

December 8, 2010  
235-D Centre Block

## Legislative Committee Bill C-32 (Copyright)

# Committee Comments



Thank you Mr. Chair. On behalf of our 26 post-secondary institutions across Canada, representing over 300,000 students, we would like to thank you and the members of the committee for inviting CASA here today.

We come before you to bring to your attention to the importance of creating education as a new category of fair dealing. The inclusion of education as fair dealing is viewed by our membership as one of the most important changes the government of Canada can make through Bill C-32.

The importance of an education fair dealing right cannot be understated. Our neighbor universities and colleges in the United States are able to capitalize on their fair use education right to drive innovation, but the growing reality for Canadian post secondary institutions is they are being financially and legislatively left behind.

If this category is not created, students will be getting double, sometimes triple charged for access to materials they've paid for through a variety of fees collected whether they be through collective licensing, library, and tuition fees. Licensing collectives such as Access Copyright are looking to expand their scope beyond photocopying to include fees for digital copies of already purchased articles, quotations in powerpoints, and even colleagues sharing text over email.

Beyond that, the economic argument for a more liberal fair dealing regime is clear. Modern, tech-heavy, creative industries in the United States rely on fair use to find innovative ways to generate more wealth and income for the country. Studies point to the fact that this fair use economy amounts to 17% of the US GDP, and education forms a significant portion of that in direct contributions, and training for future contributions<sup>1</sup>. If Canada seriously wants to be a twenty-first century leader in innovative sectors, the US example shows liberalizing fair dealing must be a cornerstone. Simply, we must allow access for the sake of education, or sit by and watch our competitors pass us by.

However, as is currently drafted, the educational fair dealing right is not enshrined as a true right, but a secondary right that can be overridden by a digital lock. Creating balance in the bill is important and digital locks have their role, but allowing them to override fair dealing undermines the very concept of fair dealing; if a work has a digital lock, a copyright holder can limit any use of it, and "fair dealing" means there can be no inherent limit if the purpose is just. This is more restrictive than the copyright regime in

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<sup>1</sup> [http://www.wired.com/images\\_blogs/threatlevel/2010/04/fairuseeconomy.pdf](http://www.wired.com/images_blogs/threatlevel/2010/04/fairuseeconomy.pdf)

the United States, and goes beyond Canada's obligations under international treaties. If we take fair dealing seriously, it needs to be a true right, and needs to trump a digital lock.

There are also two further amendments to the bill which CASA is proposing. The first is an amendment requiring libraries to self-destruct articles they lend through digital interlibrary loans. Students have two options when taking out such an article, either print one copy on to paper, or let them destruct five days after receipt. This clause undermines the way modern study operates. The benefits to digital articles are immense: they can be carried everywhere, organized in new ways, volumes can be searched in seconds, and citation can be automated. By requiring students to physically print out these articles, the law would actively bring education and research back in to the 20<sup>th</sup> century, at the loss of all Canadians.

The second amendment requires professors and students to destroy their course materials 30 days after the end of the course.

This is absurd.

In the 21<sup>st</sup> century, students are taught to be information gatherers and synthesizers that can find the information that exists in the world and bring it together in a way that generates new and original knowledge. Tests that were once closed-book in the 20<sup>th</sup> century are now open-book in the 21<sup>st</sup> century. Requiring students to destroy the information they've built their skills on after the course is over, is to force them to take an open-book test without the book—to build a house without their hammers—when they enter the workforce. It's needless, and it doesn't impact the bottom line of rights-holders, because students gained access to these lessons in an economically *fair manner* in the first place.

If the cost of an education doesn't carry with it the ability to use that education in the workforce, I ask what are students paying for?