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IN THE NEWS

Copyright in an Electronic Age

In 1996, a class action lawsuit was commenced by Heather Roberston, a Canadian freelance writer against CTV, Globemedia Inc., Thomson Reuters Canada, (owner of the Globe and Mail), and The Gale Group. Ms. Roberston brought the action on behalf of herself and other Canadian freelance writers. She alleged that publishers who reproduced published articles in electronic databases without obtaining the author's further permission, were in breach of the author's copyright.

In 2006, the Supreme Court of Canada decided in favour of Ms. Roberston saying that publishers did not have the right to simply transfer articles in newspapers and magazines into databases unless they had the writer's permission. The issue of damages was settled in May 2009 and the defendants agreed to pay \$11 million dollars. Part of the settlement would be used to establish a compensation fund for the benefit of the members of the Class identified in the action.

This case has more than a passing interest to the academic community. In 2003, Ms. Robertson commenced another class action lawsuit against a group of defendants which included Rogers Media Inc., Canwest Publication, TorStar Corporation, (owner of the Toronto Star), and Proquest Information and Learning Co.

Proquest provides electronic and microform information products and services to academic, school, public, corporate, and government libraries including a number of Canadian universities. As part of Proquest's defence to the class action, a number of non-profit organizations and universities were joined in the class action, including the University of Guelph.

The allegation by Proquest was that each of the institutions named had entered into an agreement with Proquest giving Proquest the right to make articles from academic journals available on-line. That case is ongoing.

There may be an argument that much of the world of academic publishing, (which may be kindly described as "non-profit"), is light years away from articles published in the for-profit publishing world. However, for those involved in academic publishing either as



editors or contributors, these lawsuits do raise some interesting questions:

- what legal responsibilities are assumed by either the individual or the institutions when an academic journal is started or moved from one institution to another?
- what is the journal's legal history - existing agreements with publishers? Outstanding claims? Unless the journal is incorporated, "Who" is the journal?
- does the journal have appropriate agreements in place with its authors re copyright and publishing? What about the digitalization of early issues which may predate the "Google"-era?

If the answers to these questions is 'I don't know', then there may be a problem.

At this stage, the implications for academic journals, writers and universities remain to be seen but it is an appropriate time to review the protocols in place for those publications in the not-so-much-for-profit world.

If you have questions or concerns, information on copyright and publishing is available on the Library's website at:

http://www.lib.uoguelph.ca/scholarly_communication/initiatives/author_rights_&_copyright_&_publishing_consultation/