

STATUTORY REVIEW OF *THE COPYRIGHT ACT*

A Canadian Teachers' Federation Brief
before the House of Commons Standing
Committee on Industry, Science and Technology

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Canadian Teachers' Federation
Fédération canadienne des enseignantes et des enseignants

www.ctf-fce.ca

Introduction

Founded in 1920, the Canadian Teachers' Federation ([CTF](#)) is a non-profit organization and a national alliance of provincial and territorial Member organizations that represent over 265,000 teachers across Canada. The CTF is also a member of Education International (EI) which represents over 30 million educators around the world.

The CTF has been an active participant in the federal government's copyright reform process for almost two decades. It has provided a voice for the rights of teachers and students in their pursuit of quality education in Canada.

Teachers and their teacher organizations strongly support copyright

The concerns of teachers respecting copyright bridge two realities that some would say are in conflict. Teachers are very concerned with the balance that copyright legislation must strike in order to protect the rights of creators and at the same time recognize the necessity of providing access to resources for students and educators.

CTF policy states in part:

"Creators of original works are entitled to reasonable reward for the use of their works and protection from misuse and/or pirating of their works.

...Copying and duplicating of materials for in-school use should be permissible without copyright infringement, subject to appropriate guidelines to protect the legitimate interests of creators and publishers.

...Simple procedures should be established to facilitate copyright release and the determination of reasonable fees or royalties, where applicable, on material for school use."

Copyright infringement is of key concern to educators across the country. The education sector believes that clarity and balance in the *Copyright Act* must be vigorously championed, such that copyright infringement is eliminated and that every student and teacher can be assured of timely and fair access to materials.

Teachers and Copyright

Teachers are professionals who respect copyright and teach respect for copyright. Many teachers are creators producing materials for the classroom. They are teaching our future Canadian artists.

Teachers seek clarity in copyright law and are risk-averse when it comes to any uncertainty involving copyright law. They will not copy material if there is any doubt; they do not copy whole textbooks. *Teachers do not copy whole textbooks* and it infuriates our profession when someone says something so blatantly not true.

The classroom today looks very different from the classroom of ten years ago. Technology has brought new opportunities to the teaching profession. Both pedagogical practices and class resource materials are evolving to take advantage of the changes brought about by the Internet and digital technologies, and accelerated by the use of OER and education learning systems. Over the last decade, there has been a dramatic shift from print-based resources like textbooks to digital resources. Today, teachers are challenged to find new, effective ways to teach using our evolving technologies. They are creating their own materials, using more collaborative approaches to content creation and engaging students more to learn using online resources. Parliamentarians are encouraged to appreciate the

accelerated rate of changes that are taking place in the classroom and not inadvertently disadvantage Canadian students by introducing what may fast become anachronistic copyright law.

Current copyright law strikes a good balance between the needs of Canadian students, educators and creators

Five years ago, the federal government changed the *Copyright Act* to include “education” as a stated purpose in the “fair dealing” provision of the Act. This approach gives teachers and their students access to a wide range of resources they need. Teachers and their organizations view the current *Copyright Act* as good public policy that achieves an important balance between user rights and creator rights. In fact, EI holds Canadian copyright legislation in high regard.

Teachers use guidelines to apply fair dealing in the classroom

The Supreme Court of Canada has ruled that it is fair for teachers to communicate or make copies of “short excerpts” from a copyright-protected work for students in their classes without having to purchase a copy of the entire work for each student in a class. This decision recognizes that students benefit when teachers can use short excerpts for educational purposes, such as one article from a newspaper. When longer excerpts are used, such as more than a single chapter of a book, schools pay a fee or a copyright tariff. By exposing students to short excerpts from a range of artists’ work, Canadian teachers actually promote many lesser known authors and artists on a regular basis in schools from coast to coast to coast.

The Canadian education community developed the *Fair Dealing Guidelines* to help teachers understand the Supreme Court of Canada’s interpretation of how fair dealing applies in the classroom. The ministries of education across Canada developed an online tool www.CopyrightDecisionTool.ca that allows teachers to quickly see how fair dealing applies. The *Fair Dealing Guidelines* ensure consistent application of the Supreme Court decision and are relied on in schools, school boards, and ministries/departments of education across Canada (outside of Quebec) to determine whether particular dealings with copyright-protected works for others are “fair” or “unfair.”

The CTF membership recognizes the importance of being aware of the rights and limitations of fair dealing. Our organization is committed to ongoing copyright awareness initiatives. It continually promotes this online tool on social media and its website, and invites Member organizations to do the same. The Federation also publishes articles on copyright and is highlighting the World Book and Copyright Day on April 23 as a way to raise the importance of applying fair dealing in the classroom. The potential reach of these activities are over 265,000 educators across the country.

Canadian copyright law has a good balance and the education community’s interpretation of fair dealing is a responsible one when compared to teachers and students use of copyright works around the world.

Teachers and their organizations want to ensure that Canadian students are able to access the very best educational content available. We have the capacity in Canada to compete on an international stage as well as to develop high-quality materials specifically focused on Canada.

The challenge for developers and publishers of Canadian content

While we recognize that the content creation and distribution industry is undergoing an extended period of rapid technological change that is reshaping the content creation and distribution ecosystem, blaming the fair dealing as the cause of all the challenges faced by the publishing sector is misplaced.

Since the Supreme Court's decision in 2012, educational publishers, writers' groups and Access Copyright have initiated four separate legal challenges in the courts and at the Copyright Board. They have also been actively lobbying the federal government to reverse the Supreme Court's decision on fair dealing and remove education as a permitted fair dealing purpose. In short, these groups want schools to once again be legally required to pay for copying short excerpts.

But the news is not all that bad for publishers. Statistics Canada reported that the publishing industry in Canada showed an operating profit margin of 11.7 per cent in 2014. Promoting a continued, vibrant publishing industry in Canada does not require a change to the fair dealing provisions that have been developed by the Supreme Court of Canada and Parliament. According to reports, educational spending on copyrighted works has increased significantly since the 2012 Supreme Court of Canada decision and copyright reforms, contrary to what publishers and creators say.

CTF Recommendation:

The Canadian Teachers' Federation urges the Standing Committee to maintain the current Fair Dealing provisions which balances the protection of both creators and users.

Rationale:

Any legislative amendment that narrows the scope of fair dealing would mean going against two landmark Supreme Court decisions that clearly establish fair dealing as a user's right that is an integral part of Canadian copyright law.

In addition, amendments that narrow, limit, or eliminate the fair dealing provisions would have a detrimental effect on the quality of teaching and learning in Canada since it would siphon resources from provincial and territorial education budgets. (In effect, this could actually significantly decrease the promotion of Canadian artists and creators in schools.)

More to the point, narrowing, limiting, or eliminating the fair dealing provision would deny teachers and students fair access to available enriched classroom resources.