particularly one given without consideration in return.

[57] There is no valid defence of licence.

(2) Fair Dealing

[58] Knight also submits it is entitled to the defence of fair dealing. Knight advocated for a broad interpretation of research and private study and submits that the Court should look to the ultimate user: it is fair dealing because end users would use the CSA Code to research and understand the law. As well, given that research can be conducted with a view to profit, the commercial aspect is irrelevant, and due to the high CSA revenues from the 2015 Code relative to the cost of producing it, the CSA will not be adversely affected.

[59] Knight cannot rely on fair dealing as the allegedly infringing Knight Code work is a complete copy of the 2015 CSA Code. One of the considerations enunciated by the Supreme Court of Canada in *CCH*, above, was the extent of the copying. When 100% of a work is copied, the dealing cannot be fair. Further, the argument that it is for educational purposes has no merit. The Knight Code is clearly a competitive commercial undertaking by Knight to compete with the 2015 CSA Code, and they have no valid claim to fair dealing.

VI. Remedies

[60] The CSA is only entitled to damages from the date following the date of the written assignments from the authors of the 2015 CSA Code (*Denturist Group of Ontario v Denturist Association of Canada*, 2014 FC 989 at para 68).

[61] Nevertheless, given that I find that copyright subsists in the 2015 CSA Code, that the CSA owns the copyright in that Code, and that Knight has admitted it produced the Knight Code

knowingly and wilfully as a substantial infringement of the 2015 CSA Code, I find that the CSA is entitled to:

- (a) a permanent injunction, enjoining the Respondents from infringing the CSA's copyright in the 2015 CSA Code;
- (b) an order for delivery up of all copies of the Knight Code produced to the date of this judgment or hereafter, and any plates or electronic files of the Knight Code;
- (c) statutory damages in the amount of \$5,000, given the wilful and knowing conduct of the Respondent Knight Co.

[62] While Gordon Knight is the sole directing mind of the corporate Respondent and responsible for day-to-day activities of the Respondent Corporation, there is no evidence before the Court that he acted outside his duties as a director and officer of PS Knight Co Ltd. and no real argument was presented at the hearing on this issue. I do not find personal liability by Gordon Knight, but his public commentary on the CSA, which is the subject matter of a separate law suit in the Ontario Superior Court, is a matter for that Court to decide and this decision should have no bearing on that case independent of the findings of copyright ownership and infringement.

[63] Costs are awarded to the CSA. If no agreement on costs can be reached between the parties, I ask that each party submit their written submissions on costs within two (2) weeks of the date of this Judgment.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. PS Knight Co Ltd has infringed copyright in the 2015 CSA Code;
2. PS Knight Co Ltd, its officers, directors, employees and any related companies under its control, are hereby enjoined from any reproduction, distribution, sale of the Knight Code, or any other act that contravenes the CSA's copyright in the 2015 CSA Code, without the express written permission of the CSA;
3. PS Knight Co Ltd shall deliver up to CSA all copies of the Knight Code produced to the date of this judgment or hereafter, and any plates or electronic files of the Knight Code;
4. PS Knight Co Ltd shall pay statutory damages to the CSA in the amount of \$5,000, pursuant to section 38.1 of the *Copyright Act* together with pre-and-post-judgment interest;
5. Costs to the CSA.

"Michael D. Manson"

Judge

ANNEX "A"

Copyright Act (RSC, 1985, c C-42)

Copyright and Moral Rights in Works

Copyright

Copyright in works

3 (1) For the purposes of this Act, copyright, in relation to a work, means the sole right to produce or reproduce the work or any substantial part thereof in any material form whatever, to perform the work or any substantial part thereof in public or, if the work is unpublished, to publish the work or any substantial part thereof, and includes the sole right

