

## **Stevie Harper and the Herringbones - A Copyright Case Study**

December 9, 2010 by Bob Tarantino

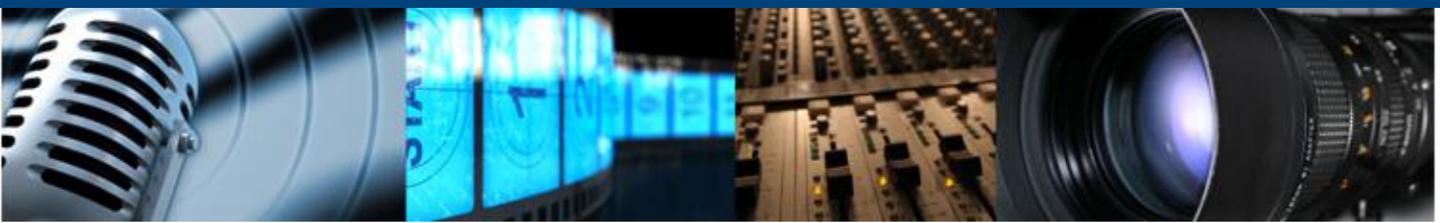
One of the more charming characteristics of lawyers is that we continually feel the need to subject virtually every event or interaction to... well, to persnickety legal analysis. We're boring that way. In any event, here goes another example - but, since it is also the time of year when law students will be writing exams for courses from their first semester of the school year, this post will be somewhat more interactive than it might otherwise be.

First, click through and read this *Globe and Mail* story: [Stephen Harper shows Tory faithful his rock star side.](#)

Having read the story one will discover that Prime Minister Stephen Harper, at the 2010 edition of the Conservative Party Christmas party (held on December 8, 2010), took the stage to play some songs (including Neil Diamond's "Sweet Caroline" and "Jumpin Jack Flash" by The Rolling Stones) backed by a trio of musicians. So far, so innocuous. Click further on the Globe website (like, say, [here](#)) and you will find an uploaded video of Stephen Harper performing a variety of songs (the video is only viewable after watching a short advertisement and is book-ended by a Canadian Press intro and outro). [This YouTube channel](#) also hosts six videos of the PM's performances.

This is an open-book examination.

- what rights granted under the *Copyright Act* are implicated in the videos? assess the likelihood that proper documentation exists licensing or otherwise authorizing the use and/or other relevant reproductions of any such rights as embodied in the videos and as such videos are used on the websites in question (hint: bonus points for assessing the relevance of copyrights in the compositions, moral rights in the compositions and performer's rights in their performances)
- can the posting of the Canadian Press video (and the consequent re-posting by the Globe) be properly considered fair dealing? (hint: assess not only what "category" of fair dealing might be applicable, but whether any relevant requirements, such as mentioning sources, have been complied with)
- assuming for the purposes of this question that the compositions embodied in the videos are currently under copyright protection - what liability, if any, does YouTube face, in Canada, for hosting the videos? (hint: bonus points for coherently explaining the status of SOCAN's Tariff 22 as it applies to YouTube)



- using the currently available wording of Bill C-32 (The Copyright Modernization Act), how, if at all, would the proposed exception for "Non-Commercial User-Generated Content" affect the liability of (a) the Canadian Press, (b) the *Globe and Mail*, (c) the individual who uploaded videos to YouTube, (d) YouTube?
- explain, as precisely as possible (giving reasons both in favour of and in opposition to the position you adopt) whether (and why) you think recording the Prime Minister's and his band's performance as embodied in the videos in question and posting them online should or should not give rise to the legal intricacies inherent in the preceding questions

Answers (and additional questions!) are warmly encouraged in the comments.

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