

# UNPACK SODRAC: Technological Change and Copyright Tariffs after CBC v SODRAC (SCC 2015)

## Symposium Organizers:

**Dr. Carys Craig**, Associate Dean (Research & Institutional Relations), Osgoode Hall Law School

**Dr. Ariel Katz**, Associate Professor, Innovation Chair – Electronic Commerce, Faculty of Law, University of Toronto

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# Unpack SODRAC: Symposium Agenda

## Thursday, February 25<sup>th</sup>, 2016

### Osgoode Hall Law School, Room 1014

In the recent case of *Canadian Broadcasting Corp. v. SODRAC 2003 Inc.*, 2015 SCC 57, the Supreme Court of Canada considered whether “broadcast-incidental copies” made by television broadcasters engage the exclusive right of reproduction in the *Copyright Act*, and whether broadcasters are bound by the terms of the licence approved by the Copyright Board. Split along various lines, the Court's ruling has set the course for continued controversy over the principle of “technological neutrality”, the meaning of “reproduction” in the digital age, and the role of the Copyright Board in setting terms for the use of protected works. In this Symposium, leading scholars, practitioners and experts in the field will unpack the SODRAC decision and its significance for the future of Canada’s copyright law.

10:30 AM – 10:45 AM

## WELCOMING REMARKS

**Lorne Sossin**

Dean, Osgoode Hall Law School

**Giuseppina D’Agostino**

Founder & Director, IP Osgoode; Associate Professor, Osgoode Hall Law School

10:45 AM – 12:15 PM

## TECHNOLOGICAL NEUTRALITY

“Technological neutrality” has emerged in recent Supreme Court jurisprudence as a guiding principle in the application of traditional copyright law to new digital contexts. The principle has been defined in a variety of competing ways, with disagreement about its meaning and effect being the central point of departure between the majority and minority rulings in the SODRAC case. How will the SODRAC case change or inform the application of technological neutrality in copyright law, both in respect of defining rights and their limits, and in the valuation of licenses at the Copyright Board? How might the decision impact other areas of law or policy beyond copyright?

### SESSION CHAIR:

**Giuseppina D’Agostino**

Founder & Director, IP Osgoode; Associate Professor, Osgoode Hall Law School

### PANELLISTS:

**Carys Craig**

Associate Dean, Research & Institutional Relations, Osgoode Hall Law School

**Gregory Hagen**

Associate Dean (Research) and the Director of Graduate Programs, Faculty of Law, University of Calgary

**Cameron Hutchinson**

Associate Professor, Faculty of Law, University of Alberta

**Richard Pfohl**

General Counsel, Music Canada

12:15 PM

## LUNCH



12:30 PM

## KEYNOTE

The Honourable Mr. Marshall Rothstein

1:00 PM – 2:30 PM

## REPRODUCTION RIGHTS

The majority ruling in the SODRAC case concluded that the Supreme Court's central holding in *Bishop v Stevens* [1990] 2 S.C.R. 467 remains sound: there is no reason, either in the subsequent jurisprudence or legislative amendments, to depart from long-standing practice of treating ephemeral copies as reproductions. In a forcefully articulated dissent, the minority described this conclusion as unreasonable and contrary to the principles of balance and technological neutrality. How should "reproduction" be understood in the digital context, where copies may no longer appear to be "material" either in form or effect? Is the holding limited to the broadcasting context? What are the potential risks and benefits of treating every copy as a copy? What bearing will the amendments in the *Copyright Modernization Act* (2012) have on the potential scope of the SODRAC ruling?

### SESSION CHAIR:

**Ariel Katz**

Associate Professor, Innovation Chair – Electronic Commerce, Faculty of Law,  
University of Toronto

### PANELLISTS:

**David Fewer**

Executive Director, Samuelson-Glushko Canadian Internet Policy & Public Interest  
Clinic (CIPPIC)

**Veronica Syrtash**

VP of Legal and Business Affairs, Canadian Musical Reproduction Rights Agency  
(CMRRA)

**Jeremy de Beer**

Professor, Faculty of Law, University of Ottawa

**Mark Hayes**

Partner, Hayes eLaw LLP

**Bitia Amani**

Associate Professor, Faculty of Law, Queen's University

2:30 PM – 2:45 PM

## BREAK

2:45 PM – 4:15 PM

## “MANDATORY” TARIFFS

The majority reasons established that the power of the Copyright Board to set the terms of a licence under s. 70.2 of the *Copyright Act* does not include the power to bind the parties to those terms: in the absence of clear authority that this is Parliament’s intent, “the burdens of a license should not be imposed on a user who does not consent to be bound by its terms.” What are the potential implications for other collective societies, copyright users, and the role of Copyright Board? Is this conclusion limited to the Board licenses established pursuant to s. 70.2, or do the reasons extend to other tariffs approved by the Board, essentially debunking the so-called “mandatory tariff” theory?

### SESSION CHAIR:

**Carys Craig**

Associate Dean (Research & Institutional Relations), Osgoode Hall Law School

### PANELLISTS:

**Mario Bouchard**

Former General Counsel, Copyright Board of Canada

**Adriane Porcin**

Assistant Professor, Faculty of Law, University of Manitoba

**Ariel Katz**

Associate Professor, Innovation Chair – Electronic Commerce, Faculty of Law, University of Toronto

**Bobby Glushko**

Head, Scholarly Communications and Copyright, U of T Libraries

**Howard Knopf**

Counsel, Macera & Jarzyna LLP

4:15 PM – 4:30 PM

## CLOSING REMARKS

**Ariel Katz**

Associate Professor, Faculty of Law, University of Toronto

**Carys Craig**

Associate Dean, Research & Institutional Relations, Osgoode Hall Law School

Additional information on the final program and registration can be found at [www.iposgoode.ca](http://www.iposgoode.ca)