- (a) to produce, reproduce, perform or publish any translation of the work,
- (b) in the case of a dramatic work, to convert it into a novel or other non-dramatic work,
- (c) in the case of a novel or other non-dramatic work, or of an artistic work, to convert it into a dramatic work, by way of performance in public or otherwise,
- (d) in the case of a literary, dramatic or musical work, to make any sound recording, cinematograph film or other contrivance by means of which the work may be mechanically reproduced or performed,
- (e) in the case of any literary, dramatic, musical or artistic work, to reproduce, adapt and publicly present the work as a cinematographic work,
- (f) in the case of any literary, dramatic, musical or artistic work, to communicate the work to the public by telecommunication,
- (g) to present at a public exhibition, for a purpose other than sale or hire, an artistic work

Droit d'auteur et droits moraux sur les oeuvres

Droit d'auteur

Droit d'auteur sur l'oeuvre

3 (1) Le droit d'auteur sur l'oeuvre comporte le droit exclusif de produire ou reproduire la totalité ou une partie importante de l'oeuvre, sous une forme matérielle quelconque, d'en exécuter ou d'en représenter la totalité ou une partie importante en public et, si l'oeuvre n'est pas publiée, d'en publier la totalité ou une partie importante; ce droit comporte, en outre, le droit exclusif :

- a) de produire, reproduire, représenter ou publier une traduction de l'oeuvre;
- b) s'il s'agit d'une oeuvre dramatique, de la transformer en un roman ou en une autre oeuvre non dramatique;
- c) s'il s'agit d'un roman ou d'une autre oeuvre non dramatique, ou d'une oeuvre artistique, de transformer cette oeuvre en une oeuvre dramatique, par voie de représentation publique ou autrement;
- d) s'il s'agit d'une oeuvre littéraire, dramatique ou musicale, d'en faire un enregistrement sonore, film cinématographique ou autre support, à l'aide desquels l'oeuvre peut être reproduite, représentée ou exécutée mécaniquement;
- e) s'il s'agit d'une oeuvre littéraire, dramatique, musicale ou artistique, de reproduire, d'adapter et de présenter publiquement l'oeuvre en tant qu'oeuvre cinématographique;
- f) de communiquer au public, par

created after June 7, 1988, other than a map, chart or plan,

(h) in the case of a computer program that can be reproduced in the ordinary course of its use, other than by a reproduction during its execution in conjunction with a machine, device or computer, to rent out the computer program,

(i) in the case of a musical work, to rent out a sound recording in which the work is embodied, and

(j) in the case of a work that is in the form of a tangible object, to sell or otherwise transfer ownership of the tangible object, as long as that ownership has never previously been transferred in or outside Canada with the authorization of the copyright owner,

and to authorize any such acts.

Simultaneous fixing

(1.1) A work that is communicated in the manner described in paragraph (1)(f) is fixed even if it is fixed simultaneously with its communication.

Where copyright belongs to Her Majesty

12 Without prejudice to any rights or privileges of the Crown, where any work is, or has been, prepared or published by or under the direction or control of Her Majesty or any government department, the copyright in the work shall, subject to any agreement with the author, belong to Her Majesty and in that case shall continue for the remainder of the calendar year of the first publication of the work and for a

télécommunication, une oeuvre littéraire, dramatique, musicale ou artistique;

g) de présenter au public lors d'une exposition, à des fins autres que la vente ou la location, une oeuvre artistique — autre qu'une carte géographique ou marine, un plan ou un graphique — créée après le 7 juin 1988;

h) de louer un programme d'ordinateur qui peut être reproduit dans le cadre normal de son utilisation, sauf la reproduction effectuée pendant son exécution avec un ordinateur ou autre machine ou appareil;

i) s'il s'agit d'une oeuvre musicale, d'en louer tout enregistrement sonore;

j) s'il s'agit d'une oeuvre sous forme d'un objet tangible, d'effectuer le transfert de propriété, notamment par vente, de l'objet, dans la mesure où la propriété de celui-ci n'a jamais été transférée au Canada ou à l'étranger avec l'autorisation du titulaire du droit d'auteur.

Est inclus dans la présente définition le droit exclusif d'autoriser ces actes.

