Illustrating Options: Collective Administration of Intellectual Property for Canadian Cultural Heritage Institutions.

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1999

This paper was originally published as the final chapter in " An Introduction to Managing Digital Assets: Options for Cultural and Educational Organizations" A report of the Getty Information Institute. 1999 Los Angeles: J. Paul Getty Trust.

The author thanks Lyn Elliot Sherwood, Director General of The Canadian Heritage Information Network, for her guidance and insightful comments concerning the structure of this paper. The author also thanks reviewers Lesley Ellen Harris, Paul K. Lepsoe, Mario Bouchard, and Barbara Lang Rottenberg for their helpful comments and suggestions.

Introduction

Copyright law in Canada falls under federal jurisdiction. Canadian federal law is a composite of both the civil and common law systems. Although Canada's Copyright Act is based on British legislation, reforms in the past ten years have incorporated many concepts from civil law (such as moral rights), and added exhibition rights, as well as a comprehensive system of collective administration of copyright.

The management of intellectual property in the electronic environment has become a topic of considerable interest in the Canadian cultural community, as it has elsewhere in the world. Of late, this community has been considering collective action to streamline access and administrative requirements. However, this approach may not suit every institution's needs. Given the public service and educational missions of cultural organisations, cost/benefit analyses should be undertaken before collective administration of intellectual property is considered.

Collective Administration in Canada: A Legal Framework

Collective administration in its current form is fairly new in Canada. Although the Canadian Performing Rights Society was founded in 1925 to administer performing rights, the Canadian Copyright Act provided only for collective administration for the public performance of musical works from 1931 until 1988. In 1988, collective administration of copyright was expanded to include literary, dramatic, and artistic works. Collective administration of the retransmission of distant broadcast signals was added in a separate amendment to the Act in 1988. Thus collective administration of copyright is a relatively new phenomenon for most intellectual property in Canada, except for musical works, which have enjoyed the benefits of collective administration of copyright for over sixty years.[1]

With the 1988 amendments to Canada's Copyright Act, a new and comprehensive scheme for managing intellectual property was introduced. Unlike the U.S. experience, collective administration in Canada became subject to a Copyright Board, an independent administrative tribunal that rules on the rates that collective societies may charge for the use of works in their repertoires. The Board holds jurisdiction over collective societies filing their agreements with the Copyright Board.[2] In certain circumstances the Board also holds the jurisdiction to settle disputes over rates and, in very limited circumstances, can rule on the interpretation of the Copyright Act.

Collective Administration of Performing Rights

The Copyright Act provides that societies, such as the Society of Composers, Authors, and Music Publishers of Canada (SOCAN)[3] may administer rights associated with the performance in public of dramatic or musical works. Recent amendments to the Copyright Act have also introduced neighbouring rights for musicians' performances, with such rights attaching to musical works.[4] The Copyright Act removes from performing rights societies any common-law rights (such as case law, contractual rights, and other rights for individually licensing works that common law provides) in musical works. Instead, it imposes a set of tariffs and provides the means to recover tariff fees, including injunctive relief and a statutory right of action.[5]

To determine what fees they can charge, a performing rights society must file its proposed list of fees with the Copyright Board and address any requests from the public for information concerning its repertoires in current use. The list of fees is then published in The Canada Gazette[6] to provide any interested parties with notice of the proposed fee schedule. Any objections to these fees may be filed with the Copyright Board, which considers these objections in determining the final fees the performing rights society can charge for the use of works in its repertoire. In this instance, the Copyright Board also has the jurisdiction to settle issues associated with the fee structure, such as notice requirements.[7]

Collective Administration of Retransmission Rights

Copyright subsists in works that are retransmitted via broadcast technologies when the works are retransmitted to the public. Royalties are owed to the copyright holders when their works are retransmitted to the public by distant signal. The Copyright Board sets the fee schedule for these payments, and the Copyright Act provides for special collective societies to collect and redistribute the fees associated with retransmitted works. As with performing rights societies, the collective societies that administer retransmission rights must file a proposed statement of fees with the Copyright Board. Objections may be filed by interested parties, and the Board must consider such objections when making final decisions about fees. Collecting bodies do not hold a common-law right to license works individually within their repertoires, but they hold statutory rights to enforce the payment of fees through the court system.[8]

