

**SPEAKING NOTES**  
**ROUNDTABLE ON COPYRIGHT REFORM**

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Good evening. Thank you for inviting the Association of Universities and Colleges of Canada to participate in this round table discussion on copyright reform. AUCC is the voice of Canada's universities and represents 94 Canadian public and private not-for-profit universities and university-degree level colleges.

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 as the Supreme Court of Canada emphasized in the 2004 CCH decision.

The Copyright Consultation Website set up by the Government of Canada raises a number of specific questions relating to copyright reform. Two of the most important questions are how existing copyright laws should be modernized and how amendments should be made to withstand the test of time.

Key elements of the modernization of Canada's copyright laws should be the adaptation of existing educational and library exceptions to the digital environment and the introduction of a new educational use of the Internet provision. To the extent possible, amendments should reflect the principle of technological neutrality so that copyright legislation is not tied to specific technologies or the specific formats in which a work may exist.

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.

A 2003 study commissioned by Industry Canada to assess the economic impact of copyright reform on technology-enhanced learning found that “allowing educational institutions to freely access content that is lawfully available on public Websites...would allow the Internet to become a more important learning resource and...support the development and growth of online learning, which, in the view of many, is a key to Canadians’ successful adaptation to the requirements of a knowledge-based economy.” The study’s author also said “Over half (55%) of the organizations and individuals responsible for the content of public Web sites reside in the U.S.; only 3% reside in Canada...A policy to facilitate access can have no impact on creative incentives where works have been produced without any expectation of compensation. This situation applies to most of the material on public sites. Individuals and organizations want to give expression to their ideas, to publicize their activities, or to attract readers to products and services, including other information products that can be purchased online. Free access does not impact on incentives for the production of such materials.” (See section 7.2 of the report)

The existing educational exceptions should also be updated to facilitate technology-enhanced learning and distance education, including the delivery of 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 and for a student to copy a recorded lesson onto a computer or other mobile device for personal study later.

The possible implementation of the World Intellectual Property Organization treaties granting new rights to copyright owners in the online environment raises concerns about the copyright liability of Internet Service Providers in Canada. AUCC supports the approach taken in Bill C-61 which exempted ISPs from copyright liability in relation to their activities as intermediaries and established a “notice and notice” regime under which an ISP’s obligation is to forward to a subscriber any allegation by a copyright owner that the subscriber has engaged in infringing activity.

Finally, an important overarching issue is the requirement under the WIPO treaties to provide adequate legal protections for the digital locks used by rights holders to protect copyright works. If new protections for digital locks are too strict, they could undermine users’ rights that permit teachers, students and librarians to use legal copies of works in certain limited ways without infringing copyright. AUCC recommends that any legislated prohibition against the breaking of a digital lock should apply only where the lock is broken for a purpose that infringes copyright.

I will end my opening comments at this point. Once again, on behalf of AUCC’s 94 member universities, I would like to thank you for the opportunity to participate in this roundtable.