

2nd Edition

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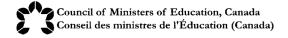


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Copyright Matters!

Some Key Questions and Answers for Teachers

2nd Edition, 2005

From the Authors

The authors of *Copyright Matters!* are pleased to offer teachers this revised edition. It replaces the first edition published in 2000. Many changes have occurred in the area of copyright since that original publication. Indeed, copyright law continues to evolve in response to existing and emerging technologies, international agreements, and the need for reasonable balance between users and creators of copyrighted works.

We hope that teachers will continue to find this second edition of *Copyright Matters!* a valuable tool in acquainting themselves with basic copyright rules. This publication is a starting point in increasing awareness of your rights and obligations, as a teacher, in selecting and using copyrighted materials in your educational institution.

The authors have generalized a very complex subject. The booklet is not a substitute for legal advice, which should be sought in cases where the application of general principles is unclear.

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What is the purpose of this booklet?

This booklet gives teachers user-friendly information on copyright law, combining items from the Canadian Copyright Act and its regulations, contractual and tariff arrangements with copyright collectives, and court decisions. It provides information about copyright law and copyright collectives and how they relate to the use of resources on school premises. More detailed information is available from many printed sources, from the Internet, and by contacting your ministry or department of education. A list of sources appears at the end of this booklet. Education departments and ministries, as well as school boards across the country, encourage copyright awareness in our education systems and respect for copyright.

What is copyright?

Copyright is the legal protection of literary, dramatic, artistic, and musical works, sound recordings, performances, and communications signals. Copyright provides creators with the legal right to be paid for — and to control the use of — their creations. Copyright also provides exceptions to the rights of creators for users, like educational institutions, who want access to material protected by copyright. Balance in copyright is achieved by providing creators with legal rights and by limiting those rights through "exceptions". Copyright protects only the way information is expressed, not the information itself. *Copying ideas, facts, or information in your own words is not copyright infringement; however, proper citation of sources is required.* Copyright arises automatically upon creation — it is not necessary to register a copyright in order for a work to be protected, nor is it necessary for the © symbol to appear on a work for it to have copyright protection.

Although the copyright law is the same across Canada, the copyright law in other countries is often quite different. Activities that may be permitted under exceptions in other countries may not be permitted under exceptions in Canada. In order to determine the use you can make of resources, it is always the Canadian Copyright Act that will apply, regardless of where those resources may have originated. In the United States, for example, the "fair use" doctrine is quite different from "fair dealing" in Canada. When compared with the Canadian "fair dealing" doctrine, the United States' "fair use" doctrine permits broader uses of copyright material without permission or payment to the copyright owner.

Why is copyright important?

Just as you would want to protect anything that you own, creators want to protect their works. Without copyright protection, there would be little incentive to develop new works, as there would be no guarantee that the creators would be paid for their work or that the use of their work would be acknowledged when reprinted or reproduced.

As students, we were all taught the value of original thinking and the importance of not plagiarizing the works of others. Since teachers use copyright materials as well as *educate the copyright owners* and users of tomorrow, they have a unique responsibility to set the right example. The works of others should not be used without their permission unless the use is within the exceptions provided in the law or the use has been authorized by the copyright owner.

A first step is to look at the resources you use — print materials, videos, and various forms of recording and performance — and ask the right questions. Do you have permission to copy all or part of these materials, adapt them for your own use, or use them on school premises?

Ask how you can obtain the legal right to use these materials, so that your students have reasonable access to the resources needed for the learning process. Teachers must be cognizant of the copyright status of resource materials in their possession.

What does "public domain" mean?

A work in the public domain is freely available for anyone to use without asking for permission or paying royalties. The phrase "public domain" is a copyright term referring to works that belong to the public. (Even a work that is protected by copyright can, in a figurative sense, be placed in the public domain.) Works are considered to be in the public domain for several reasons: because the term of copyright protection has expired (in most cases, 50 years after the death of the author); because the work was not eligible for copyright protection in the first place; or because the copyright owner has given the copyright in the work to the public. The copyright owner must specifically license all or some uses of the work, usually by stating on the work what uses may be made without requesting permission, for example, the copyright notice may state that the work may be reproduced, communicated, or performed for educational purposes without permission or payment.

What is an exception?