If a copyright holder of a retransmitted work is not a member of a collecting body, he or she must bring an application before the Copyright Board to have a collecting body designated to act on his or her behalf. Copyright holders hold no individual rights to collect royalties owed them because of the retransmission of their works.
Copyright Act regulations require that copyright holders file their claims within two years from the time the retransmission occurred.[9]

Other Collective Societies

The Copyright Act also provides for collective societies, associations, or corporations that are not performing rights societies or retransmission rights societies. In general, these

other types of collective societies may administer copyright and operate a licensing scheme for their particular repertoire of works. They are free to enter into licensing agreements in any form, but they must offer blanket licenses as well as transactional or individual licenses for the use of a work. The Copyright Board does not impose royalty rates on these collecting societies, but does act as an arbitration panel when a collective licensing body and a prospective user cannot agree on rates or related terms and conditions of the licensing agreement.[10]

The collective is responsible for redistributing the royalties collected to its membership. Redistribution is based upon specified formulas devised to obtain fair remuneration for the author. These formulas may or may not depend on the exact use of the author's work. Depending on the by-laws of the collective society, redistribution formulas may also ensure that remuneration is split equitably among the members of the collective society. In all cases, a certain percentage of the royalties collected is used to cover administrative costs incurred in managing the collective.

Many other rights-related associations do not issue licenses or collect and redistribute royalties, but have an impact upon the collective administration environment by fulfilling a lobbying function on behalf of certain groups, or by serving as quasi-collective societies. An example is the Canadian Musical Reproduction Rights Agency (CMRRA), which acts as an agent for music publishers. CMRRA can negotiate individual licensing agreements on behalf of its members and can clear the rights to musical works held by members. However it functions primarily as an agent, and the law of agency imposes different responsibilities on it and provides different protections for the agents' clients.[11]

Other Legal Factors Affecting Collective Administration

1. Anti-Competition Rules.

The Canadian Copyright Act encourages collective administration. Canadian legislators were very much aware of the potential conflict with anti-competition rules, such as those that exist in the United States. Antitrust accusations have marked the history of collective administration in the United States, and Canadian legislators sought to address this issue so that collective administration in Canada would not share a similar experience. By increasing the overseeing powers of the Copyright Board to set and review tariffs and other conditions associated with the allocation and collection of royalties, legislators sought to remove any potential conflict with Canada's Competition Act,[12] particularly Section 45 of the Act, which makes it is a criminal offence to conspire or agree to lessen competition by effectively enhancing the price of a good or service.[13]

Canadian performing rights societies are protected from certain accusations of anti-competitive behaviour because they are subject to the Copyright Board's jurisdiction in setting tariffs for royalties.[14] For all other issues, performing rights societies and other collective societies are subject to anti-competition laws.

2. Exceptions to Copyright.

Amendments to Canada's Copyright Act[15] in 1997 introduced specific exceptions to copyright for educational institutions and museums, archives, and libraries, which are excepted from copyright violation if they make a copy of a work in order to manage or maintain their respective collections (specific conditions are provided in the text of the legislation), or to carry out limited interlibrary loans. Exceptions to copyright are also provided to educational institutions for use of works inside a classroom or as part of an examination.[16] Museums, libraries, and archives that are part of educational institutions may avail themselves of all of the exceptions. Certain exceptions for all these groups apply only when a copy of the work in question is not "commercially available," i.e., not available for licensing from a collective society.[17]

Some of the amendments of the 1997 legislation are not yet in force, so the impact of the exceptions on a collective's potential market is not known. However, one can assume that since educational institutions are one of the primary users of intellectual property from cultural heritage organisations, their direct use of this intellectual property for educational purposes may be exempt from copyright. In other words, educational institutions can use this intellectual property for the specific reasons defined by the Copyright Act (such as for use on a classroom overhead projector) without paying for such use or requesting prior authorisation, as long as museums, libraries, and archives do not make their intellectual property commercially available through a collective society. If these organisations do make their intellectual property available through collective societies, then educational institutions are required by law to use these collectives to obtain the works. Thus, under Canadian law, it is in the interests of cultural institutions to join collectives if they wish to receive financial payments from the educational markets using their intellectual property.

