

Copyright Update

One of the many changes that were introduced in recent Canadian copyright reform is what has become known as the YouTube exception, a.k.a. the mash-up exception, or more properly called the Non-commercial User-generated Content exception, which is detailed in the Canadian *Copyright Act* s. 29.21. Like fair dealing, this is an *exception* to copyright. Exceptions outline specific situations and conditions that allow some copying of materials that otherwise would be restricted under copyright law.

The Non-commercial User-generated Content exception permits copying small portions of existing published or publicly available work in the production of a new work, which may then be shared publicly (e.g., via social media such as YouTube). What this means is that it's okay for someone to make a mash-up or use bits of publicly available material in their own multi-media creation, and then make the new work publicly (but not commercially) available. This re-use of content without permission will no longer be considered an infringement of copyright, as long as it follows the conditions outlined in the legislation.

There are several conditions that must be followed in order to take advantage of this exception to copyright, and, as always, some ambiguities in the legislation. Some of the conditions include: the new work may not be used for any commercial purposes; the source of the re-used content must be mentioned (you can never avoid proper attribution!); the creator of the new work must be reasonably certain that the content they are using is not itself infringing copyright; and the new work may not have any substantial adverse effect on the original work.

The language of section 29.21 specifically states that an *individual* may use this exception, and the individual, "or, with the individual's authorization, a member of their household," may disseminate it and make it available to the public. One would assume from this that the legislation is restricted to the personal and domestic realm, and excludes organizations or groups from taking advantage of it. However, this new exception is worded quite generally and has not yet been tested by litigation. More defined interpretation of it will emerge over time through case law.

There are many potential uses for this exception within education, such as multi-media productions as an alternative to the traditional student essay or presentation, or New Media student projects. The exception for user-generated content is truly a modernization of the *Copyright Act*. It allows for the evolving and emerging ways in which works are created and disseminated in our contemporary digital culture. "Produser" is a hybrid word recently coined to describe the combination of actively producing and passively using information. The boundaries between producing and using, between producer and user, are increasingly and dynamically blurring in our use of digital media, and the YouTube exception acknowledges this change.

As always, feel free to contact the Copyright Office with any questions at copyright@uleth.ca or 403-332-4472.

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