An exception in copyright law permits defined categories of users, such as educational institutions, to make certain uses of a work protected by copyright, without having to ask for permission and without having to pay a royalty. The Canadian Copyright Act contains some exceptions for educational institutions and persons acting under their authority. However, these exceptions are usually very limited in what they allow. The exceptions that apply to education are highlighted throughout this booklet.

What is a copyright collective?

Collectives administer many of the rights provided to creators in Canadian copyright law. A collective is an organization that administers the legal rights provided under the Copyright Act on behalf of copyright owners and rights holders who are members of that collective. Collectives can license only what copyright owners and rights holders authorize them to license. There are many kinds of collectives. Access Copyright and COPIBEC license photocopying in schools. Two other collectives, Visual Education Centre (VEC/Criterion) and Audio-Ciné Films Inc., license the public performance of some feature-length videos in schools. These licences permit copying and/ or public performance without infringing copyright, as long as the copying and/or public performance remains within the negotiated limits set out in the licence. The Educational Rights Collective of Canada (ERCC) collects royalties under a tariff system for the copying of radio and television programs at the time they are aired. SOCAN (Society of Composers, Authors and Music Publishers of Canada) collects tariffs for the extracurricular performances of music. A complete list of collectives can be obtained by using the link listed at the end of this booklet.

Do copyright costs increase with use?

We all know how expensive it is to purchase a textbook or a video. When additional use of such a resource is made, for example, by photocopying parts of a textbook or by copying a video, there are usually *additional costs* (collective licensing and clearance of public performance rights) for the school, school board, or ministry/ department. *Since financial resources are usually limited*, it is important to carefully evaluate the resources that need to be acquired, how they can be used, and what it will cost to use them.

What material can be copied under the Copyright Act?

Exceptions under the Copyright Act permit certain things to be done by educational institutions that would infringe copyright if there were no exceptions. Teachers can

- copy and perform extracts from a work protected by copyright, unless the part is highly significant or valuable (courts make the final determination whether a "dealing" is "fair")
- copy or perform works whose author(s) died more than 50 years ago (but not translations or annotations of such works)
- use any work protected by copyright with the permission of the copyright owner
- copy the text of federal and Ontario statutes, regulations, and court decisions without permission
- make a single copy of works, such as articles or photographs, protected by copyright for private study, research, criticism, review, or news reporting under the sections of the Copyright Act that allow such uses of copyright material — referred to as "fair dealing"
- copy a work protected by copyright by hand onto a surface normally used to display handwritten material, such as a blackboard, whiteboard, or flip chart
- copy a work protected by copyright for the purpose of overhead projection using a device such as an LCD, overhead, opaque, or slide projector, provided the work is used for the purpose of education and training and is not already available in a commercial format
- copy an entire work (other than a cinematographic work) onto an alternative format including translation, adaptation, and

performance in public (except the making of a large-print book) for the purpose of serving students with perceptual disabilities as long as such an adaptation is not already commercially available in that format

Exceptions under the Copyright Act permit additional things to be done by libraries, including those in schools, that would infringe copyright if there were no exceptions. These include

- making a copy of a work "if the original is rare or unpublished and is deteriorating, damaged, or lost" — provided a replacement copy is not commercially available
- making a copy of a fragile document for on-site consultation if the original cannot be viewed because of its condition — provided a replacement copy is not commercially available
- making a copy if the original is in an obsolete format or the technology to use the original is unavailable — provided a replacement copy is not commercially available
- making a copy for the purpose of cataloguing or internal record keeping or for insurance purposes or police investigation
- making a copy for the purpose of restoration

Can teachers copy print materials?

Yes, in two ways: first, under the provisions in the Copyright Act outlined immediately above and, second, if your province, territory, or school board is licensed by Access Copyright (formerly known as CANCOPY). The creators of print materials such as books, newspapers, magazines, journals, and reference works have the exclusive legal right to authorize the copying of all or part of their works. Before 1989, if a teacher wanted to copy 10 per cent of a work or make multiple copies of a periodical article, it was necessary to seek permission from

the holder of the rights in that work, usually the author or publisher. In 1989, a collective called the Canadian Copyright Licensing Agency (now Access Copyright) was formed to administer the right to make copies of published print material and to ensure that authors and publishers are compensated for such copying. Schools, universities, colleges, and others are licensed by Access Copyright to reproduce works, *within limitations*, without the need to seek out individual copyright holders to obtain permission. Your school administrator, school district office, and ministry/department of education will know if there is an Access Copyright licence in place at the time you wish to make copies. The Web site of the Council of Ministers of Education, Canada (CMEC) is also a good alternative for locating the most up-to-date information on copyright <www.cmec.ca/else/indexe.stm>.

