

BACKGROUND INFORMATION

Copyright reform

- Canadian universities support balance in copyright law. As both substantial creators and users of copyright works, universities recognize the need for balance between creators receiving fair pay for the use of copyright works and the public having access to copyright works for purposes such as research and education. Users' rights in copyright law – fair dealing and exceptions to infringement – are essential to achieving balance.
- Academics create many of the works utilized in educational institutions and libraries – often with public funding. They have different motivations for creation than commercial creators. While getting paid for their works is a consideration for academics, most are motivated to advance knowledge and scholarship in their disciplines and to further debate. In return, they require access to research produced by other scholars.
- The federal Science and Technology Strategy stresses the importance of having a modern intellectual property regime that is competitive with those of Canada's trading partners. Users' rights are a key component of a competitive intellectual property regime. A 2007 study by the U.S. Computer and Communications Industry Association concluded that users' rights in copyright law promote innovation and are a major catalyst of economic and productivity growth.
- The Internet is one of the most important teaching and learning resources used in Canada's universities. Students and professors need to know that they are not breaking copyright law when they engage in teaching and learning activities that involve the use of publicly available works on the Internet. Copyright law should be amended to clarify that publicly available works on the Internet can be used for education and training purposes without infringing copyright.
- Canadian copyright law has not kept pace with modern educational practices or the new communications technologies that are used in universities, including delivering lessons through the Internet. Copyright law should allow a student to view a lesson live through the Internet or later through a recording of a lesson. It should also be permissible for an educational institution to make a recorded lesson available to a student for the duration of his or her academic program. Copyright law should permit a student to copy a recorded lesson onto a computer or other mobile device for study later.
- Canadian copyright law permits a librarian to send only a paper format copy of a scholarly, scientific or technical work to a researcher located within the same institution or at another institution. This restriction makes it difficult for Canadian researchers to receive materials quickly or to conduct collaborative research using new technologies. Copyright law should permit a librarian to deliver a work, including a "born digital" work, to a researcher through the

Internet and allow the researcher to retain the digital copy for future reference subject to appropriate restrictions against redistribution.

- In the U.S., educational institutions and academic libraries use the fair use provision to make available or to send scholarly, scientific and technical publications to researchers through the Internet. Punitive statutory damages cannot be imposed if staff in these institutions have reasonable grounds to believe that their activities fall under fair use. In contrast, high statutory damages awards may be assessed against employees of Canadian universities and libraries if they make an error in judgment about what constitutes fair dealing. This discourages the use of fair dealing to distribute research materials through the Internet. Canadian copyright law should be amended to protect an individual from statutory damages, where a person has reasonable grounds to believe that the activity qualifies as fair dealing.
- The law is unclear about whether Internet Service Providers (ISPs), including universities, infringe copyright when they facilitate the transmission of copyright works through the Internet and whether they have liability for the activities of their service subscribers. The law should be amended to clarify that an ISP is not liable for copyright infringement when it acts as a "pipe" for Internet communications and does not alter the content of the works being communicated. When a copyright owner alleges that an individual has posted infringing material online, an ISP should be obligated only to forward the allegation of infringement to its subscriber.
- To bring Canadian copyright law into line with international treaties, the Government of Canada may introduce legal protections banning breaking digital locks – technology that restricts a user's ability to copy content of digital materials -- used by rights holders to protect copyright works in digital form. If the protections for digital locks are too strict, they could undermine users' rights that permit teachers, students and librarians to use works in certain ways without infringing copyright. Any legislated prohibition against the circumvention of technological measures should apply only where the purpose of the circumvention is to infringe copyright.

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