



## Directive on the Protection of Copyright

<p><b>Department responsible:</b> General Administration</p>	<p><b>Approved by:</b> _____</p> <p style="text-align: center;">Director General</p>
<p><b>Effective Date</b> January 1<sup>st</sup> 2003</p>	<p><b>Amended on:</b> July 1<sup>st</sup> 2006 and April 12, 2011</p>
<p><b>Reference:</b> <i>Copyright Act</i> (R.S.C., c. C-42)</p>	<p><b>Web / sources:</b>  <a href="http://www.meq.gouv.qc.ca/drd/aut.html">www.meq.gouv.qc.ca/drd/aut.html</a>  <a href="http://www.copibec.ca">www.copibec.ca</a>  <a href="http://www.sodrac.com">www.sodrac.com</a>  <a href="http://www.socan.ca">www.socan.ca</a></p>

The *Copyright Act* of Canada confers exclusive rights to authors in order to protect them against any unauthorized use of their work. This protection applies even when a work is used for pedagogical purposes, although the law provides a certain amount of flexibility for educational institutions. Such exceptions, however, remove only a few of the constraints, and the school boards and teachers remain limited in their use of copyright-protected material.

In order to give more leeway to the educational sector, the Ministère de l'Éducation, du Loisir et du Sport du Québec decided to come to a specific agreement with the majority of copyright societies by paying them a lump sum, which gives Quebec educational institutions certain extended rights of use.

The information contained in this Directive is provided solely for guidance and should neither be quoted nor considered as having legal value. It may become obsolete without advanced notice.

### **1. Premises**

- 1.1 [application](#) This Directive states the copyright protection rules to be observed in using material and tools for pedagogical purposes, whether within the schools or at the head office of KSB. These rules apply in the same way to material produced by the School Board, which is also protected against unauthorized use by third parties.
- 1.2 [definitions](#) In this directive, the following words or expressions mean:
- a) **COPIBEC**: an organization governed by the Union des écrivaines et écrivains québécois (UNEQ), responsible for reproduction rights of literary work in Quebec;
  - b) **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;

- c) **premises** : the place where teaching is carried out;
- d) **MELS**: ministère de l'Éducation, du Loisir et du Sport du Québec [department of education of Quebec];
- e) **musical work**: any musical composition with or without lyrics, without distinction between classical and popular music;
- f) **protected work**: original literary, dramatic, musical or artistic works;
- g) **SOCAN**: Society of Composers, Authors and Music Publishers of Canada;
- h) **SODRAC**: Society for Reproduction Rights in Canada of Composers, Authors and Music Publishers;
- i) **SOPROQ** : Société de gestion collective des droits des producteurs de phonogrammes et de vidéogrammes du Québec.

## 2. Copyright

- 2.1 [extent of protection](#) In relation to sole rights related to a work, copyright protection includes, among others:
  - a) translation;
  - b) reproduction (on tapes, records, computers, etc);
  - c) publication;
  - d) performance in public;
  - e) communication to the public (radio, television, Internet, etc.);
  - f) public exhibition;
  - g) adaptation and conversion into another form of work.
- 2.2 [birth of copyright](#) A work is automatically protected as soon as it is fixed into a non-ephemeral material form. The work does not have to be complete, nor definitive. A draft, notes or a detailed plan are sufficient. An idea is not protected, only the form by which it is expressed is protected (book, painting, music, sculpture, photograph, film, computer program, etc.).
- 2.3 [official registration copyright](#) Although copyright is automatically established, it is preferable to register it officially at the Copyright Office in order to avoid ambiguities as to the ownership of copyright in case of conflict.
- 2.4 [owner of copyright](#) In general, the owner of copyright is:
  - a) the author of the work;
  - b) the employer, if the work was made in the course of employment, in the absence of any agreement to the contrary;

- c) the person who ordered a photograph, a portrait, or an engraving for valuable consideration, in the absence of any agreement to the contrary;
- d) another person, if the original copyright owner has assigned copyright.

