

# Why media companies should keep an eye on... compute code and photocopying cases

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Supreme Court copyright decisions cast a long shadow. For most of us, and in most cases, it's only in hindsight that we can see how a decision can disrupt business models that depend on copyright, across industries. A decision on, say, photocopying library books, can affect how music is marketed and sold online. A case scrutinizing the intricacies of computer code can affect how comfortable film studios feel in developing new markets for movie distribution. Years after their release, the ripples from such decisions can feel like waves.

The library photocopying issue – what is the proper test for “fair dealing” with a copyright-protected work – was decided by the Supreme Court of Canada in *CCH Canadian Ltd. v. Law Society of Upper Canada*, [2004] 1 SCR 339. And so a case dealing with fax transmissions of photocopies from library books has become a go-to decision for years, on cases ranging from online shopping for music to a documentary of the “greatest bad movie ever made”. And to many other cases of interest to media companies along the way.

In the United States, the Supreme Court is currently considering a high-profile case involving the fundamentals of copyright law, and the nature of computer code. The factual underpinnings of the case are so technical that lawyers and commentators are grasping for analogies to make them clear. But the case deals clearly enough with copyright “fair use” to have triggered a long roster of *amici curiae* (friends of the court), including some organizations that have little or no day-to-day business with computer code. In this case, some media business stakeholders have had their say, warning that the eventual decision could impact how film, books, art and music are protected, licensed and sold in years to come.

Back in Canada, the Supreme Court will be hearing yet another photocopy case (mostly digital rather than paper-and-fax this time). See our discussion of the Federal Court of Appeal decision here and the parties and interveners on the Supreme Court appeal here. Among the interveners is a *music* copyright collective whose members likely give little thought to photocopies of textbooks. These music authors, composers and publishers do, however, care a great deal about copyright “fair dealing”, and what impact the decision could have on royalties that they earn licensing their musical works to media companies and other copyright users. The Supreme Court’s eventual decision will find its way into arguments by copyright owners and users in the years to come, and there is little doubt that those arguments will address printed texts, music, and media of all kinds.

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