What print materials can teachers copy under the Access Copyright licence?

All publicly funded schools in the elementary and secondary systems across Canada (except in Quebec) were covered by a five-year licence (ending August 2004) with Access Copyright. Annually, each province and territory pays Access Copyright a fee for this licence. The fees are redistributed by Access Copyright to copyright owners. A new licence for years following 2004 will be negotiated or a tariff set by the Copyright Board if an agreement cannot be negotiated.

The Access Copyright licence provides permission to educational institutions to make reprographic copies, the most common form of which are photocopies. The Access Copyright licence also provides teachers and students with limited rights to copy legally the published print works of others without seeking permission. But the licence does not give teachers and students the right to do any and all forms of reproduction.

Teachers and students are permitted to make copies for school purposes, including class sets, as well as for administration, communications with parents, and library use. The Access Copyright licence covers published print works from the following countries: Australia, Canada, Denmark, France, Germany, Hong Kong, Iceland, Ireland, Italy, Jamaica, Liechtenstein, Malta, Mexico, Netherlands, New Zealand, Norway, South Africa, Spain, Switzerland, the United Kingdom, and the United States of America. Access Copyright also has a reciprocal agreement with COPIBEC, a collective in Quebec that licenses users.

The Access Copyright licence authorizes copying of up to 10 per cent of a work. You can copy more than 10 per cent in the following circumstances:

- an entire chapter that constitutes 20 per cent or less of a book
- an entire single short story, play, essay, or poem from a book, periodical, or anthology
- an entire newspaper article or page
- an entry from a reference work
- an illustration or photograph from a publication containing other works
- large-print material to accommodate the perceptually disabled, published in Canada
- in limited cases, as specified in the licence, out-of-print books

What can't be copied under the Access Copyright licence?

The licence does NOT authorize the copying of

- published work cards, assignment sheets, tests, and examination papers that are available for purchase
- material designed for one-time use (e.g., workbooks and activity books)
- instruction manuals and teachers' guides
- federal, provincial, and territorial government publications, except those of the Government of Quebec
- · print music

Can teachers play sound recordings, radios, and televisions on school premises?

Yes. An exception permits the playing of sound recordings. The same exception also allows the playing of radio and television programs at the time they are aired. However, the playing of sound recordings and of radio and television programs, as well as the performance of works such as a play, are subject to all of the following conditions:

- must take place on the premises of an educational institution
- must be for educational or training purposes
- must not be for profit
- must take place before an audience consisting primarily of students of the educational institution, instructors acting under its authority, or any person who is directly responsible for setting curriculum
- must not involve a "motive of gain"

Where music is not performed in pursuit of an educational object, tariffs are applicable through the collective called SOCAN. Examples include music performed for extracurricular activities such as at an assembly, for background music, for a school dance, or for a fashion show. A current statement of applicable fees can be found on the SOCAN Web site at <www.socan.ca>.

Can students perform a work protected by copyright, such as a play, on school premises without permission from the copyright owner?

Yes. An exception permits live performances, primarily by students. An example is the performance of a play in a drama class. The five conditions listed in answer to the previous question must also be met before this exception applies.

Can teachers copy news and news commentary programs from the radio or television?

Yes. An exception became law on January 1, 1999, permitting a person acting under the authority of a non-profit educational institution to make a single copy of a news program or a news commentary program and to use the copy on the school premises for educational and training purposes. The copy can be made only at the time the program is aired. The audience must consist primarily of students of the educational institution. Documentaries are specifically excluded from the exception. The following conditions apply:

- The copy can be made and shown an unlimited number of times without the permission of the copyright owner or the payment of a royalty, for up to one year from the date the copy is made.
- After one year, the copy must be either erased or paid for.
- The educational institution is required to provide to the copyright owner or a collective representing the owner, upon request, information relating to the making, erasing, performing, and method of identification of the copy, if the copy is retained for more than 72 hours.

