



## **Canadian Copyright and Campaigns**

January 19, 2011 by Bob Tarantino

The CBC is reporting about another copyright flare-up involving Canadian political parties:

The federal Conservatives are rejecting a demand by the CBC to withdraw file footage from the national broadcaster that appears in new Tory ads targeting their political opponents.

The Conservatives did not seek permission to use CBC content in three ads that were posted online and broadcast on TV on Monday, says CBC spokesman Marco Dube says.

This seems to be a bit of a recurring theme with the Conservatives: I had written earlier about the 2007 spat which arose because the Conservatives used footage from the 2006 Liberal leadership debates. As I noted then:

The incident afforded an opportunity to reflect on a larger issue: should there even *be* a possibility of infringement in situations like this? In Canada, this appeared to be a case of *prima facie* infringement - while American readers might have been thinking that there was at least a plausible argument that the use qualified as "fair use". But Canada lacks a "fair use" concept, instead having a more limited "fair dealing" concept. The *Copyright Act* enumerates certain exceptions to infringement - and if you can't fit yourself into one of them, you've infringed copyright.

I concluded then that the chances that the unauthorized use of footage in a political ad would constitute "fair dealing" under Canadian copyright law would be slim - but that such a conclusion was regrettable, since on freedom of expression grounds it almost certainly should be permissible to use short clips or stills, particularly from political debates and particularly from pool or public broadcaster footage, in the context of a political ad. The 2007 copyright dispute does not appear to have ever had a publicly disclosed resolution - and I suspect the 2011 dispute will end in much the same way.

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