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Copyright Act Reform: Key Issues for the Five-Year Review

Research Paper

JAY KERR-WILSON is a partner at Fasken Martineau DuMoulin. He practises primarily in the areas of communications and public law, with a particular emphasis on copyright. Prior to joining Johnston & Buchan in 2006, he served as Vice-President, Legal Affairs at the Canadian Cable Telecommunications Association (CCTA) where he acted on behalf of the Canadian cable industry in copyright, Internet, telecom and broadcasting matters.

Mr. Kerr-Wilson represents large and small, Canadian and foreign communications and technology companies in proceedings before the Copyright Board of Canada and advises these clients on issues related to copyright licensing and copyright liability. He advocates on behalf of his clients on issues related to copyright law reform and has testified on several occasions before various Parliamentary committees. Between 2001 and 2010 he regularly served as a delegate to the World Intellectual Property Organization's (WIPO) Standing Committee on Copyright and Related Rights, on behalf of Canada's cable and satellite industry.

In addition to his copyright-related work, Mr. Kerr-Wilson practices before the Ontario Superior Court, the Federal Court, the Federal Court of Appeal and the Supreme Court of Canada. He represents clients in appeals and judicial reviews of decisions of the Canadian Radio-television and Telecommunications Commission (CRTC) and the Copyright Board of Canada. He is also a registered trade-mark agent.

KRISTINA MILBOURN is Director, Copyright and Broadband with Rogers Communications Canada Inc. She is an experienced lawyer specializing in the areas of copyright and communications law.

Ms. Milbourn has extensive experience with regulatory matters and is the resident copyright expert at Rogers Communications. She holds a Bachelor of Science (Honours) from the University of Toronto and a Bachelor of Laws from the University of Western Ontario. She was called to the Ontario Bar in 2009.

Moderator

STEPHEN ZOLF is a partner at Aird & Berlis and a member of the firm's Corporate/Commercial Group and the Communications, Sports & Media and Technology Teams. Stephen has specific expertise on the legislative and regulatory framework governing Canada's communications sector under the *Broadcasting Act*, the *Telecommunications Act* and the Canadian *Copyright Act*. Stephen's expertise encompasses competition/antitrust and foreign investment law and he regularly advises clients on the merger approval process under the *Competition Act* and the *Investment Canada Act*.

A recognized expert in communications and media law, Stephen guides clients through the rapidly evolving legal and regulatory environment governing the communications industry in Canada. Mr. Zolf provides strategic and regulatory advice to clients in the communications sector on a broad range of matters, including Canadian content rules and regulations, tax credit and other funding mechanisms for Canadian content creators and IP issues relating to the acquisition of content for digital platforms. He also advises clients on telecom matters such as the provision of competitive access to network facilities as well as wireless spectrum policy.

Mr. Zolf has acted as regulatory/legal counsel in a number of major high profile media transactions in Canada. He has appeared before various administrative tribunals and agencies, including the CRTC and the Copyright Board and regularly interfaces with the Competition Bureau, the Investment Review Division and other branches within ISED. With strong communication skills and a personable approach, he speaks regularly on broadcasting policy, telecommunications and copyright law.

Mr. Zolf has been consistently recognized as a leading practitioner of communications and media law by Chambers and Partners, Lexpert, Best Lawyers and Legal Media Group. He is also the Legal Alert Editor for Carswell. Before becoming a lawyer, he worked as an economist and policy advisor for the Canadian government in the area of competition policy, regulatory reform and telecommunications.

Panellists

DR. CARYS CRAIG is Associate Dean (Research & Institutional Relations), and an Associate Professor at Osgoode Hall Law School. She is the Academic Director of the Osgoode Professional Development LLM Program in Intellectual Property Law, Editor-in-Chief of the Osgoode Hall Law School SSRN Legal Studies Research Paper Series, and a founding member of *IP Osgoode* (Osgoode's Intellectual Property Law & Technology Program).

A recipient of multiple teaching awards, including the 2015 President's University-Wide Teaching Award, Dr. Craig teaches JD, graduate and professional courses in the areas of intellectual property, copyright and trademark law, and legal theory. She researches and publishes widely on intellectual property law and policy, with an emphasis on authorship theory, users' rights and the public interest. She is the author of *Copyright, Communication & Culture: Towards a Relational Theory of Copyright Law* (Edward Elgar, 2011), and the co-editor of *Trade-marks and Unfair Competition Law: Cases and Commentary*, 2nd ed. (Toronto: Carswell, 2014),

and *Copyright: Cases and Commentary on the Canadian and International Law*, 2nd ed. (Toronto: Carswell, 2013). Her award-winning work has been cited with approval by the Supreme Court of Canada.

