

THE COPYRIGHT MODERNIZATION ACT



**A Canadian Teachers' Federation Brief
to the Legislative Committee on Bill C-32,
*an Act to amend the Copyright Act.***



Introduction

The Canadian Teachers' Federation (CTF) is the national voice of 200,000 teachers in the K-12 system in provincial and territorial teacher organizations across Canada.

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 reflects the concern for this balance when it 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.”

Rapid advances in technology-enhanced learning calls for a modernized *Copyright Act* that serves the public interest in permitting reasonable access to, and use of, Internet materials for purposes such as education, teaching, research and innovation, and the dissemination of knowledge. The Canadian Teachers' Federation has long maintained that a modern and balanced copyright framework will protect the public interest. The need for such a framework has never been more important than now, when all levels of government are investing in connecting Canadians and promoting skills development and innovation.

By enacting balanced copyright legislation, addressing the needs of students and teachers and promoting access, Canada has an extraordinary opportunity to enhance learning opportunities for generations to come.

In general, teachers are pleased to support Bill C-32, *An Act to amend the Copyright Act*. While some changes and fine-tuning will be required, we believe that the Bill represents a fair and balanced approach to addressing the education issues of importance to us.

Two of the proposed sections are of utmost importance:

1. The CTF in concert with other organizations representing a broad spectrum of the education community have lobbied for years for **an amendment to the legislation that would permit students and teachers to access freely available Internet material for educational purposes**. Bill C-32 contains such an amendment [section 30.04].
2. Bill C-32 proposes that “education” be added to the list of purposes for which **fair dealing** is available [section 29].

The Education Amendment

This amendment is critically important. Access to knowledge is the key to building a socially prosperous and economically sound society. This would ensure that students and teachers can benefit from a rich and varied source of information, while clarifying and enhancing respect for copyright ownership on the Internet. It will apply exclusively to participants in a program of learning taking place under the authority of an educational institution, and strictly to the use of publicly available material on the Internet, that is, material posted on the Internet without any expectation of payment for their use. **It will exclude any Internet material for which the creator has indicated that payment is required.**

For Canadian students and teachers alike, reasonable access to Internet resources is a critical necessity for learning and teaching. Canada's current *Copyright Act*, however, makes it illegal for students and teachers to participate in classroom activities where they download, save, and share Internet text or images that were intended to be freely downloaded and distributed.

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 Internet materials.

In the absence of an education amendment, schools and postsecondary institutions across the country may be legally obliged to curtail Internet use in order to avoid liability. The imposition of legislated limitations on access to a tool as valuable as the Internet could ultimately compromise the quality of education in Canada.

The Canadian Teachers' Federation strongly supports the passage of the educational use of the Internet amendment [section 30.04].

Fair Dealing

For additional clarification, adding **education** to the **fair dealing** provisions of the Act recognizes that there is a need for a balanced method of providing access to material without causing harm to the owners of copyright. The current Canadian *Copyright Act* states that it is not an infringement of copyright to "deal fairly" with a work that is protected by copyright for five listed purposes: research, private study, criticism, review, or news reporting. Adding education to this list seems a natural fit.

Whether or not any particular use for education purposes is considered **fair** will require an assessment using the six factors determined by the Supreme Court of Canada: the purpose of the **dealing**; the character; the amount; alternatives to the dealing; the nature of the work, and; the effect of the use on the work. In applying these factors, the Federal Court of Appeal has found that a teacher making copies for a class of students is not **fair**. The only way to change this is by appeal to the Supreme Court of Canada or, to amend the *Copyright Act* to make it clear that making multiple copies for distribution to a class of students is fair dealing. A similar provision is found in the US *Copyright Act*.

The Canadian Teachers' Federation strongly supports the passage of the amendment adding "education" to the list of fair dealing purposes [section 29].

The Canadian Teachers' Federation supports a further amendment to the fair dealing provision clarifying that making multiple copies for distribution to a class of students is fair dealing.

This does not mean that CTF favors making multiple copies of entire textbooks, as has been claimed by some. In as much as we want access to material for teachers and students, we also do not want to abrogate the legal rights of copyright owners...writers, musicians, artists...to protect and control the use of their works and to collect payment and royalties for such use. In fact, teachers are champions of those rights.

It is true that sales of textbooks have declined in recent years, but not because teachers and students are making photocopies of them. Other fundamental reasons related to school structure, administration and resource-sharing have combined to result in lower textbook sales.

A 2005-06 study shows that teachers copy, on average, a total of 60 pages per student, per year...six pages per month of the school year...and that they usually copy short excerpts from books to supplement the main text. This can hardly be seen as a significant factor in the reduction of textbook sales.

There are two proposed sections of Bill C-32 that we believe will work against the intent of the education amendment and the addition of education to the fair dealing provision. One deals with the destruction of teaching materials [sections 30.01(5) and 30.01(6)(a)] and the other deals with technological protection measures [sections 41.1 to 41.27].

Destruction of teaching materials

Sections 30.01 (5) and 30.01(6) stipulate that students and teachers are required to destroy any recording of an on-line lesson within 30 days after the students' final course evaluations. K-12 teachers will, no doubt, be consistent with others in the education sector in our view of this proposal. Some students may need the course material long after the 30-day limit, either as the result of a reassessment or "makeup" of the final exam for any one of a variety of factors.

Teachers' approach to developing course content is a continuing process built upon year after year. Destroying on-line lessons is an unnecessary waste of time and resources. Teachers would have to re-create them for use in subsequent semesters or school years.

The Canadian Teachers' Federation supports an amendment to section 30.01 that deletes the requirement to destroy on-line course material 30 days after final course evaluations.

Technological protection measures

Section 41 contains a series of amendments that establish a very complicated process related to the provision of “digital locks”. These technological measures affect the access and use of protected material. Generally, teachers and students would be prohibited from circumventing a technological protection measure that protects copyrighted material. However, the *Copyright Act* makes provision for a number of user rights that permits the use of copyright material for specific purposes. The preferred approach by many user groups, particularly those in the education sector, is to prohibit circumvention of technological protection measures only when the circumvention is for the purpose of infringing copyright.

The Canadian Teachers’ Federation supports amendments to section 41 that would permit users to circumvent technological measures in situations where the use of the material would not be an infringement of copyright.

The Canadian Teachers’ Federation would like to thank Members of the Legislative Committee dealing with Bill C-32 for the opportunity to present the views of Canadian teachers on this extremely important issue.