3. *Fair Dealing.*

"Fair dealing" is an exemption allowed in Canadian copyright law that allows a work to be used without prior authorisation for purposes of research, private study, criticism, review, or reporting, without violating copyright.[18] The concept of fair dealing has been in existence since the Canadian Copyright Act was introduced in 1924. It is a defence that the user of copyright material can employ to justify use without prior authorisation. Unlike its "fair use" counterpart in the United States, fair dealing does not generate a great deal of litigation, and there are no written criteria (such as the "four factors" of fair use) for assessing fair dealing in Canadian legislation.

Once a user establishes that the use of a work falls into one of the categories of use under fair dealing, he or she must determine whether his proposed use of the work is

"fair." The test of "fairness" may be based on whether a substantial part of the work is being used, and whether that will diminish the quality of the work, or increase the quantity of the work in circulation so as to diminish the return to the author.[19] While the criteria of substantiality and effect on the market are similar to two of the four factors used in U.S. copyright law's fair use exemption, in Canada their interpretation has been much less precise. In the few court decisions that have interpreted fair dealing, what constitutes fair is based on a notion of "first impression." A leading court decision has described fair dealing as follows:

> "To take long extracts and attach short comments may be unfair. But, short extracts and long comments may be fair. . . . after all is said and done, it must be a matter of impression."[20]

The end result is that fair dealing is a vague concept that both users and copyright holders grapple with in order to determine how far a user can go in using a work before such use becomes unfair. Collective societies administering copyright inherit this dilemma. While collective societies do not try to define fair dealing in their licensing agreements, they do try to take fair dealing into account when setting royalty rates.[21] The notion that fair dealing applies in a digital environment is contentious. What acts constitute fair dealing? Is browsing on the Internet fair dealing? The Canadian government's Information Highway Advisory Council[22] supports the conclusion that fair dealing applies to the electronic environment. The government will be addressing new media issues in its next stage of copyright reform, which will occur over the next few years. For collectives trying to determine their operational boundaries, the uncertainty of applying fair dealing in analogue and print environments is compounded in an electronic one.

4. The Status of the Artist Act.[23]

Canada's Status of the Artist Act, which provides minimum terms and conditions for freelance artists contracting with the federal government and its agencies, imposes a regulatory scheme for certifying associations of artists entering into freelance contracts with the federal government. Cultural heritage institutions that are agencies of the federal government are thus affected by this Act. The Status of the Artist Act allows artists' associations to negotiate collective agreements establishing minimum terms and conditions for individual artists in their freelance contracts. Under this Act, artists' associations can collectively negotiate these terms and conditions on behalf of their members, but individual members must subsequently sign their own agreements with the contracting federal agencies.[24] It is not clear whether artists' associations authorised to operate under the Status of the Artist Act can include royalty rates among the terms and conditions they negotiate. (Under the Copyright Act, the Copyright Board determines rates.) It is clear, however, that there is potential for overlap in this area between the Copyright Board and artists' associations authorised by the Status of the Artist Act.[25] The Copyright Board stated that replacing the administrative scheme in the Copyright Act with a system of collective bargaining (as provided for under the Status of the Copyright Act) is illogical if copyright is

assigned to collective societies that are not part of the artists' associations and thus are not part of these associations' collective bargaining process.[26] The tribunal responsible for administering the Status of the Artist Act has concluded that an artists' association can negotiate certain uses for artistic works in a collective agreement that includes copyrights. However, the element of exclusive representation, common in the accreditation process in labour law and under the Status of the Artist Act, does not have to apply to copyright negotiations. Therefore, even if an artists' association is given the jurisdiction to negotiate copyright, each artist must have expressly assigned the copyright before the association can include copyright in its collective bargaining negotiations.[27]

Theory and Practice: The Operating Environment

Since the inception of Canada's comprehensive system for collective administration, various collective societies have been created and have filed their licensing agreements with the Copyright Board. These societies can be grouped by distinctive categories. The majority is based on genre, followed by language of publication.[28]
Societies also group themselves on the basis of the types of rights they may represent.[29] For example, CANCOPY, the Canadian National Reprography Collective, represents authors' reproduction rights but not their public performance rights. Therefore, CANCOPY grants the right to photocopy a work but not the right to read it aloud in public. There are many more collectives operating in the province of Quebec or for French-language publications than operating in English Canada or for English-language publications. This phenomenon may be the result of historic, political, and legal developments.[30]

