

Copyright Matters: Protecting Fair Dealing for Education

By the Canadian Alliance of Student Associations

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Canadian Alliance of Student Associations
Alliance canadienne des associations étudiantes

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The Canadian Alliance of Student Associations (CASA) is a non-partisan organization that represents 270,000 students at universities, colleges and polytechnics across the country. CASA advocates for a post-secondary education system that is accessible, affordable, innovative and of the highest quality. A key aspect of achieving this system is upholding the right for students to access information. With regards to the ongoing review of the Copyright Act, CASA strongly believes that fair dealing for educational purposes should be preserved. Fair dealing for such purposes has proven instrumental in reducing barriers to learning, fostering innovation, and enhancing the quality of post-secondary education in Canada.

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The context within which students are purchasing, studying, and creating copyrighted material is rapidly changing with the global shift towards digital content. In fact, the majority of students today have very limited memory of life before the internet, and are accustomed to having quick access to quality content. The internet offers a vast array of learning materials, such as Massive Open Online Courses (MOOCs), open source articles, and educational YouTube videos. On top of that, creators are more often choosing to distribute their work under open licensing, through platforms like open access journals, open educational resources (OERs), and Creative Commons. These innovative distribution platforms allow for content, such as textbooks and lesson plans, to

be used, built upon, or modified freely to meet various accessibility or language needs, for example. These platforms not only bring returns to students in terms of cost savings, but they also offer valuable opportunities to foster innovation in learning, as students are not only consumers of content, but also creators. Because of the abundance of high quality materials that are available in such readily accessible formats, learning now increasingly takes place online and through digital materials. The changing nature of academic materials has introduced new forms of content consumption that must be accounted for when undertaking a review of the Canadian Copyright Act.

Copyright law strives to create a balance between creator and user rights, and students believe that the current Copyright Act, with the inclusion of fair dealing for education, successfully does just that. Fair dealing creates a mechanism that facilitates the legitimate and fair exchange of short excerpts of a copyrighted work, thereby exposing students to more variety of works and perspectives than ever before. At the same time, students continue to pay lots for textbooks, with the average cost for textbooks being \$656 in 2015 for University texts and \$437 for college texts. These expenditures are clear evidence of the continued use and purchase of effective published materials. For these reasons, **CASA recommends that education as a component of fair dealing be preserved under the Copyright Act.**

The technological protection measures such as digital locks that are regulated by the Copyright Act are contrary to the purpose that fair dealings for education promotes. Digital locks serve as an unnecessary barrier for students who would otherwise have legal access to academic resources under the fair dealings framework. While digital locks are intended to ensure that creators receive appropriate compensation, they in fact dissuade students from accessing these materials because students will likely find similar content elsewhere. With the greater diversity of materials and the constrained nature of student budgets, students will choose accessible content over paying for content under a digital lock. **CASA recommends that the technological protection measures in the Copyright Act be reformed to ensure that they do not contradict with the framework established by fair dealings for education purposes.**

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While some argue that fair dealing has enabled students and educators to benefit at the expense of creators and publishers, this is simply untrue. The new digital landscape presents both a challenge and an opportunity across sectors, and the publishing industry is no exception to this. There are in fact many examples of creators who have managed to leverage this new form of content consumption to achieve success and gain worldwide recognition. For example, Rupi Kaur is one of Canada’s rising literary stars and has sold over five million copies of her two poetry books: *Milk and Honey* and *The Sun and Her Flowers*. Kaur first shared her poetry freely on social media, enabling her to reach a large and targeted audience. After successfully gaining a wide following, she self-published and sold her work

through Amazon. Eventually, her work was picked up by an established publisher and has since been translated into many languages and sold globally. Her work has topped the New York Times Best Seller list, and she has been accredited for the recent increase in poetry sales in Canada. Kaur leveraged digital technologies to young, racialized, Indigenous girls and women—those who are traditionally excluded for Canadian literature—simultaneously increasing accessibility and making a dying art form relevant to youth globally. Rupi presents a clear demonstration of how creators can adapt to the changing digital landscape, and better yet, use it to their advantage.

Another element that affects students and should be considered throughout the Copyright Act review, is reform of the Copyright Board. Post-secondary students are directly impacted by the decisions of the Copyright Board of Canada, as it is responsible for setting tariffs on copyrighted educational material. While these tariffs are billed to post-secondary institutions, they are sometimes directly passed on to students through ancillary fees, which students are required to pay in addition to their tuition. Other times, the tariff fee is paid through the post-secondary institution’s operating budget, which constrains the institution’s ability to provide other critical resources, including updated infrastructure and quality teaching staff, to post-secondary students. Though the Copyright Board’s decisions have a direct impact on students, their existing decision-making processes lack transparency, meaning that students are left in the dark with regards to why these fees were set. The lack of transparency through which the fee is proposed as well as the increasingly open nature of information makes the Copyright Board tariff an unnecessary barrier to academic materials for post-secondary students.

CASA recommends that the Copyright Board be reformed to provide an opportunity for public interest and non-commercial stakeholders to intervene in hearings and contribute legal arguments without prior involvement in the interrogatory process.

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A key aspect of achieving an affordable, innovative, accessible and high quality post-secondary education system is upholding the right for students to access information. The addition of fair dealing for educational purposes in the 2012 Copyright Modernization Act has been instrumental in reducing barriers to learning, fostering innovation, and enhancing the quality of post-secondary education in Canada. It is of

crucial importance that the committee understand the benefit of preserving fair dealings for educational purposes during the statutory review of the Copyright Act. Students now have access to a variety of resources which enriches their learning experience. They are also able to better afford these materials contributing to the accessibility of post-secondary education. The tariffs imposed by the Copyright Board however continue to serve as an impediment to accessible academic materials. The non-transparent manner in which this fee is decided leaves students to conclude that the fees were determined arbitrarily. When considering reform of the Copyright Board, the committee should consider providing an opportunity for public interest and non-commercial stakeholders to intervene in hearings and provide arguments without prior involvement in the fee allocation process. If accepted, these recommendations would help to ensure that the Copyright Act supports a strong post-secondary education system in Canada.

Our Members



About CASA

Established in 1995, the Canadian Alliance of Student Associations (CASA) is a non-partisan, not-for-profit, student organization composed of 22 student associations representing 270,000 post-secondary students from coast to coast. Through its partnership with the Quebec Students Union (QSU) and its 8 members representing 79,000 students, CASA presents a national student voice to the federal government. CASA advocates for a Canadian post-secondary education system that is accessible, affordable, innovative and of the highest quality.



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