Copies that are not erased after one year will be subject to payment and to terms and conditions relating to the use, as established by the copyright collective or copyright owner, whether or not the copies are ever used. These costs can be substantial.

Can teachers copy other kinds of radio and television programs?

Yes. An exception became law on January 1, 1999, permitting a person acting under the authority of a non-profit educational institution to make a single copy of all other types of broadcast programs (i.e., those that are not news or news commentary programs). *The copy can be made only at the time the program is aired*. A teacher may examine the copy for up to 30 days, to determine whether the copy will be used on the premises of an educational institution for educational purposes. If the copy is shown on school premises at any time (including within the 30-day evaluation period) or if it is not erased after 30 days, payment must be made.

The educational institution is required to provide information related to the making, erasing, performing, and method of identification of the copy to the copyright owner or a collective representing the owner. A copy may be viewed only by an audience consisting primarily of students of the educational institution and is subject to terms and conditions relating to the use of the copy and to payment, *whether or not it is ever used*. The Educational Rights Collective of Canada (ERCC) is the collective that collects tariffs for off-air recordings.

What will copying radio and television programs cost?

On October 25, 2002, the Copyright Board of Canada established tariffs for off-air television recording as follows:

Transactional: \$1.60 per minute for elementary/secondary schools; \$2.00 per minute for postsecondary institutions

Comprehensive: \$1.73 annually per FTE for elementary/secondary schools; \$1.89 per FTE for postsecondary institutions

Under the transactional tariff, you pay for each recording based on the length of the recording. Under the comprehensive tariff, you pay an annual cost based on the number of full-time equivalent students (FTE) in your institution. If you make a recording, you must keep prescribed records and pay the appropriate fees. The tariffs indicated were set by the Copyright Board for 1999 to 2003. The same tariffs have been extended, effective January 1, 2003, until new tariffs are set by the Copyright Board. No date has been set by the Copyright Board to do this.

Your province, territory, or school board may have an educational media centre that makes available, at no charge, curriculum-relevant video programs for school use. Titles obtained from these sources will have been cleared for performance on school premises. In addition, some public libraries are now carrying titles cleared for public performance. School libraries and media centres are always interested in teacher input in building their collections.

What is Cable in the Classroom?

Cable in the Classroom is a programming service providing access, free of charge, to a limited number of television programs for use on school premises. Schools have the right to tape and show programs made available by Cable in the Classroom, without payment of copyright royalties, during the rights clearance period. Cable in the Classroom pre-clears selected television programs for school use and pays the required royalties to the copyright owners. Teacher guides are also available for a number of the program offerings. Their Internet site <www.cableeducation.ca> gives a monthly schedule of available programming, providing information on where and when the programs will air and the length of time programs can be retained. After the clearance period ends, you must either erase such programs or pay the royalties for their continued use through ERCC.

Can teachers show a video on school premises without infringing copyright?

A copyright owner has the right to authorize and get paid for the "performance in public" of a work, including a video. A Canadian school, under copyright law, is considered to be a public place. In order for a video to be shown in a school, it is necessary to have the authorization or permission of the owner of the copyright in the video. A video shown in a school must be cleared for public performance. Videos that are acquired from educational sources or are borrowed from educational media centres will normally include the right to perform the work in public (in a school). Videos that are rented or purchased from most commercial sources such as video stores are licensed for "home use only" — their performance in a classroom would be an infringement of copyright, unless the user is licensed with

a collective for this purpose. The two collectives for such a purpose are Audio-Ciné Films Inc. and Visual Education Centre (VEC/Criterion).

Can teachers purchase and then show videos on school premises?

Purchasing a copy of a resource, whether it is a video or a book, does not include ownership of its copyright or provide a licence for public performance. You are limited in how that resource can be used. You can purchase a textbook or a video, which provides you with physical ownership. But ownership of the physical object does not authorize you to do any of those activities restricted by copyright, such as reproducing a book or showing a video on school premises without clearance for public performance. To do so, you would need the permission of the copyright owner or a licence from a collective.

The use of a video you purchase at a retail store is restricted to *personal viewing in your own home*. For example, the video you purchase for \$19.95 for home use only could cost your media centre \$250 to purchase the difference in cost is directly related to the inclusion of the right to perform it in public (in a school).