Fixation

(1.1) Dans le cadre d'une communication effectuée au titre de l'alinéa (1)f), une oeuvre est fixée même si sa fixation se fait au moment de sa communication.

Quand le droit d'auteur appartient à Sa Majesté

12 Sous réserve de tous les droits ou privilèges de la Couronne, le droit d'auteur sur les oeuvres préparées ou publiées par l'entremise, sous la direction ou la surveillance de Sa Majesté ou d'un ministère du gouvernement, appartient, sauf stipulation conclue avec l'auteur, à Sa Majesté et, dans ce cas, il subsiste jusqu'à la fin de la cinquantième

period of fifty years following the end of that calendar year.

Infringement of Copyright and Moral Rights and Exceptions to Infringement

Infringement of Copyright

General

Infringement generally

27 (1) It is an infringement of copyright for any person to do, without the consent of the owner of the copyright, anything that by this Act only the owner of the copyright has the right to do.

Secondary infringement

(2) It is an infringement of copyright for any person to

- (a) sell or rent out,
- (b) distribute to such an extent as to affect prejudicially the owner of the copyright,
- (c) by way of trade distribute, expose or offer for sale or rental, or exhibit in public,
- (d) possess for the purpose of doing anything referred to in paragraphs (a) to (c), or
- (e) import into Canada for the purpose of doing anything referred to in paragraphs (a) to (c),

a copy of a work, sound recording or fixation of a performer's performance or of a communication signal that the person knows or should have known infringes copyright or would infringe copyright if it had been made in Canada by the person who made it.

Secondary infringement — exportation

(2.11) It is an infringement of copyright for any person, for the purpose of doing anything

année suivant celle de la première publication de l'oeuvre.

Violation du droit d'auteur et des droits moraux, et cas d'exception

Violation du droit d'auteur

Règle générale

Règle générale

27 (1) Constitue une violation du droit d'auteur l'accomplissement, sans le consentement du titulaire de ce droit, d'un acte qu'en vertu de la présente loi seul ce titulaire a la faculté d'accomplir.

Violation à une étape ultérieure

(2) Constitue une violation du droit d'auteur l'accomplissement de tout acte ci-après en ce qui a trait à l'exemplaire d'une oeuvre, d'une fixation d'une prestation, d'un enregistrement sonore ou d'une fixation d'un signal de communication alors que la personne qui accomplit l'acte sait ou devrait savoir que la production de l'exemplaire constitue une violation de ce droit, ou en constituerait une si l'exemplaire avait été produit au Canada par la personne qui l'a produit :

- a) la vente ou la location;
- b) la mise en circulation de façon à porter préjudice au titulaire du droit d'auteur;
- c) la mise en circulation, la mise ou l'offre en vente ou en location, ou l'exposition en public, dans un but commercial;
- d) la possession en vue de l'un ou l'autre des actes visés aux alinéas a) à c);
- e) l'importation au Canada en vue de l'un ou l'autre des actes visés aux alinéas a) à c).

referred to in paragraphs (2)(a) to (c), to export or attempt to export a copy — of a work, sound recording or fixation of a performer's performance or of a communication signal — that the person knows or should have known was made without the consent of the owner of the copyright in the country where the copy was made.

Exception

(2.12) Subsection (2.11) does not apply with respect to a copy that was made under a limitation or exception under this Act or, if it was made outside Canada, that would have been made under such a limitation or exception had it been made in Canada.

Presumptions respecting copyright and ownership

34.1 (1) In any civil proceedings taken under this Act in which the defendant puts in issue either the existence of the copyright or the title of the plaintiff to it,

(a) copyright shall be presumed, unless the contrary is proved, to subsist in the work, performer's performance, sound recording or communication signal, as the case may be; and

(b) the author, performer, maker or broadcaster, as the case may be, shall, unless the contrary is proved, be presumed to be the owner of the copyright.