Dr. Craig holds a First Class Honours Bachelor of Laws (LLB Hons) from the University of Edinburgh in Scotland, a Master of Laws (LLM) from Queen's University in Kingston, and a Doctorate in Law (SJD) from the University of Toronto, where she was a graduate fellow of Ontario's Centre for Innovation Law and Policy.

DAVID KENT is a partner in the Toronto office of McMillan LLP and a member of the firm's Litigation, Competition, and Intellectual Property and Technology Law Groups. He is the National Co-Chair of the firm's Advocacy and Litigation Group and of its Class Action practice.

Mr. Kent's practice emphasizes complex litigation involving competition, intellectual property, commercial, regulatory and securities/governance disputes. He regularly advises Canadian and US social media sites, OTT services, webcasters, broadcasters and cable networks on Canadian copyright matters. Mr. Kent has appeared as counsel in over 35 Copyright Board proceedings, and in related proceedings in the Federal Court of Appeal and the Supreme Court of Canada, for both copyright users and rights holders. He also has extensive experience in domestic, international and Canada/US cross-border cartels, conspiracies and class actions.

Mr. Kent was defence counsel in two of the largest Canadian criminal cartel prosecutions and is or was counsel in most of the major Canadian civil cartel cases to date. His class action experience includes precedent setting decisions on a wide range of issues including competition and securities law, jurisdiction, cross-border discovery and certification and settlement. He regularly appears before federal and provincial trial and appellate courts and administrative tribunals across the country.

Mr. Kent was elected a fellow of the American College of Trial Lawyers in 2016. He is included in LEXPERT/American Lawyer in their *Guide to the Leading 500 Lawyers in Canada*; LEXPERT, The Best Lawyers in Canada; Who's Who Legal; Benchmark Canada; Chambers Global; PLC; and Euromoney's Guide to the World's Leading Competition and Antitrust Lawyers. David enjoys an AV rating from Martindale and Hubbell.

Mr. Kent graduated with honours from the University of Toronto Law School in 1981 and was awarded the Dean's Key. He taught Alternative Dispute Resolution at Osgoode Hall Law School (2005-07) and Queen's University Law School (1999-2004).

ERIN FINLAY is the Chief Legal Officer at the Canadian Media Producers Association (CMPA) where she advises and advocates on behalf of its independent film and television producer members to ensure that independent world-class content continues to thrive in Canada and around the world. Ms. Finlay provides legal advice and strategic direction for the CMPA and its members on a wide range of matters, including CRTC regulatory proceedings, Terms of Trade, Canada Media Fund policies and guidelines, intellectual property and the changing role of copyright in our ever-shifting media landscape.

In her professional capacity, Ms. Finlay is a member of the Board of Directors of the Canadian Retransmission Collective, the Producers Audiovisual Collective and ISAN Canada. She volunteers as a member of the Board of Directors and an alumni chorister with the Toronto Mendelssohn Choir, where she can occasionally be found performing with the Toronto Symphony Orchestra, and is an aspiring drummer and ukulelist.

Prior to joining the CMPA, Ms. Finlay was General Counsel and Director of Legal and Government Relations at Access Copyright. She provided legal, risk management, policy and strategic advice to the organization, and directed the prosecution of complex copyright enforcement litigation, tariff-setting proceedings before The Copyright Board of Canada and related judicial review applications and appeals to the Federal Court of Appeal and the Supreme Court of Canada on behalf of the organization's author and publisher members. Prior to her time at Access Copyright, Ms. Finlay was an intellectual property and advocacy lawyer at Cassels Brock & Blackwell LLP. Her expertise spans a wide scope of entertainment and copyright law, cultural policy development and broadcast regulatory policy in the Canadian film and television, music and book publishing industries.

Ms. Finlay is a graduate of Queen's Law, holds a Masters of Law with a specialization in intellectual property law from Osgoode Hall Law School and an Honours Bachelor of Arts degree from Wilfrid Laurier University.