- 2.5 [term of copyright](#) Copyright protection is not indefinite. As a general rule the copyright subsists for 50 years following the death of the author, or following the first publication of the work, where such publication occurred after the death of the author. As for the copyright for a performance by an artist (execution in public), the protection extends to the 50 years following the recording of such performance.
- 2.6 [geographical extent of protection](#) Any work produced by a citizen or a person ordinarily resident in a treaty country of the *Berne Convention* or the *Universal Copyright Convention* is automatically protected in all treaty countries. Canada is a signatory of all these treaties, as are the majority of industrialized countries. Thus, a work produced in the United States or in France is protected, and copyright regulations pertaining to its use in Canada must be respected.

**Procedure**

2A) [example](#) *A musical work composed by Beethoven is no longer protected by copyright since the author has been dead for over 50 years. An orchestra could, therefore, perform this work without paying royalties and could even record its performance. With respect to the use of this recording, the orchestra would benefit from another type of protection, called copyright in performer's sound recording, for 50 years following the date of such recording. Beyond this period, anybody would be able to use this recording without violating the law. (See Section 5 below about exceptions for educational institutions.)*

### 3. Exceptions to infringement for educational institutions

- 3.1 [exceptions for educational institution](#) The law provides for a few exceptions for educational institutions where it is possible to use a work without the specific authorization of its author. Such uses, however, remain very restricted.
- 3.2 [reproduction](#) Teachers may, for pedagogical purposes and on the premises of the institution, make a manual reproduction of a work onto a dry-erase board, flip chart or other similar surface. They may also project an image of that copy using an overhead projector or similar device.
- 3.3 [Examinations or tests](#) The law allows for the reproduction, translation, performance or communication of a work or other matters subject to copyright on the premises of the institution and within the context of examinations or tests.

- 3.4 [plays, music and live performances](#) The live performance in public of a work (song, play, etc.) by students, as well as the listening to a sound recording of a work (on CD, etc.) or the viewing of or the listening to a work at the time of its retransmission by telecommunications are permitted. These acts must be done on the premises of the institution for pedagogical purposes and not for profit.
- 3.5 [news reporting, excluding documentaries](#) It is possible for a school to reproduce (on video cassette...) a single copy destined to students for pedagogical purposes of television or radio emissions of news reporting, providing it is not a documentary. This right to reproduce is valid for one year from the date of reproduction, following which, royalties must be paid out or the reproduction must be destroyed.
- 3.6 [documentaries](#) A television or radio documentary emission may be reproduced in a single copy destined to students for pedagogical purposes, but this reproduction must be destroyed within 30 days if royalties are not paid out.
- 3.7 [mandatory information](#) It is mandatory to record information related to reproduction, destruction and public performance of any copyright work, and the school must label copies of such work or materials so reproduced.
- 3.8 [KSB publications](#) The pedagogical material produced by KSB may contain short excerpts of literary works that are protected and already published where such works are not intended for use in pedagogical institutions. If used, the source must be mentioned, and no more than 2 excerpts of the same author may be used within the 5 following years.

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- 3A) [limitations to reproduction on acetate, slides, etc.](#) The reproduction of a work on acetate or similar material, such as slides, is not permitted if such work is available in Canada, for a reasonable price and within a reasonable time or if it is available under a license from a collective society under the same conditions.

## **4. Use of literary works by the Board and its schools**

The above-listed exceptions with respect to reproduction give very little latitude to teachers in the use of a literary work for educational purposes, and in most cases, royalties remain payable. However, an agreement was concluded between the MELS and COPIBEC in order to consolidate the payment of royalties, which will be made by MELS, thereby allowing a wider use of literary works for pedagogical purposes.

- 4.1 [literary work](#) A literary work means a book or an article from a newspaper or periodical.
- 4.2 [agreement concluded by MELS](#) The agreement on reproduction of literary works in educational institutions providing pre-school, elementary and secondary education, stem from an accord entered into by COPIBEC, representing authors and publishers, and the MELS.