Where no grant registered

(2) Where any matter referred to in subsection (1) is at issue and no assignment of the copyright, or licence granting an interest in the

Violation à une étape ultérieure — exportation

(2.11) Constitue une violation du droit d'auteur l'exportation ou la tentative d'exportation, en vue de l'un ou l'autre des actes visés aux alinéas (2)a) à c), de l'exemplaire d'une oeuvre, d'une fixation d'une prestation, d'un enregistrement sonore ou d'une fixation d'un signal de communication alors que la personne qui exporte ou tente d'exporter l'exemplaire sait ou devrait savoir que celui-ci a été produit sans le consentement du titulaire du droit d'auteur dans le pays où il a été produit.

Exception

(2.12) Le paragraphe (2.11) ne s'applique pas à l'exemplaire produit au titre d'une exception ou restriction prévue par la présente loi ni à celui produit à l'étranger qui, s'il avait été produit au Canada, l'aurait été au titre d'une telle exception ou restriction.

Présomption de propriété

34.1 (1) Dans toute procédure civile engagée en vertu de la présente loi où le défendeur conteste l'existence du droit d'auteur ou la qualité du demandeur :

a) l'oeuvre, la prestation, l'enregistrement sonore ou le signal de communication, selon le cas, est, jusqu'à preuve contraire, présumé être protégé par le droit d'auteur;

b) l'auteur, l'artiste-interprète, le producteur ou le radiodiffuseur, selon le cas, est, jusqu'à preuve contraire, réputé être titulaire de ce droit d'auteur.

Aucun enregistrement

(2) Dans toute contestation de cette nature, lorsque aucun acte de cession du droit d'auteur ni aucune licence concédant un intérêt dans le droit d'auteur n'a été enregistré sous l'autorité

copyright, has been registered under this Act,

(a) if a name purporting to be that of

(i) the author of the work,

(ii) the performer of the performer's performance,

(iii) the maker of the sound recording, or

(iv) the broadcaster of the communication signal

is printed or otherwise indicated thereon in the usual manner, the person whose name is so printed or indicated shall, unless the contrary is proved, be presumed to be the author, performer, maker or broadcaster;

(b) if

(i) no name is so printed or indicated, or if the name so printed or indicated is not the true name of the author, performer, maker or broadcaster or the name by which that person is commonly known, and

(ii) a name purporting to be that of the publisher or owner of the work, performer's performance, sound recording or communication signal is printed or otherwise indicated thereon in the usual manner,

the person whose name is printed or indicated as described in subparagraph (ii) shall, unless the contrary is proved, be presumed to be the owner of the copyright in question; and

(c) if, on a cinematographic work, a name purporting to be that of the maker of the cinematographic work appears in the usual manner, the person so named shall, unless the contrary is proved, be presumed to be the maker of the cinematographic work.

Recovery of possession of copies, plates

de la présente loi :

a) si un nom paraissant être celui de l'auteur de l'oeuvre, de l'artiste-interprète de la prestation, du producteur de l'enregistrement sonore ou du radiodiffuseur du signal de communication y est imprimé ou autrement indiqué, de la manière habituelle, la personne dont le nom est ainsi imprimé ou indiqué est, jusqu'à preuve contraire, présumée être l'auteur, l'artiste-interprète, le producteur ou le radiodiffuseur;

b) si aucun nom n'est imprimé ou indiqué de cette façon, ou si le nom ainsi imprimé ou indiqué n'est pas le véritable nom de l'auteur, de l'artiste-interprète, du producteur ou du radiodiffuseur, selon le cas, ou le nom sous lequel il est généralement connu, et si un nom paraissant être celui de l'éditeur ou du titulaire du droit d'auteur y est imprimé ou autrement indiqué de la manière habituelle, la personne dont le nom est ainsi imprimé ou indiqué est, jusqu'à preuve contraire, présumée être le titulaire du droit d'auteur en question;

c) si un nom paraissant être celui du producteur d'une oeuvre cinématographique y est indiqué de la manière habituelle, cette personne est présumée, jusqu'à preuve contraire, être le producteur de l'oeuvre.