The spirit of labour law and the Status of the Artist Act had a significant impact on the practical, as opposed to the legal, practices of collective societies in Canada. Many areas of the Status of the Artist Act, which is a labour law, conflict with the Copyright Act, particularly in collective administration. Its certification system has the potential to affect collective administration, particularly when associations seek to act both as collectives for the purposes of copyright administration and as associations for the purposes of negotiating collective agreements under the Status of the Artist Act.

Quebec's Unique Environment

The convergence of labour law and the collective administration of copyright is particularly apparent in Quebec, resulting in a hybrid rights management system in this province. Artists' associations, which include collective societies, represent many different categories of artists (based on specific rights) and have large memberships. They wield enormous influence in negotiating conditions of use.[31]

Licensing agreements issued by collectives, particularly in the audio-visual field, become more like collective agreements with minimum terms and conditions. They cover areas

such as how a work may be used, remuneration required, rights that may be licensed, and perhaps a "good will" clause (frequently required of artists of particular notoriety). If an association holds the express authority to negotiate copyright, agreements will also stipulate royalty rates and tariffs.[32] If an association is not authorised to negotiate copyright, the government agency must enter into separate licensing agreements with the collective society, thereby creating further layers of negotiation in the licensing process.

When agreements are negotiated with non-governmental bodies, artists' associations and collective societies often find themselves at the same bargaining table. However, issues become more complex because the minimum standards set in provincial and federal legislation do not apply.[33] Therefore, artists' associations, collective societies, and potential users must negotiate in an adversarial labour law environment and cannot avail themselves of any formal legislative structure that sets certain terms and conditions.

The Relationship Between the Author and the Collective

Collective societies in Canada administer economic rights on behalf of their members. Frequently, members of collectives hold the copyrights for works held in the collectives' repertoires. The pivotal point in the relationship between the collective and its membership is when rights are assigned or transferred directly to the collective. The agreement that outlines this transfer may be either a license or a right to administer, depending on whether the member assigns property rights or merely the mandate to collect and distribute royalties. The nature of the relationship is not always clear because agreements often do not clarify these points.[34]

Moral rights cannot be assigned to collective societies (or anyone else) under Canadian law, but some collective societies will try and protect their members' moral rights as a matter of course. Certain collective societies, for example, may have bylaws that prohibit granting a license when there is a violation of moral rights, or may accept instructions from individual members and act as their agent with respect to moral rights.[35]

Many collective societies demand exclusive representation of their members' rights.[36] Copyright in Canada, as in the United States, involves a bundle of rights, and creators frequently assign different rights for the same work to different collective societies. In Canada, however, the author may not assign the same right to a work to more than one collective society at the same time. The sole exception is collective societies operating in mutually exclusive territories. In this instance, an author may grant the same right for a work to more than one collective society as long as the societies operate in non-overlapping territories.[37] This situation is extremely rare. Most collective societies hold reciprocity agreements with each other that cover different jurisdictions.

The collective society manages the rights of the author, enters into licensing agreements on his or her behalf, collects royalties, and redistributes them according to agreed

formulas. In addition, a number of collective societies offer their members legal advice, intervene in legal disputes that may influence relevant issues, and play an advocacy role on behalf of their membership. Despite these interactions, the relationship between the collective and its members is somewhat paternalistic. The degree of control that a member may have over the day-to-day activities of the collective society, and over the administration of the rights assigned to the society, is not always clear.[38]

The Relationship Between the Collective and the User

Most collectives offer users both transactional and blanket licenses. An exception occurs in collective societies that represent public performance rights for dramatic or musical works, such as SOCAN. Users may purchase blanket or transactional licenses from these collectives, or they may simply pay the tariffs the Copyright Board sets for the use of these works.[39]

Issues such as access, cost, and size of repertoire continue to be problematic for certain users in certain disciplines. For example, access and repertoire size are major issues for the educational community, which has traditionally advocated wide exceptions to copyright for educational purposes, claiming that the collectives that serve them offer terms that are too strict or do not hold the most popular works in their repertoires. Broadcasters have also advocated for certain exceptions, claiming that the costs associated with certain reproduction rights held by collectives are prohibitive. Many users feel that, with the exception of Quebec (where collective administration is well established), there is a vacuum in rights management options in Canada.

