Copyright Q & As Tutorial Series Transcript

How does copyright work: Whose law? Exceptions?

Hi, I'm Copyright Cate. Welcome to the Copyright Q&As tutorial series.

In this tutorial we examine the broad question of how the copyright system works by looking at whose law applies when you use a work created in a different country, and exceptions to copyright infringement – that is, permitted public uses of a work that are outside the control of copyright owners.

A companion tutorial looks at the related issues of when copyright protection begins for a new creation, who owns copyright in a new creation, and how long copyright protection lasts.

On completion of this tutorial you will be able to:

- state why copyright is said to be "territorial" in nature, and
- identify what exceptions to infringement are, in the Canadian Copyright Act.

Let's say you found a great resource published in the U.K. and you'd like to copy a substantial part for use in a class presentation on your campus here in Canada. If we assume the resource is copyrighted, whose law will govern your proposed use – U.K., or Canadian copyright law?

In this example, since copyright is territorial, we apply the copyright law of Canada. We say that copyright is territorial because the law of the territory in which a copyrighted item *is used* is the law that governs that use.

Another way of looking at 'whose law applies' is to ask what protections are available here in Canada for materials created by authors from countries? And conversely, what protections are available to your works and other subject-matter when they are used in other countries?

A basic guiding principle of the Berne Convention is that a work created in one member country must be protected in every other member country to the same extent enjoyed by the other country's own nationals. This principle is called national treatment.

The Canadian Copyright Act accommodates national treatment by providing that materials created by authors from other treaty countries enjoy protection when used in Canada to the same extent available for any work originating within Canada. Similar provisions exist in the copyright laws of

other treaty countries which protect copyright in all of your works when they are used in other treaty countries.

The tutorial on 'What kind of property is copyright?' talked about copyright as a balance between private owners' rights and the public interest in having good access to protected items for the benefit of society as a whole.

And the tutorial on 'Thresholds for protection: substantial part' told us copyright doesn't protect every iota of a work but only substantial parts that represent a substantial part of the author's skill and judgment expressed in the work.

Treaties such as the Berne Convention allow member countries to limit or make exceptions to authors' copyrights by allowing some "free uses" of works or substantial parts. These exceptions are allowable as long as the uses are limited to

- certain special cases that

- don't conflict with normal exploitation of the work and

- don't unreasonably prejudice authors' legitimate interests.

In classroom settings, educators have long felt that copying substantial parts of works for educational purposes can fall within copyright law's exceptions. Exceptions are uses of copyright works that do not infringe owners' rights. In a landmark 2004 case called CCH v. the Law Society of Upper Canada, the Supreme Court of Canada said exceptions to infringement are more properly called users' rights, which must not be interpreted restrictively in order to maintain a proper balance between owners' and users' interests.

So copyright exceptions are provisions for users' rights in the Copyright Act. The most important and generally applicable users' rights are called fair dealing. We will take a closer look at fair dealing in another tutorial.

Thanks for viewing this tutorial in our Copyright Q&As series. You can check out the Sources used in this tutorial as well as Further Information if you'd like to find out more about copyright.