Propriété des planches

38 (1) Subject to subsection (2), the owner of the copyright in a work or other subject-matter may

(a) recover possession of all infringing copies of that work or other subject-matter, and of all plates used or intended to be used for the production of infringing copies, and

(b) take proceedings for seizure of those copies or plates before judgment if, under the law of Canada or of the province in which those proceedings are taken, a person is entitled to take such proceedings,

as if those copies or plates were the property of the copyright owner.

Powers of court

(2) On application by

(a) a person from whom the copyright owner has recovered possession of copies or plates referred to in subsection (1),

(b) a person against whom proceedings for seizure before judgment of copies or plates referred to in subsection (1) have been taken, or

(c) any other person who has an interest in those copies or plates,

a court may order that those copies or plates be destroyed, or may make any other order that it considers appropriate in the circumstances.

Notice to interested persons

(3) Before making an order under subsection (2), the court shall direct that notice be given to any person who has an interest in the copies or plates in question, unless the court is of the opinion that the interests of justice do not require such notice to be given.

38 (1) Sous réserve du paragraphe (2), le titulaire du droit d'auteur peut, comme s'il en était le propriétaire, recouvrer la possession de tous les exemplaires contrefaits d'oeuvres ou de tout autre objet de ce droit d'auteur et de toutes les planches qui ont servi ou sont destinées à servir à la confection de ces exemplaires, ou engager à leur égard des procédures de saisie avant jugement si une loi fédérale ou une loi de la province où sont engagées les procédures le lui permet.

Pouvoirs du tribunal

(2) Un tribunal peut, sur demande de la personne qui avait la possession des exemplaires et planches visés au paragraphe (1), de la personne contre qui des procédures de saisie avant jugement ont été engagées en vertu du paragraphe (1) ou de toute autre personne ayant un intérêt dans ceux-ci, ordonner la destruction de ces exemplaires ou planches ou rendre toute autre ordonnance qu'il estime indiquée.

Autres personnes intéressées

(3) Le tribunal doit, avant de rendre l'ordonnance visée au paragraphe (2), en faire donner préavis aux personnes ayant un intérêt dans les exemplaires ou les planches, sauf s'il estime que l'intérêt de la justice ne l'exige pas.

Facteurs

(4) Le tribunal doit, lorsqu'il rend une ordonnance visée au paragraphe (2), tenir compte notamment des facteurs suivants :

a) la proportion que représente l'exemplaire contrefait ou la planche par rapport au support dans lequel ils sont incorporés, de même que leur valeur et leur importance par rapport à ce support;

b) la mesure dans laquelle cet exemplaire ou cette planche peut être extrait de ce support ou

Circumstances court to consider

(4) In making an order under subsection (2), the court shall have regard to all the circumstances, including

(a) the proportion, importance and value of the infringing copy or plate, as compared to the substrate or carrier embodying it; and

(b) the extent to which the infringing copy or plate is severable from, or a distinct part of, the substrate or carrier embodying it.

Limitation

(5) Nothing in this Act entitles the copyright owner to damages in respect of the possession or conversion of the infringing copies or plates.

Statutory damages

38.1 (1) Subject to this section, a copyright owner may elect, at any time before final judgment is rendered, to recover, instead of damages and profits referred to in subsection 35(1), an award of statutory damages for which any one infringer is liable individually, or for which any two or more infringers are liable jointly and severally,

(a) in a sum of not less than \$500 and not more than \$20,000 that the court considers just, with respect to all infringements involved in the proceedings for each work or other subject-matter, if the infringements are for commercial purposes; and

(b) in a sum of not less than \$100 and not more than \$5,000 that the court considers just, with respect to all infringements involved in the proceedings for all works or other subject-matter, if the infringements are for non-commercial purposes.

Infringement of subsection 27(2.3)

(1.1) An infringement under subsection 27(2.3)

en constitue une partie distincte.

Limite

(5) La présente loi n'a pas pour effet de permettre au titulaire du droit d'auteur de recouvrer des dommages-intérêts en ce qui touche la possession des exemplaires ou des planches visés au paragraphe (1) ou l'usurpation du droit de propriété sur ceux-ci.