The collective management options that exist do offer advantages to users. In the ten years that have passed since collective management was introduced broadly in the Canadian market, access to a large number of works has increased. Collective societies make it their business to clear copyright, are experts in the field, and have to some degree created a system of "one-stop shopping" that facilitates access to works. For example, in areas such as reprography, blanket licenses have made it possible for scholars and students to copy required texts without violating copyright or applying the test for fair dealing.[40]

Potential for the Future—Licensing Electronic Rights

The administration of collectives may not have to change substantially in order to manage electronic rights.[41] What will need to be clarified is the concept of electronic rights and their legal interpretation.

The status of electronic rights as a unique type of right, or as part of an overall "one-time right" to publish, remains unclear. Certain freelance publishing agreements have no express provisions granting electronic rights to publishers, but publishers nevertheless place their print materials on their respective Internet sites. A court action spearheaded by

a number of writers' associations has recently been launched in Canada to contest such use.[42]

Of late, electronic rights have been challenged in a new way in Canada. The law affecting the copyright status of databases was changed substantially by a recent decision of the Federal Court of Appeal of Canada. Prior to the Court's decision, it was generally assumed that copyright subsisted on databases that held mostly factual information. The threshold test that determined whether a work was "copyrightable" was much lower in Canada than in the United States where a certain level of creativity is required for a database to be copyrighted. The Federal Court of Appeal in Canada agreed with the creativity requirement in place in the United States, and raised the threshold requirements for databases in Canada. Databases now receive copyright protection in Canada only if they can be considered "intellectual creations."[43] The end result of this decision is that many electronic works once considered copyrightable no longer enjoy copyright protection.

Collective societies in Canada are now addressing the issue of electronic rights. As an example, SOCAN has applied to the Copyright Board to obtain the authority to collect royalties for the use of musical works over the Internet. A new collective called The Electronic Rights Licensing Agency (TERLA)[44] is being launched to represent the rights of Canadian freelance writers, photographers, and illustrators. It hopes to provide convenient rights clearance services to publishers that wish to distribute Canadian written works electronically.

Another new project is Canadian Artists Represented Online (CAROL), which will make contemporary visual works of art available for licensing on an Internet-based system, thereby securing a place for visual artists in the new technology market. The economic model proposed by the CAROL project is based on "fair remuneration" for contemporary artists, including the coverage of overhead costs. The CAROL project is currently in the test bed stage, working with local collective societies and partners in the telecommunications industry, and incorporating the latest technologies in order to control use of its repertoire in an electronic environment.[45]

Finally, CHIN has embarked on a rights management initiative for its museum members. CHIN has managed museum databases for twenty-five years, and has been managing the electronic rights of its museum members since its inception. Museum members hold copyright on the information in the CHIN databases, and CHIN has assisted in the protection of its members' copyright and launched a subscription service to the databases. CHIN has now launched a site licensing service and is also exploring the possibility of a more complex rights management program.[46]

Conclusion

Collective administration of copyright in Canada is not without its pitfalls. Initially, collective administration sought to balance the relationship between the copyright holder

and the user of copyrighted material so that bargaining strengths were equalised. In attempting this alignment, a complex system of collective administration was introduced. To address anti-competition issues, an administrative tribunal with the jurisdiction to oversee royalty rates was deemed necessary.

Despite its complexity, the system has provided both the user and the copyright holder with certain advantages. Low-cost access to works protected by copyright has been provided by collectives operating in certain sectors of the cultural community. Reprography collectives, for example, have allowed educational institutions to access works at low cost. The system of collective administration has increased the circulation of information, thereby serving the public interest.

Canadian cultural heritage organisations could benefit greatly from collective administration of copyright, and the Canadian legal system offers incentives for doing so. While exceptions to copyright law in Canada may diminish the educational market for cultural organisations, this potential problem can be remedied by collective action, which secures educational markets under copyright law.

