Canada

“Re: Sound v. Motion Picture Theatre Associations of Canada”

Copyright Act, R.S.C. 1985, Chap. C-42, Secs. 2 “sound recording”, 19 – *Re: Sound v. Motion Picture Theatre Associations of Canada, Rogers Communications Inc., Shaw Communications Inc., Bell ExpressVu LLP, Cogeco Cable Inc., Eastlink, Quebecor Media, TELUS Communications Company, Canadian Association of Broadcasters and Canadian Broadcasting Corporation and Samuelson-Glushko Canadian Internet Policy and Public Interest Clinic*

Decision of the Supreme Court

12 July 2012 – Case No. 34210

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1. The concept of “soundtrack” includes pre-existing sound recordings, and such recordings are excluded from the definition of “sound recording” when they accompany a cinematographic work.
2. A pre-existing sound recording that is part of a soundtrack cannot be the subject of a tariff under Sec. 19 of the Copyright Act when the soundtrack accompanies a cinematographic work.
3. According to Sec. 2 of the Act, a “sound recording” is a recording consisting of sounds “but excludes any soundtrack of a cinematographic work where it accompanies the cinematographic work”. Therefore, a “soundtrack” is a “sound recording” except when it accompanies the motion picture.
4. The Copyright Act is not incompatible with the Rome Convention. Although the Rome Convention states that producers of phonograms shall enjoy the right to authorize or prohibit the direct or indirect reproduction of their phonograms, Art. 3 defines “phonogram” as “any exclusively aural fixation of sounds of a performance or of other sounds”. A soundtrack that accompanies a cinematographic work is not for “exclusively aural fixations”.

Available at <http://scc.lexum.org/decisia-scc-csc/scc-csc/scc-csc/en/item/9999/index.do>.

For more on this decision *see* the editorial by Ysolde Gendreau “Balancing the Balance” 44 *IIC* 623 (2013), doi:[10.1007/s40319-013-0091-9](https://doi.org/10.1007/s40319-013-0091-9).