Dommmages-intérêts préétablis

38.1 (1) Sous réserve des autres dispositions du présent article, le titulaire du droit d'auteur, en sa qualité de demandeur, peut, avant le jugement ou l'ordonnance qui met fin au litige, choisir de recouvrer, au lieu des dommages-intérêts et des profits visés au paragraphe 35(1), les dommages-intérêts préétablis ci-après pour les violations reprochées en l'instance à un même défendeur ou à plusieurs défendeurs solidairement responsables :

a) dans le cas des violations commises à des fins commerciales, pour toutes les violations — relatives à une oeuvre donnée ou à un autre objet donné du droit d'auteur —, des dommages-intérêts dont le montant, d'au moins 500 \$ et d'au plus 20 000 \$, est déterminé selon ce que le tribunal estime équitable en l'occurrence;

b) dans le cas des violations commises à des fins non commerciales, pour toutes les violations — relatives à toutes les oeuvres données ou tous les autres objets donnés du droit d'auteur —, des dommages-intérêts, d'au moins 100 \$ et d'au plus 5 000 \$, dont le montant est déterminé selon ce que le tribunal estime équitable en l'occurrence.

Violation du paragraphe 27(2.3)

(1.1) La violation visée au paragraphe 27(2.3) ne peut donner droit à l'octroi de dommages-intérêts préétablis à l'égard d'une oeuvre donnée ou à un autre objet donné du droit

may give rise to an award of statutory damages with respect to a work or other subject-matter only if the copyright in that work or other subject-matter was actually infringed as a result of the use of a service referred to in that subsection.

Deeming — infringement of subsection 27(2.3)

(1.11) For the purpose of subsection (1), an infringement under subsection 27(2.3) is deemed to be for a commercial purpose.

Infringements not involved in proceedings

(1.12) If the copyright owner has made an election under subsection (1) with respect to a defendant's infringements that are for non-commercial purposes, they are barred from recovering statutory damages under this section from that defendant with respect to any other of the defendant's infringements that were done for non-commercial purposes before the institution of the proceedings in which the election was made.

No other statutory damages

(1.2) If a copyright owner has made an election under subsection (1) with respect to a defendant's infringements that are for non-commercial purposes, every other copyright owner is barred from electing to recover statutory damages under this section in respect of that defendant for any of the defendant's infringements that were done for non-commercial purposes before the institution of the proceedings in which the election was made.

If defendant unaware of infringement

(2) If a copyright owner has made an election under subsection (1) and the defendant satisfies the court that the defendant was not aware and had no reasonable grounds to believe that the defendant had infringed copyright, the court

d'auteur que si le droit d'auteur de l'une ou de l'autre a été violé par suite de l'utilisation des services mentionnés à ce paragraphe.

Violation réputée : paragraphe 27(2.3)

(1.11) Pour l'application du paragraphe (1), la violation du droit d'auteur visée au paragraphe 27(2.3) est réputée être commise à des fins commerciales.

Réserve

(1.12) Toutefois, le titulaire du droit d'auteur qui a choisi de recouvrer des dommages-intérêts préétablis auprès de la personne visée au paragraphe (1) pour des violations qu'elle a commises à des fins non commerciales ne pourra pas recouvrer auprès d'elle de tels dommages-intérêts au titre du présent article pour les violations commises à ces fins avant la date de l'introduction de l'instance et qu'il ne lui a pas reprochées dans le cadre de celle-ci.

Réserve

(1.2) Si un titulaire du droit d'auteur a choisi de recouvrer des dommages-intérêts préétablis auprès de la personne visée au paragraphe (1) pour des violations qu'elle a commises à des fins non commerciales, aucun autre titulaire du droit d'auteur ne pourra recouvrer auprès d'elle de tels dommages-intérêts au titre du présent article pour les violations commises à ces fins avant la date de l'introduction de l'instance.

