

Source Episode #10

Copyright and Fair Dealing with Michael Geist

Episode Highlights

Join Andrew King as he connects with Michael Geist, Canada Research Chair in Internet and e-Commerce Law and Professor of Law at the University of Ottawa.

In this episode, you'll learn more about issues around fair dealing, dispelling myths about lost revenue, threats to traditional copyright rules, what's at stake for education, and more.

What is fair dealing and why has fair dealing emerged as an issue again?

Michael Geist (MG): Legislative decisions made by the Supreme Court of Canada under the *Copyright Act* made clear that fair dealing is a user's right, which provides clear permissions for educators to make appropriate use of materials.

It is fast becoming an issue again because there are certain groups that have been very vocal, who have argued that somehow, they've been mistreated by this, that they've lost revenue by this. They have been urging and lobbying the government to essentially roll back what it did.

Publishers are claiming a loss in revenues for the creators and suggest that education is cutting into their revenues. Is that true?

MG: What has taken place is not a loss or an ending of payments. So, this is not about whether or not education pays for educational materials – they do in the billions of dollars.

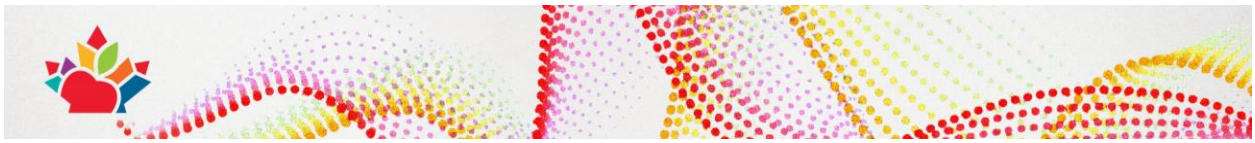
The system is not broken. In fact, there are payments for those that merit payments, and the law is being interpreted in a fair manner, consistent with the Supreme Court of Canada.

How has digitization changed the copyright landscape and revenue models?

MG: Over the last decade as more materials have become digitized, there are now other intermediaries, such as database vendors, that have also brought together many of these same materials in a single package for a given cost.

You get different authors saying, "You're using my work and not paying for it". In the past, they would be paid whether or not the materials were being used because they were part of this larger collective. As we shift to an increasingly digital world, now we actually do know whether it's being used or not. And I think in many instances it may not be used as much as some of those authors had thought.

The reality is that the copyright collective know very well that educational institutions are paying for the underlying materials or are using those materials in a lawful fashion. So long as there's appropriate distributions, let's say for the stuff that is licensed on the digital side, it seems to me that people are still being appropriately paid under those circumstances. And to the extent to which they're not, it's an issue with the new intermediaries, who will have struck their own deals. It's not really an educational issue. The education side is to ensure they're operating within the law, and I think they've been doing exactly that for the better part of over a decade. The notion that we should burden educators, students, or educational institutions with having to pay for materials that they aren't using, especially during these difficult economic times, should be a non-starter.



What are the risks of overturning fair dealing?

MG: The risks of reverting fair dealing are enormous, and it would be disastrous public policy long term for Canada. In this instance, it's wrong from a legal perspective, from an ethical perspective in terms of the double payment, and it is wrong in terms of where that burden ultimately falls, because so often it falls on cash strapped educational institutions or on the students themselves. Collectively, we are talking about huge sums of money and in some instances, it's coming out of some of the people who can least afford to pay it, especially when they are effectively, in many instances, already paying for it through these alternative licensing systems.

How would changes to fair dealing impact users' rights, such as educators and students?

MG: For the better part of two decades, the Supreme Court of Canada has been faced with the same question on several occasions and every time the Court comes back with the same answer: Copyright is designed to serve the broader public interest, which is best served by balancing both creator rights and users' rights. And so, when you ask: "Don't teachers and students have rights?", they absolutely do. So, where we move the needle too far in one direction or the other, we run the risk of losing that balance.