

Ottawa's Unfolding Copyright Reform Debate On Fair Dealing

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MPs' Review of the *Copyright Act*

- Review of *Copyright Act* to be completed this Spring
- Two committee reports and their recommendations
- Statement(s) by Minister(s)



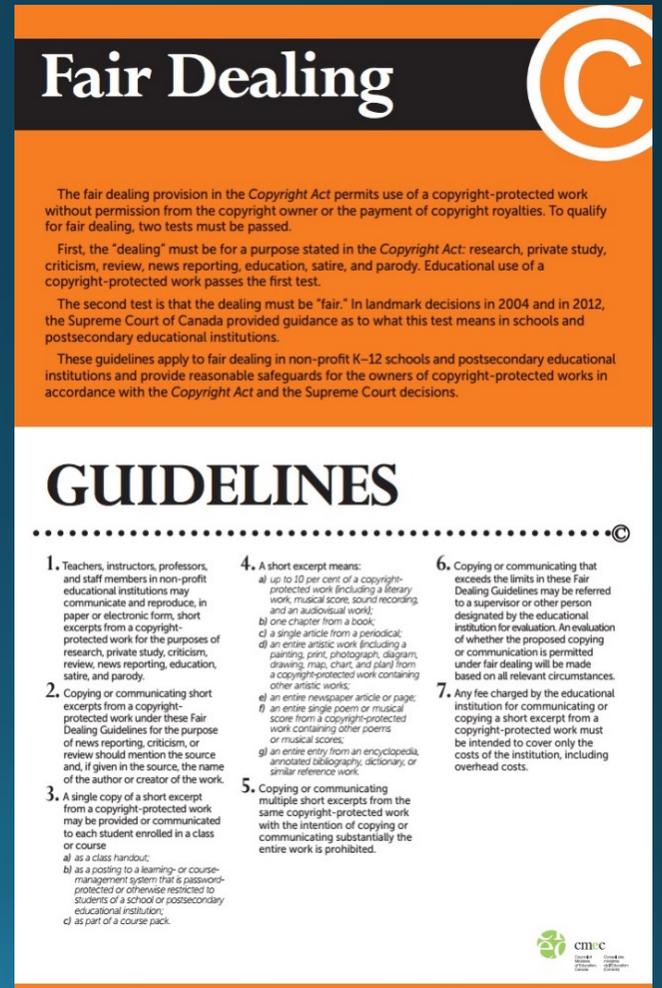
What is at stake for educators?

- Possible recommendations to amend educational use of fair dealing
- Possible change in law that could reverse more than 10 years of legal activities and decisions



Fair Dealing Guidelines (FDG)

- 2012 Supreme Court decision permits copying “short excerpts” for students
- FDG describe short excerpts to provide for uniformed compliance
- FDG is a focus of criticism (*has withstood claims of “unfair dealing” in courts and at Copyright Board*)



The image shows the cover page of the Fair Dealing Guidelines (FDG) document. The title "Fair Dealing" is prominently displayed in white text on a dark orange background, accompanied by a large white copyright symbol (C) inside a circle. Below the title, there is a paragraph explaining the fair dealing provision in the Copyright Act, followed by two numbered tests for fair dealing. The second test, "fair," is further defined by landmark court decisions. The document also states that these guidelines apply to non-profit K-12 schools and postsecondary educational institutions. The word "GUIDELINES" is written in large, bold, black letters on a white background, with a dotted line and a small copyright symbol below it. A list of seven numbered guidelines follows, detailing the scope of copying and communication permitted. The bottom right corner features the logo of the Copyright Clearance Center (CCC).

Fair Dealing

The fair dealing provision in the *Copyright Act* permits use of a copyright-protected work without permission from the copyright owner or the payment of copyright royalties. To qualify for fair dealing, two tests must be passed.

First, the “dealing” must be for a purpose stated in the *Copyright Act*: research, private study, criticism, review, news reporting, education, satire, and parody. Educational use of a copyright-protected work passes the first test.