Cas particuliers

(2) Dans les cas où le défendeur convainc le tribunal qu'il ne savait pas et n'avait aucun motif raisonnable de croire qu'il avait violé le droit d'auteur, le tribunal peut réduire le montant des dommages-intérêts visés à l'alinéa (1)a) jusqu'à 200 \$.

Cas particuliers

(3) Dans les cas où plus d'une oeuvre ou d'un

may reduce the amount of the award under paragraph (1)(a) to less than \$500, but not less than \$200.

Special case

(3) In awarding statutory damages under paragraph (1)(a) or subsection (2), the court may award, with respect to each work or other subject-matter, a lower amount than \$500 or \$200, as the case may be, that the court considers just, if

(a) either

(i) there is more than one work or other subject-matter in a single medium, or

(ii) the award relates only to one or more infringements under subsection 27(2.3); and

(b) the awarding of even the minimum amount referred to in that paragraph or that subsection would result in a total award that, in the court's opinion, is grossly out of proportion to the infringement.

Collective societies

(4) Where the defendant has not paid applicable royalties, a collective society referred to in section 67 may only make an election under this section to recover, in lieu of any other remedy of a monetary nature provided by this Act, an award of statutory damages in a sum of not less than three and not more than ten times the amount of the applicable royalties, as the court considers just.

Factors to consider

(5) In exercising its discretion under subsections (1) to (4), the court shall consider all relevant factors, including

(a) the good faith or bad faith of the defendant;

(b) the conduct of the parties before and during

autre objet du droit d'auteur sont incorporés dans un même support matériel ou dans le cas où seule la violation visée au paragraphe 27(2.3) donne ouverture aux dommages-intérêts préétablis, le tribunal peut, selon ce qu'il estime équitable en l'occurrence, réduire, à l'égard de chaque oeuvre ou autre objet du droit d'auteur, le montant minimal visé à l'alinéa (1)a) ou au paragraphe (2), selon le cas, s'il est d'avis que même s'il accordait le montant minimal de dommages-intérêts préétablis le montant total de ces dommages-intérêts serait extrêmement disproportionné à la violation.

Société de gestion

(4) Si le défendeur n'a pas payé les redevances applicables en l'espèce, la société de gestion visée à l'article 67 — au lieu de se prévaloir de tout autre recours en vue d'obtenir un redressement pécuniaire prévu par la présente loi — ne peut, aux termes du présent article, que choisir de recouvrer des dommages-intérêts préétablis dont le montant, de trois à dix fois le montant de ces redevances, est déterminé selon ce que le tribunal estime équitable en l'occurrence.

Facteurs

(5) Lorsqu'il rend une décision relativement aux paragraphes (1) à (4), le tribunal tient compte notamment des facteurs suivants :

a) la bonne ou mauvaise foi du défendeur;

b) le comportement des parties avant l'instance et au cours de celle-ci;

c) la nécessité de créer un effet dissuasif à l'égard de violations éventuelles du droit d'auteur en question;

d) dans le cas d'une violation qui est commise à des fins non commerciales, la nécessité d'octroyer des dommages-intérêts dont le montant soit proportionnel à la violation et

the proceedings;

(c) the need to deter other infringements of the copyright in question; and

(d) in the case of infringements for non-commercial purposes, the need for an award to be proportionate to the infringements, in consideration of the hardship the award may cause to the defendant, whether the infringement was for private purposes or not, and the impact of the infringements on the plaintiff.

No award

(6) No statutory damages may be awarded against

(a) an educational institution or a person acting under its authority that has committed an act referred to in section 29.6 or 29.7 and has not paid any royalties or complied with any terms and conditions fixed under this Act in relation to the commission of the act;

(b) an educational institution, library, archive or museum that is sued in the circumstances referred to in section 38.2;

(c) a person who infringes copyright under paragraph 27(2)(e) or section 27.1, where the copy in question was made with the consent of the copyright owner in the country where the copy was made; or

(d) an educational institution that is sued in the circumstances referred to in subsection 30.02(7) or a person acting under its authority who is sued in the circumstances referred to in subsection 30.02(8).

