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# Copyright: Robertson v Thomson

Margaret Ann Wilkinson  
Western University, mawilk@uwo.ca

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# Copyright: Robertson v. Thomson

**Dr. Margaret Ann Wilkinson**  
Professor  
Faculty of Law

(with doctoral supervisory status in Library & Information Science)

**The University of Western Ontario**

# Canadian Supreme Court on Copyright

(majority & minority)

THÉBERGE 2002 (7 sitting)	CCH v LSUC March 2004 UNANIMOUS	SOCAN June 2004 ALL CONCUR	ROBERTSON v. THOMSON Heard December 14, 2005. Decision expected... BUT	ROBERTSON v. THOMSON "rehearing" held April 18, 2006. Released October 10, 2006.
McLachlin, CJ	McLachlin, CJ *	McLachlin, CJ	McLachlin, CJ	McLachlin, CJ
Major	Major	Major	Major – retiring –	ROTHSTEIN
Binnie *	Binnie	Binnie *	Binnie	Binnie
	Arbour	Arbour	ABELLA	ABELLA*
Iacobucci	Iacobucci	Iacobucci	CHARRON	CHARRON
	Bastarache	Bastarache	Bastarache	Bastarache
LeBel	LeBel	LeBel (*concur)	LeBel	LeBel**
L'Heureux-Dubé	FISH	Fish	Fish	Fish**
Gonthier *	DESCHAMPS	Deschamps	Deschamps	Deschamps

## Who was involved in each case ? What was at stake ?

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### *Théberge v. Galerie d'Art...*

The issue **did not involve users' rights** directly, although the public ultimately were the market for the posters involved: the *lis* was between artist who had given a certain license to the gallery and the gallery ... Théberge lost

### *SOCAN "Tariff 22" ...*

The issue **did not involve users' rights** directly, although ultimately the public were being given access to songs through the activities of the ISPs (internet service providers) : the issue was whether SOCAN, representing music rightsholder, could have a tariff (royalties) from ISPs for their reproduction, as middlepersons, of songs being made available on the internet ... SOCAN lost

### *Robertson v. Thomson*

The issue **did not involve users' rights** directly, although the public ultimately consumes the newspapers and online products that were at issue: the *lis* was between contributors (Robertson) –who had given a certain license already to the publisher Thomson for use in the newspaper (*Globe & Mail*) -- and the newspaper publisher (Thomson)... mixed result

Only the *Law Society* case **has involved users rights directly...** (the publishers lost)

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## Only “*Tariff 22*” and *Robertson v. Thomson* have involved Internet situations directly:

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The Supreme Court of Canada made clear in the “Tariff 22” case concerning music that:

- Posting a work on the net is authorizing its communication – and communication occurs when the item is retrieved by an end user, and
- When a content provider intends the public to have access, that is a communication by telecommunication to the public...

Both rights only the copyright holder has.

Analysis adopted from the Copyright Board’s initial reasoning: very “process” oriented...

In *Robertson v. Thomson* we have a **new court**: the united court from the Law Society and SOCAN (*Tariff 22*) cases has split: LeBel and Fish write for the majority, with Rothstein, Bastarache and Deschamps joining – Abella writes for the minority, joined by Chief Justice McLachlin, and Binnie and Charron.

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Gonthier *	DESCHAMPS	Deschamps	Deschamps	Deschamps

## What was the Supreme Court's attitude in *Robertson v. Thomson* ?

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Thomson had permission for CD-ROM presentation, because retrieval preserved newspaper context...

-- minority agrees in the result, but not with the reasoning

Thomson had no permission for InfoGlobe database because retrieval was of underlying article (Robertson's work) since retrieval did not preserve context of the compiled work (the newspaper)

– here minority completely disagrees with analytic tack of majority – would have found permission for Thomson...

## What was the Supreme Court's attitude in *Robertson v. Thomson* ?

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Majority affirms *technological neutrality* of the Act..." if an act is an infringement in the "real world", it is an infringement if it occurs in the electronic environment"

-- Robertson won: the newspaper is a "collected work" and a "compilation" (the court focussed on compilation not collective work in its analysis...)

Majority says that the "process" is not important to the decision – just the "**context**" of the presentation of the articles in the different products...- *distinguishes the Supreme Court's approach in Tariff 22*

...the minority in says the "process" approach, emphasizing originality should have been used...

... the minority criticizes the majority's application of technological neutrality and says the "context" approach is not media neutral



# What might this mean for librarians?

CREATORS	INTERMEDIARIES	USERS
Théberge	Galerie d'Art *	
	CCH (legal publishers)	Librarians (agents) – Users *
SOCAN music collective – for artists (creators) and producers (intermedaries)	ISPs *	
Robertson *	Thomson Globe & Mail (also a creator of the collected work or compilation)	