The second test is that the dealing must be “fair.” In landmark decisions in 2004 and in 2012, the Supreme Court of Canada provided guidance as to what this test means in schools and postsecondary educational institutions.

These guidelines apply to fair dealing in non-profit K–12 schools and postsecondary educational institutions and provide reasonable safeguards for the owners of copyright-protected works in accordance with the *Copyright Act* and the Supreme Court decisions.

GUIDELINES

1. Teachers, instructors, professors, and staff members in non-profit educational institutions may communicate and reproduce, in paper or electronic form, short excerpts from a copyright-protected work for the purposes of research, private study, criticism, review, news reporting, education, satire, and parody.
2. Copying or communicating short excerpts from a copyright-protected work under these Fair Dealing Guidelines for the purpose of news reporting, criticism, or review should mention the source and, if given in the source, the name of the author or creator of the work.
3. A single copy of a short excerpt from a copyright-protected work may be provided or communicated to each student enrolled in a class or course
 - a) as a class handout;
 - b) as a posting to a learning- or course-management system that is password-protected or otherwise restricted to students of a school or postsecondary educational institution;
 - c) as part of a course pack.
4. A short excerpt means:
 - a) up to 10 per cent of a copyright-protected work (including a literary work, musical score, sound recording, and an audiovisual work);
 - b) one chapter from a book;
 - c) a single article from a periodical;
 - d) an entire artistic work (including a painting, print, photograph, diagram, drawing, map, chart, and plan) from a copyright-protected work containing other artistic works;
 - e) an entire newspaper article or page;
 - f) an entire single poem or musical score from a copyright-protected work containing other poems or musical scores;
 - g) an entire entry from an encyclopedia, annotated bibliography, dictionary, or similar reference work.
5. Copying or communicating multiple short excerpts from the same copyright-protected work with the intention of copying or communicating substantially the entire work is prohibited.
6. Copying or communicating that exceeds the limits in these Fair Dealing Guidelines may be referred to a supervisor or other person designated by the educational institution for evaluation. An evaluation of whether the proposed copying or communication is permitted under fair dealing will be made based on all relevant circumstances.
7. Any fee charged by the educational institution for communicating or copying a short excerpt from a copyright-protected work must be intended to cover only the costs of the institution, including overhead costs.

Industry Committee

- Dozens of witnesses heard relating to specific review of publishers' claims and educators' use of fair dealing
- Expect report to comment on educational use of fair dealing
- MPs seeking a balance that will provide fair remuneration for publishers and artists
- Report expected to be tabled in May or June – before Parliament recesses for summer



Canadian Heritage Committee

- Reviewed copyright in the context of what is fair remuneration for artists
- Report will document artists' loss of income
- Report will likely comment on educational use of fair dealing
- Report expected to be tabled in March (or later)



A Legislative Legacy

- After MPs thorough review, reports' conclusions and recommendations become a defining statement of copyright and education
- Reference point for future Parliamentary activity



Current Argument

- Publishers, Access Copyright and artists' groups are active in Ottawa claiming economic hardship due to 2012 changes
- Their claim is education sector has stopped paying for content resulting in economic hardship for publishers and artists
- Asking for MPs to reverse 2012 changes to fair dealing respecting education



Creators' Testimony

- It's “a wild west” with educators having no respect for copyright. Whole books are routinely copied.
- We are witnessing the end of Canadian content for our students. With lost revenues, publishers do not have the money to develop Canadian content.
- Publishers are in dire straits. Artists are not being paid for their works.



“It’s “a wild west.””

- Publishers repeatedly make unsubstantiated claims that teachers are copying whole textbooks
- **FACTS:** The Supreme Court and Copyright Board have found no evidence of textbook reproduction
- The decline of textbook sales is due to other factors:
 - declining enrolment
 - adoption of semester teaching
 - increasing use of Internet and electronic resources
 - more resource-based learning
 - longer lifespan of textbooks

Copying fewer than 2 pages/student

- Access Copyright claims 600 million copies are made “free” each year by Canadian educators
- But 98 % of these copies fall within fair dealing according to Copyright Board findings
- Approx. 12 million pages require assessment whether they do fall within fair dealing
- Stats Can reports 6.8 million Canadian students in K-12 and post-secondary in 2015-16

“It’s the end of Canadian content.”