- 4.3 [license granted](#) COPIBEC grants to users in educational institutions a global license for limited reprography, which gives them access to thousands of Canadian and foreign works protected by copyright.
- 4.4 [application](#) Pursuant to the license granted to the MELS, the term “reproduction” means reproduction, on paper or acetate, done by means of a reprography process, such as photocopy, xerography, duplication (stencil), manual transcription or drawing (including tracing) and any similar process, or done by means of facsimile or photocopier.
- 4.5 [royalties paid by MELS](#) In consideration of the license granted, the MELS has undertaken to pay a financial compensation to authors for the reproduction of their works.
- 4.6 [obligations of users](#) Users in schools and school boards, however, must respect the reproduction limitations stated in the agreement concluded between COPIBEC and the MELS.

#### **The agreement on reproduction permits the following**

- 4.7 [reproduction limited to 10% or 25 pages](#) For the sole purpose of educational services, users in institutions providing pre-school, elementary and secondary education, as well as in school boards, are authorized to reproduce the lesser of 10% or 25 pages of a work.

Notwithstanding the preceding limitations, it is also permitted to reproduce in its entirety a tale, a short story or a poem included in a compilation, providing the total number of pages reproduced do not exceed the lesser of 10% or 25 pages of the compilation.

Users may also reproduce in its entirety a periodical or newspaper article, providing the total number of pages of the selected text does not exceed the lesser of 10% or 25 pages of the periodical or newspaper.

#### **The agreement on reproduction does not permit the following**

- 4.8 [prohibitions](#) The agreement prohibits the reproduction of unpublished works, of sheet music, as well as the reproduction of separate photographs and illustrations. In addition, the agreement does not apply to works appearing on the COPIBEC exclusion list (See [http://www1.copibec.qc.ca/?action=usedps\\_psexclusion](http://www1.copibec.qc.ca/?action=usedps_psexclusion))

Except for excerpts used for purposes of examination, testing or evaluation, reproductions taken from a protected work may not be inserted in, joined with or annexed to other documents. For example, the agreement does not allow for compilations or anthologies to be made from reproductions of protected works.

The digital reproduction of a work (CD-ROM, data banks, etc.) are excluded from the agreement.

- 4.9 [prohibition to sell](#) Reproductions produced may not be sold for motive of gain to student or others. However, users are authorized to recover the cost of reproduction, that is to sell copies at cost.

### **Procedure**

- 4A) [verification before reproducing](#) Before reproducing a work, users must ensure that it does not appear on the list of exclusions established by COPIBEC, because the agreement prohibits the reproduction of certain works. All other works may be reproduced by users.
- 4B) [reproduction beyond limitations](#) Users who wish to reproduce a work beyond the limitations provided for in the agreement on reprography must contact COPIBEC to obtain a special authorization.
- [royalties payable](#) Costs related to obtaining such an authorization shall not be assumed by MELS.
- 4C) [data on material reproduced](#) The distribution between individual authors and publishers of reproduction royalties paid by MELS to COPIBEC is determined through statistical surveys. However, it remains important to verify which documents have actually been distributed to students, and COPIBEC can, with the collaboration of MELS, collect data from target groups comprised of members of the teaching and administrative staff.
- 4D) [identification on reproduced materials](#) Users of educational institutions and school boards must indicate, on each set of reproductions, the name of the author and of the publisher, the title of the work, the date of publication and the page numbers reproduced.
- 4E) [nomination of a person responsible](#) The person designated by KSB as responsible for the application of the agreement on reproduction is the Associate Secretary-General, at the Administrative center.