It is important to know how the videos in your school were acquired. Those obtained from educational suppliers or from your media centre can be shown on school premises because the public performance rights were acquired at the time the videos were purchased. Showing videos purchased from other sources such as a retail store, purchased directly from the United States, or taped from television, either at home or at the school, is more problematic. In many cases, showing them on school premises will likely be an infringement of copyright because the public performance rights have not been obtained.

There are two agencies that license the public performance of feature-length videos. They are the Visual Education Centre (VEC/Criterion) and Audio-Ciné Films Inc. Each of these collectives represents different motion picture studios.

A great reference tool for educators on the public performance rights for films and videos is the Children's Video Service at <www.cvsinc.ca>. This company can be reached by e-mail at Douglas@cvsinc.ca.

Can teachers copy computer software for educational use?

Software is protected under copyright law. It is an infringement to make copies of any software without permission. Adherence to the terms of the licence that accompanies any purchased software is essential. Although there is no specific exception permitting the copying of computer software for educational purposes, there are two minor exceptions that allow owners of legal copies of computer programs to make a single reproduction of these programs.

Under the first exception, an owner of a legitimate copy of a computer program may make one backup copy of that program. The person must be able to prove that the backup copy is erased as soon as he or she ceases to be the owner of the copy of the computer program from which the backup was made.

Under the second exception, an owner of a legitimate copy of a computer program may also make a single copy of that program by adapting, modifying, or converting the computer program or translating it into another computer language, provided that the reproduction is essential for the compatibility of the program with a particular computer, that the reproduction is solely for the person's own use, and that the copy is erased when the person ceases to be the owner of the copy of the program from which the copy was made.

Can teachers and students copy from the Internet?

From a copyright point of view, you should be aware of the following four rules:

1 Most material available on the Internet is protected by copyright. This includes text (e.g., postings to newsgroups, e-mail messages), images, photographs, music, video clips, and computer software.

Under the Copyright Act, reproduction and unauthorized use of a protected work are currently infringements. Therefore, reproduction of any work or a substantial part of any work on the Internet would infringe copyright unless you have the permission of the owner.

Many Internet users are questioning the appropriateness of the rules in copyright law. Canada and other countries around the world are currently studying uses of copyright materials from the Internet. Many Internet users and service providers are asking for changes in copyright law that would allow defined uses of works on the Internet without infringing copyright. The ministers of education in Canada (except in Quebec), the Canadian School Boards Association (CSBA), the Canadian Teachers' Federation (CTF), and others in the education community are active participants in this ongoing work.

- 2 Copyright protects the way in which information is expressed. The information itself is not protected by copyright. Restating ideas, facts, or information in your own words is not copyright infringement.
- 3 Where a work has been placed on the Internet with the message that it can be freely copied, there is an actual licence to copy the

work. Sometimes the terms of the licence are subject to conditions. Common conditions are that the posting cannot be used for commercial purposes, must be circulated in its entirety, cannot be used out of context, and cannot be edited or reformatted. If you abide by the conditions, you may copy the work without infringing copyright.

4 Any works protected by copyright that are on your school's or district's Web site require copyright clearance, unless the school or district already owns the copyright in them. If the school or district does not own the copyright, permission must be obtained from the copyright owner. *The permission must be in writing*. The same would apply for students accessing student Web sites. A useful site to consult on such issues, written from the teacher's perspective, is <www.2learn.ca/copyright/copy.html>.

Can teachers copy print or sheet music without the copyright owner's permission?

The copying of print or sheet music is *not* covered under the existing licence with Access Copyright. Normally, you will need to contact the music publisher directly to secure such permissions. Access Copyright can also arrange such copying permission (at a cost) if contacted, but their repertoire in this area is limited.

Can music be performed without the copyright owner's permission?

Yes. The public performance of music in schools, when it is "in furtherance of an educational object," does not require payment or the consent of the copyright owner under the Copyright Act, because of an exception. If the performance is not in furtherance

of an educational object, the exception will not apply. For example, music used for entertainment at school concerts, assemblies, or school dances must be paid for through tariffs administered by a collective called SOCAN (Society of Composers, Authors and Music Publishers of Canada) because they are **not** considered in furtherance of an educational object. The public performance of music in these circumstances must be authorized by the copyright owner or by SOCAN as the collective that represents the owner. However, any use of music that can be considered in furtherance of an educational object is not subject to the payment for use. For example, performance of music in a music class for the purposes of giving music instruction would fall under the exception.