Exemplary or punitive damages not affected

(7) An election under subsection (1) does not affect any right that the copyright owner may have to exemplary or punitive damages.

tienne compte des difficultés qui en résulteront pour le défendeur, du fait que la violation a été commise à des fins privées ou non et de son effet sur le demandeur.

Cas où les dommages-intérêts préétablis ne peuvent être accordés

(6) Ne peuvent être condamnés aux dommages-intérêts préétablis :

a) l'établissement d'enseignement ou la personne agissant sous l'autorité de celui-ci qui a fait les actes visés aux articles 29.6 ou 29.7 sans acquitter les redevances ou sans observer les modalités afférentes fixées sous le régime de la présente loi;

b) l'établissement d'enseignement, la bibliothèque, le musée ou le service d'archives, selon le cas, qui est poursuivi dans les circonstances prévues à l'article 38.2;

c) la personne qui commet la violation visée à l'alinéa 27(2)e) ou à l'article 27.1 dans les cas où la reproduction en cause a été faite avec le consentement du titulaire du droit d'auteur dans le pays de production;

d) l'établissement d'enseignement qui est poursuivi dans les circonstances prévues au paragraphe 30.02(7) et la personne agissant sous son autorité qui est poursuivie dans les circonstances prévues au paragraphe 30.02(8).

Dommages-intérêts exemplaires

(7) Le choix fait par le demandeur en vertu du paragraphe (1) n'a pas pour effet de supprimer le droit de celui-ci, le cas échéant, à des dommages-intérêts exemplaires ou punitifs.

Register to be evidence

53 (1) The Register of Copyrights is evidence of the particulars entered in it, and a copy of an entry in the Register is evidence of the particulars of the entry if it is certified by the Commissioner of Patents, the Registrar of Copyrights or an officer, clerk or employee of the Copyright Office as a true copy.

Owner of copyright

(2) A certificate of registration of copyright is evidence that the copyright subsists and that the person registered is the owner of the copyright

Assignee

(2.1) A certificate of registration of an assignment of copyright is evidence that the right recorded on the certificate has been assigned and that the assignee registered is the owner of that right.

Licensee

(2.2) A certificate of registration of a licence granting an interest in a copyright is evidence that the interest recorded on the certificate has been granted and that the licensee registered is the holder of that interest.

Admissibility

(3) A certified copy or certificate appearing to have been issued under this section is admissible in all courts without proof of the signature or official character of the person appearing to have signed it.

Preuve

53 (1) Le registre des droits d'auteur, de même que la copie d'inscriptions faites dans ce registre, certifiée conforme par le commissaire aux brevets, le registraire des droits d'auteur ou tout membre du personnel du Bureau du droit d'auteur, fait foi de son contenu.

Titulaire du droit d'auteur

(2) Le certificat d'enregistrement du droit d'auteur constitue la preuve de l'existence du droit d'auteur et du fait que la personne figurant à l'enregistrement en est le titulaire.

Cessionnaire

(2.1) Le certificat d'enregistrement de la cession d'un droit d'auteur constitue la preuve que le droit qui y est inscrit a été cédé et que le cessionnaire figurant à l'enregistrement en est le titulaire.

Titulaire de licence

(2.2) Le certificat d'enregistrement de la licence accordant un intérêt dans un droit d'auteur constitue la preuve que l'intérêt qui y est inscrit a été concédé par licence et que le titulaire de la licence figurant au certificat d'enregistrement détient cet intérêt.

Admissibilité en preuve

(3) Les copies certifiées conformes et les certificats censés être délivrés selon les paragraphes (1) ou (2) sont admissibles en preuve sans qu'il soit nécessaire de prouver l'authenticité de la signature qui y est apposée ou la qualité officielle du signataire.

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-646-15

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KNIGHT CO. LTD. AND GORDON KNIGHT

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DATED: MARCH 8, 2016

APPEARANCES:

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Mr. David Potter

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Mr. Jeffrey Radnoff

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