Canada

“Entertainment Software Assn.”

Copyright Act, R.S.C. 1985, c. C-42, Sec. 3(1)(f) – *Entertainment Software Association and Entertainment Software Association of Canada v. Society of Composers, Authors and Music Publishers of Canada and CMRRA-SODRAC Inc., Samuelson-Glushko Canadian Internet Policy and Public Interest Clinic and Cineplex Entertainment LP*

**Decision of the Supreme Court of Canada
12 July 2012 – Case No. 33921**

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1. The conclusion that a separate, “communication” tariff applies to downloads of musical works violates the principle of technological neutrality, as there is no practical difference between buying a durable copy of the work in a store, receiving a copy in the mail, or downloading an identical copy using the Internet.
2. The Copyright Act must be interpreted in a way that avoids imposing an additional layer of protections and fees based solely on the method of delivery of the work to the end user.
3. The legislative history of the Act demonstrates that the right to “communicate” is historically connected to the right to perform a work and not the right to reproduce permanent copies of the work.
4. The term “communicate” in Sec. 3(1)(f) should not be transformed by the use of the word “telecommunication” in a way that would capture activities that resemble reproduction.
5. The right of reproduction continues to apply to copies made through downloads notwithstanding that they are digital copies and the communication right continues to apply to digital communications notwithstanding that they may differ from traditional broadcasting technologies.

Available at <http://scc.lexum.org/decisia-scc-csc/scc-csc/scc-csc/en/item/9994/index.do>.

See also the editorial by Ysolde Gendreau in 44 IIC 623 (2013) doi:10.1007/s40319-013-0091-9.