- Publishers claim that fair dealing is the end of educational resources with Canadian content
- **FACTS:** The education sector has not reduced its spending on learning resources or its support for Canadian content
- The education sector is developing learning resources, signing licenses and entering into subscription-based on-line resources. Though they are not buying as many publishers’ textbooks, they are directly supporting the development of Canadian content.

“We’re in dire straits.” (1)

- Publishers claim that loss of tariff payment places Canadian publishers in dire financial straits
- **FACTS:** Statistics Canada documents that the publishing industry is enjoying operating profit margins in excess of 10% year over year
- The top revenue category is “educational titles”
- Large education publishers in Canada are internationally owned -- industry trends are global

“We’re in dire straits.” (2)

- Access Copyright claims that loss of tariff payment places Canadian authors in dire financial straits
- AC’s requests 1) narrowing of educational use of fair dealing and 2) applying a mandatory tariff
- FACTS: 1) Copyright Board found 98% of copying is within fair dealing – most copyright is a few pages
- 2) Educators use lesson materials largely from outside Access Copyright’s repertoire

Their Symbiotic Argument

- Publishers claim hardship because of decrease in Access Copyright payments.
- Writers claim hardship because of decrease in Access Copyright payments.
- Access Copyright claims education sector has stopped payments.
- The (obvious) answer is to have education sector pay Access Copyright so publishers and writers are paid.

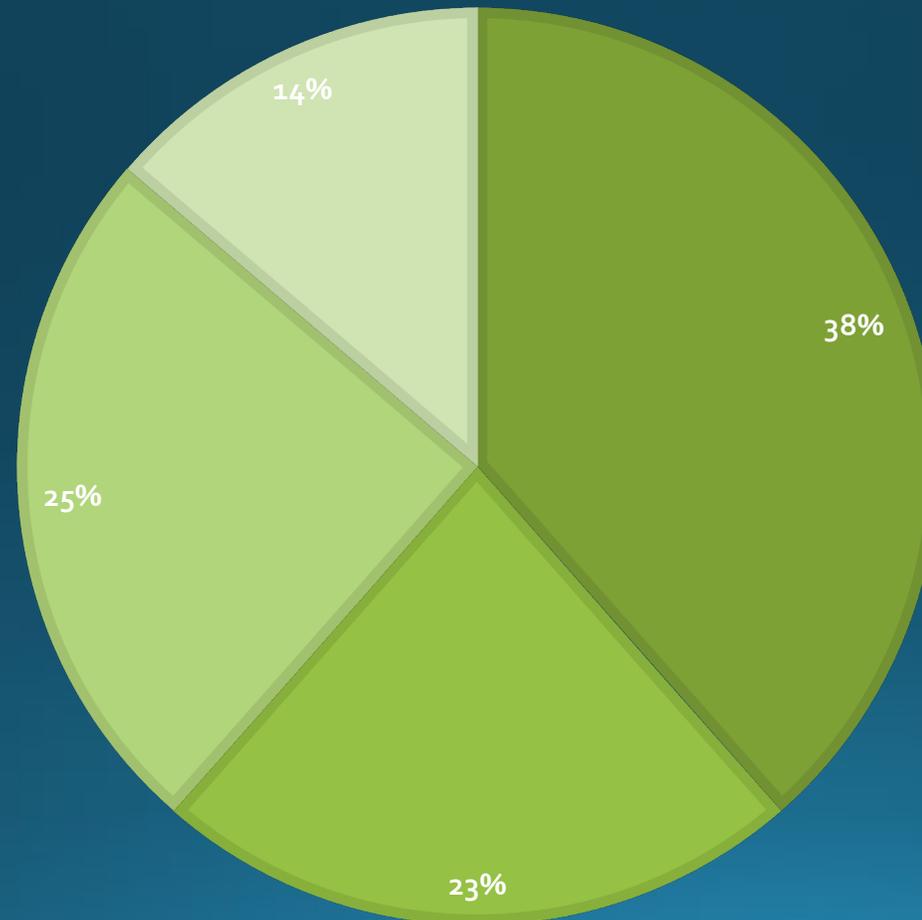
MPs' Nagging Question

- Will re-establishing an Access Copyright tariff provide the desired results for publishers and, more importantly, for Canadian artists?
- MPs just need to follow the money to realize the answer is an emphatic “no”