## **5. Use of a musical work by KSB and its schools**

### **Playing or performing a work**

- 5.1 [exceptions to the copyright act](#) As described in Section 3.4, it is permitted in certain circumstances to play a sound recording of a musical work (on CD, cassette, etc.) for pedagogical purposes.
- 5.2 [agreement between MELS and SOCAN](#) In order to broaden the exemption to the Copyright Act the MELS concluded an agreement with SOCAN, which represents the composers, authors and music publishers of Canada. This agreement allows for the playing of a musical work for non-pedagogical purposes and the performance of such work by students.
- 5.3 [license granted](#) SOCAN grants to schools a license covering the playing of any work from the world repertoire or the performance of such work by students, without requiring and authorization or paying royalties. Activities to which the agreement applies are:
- a) dances, Halloween, Christmas and Easter celebrations, winter and green class. These activities may not be open to the public, even for the funding of extracurricular activities;

- b) parties organized for the staff, except where spouses or friends are invited;
- c) school proms held in the educational institution. This exception does not apply if the prom is held outside the educational institution;
- d) concerts given by the school band or by the students or staff;
- e) student radio.

**Reproduction of a work**

- 5.4 [incorporation of a musical work into a video...](#) With respect to the reproduction of a musical work contained on a compact disc, LP album or cassette for the purpose of incorporating into a video or other medium produced by KSB, its teachers or students, there is an agreement between the MELS and SODRAC and SOPROQ which allows certain uses. However, contrary to the playing or performing of musical work as described in sections 5.1, 5.2 and 5.3, this agreement allows reproduction of work of authors listed in their databank accessible at [www.sodrac.com](http://www.sodrac.com) under the section “who we represent”.
- 5.5 [payment is mandatory](#) In the case cited in section 5.4 above, if the material in which music was incorporated is broadcast in public, rather than exclusively for pedagogical purposes or extracurricular activities, a license must be obtained from SODRAC and related royalties must be paid.

<b>6. Use of cinematography work by KSB and its schools</b>
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- 6.1 [works specific to education](#) A work specifically designed for educational purposes by a specialized producer is in general sold with the permission to rebroadcast without restriction. Productions from NFB, Télé-Québec, Télé-Ontario, etc. are generally royalty-free when purchased.
- 6.2 [works intended for the general public](#) Rebroadcasting of a film intended for the general public is not royalty-free, and even the purchase of the video cassette of such a film does not permit its viewing in a public place, such as a classroom. Productions such as those of Walt Disney, Warner Brother, Universal Studio, etc. may not be viewed in a classroom without the purchase of a mandatory license obtained from “*Les Films Criterion*” or from “*Audio Ciné Films*”.
- 6.3 [prohibition](#) KSB did not conclude an agreement with collective societies in this area. Consequently, it is illegal to view, use or reproduce a film described in section 6.2 on the premises of KSB.

<b><u>Procedure</u></b>
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| 6A) <a href="#">borrowing from the resource center</a> | <i>The resource center of KSB owns a large collection of videos related to education, which may be borrowed by schools and viewed by students without any restriction. Each school has the list of videos available.</i> |
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6B)	<a href="#">violation</a>	<i>A teachers who owns or rents a Walt Disney film, or who tapes it when broadcast on TV and shows it to his students, whether during or outside school hours, violates the law and may be exposed to legal proceedings.</i>
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## 7. Work produced by KSB

- 7.1 [symbol to affix](#) To clearly indicate that a work produced by the School Board is protected by copyright, each copy of a work produced by KSB should bear the symbol © followed by the name of KSB, and the year of the first publication of the work.
- 7.2 [authorization / use by third parties](#) Any authorization to use the work produced by the Board provided to individuals or entities from outside the Board, shall be previously approved by the Director General. Particular conditions may be attached to any use, such as:
- user fees
  - mention of the KSB property rights
  - no resale to be allowed
  - etc.

## 8. Application of this Directive

- 8.1 [previous provisions](#) The present directive replaces all other directives of the Board pertaining to this subject, while respecting the policies adopted by the Council of Commissioners where applicable. If such policies are adopted, the provisions of these policies will be integrated into this directive for the benefit of the reader.
- 8.2 [responsibility](#) The Associate Secretary-General of KSB is responsible for the application of this Directive.