



# Intellectual Property

Erin Best – *St. John's, NL*

# Types of Intellectual Property

- Copyright
- Trademark
- Patent
- Industrial Design

# Characteristics of Intellectual Property

- Federal jurisdiction & International treaties
- Copyright protection springs from creation
- No copyright in ideas, only expressions
- Copyright infringement and plagiarism are different
- Trademarks should be registered
- Official marks
- Obtaining a patent



Copyright

# Copyright

- “Original” work (any “exercise of skill and judgment”)
- Term – 50 years, then public domain
- Statutory damages!
- Do you have insurance for IP infringement?
- Digital Locks (aka TPMs)



Fair Dealing

# Copyright: Fair Dealing

- Not an infringement to copy a work when the use is a fair dealing
- Enumerated purposes:
  - **Research**
  - **Private study**
  - **Education**
  - Parody or satire
  - Criticism or review (must cite source)
  - News reporting (must cite source)

# Copyright: Fair Dealing

- And the dealing must be fair!
- Contextual analysis
- Fairness test:
  - The **purpose** of the dealing
  - The **character** of the dealing
  - The **amount** of the dealing
  - **Alternatives** to the dealing
  - The **nature** of the work
  - The **effect** of the dealing on the work



# Copyright

## Copyright Office

- Administers Copyright Policy
- Reviews and advises on licenses
- Negotiates licenses
- Conducts fair dealing analysis

## Backup Copyright Officer

- Lawyer
- Provides advice and guidance on unusual copyright issues
- Conducts fair dealing analysis

# *Access Copyright v. York University*

- **STATUS: Waiting for decision from Federal Court of Appeal**
- Access Copyright: collective that administers rights of writers
- Universities used to buy a license
- 2004: CCH SCC decision expanded fair dealing
- 2010: AC increased cost of license from \$3.38 to \$45 per FTE
- 2011: York opted out of interim tariff
- AC sued York in FCC for failure to pay interim tariff (\$26 FTE)
- AUCC hires legal counsel to prepare fair dealing guidelines
- Strength in numbers approach

# *Access Copyright v. York University*

- **July 2017 decision of FCC: Universities lose**
- Interim tariff is mandatory and enforceable
- Fair dealing guidelines deemed “arbitrary”
- 10% in one course + 10% in another...could = 100%
- BUT:
  - SCC has said aggregate is irrelevant
  - What about content that is already licensed?
  - Who is the user? SCC: The student
  - SCC: Fair dealing encourages dissemination



These materials are intended to provide brief informational summaries only of legal developments and topics of general interest.

These materials should not be relied upon as a substitute for consultation with a lawyer with respect to the reader's specific circumstances. Each legal or regulatory situation is different and requires review of the relevant facts and applicable law.

If you have specific questions related to these materials or their application to you, you are encouraged to consult a member of our Firm to discuss your needs for specific legal advice relating to the particular circumstances of your situation.

Due to the rapidly changing nature of the law, Stewart McKelvey is not responsible for informing you of future legal developments.