Follow the Money re Access Copyright

ACCESS COPYRIGHT – \$10.8 M IN 2017

■ Administration ■ Foreign Payments ■ Publishers ■ Canadian Authors



Access Copyright pays Canadian authors only 14% of the money it collects.

Follow the Money re Publishers

- Stats Can reports Canadian publishing industry generated \$1.6 Billion in revenues in 2016
- Stats Can reports 10.2 % profit margin in 2016
- Publishers received \$4.9 million from Access Copyright in 2016 (0.31 % of total revenues)
- Publishers passed along \$1.1 million or 22% of Access Copyright payments to Canadian authors in 2016

Follow the Money re Payment to Authors

- WUC reports Access Copyright's average payment to writers in 2012 was \$1,018
- Majority of Access Copyright payments are approximately \$650 annually – accounting for less than 2.5% of a writer's income (“roughly same portion as award/prizes”)
- Stats Can reports 30,060 Canadian writers who made an average of \$38,363 in 2016

Call to Action

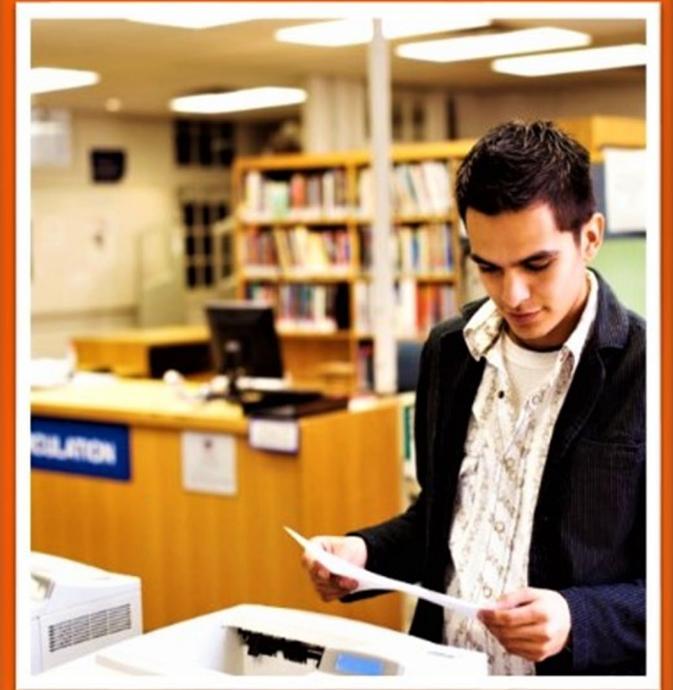
- Stay informed of the debate
- Read the details of the MPs' committee reports
- Make your views known to MPs
- Visit your MP
- Share your intelligence



Key messages for educators

- FDG is sound public policy; fair and reasonable; places teachers and students on level playing field
- Teachers are professional
- Education sector supports Canadian creators – paying millions for Canadian content
- There are more effective and efficient ways to support artists than amending copyright law

#FairDealingWorks



**For Teachers
For Students**

Address the Dilemma

- Need to support industries' transitioning business models through times of change
- Digital age has caused international disruptions to business trends and growth – including in the publishing industry
- There may be political and public policy reasons to subsidize industries via grants and support programs
- **However, it is not good public policy to subsidize an industry by amending the *Copyright Act* to reverse decisions made by the Supreme Court of Canada**



Questions and Comments

Ottawa's Unfolding
Copyright Reform
Debate On
Fair Dealing