However, the Canadian form of collective administration also presents interesting limitations for the cultural community. Unlike its U.S. counterparts, collective societies in Canada face the Copyright Board's potential intervention in determining its royalty rates. A sound pricing policy can help maintain a collective's credibility before the Copyright Board, and reduce the possibility of Board intervention when consumers of intellectual property from cultural organisations object to usage fees.

Another concern is the exclusivity requirement mandated by many Canadian collective societies. Exclusivity limits an organisation's control over its own intellectual property. Ideally, members should grant collective societies the nonexclusive right to manage their copyright so that cultural organisations can continue to control the exploitation of their own intellectual property.[47]

Many existing collectives or associations are just now facing issues presented by digital media, such as instant and almost perfect reproductions of works. Canadian law is playing "catch-up" at the moment, and many issues (such as copyright on databases and electronic reproduction rights) are unresolved. Technology is ever evolving and will enable new ways to protect and exploit intellectual property. Cultural heritage organisations must ensure that the collectives they join stay informed of changes in technology and law, so that the collectives can continue to act in the best interests of their members.

Glossary

civil law: Derived from Roman law, civil law codifies legal principles into one statute. In Quebec, the Civil Code embodies most legal obligations, such as family law, property law, responsibility for negligent behaviour (tort law does not exist), and commercial

transactions. Most European countries, Scotland, the province of Quebec, and the state of Louisiana are governed by civil law.

common law: Derived from British legal traditions, common law relies on judicial precedents set by prior court decisions to determine the development of legal principles, rather than on legal enactments. Common law derives its authority from rules of the court, custom, judicial reasoning, prior court decisions, and principles of equity. Canada and the United States (with exceptions noted in the above definition), England, New Zealand, and Australia are common-law countries.

law of agency: A contractual relationship authorising a person or corporation to act on behalf of another person or corporation under specific and limited circumstances.

neighbouring rights: Recently introduced into Canadian law, neighbouring rights protect performers and producers of recordings, and broadcasters' communication signals. They are similar to copyright but can be distinguished because they give additional rights to users of material already protected by copyright. Consequently, performers and producers of sound recordings and broadcasters (as well as copyright holders) can be remunerated for their use of copyright protected works.

tariffs: Similar in principle to royalties, tariffs are fixed by the Copyright Board upon application by a collective society of their proposed rates.

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[1] Marian Hebb, "Answers to Questionnaire from Professor Carine Doutrelepont on Collective Administration of Authors and Performers Rights," L'Association Littéraire et Artistique Internationale (ALAI) International Congress, 1997, 1.

[2] Collective societies are not required to file their agreements with the Copyright Board, but it is to their advantage to do so if they wish to benefit from an administrative tribunal (versus the courts) in problems that may arise.

[3] SOCAN was formed by the amalgamation of the Canadian Authors and Publishers Association of Canada (CAPAC) and the Performing Rights Organization of Canada (PROCAN). SOCAN represents composers, authors, and publishers of musical works. See also Claudette Fortier, "Réponse de Questionnaire de Madame Carine Doutrelepont," ALAI International Congress 1997, 1.

[4] Neighboring rights were introduced into Canadian law by amendments contained in the World Trade Organization Agreement Implementation Act, S.C. 1994, c. 47 and then expanded upon in the Copyright Act, S.C. 1997, c. 42.

[5] Robert T. Hughes et al., Hughes on Copyright and Industrial Design (Toronto:

Butterworths, 1997), 491—492.

[6] The Canada Gazette is a government publication that generally notes the coming into force of new legislation, new regulations, etc.

[7] Hughes, endnote 6.

[8] 9 Ibid., endnote 6, 499f.

[9] Ibid.

[10] Ibid., endnote 6, 495f. In very limited circumstances, a licensing body may remain subject to the control of the Director of Investigation and Research acting under the auspices of the Copyright Board.

[11] For a discussion on agents and other forms of quasi-collectives, see Glenn Bloom, Administering Museum Intellectual Property (Ottawa: Canadian Heritage Information Network, March 1997), 6.

[12] Ibid., 13

[13] Ibid.

