Publisher's Note

An Update has Arrived in Your Library for:

Please circulate this notice to anyone in your office who may be interested in this publication. *Distribution List*
☐
☐
☐
☐

CANADIAN FILM & TELEVISION BUSINESS & LEGAL PRACTICE
Tony Duarte & Bob Tarantino
Release No. 1, December 2021

Publisher's Special Release Note 2020

The pages in this work were reissued in December 2020 and all the pages carry that date in the release line. Please note that we have not reviewed the content on every page of this work in this current release. We will continue to review and update the content according to the work's publication schedule. This will ensure that subscribers are reading commentary that incorporates developments in the law as soon as possible after they have happened or as the author deems them significant.

Changes to chapter and heading numbering may have occurred. Please refer to the Correlation Table in the front matter if you wish to confirm references.

THOMSON REUTERS CANADA®

Customer Support
1-416-609-3800 (Toronto & International)
1-800-387-5164 (Toll Free Canada & U.S.)
Fax 1-416-298-5082 (Toronto)
Fax 1-877-750-9041 (Toll Free Canada Only)
E-mail CustomerSupport.LegalTaxCanada@TR.com

This practical reference pulls together the legal and business issues of film and television development, production, finance and distribution in a single source.

The materials in this release have been written and contributed by Bob Tarantino.

What's New in this Update:

This release features revisions and updates to the case law and commentary in Chapter 2 (Restrictions on the Subject and Content of Motion Pictures), 3 (Transfers of Rights to Source Properties), 9 (Performer Services and Personal Appearance Agreements), 14 (Tax Considerations), 16 (Canadian Content Certification), 20 (Debt Financing of Production) and Appendix A (Common Entertainment Agreement Clauses and Issues).

Highlights

- **Part I – Development – Chapter 2 – Restrictions on the Subject and Content of Motion Pictures – Copyright – Generally –** The Federal Court in *Canadian Broadcasting Corporation v. Conservative Party of Canada* also considered whether the defendant could avoid liability for infringement on the basis of not having copied a substantial part of the plaintiff's work when the defendant used clips from the plaintiff's news and current affairs shows in creating political advertisements. The court concluded that the defendant had taken a substantial part, despite the fact that the clips used amounted to less than 0.5% on average of the underlying work from which the clip was taken. Like the court in the *Wiseau* decision just discussed, the court in the CBC case referred to the five-part test from *U & R Tax Services Ltd.* (though incorrectly citing it to the Supreme Court of Canada's decision in *Cinar v. Robinson*), concluding ultimately that the defendant, notwithstanding the duration of the clips, had copied "the artistic design, production services (lighting, camera work, audio, etc.) and journalistic decisions (i.e. the flow of discussions and the election and posing of questions)" and the "CBC style of audio-visual material", which constituted the original skill and judgment of the plaintiff protected by copyright. Unfortunately, the court did not discuss whether any of those elements are properly the subject of copyright protection. Of further concern, the court also stated that "[e]ven a single still image can represent a substantial reproduction of a cinematographic work"; if that is correct, that would effectively mean that there is no *de minimis* threshold of a cinematographic work below which a literal

copy constitutes a "non-substantial part": *Canadian Broadcasting Corporation v. Conservative Party of Canada*, 2021 CarswellNat 1328, 2021 FC 425.

- **Part I – Development – Chapter 2 – Restrictions on the Subject and Content of Motion Pictures – Copyright – Use of a Title –** In *Winkler v. Hendley*, the plaintiffs (owners of copyright in a 1954 book written by a deceased author) asserted that the defendants had infringed copyright by using the phrase "The Black Donnellys" (the title of the plaintiff's book) as the title of the defendant's book. The court noted that the Copyright Act requires a title to be "original", and that the author of the 1954 had stated in the book that the phrase "Black Donnellys" had been used to refer to the family in question during the 1800s; on that basis, the court held that the plaintiffs were effectively prevented from arguing that the phrase was "original" as required by the *Copyright Act*: *Winkler v. Hendley*, 2021 CarswellNat 1586, 2021 FC 498.

ProView Developments

Your ProView edition of this product now has a new, modified layout:

- The opening page is now the title page of the book as you would see in the print work
- As with the print product, the front matter is in a different order than previously displayed
- The Table of Cases, Table of Statutes and Index are now in PDF with no searching and linking
- The Table of Contents now has internal links to every chapter and section of the book within ProView
- Images are generally greyscale and size is now adjustable
- Footnote text only appears in ProView-generated PDFs of entire sections and pages