Are student-created works protected by copyright?

Yes. Any original work created by a student — be it in the form of an essay, a video recording, Web site, or other material protected by copyright — is protected. The only use that may be made of student-created works is that permitted by the Copyright Act. Thus, the student, or if the student is a minor, the parent/guardian, must authorize the further use of a student's work, such as its use in a school publication or teacher workshop.

Where can I get more information on copyright?

Copyright can be and often is very complicated. This booklet provides the basics to point you in the right direction in increasing your own copyright awareness. Exploring additional resources to obtain more in-depth information on the topics that were covered in this booklet will increase your knowledge. Awareness of copyright is important because you are educating the copyright owners and

users of tomorrow. More detailed information is available from the following sources:

Copyright Information Web Sites

<www.cmec.ca/else/indexe.stm> The Council of Ministers of Education, Canada (CMEC) site contains a complete transcript of the current Access Copyright agreement, an electronic version of Copyright Matters!, and many other resources related to copyright in the schools including an extensive site developed at the Department of Education, Citizenship and Youth in Manitoba.

<www.cdnsba.org> The Canadian School Boards Association

<www.ctf-fce.ca/> The Canadian Teachers' Federation

<www.pch.gc.ca/progs/ac-ca/progs/pda-cpb/index_e.cfm> Canadian Heritage site on copyright issues and developments

<www.amtec.ca/site/copyright/copyrig.shtml> Association for Media and Technology in Education in Canada copyright resources site

<www.accesscopyright.ca/> Access Copyright's own Web site related to copyright licensing of print resources

<www.cableducation.ca/> Web site for Cable in the Classroom's copyright-cleared programming for educational use

<www.2learn.ca/copyright/copy.html> A useful site on obtaining copyright permissions, written from a teacher's perspective

Print/Web Resources

 Copyright Guide for Canadian Libraries. Wanda Noel. Published by the Canadian Library Association, 1999. 150 pages. ISBN 0-88802-294-8. \$44.95 plus tax. Canadian Library Association, 328 Frank Street, Ottawa, Ontario K2P 0X8. Tel.: (613) 232-9625, ext. 310

- Guide canadien du droit d'auteur. Wanda Noel. Published by ASTED, 2000. ASTED, 3414, avenue du Parc, Bureau 202, Montréal (Québec) H2X 2H5. Tél.: (514) 281-5012
- Droit d'auteur et bibliothèques en un clin d'oeil. Jules Larivière.
 Published by ASTED, 1999. ASTED, 3414, avenue du Parc,
 Bureau 202, Montréal (Québec) H2X 2H5. Tél.: (514) 281-5012
- Canadian Copyright Law. Lesley Ellen Harris. Published by McGraw Hill Ryerson, 3rd edition, October 2001. ISBN 0-07-560369-1.
 \$26.99. <www.mcgrawhill.ca/copyrightlaw>
- Children's Video Service. 1200 Aerowood Drive, Mississauga, Ontario L4W 1S7 <www.cvsinc.ca> Tel.: (416) 925-5857 or 1-800-263-1258; Fax: (416) 925-6436; E-mail: douglas@cvsinc.ca

Collectives

- Access Copyright <www.accesscopyright.ca/>
- ERCC (Educational Rights Collective of Canada) <info@ercc.ca>
- SOCAN (Society of Composers, Authors and Music Publishers of Canada) <www.socan.ca>
- CPCC (Canadian Private Copying Collective) <www.cpcc.ca>
 CPCC allows for the purchasing of blank recording medium by educational institutions without paying the additional levy imposed for personal consumption. Visit their Web site for detailed information.
- [For videos] Audio-Ciné Films Inc. (ACF), 1955 Côte-de-Liesse Road, Suite 210, Montreal, Quebec H4N 3A8 Tel.: 1-800-289-8887
 <www.acf-film.com> Visual Education Centre (VEC/Criterion), 41 Horner Avenue, Unit 3, Etobicoke, Ontario M8Z 4X4
 Tel.: 1-800-668-0749 <www.criterionpic.com>

For a complete list of copyright collectives and links to their Web sites: <www.cb-cda.gc.ca/societies/index-e.html>