[14] Ibid. See also Hughes, endnote 6, 495f. It is a principle of Canadian competition law that economic behavior specifically regulated by a government agency pursuant to a statutory scheme, as found in the Copyright Act, cannot violate section 45 of the Competition Act. Other collective societies that are not performing rights societies are still protected from prosecution under section 45 of the Competition Act as long as they file their licensing agreements with the Copyright Board within fifteen days of completion. The act of filing the agreement has the effect of acknowledging the Board's jurisdiction to oversee the pricing of royalties charged for the use of a work.

[15] Hughes, endnote 6

[16] Ibid.

[17] Ibid.

[18] Lesley Ellen Harris, Canadian Copyright Law (Toronto: McGraw-Hill Ryerson Ltd., 1995), 124; An Act to Amend the Copyright Act S.C. 1997, c. 24, s.s. 29, 29.1, 29.2.

[19] For a complete discussion of many of the factors that have already been taken into account by the courts in trying to apply fair dealing, see David Vaver, Intellectual Property Law: Copyright, Patents, Trademarks (Toronto: Irwin Law Publishers, 1997), 102—103.

[20] Hubbard & Anon. v. Vosper & Anon. [1972] 2 Q.B. 84 (C.A.)

[21] An observation made by lawyers who have worked with collectives associations in Canada.

[22] Ensuring a Strong Canadian Presence on the Information Highway, Canadian Content and Culture Working Group Report, Ottawa: Government of Canada, 1995.

[23] Status of the Artist Act, S.C. 1992, c. 33.

[24] Ibid., endnote 1 and endnote 3.

[25] Ibid. Mona Mangan, an attorney for the Writers Guild of America, East, Inc. suggested in her comments at the ALAI International Congress 1997 that the Canadian system, providing both for collective administration of copyright and collective bargaining under the Status of the Artist Act, is the most modern and unique approach for protecting authors' rights.

[26] Copyright Board Publication of Tariff No. 2, The Canada Gazette, Part 1, January 31, 1998, 51f.

[27] Colette Matteau and Éric Lefebvre, "Les Décisions du Tribunal canadien des relations professionelles artistes-producteurs visant le droit d'auteur," Les Cahiers de propriété intellectuelle 10, no. 2 (1998), 401.

[28] Fortier, ALAI International Congress 1997, 1.

[29] For a full description of the collective societies that currently operate in Canada, see Fortier, endnote 29.

[30] Quebec is a civil-law jurisdiction that has looked to Europe for inspiration and markets in the development of its cultural industries. Collective administration of copyright has long been established in the civil-law jurisdictions of Europe.

[31] Yves Légaré, "La Gestion syndicale des oeuvres audiovisuelles dans les productions de langue francaise au Canada," ALAI International Congress 1997, 3.

[32] Ibid., endnote 1, 4.

[33] Ibid., endnote 1, 8.

[34] Lucie Guibault, "Agreements Between Authors or Performers and Collective Rights Societies: A Comparative Study of Some Provisions," ALAI International Congress 1997, 11.

[35] Ibid., endnote 1, 3.

[36] The Director of Investigation and Research, acting under the auspices of the Copyright Board, has the authority to challenge the practice of exclusive representation.

[37] Ibid.

[38] Ibid., and endnote 1.

[39] Ibid., endnote 5, 492

[40] Ibid., endnote 18, 158.

[41] ALAI International Congress 1997, author's notes from panel discussions.

[42] Electronic Rights Defense Committee et al. v. Southam Inc. et al. An action has been commenced in the Federal Court. A court date has not yet been set.

[43] Teledirect (Publications) Inc. v. American Business Information Inc. (heard at Montreal, October 6—7, 1997; judgment delivered at Ottawa October 27, 1997) not reported (FCA). Leave to appeal to Supreme Court of Canada denied May 21, 1998.

[44] The Electronic Rights Licensing Agency's founding members are the Periodical Writers Association of Canada, the Writers Union of Canada, the Canadian Association of Photographers and Illustrators of Canada, and the Association of Photographers and Illustrators in Communication. It has not yet started licensing works.

[45] For more information on the CAROL project, see [http://www.caro.ca/gallery].

[46] For more information about this project, see [http//:www.chin.gc.ca/about_ CHIN/]. In 1999, CHIN published the results of a marketing study for museum intellectual property.

[47] Ibid., endnote 34.