



The Canadian Network for Innovation in Education (CNIE) / Réseau canadien pour l'innovation en éducation (RCIÉ) is a national organization of professionals committed to excellence in the provision of innovation in education in Canada. CNIE / RCIÉ connects educators, administrators and practitioners in a bilingual, pan Canadian network. Our association of almost five hundred members promotes research and advances practice in both open and distance education and the use of educational technologies. CNIE / RCIÉ addresses all educational contexts, including K-12, post-secondary, and private sector. www.cnie-rcie.ca

Canadian Copyright Electronic Submission

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The federal government has initiated a series of consultations across Canada as a preparation for the creation of a new Canadian Copyright law. CNIE-RCIÉ's President Maureen Baron made an oral presentation at the Montreal Town Hall meeting on July 30th, 2009. The entire Town Hall proceedings can be accessed from <http://copyright.econsultation.ca/topics-sujets/show-montreal/24>. The following is CNIE-RCIÉ's electronic submission via the government's website <http://copyright.econsultation.ca/topics-sujets/show-montreal/18>. This submission is a response to the questions (in italics) posed on the Copyright econsultation website:

1. How do Canada's copyright laws affect you? How should existing laws be modernized?

CNIE /RCIÉ members are teachers, instructors, professors, trainers, professional development consultants and trainers, instructional designers, academic deans, pedagogical consultants, media center managers, librarians, researchers, graduate students, multimedia producers, and e-learning specialists who work in on-site, physical and technology-based cyber environments. Our members work in traditional, physical space-based classrooms as well as in virtual classroom spaces through the use of educational technology and distance education. CNIE / RCIÉ members use, create, disseminate, broadcast, archive, organize, consult, teach and research with copyright materials every day in almost every aspect of their professional responsibilities. Below, are some examples of how the existing Canadian Copyright Law impacts our professional work and what changes CNIE –RCIÉ would like to see in a new Canadian Copyright Law.

- a. A student is anyone of any age, ability or disability who seeks to learn, understand or be informed. Today's students do not learn-and teachers do not teach- only in or from onsite, physical space-based classrooms. Through the use of educational technology (including Learning Management Systems such as WebCT or GRIC's Edu-groupe and the Internet) students can participate in class discussions; complete and or submit their assignments; view multimedia demonstrations, lectures, support or primary source materials; or study their learning resources from an office computer at lunch or a home computer at midnight, at a public library or from a PDA. Learning occurs increasingly any place and any time, in both formal and informal contexts.

Currently, there are different copyright rules for the dissemination of learning materials depending on their format and mode of delivery. Hard copies in a physical classroom are subject to regulation different from that which applies- where it exists at all- to electronic copies in a closed, password-protected, blended cyber classroom or within a distance education course. Whether the student is a home-bound eight-year-old recovering from chemotherapy and trying to keep up with his/her class; or a student in a rural area who can only take a course through distance education; or a student in a juvenile detention facility trying to prepare for re-entry into a high school class; or a graduate student on a work/study placement trying to integrate research developments into his/her work project; or a professional health care worker in a remote location trying to maintain his/her professional qualifications, all of these students need legal and effective access to the same learning resources used by students in traditional classrooms. "Classroom" must be redefined in copyright law as a learning environment rather than a restricted, physical location.

Canada's new copyright law should specify that the users – teachers and students, not consumers - and the end use – educational and not commercial use - of copyrighted materials are the deciding factors in determining acceptable terms and conditions for the use, in educational contexts, of copyright materials in all formats, including electronic ones.

- b. For the same reasons as stated above, the distinction between "home use" and "public performance" within an educational setting is no longer valid. The latter may now occur face to face or in person; virtually, online; during virtual practice or simulation; during videoconferencing; and as part of formal distance education or distance learning. Using technology in all its forms and configurations, students can access the same learning materials for educational purposes from a school based computer lab, a home-based network, a jail cell or hospital room that is also a "personal living space," - or an office. Thanks to the Internet, students can access learning materials in all manner of public spaces- but for personal, educational use.

Canada's new copyright law should specify that the user of copyright material– a student or educator - and the educational quality of the use- not

the location of that use- are the deciding factors in copyright use, permission and cost.

- c. When educators use resources other than print for “just in time teaching” -such as news stories for history, journalism, environmental studies or media literacy courses- they find it difficult to judge, in the terms of the present Copyright Act, what is a “news story” versus an “in depth news feature” versus a “news magazine.” Whether such uses are planned in advance or the result of a teachable moment, the principle of Fair Dealing needs to apply.

Canada’s new copyright law should extend the definition of “Fair Dealing” from print materials only to the educational use of *all* learning resources, regardless of their media, format or delivery mode. If the terms of this extension are deliberately made inclusive, the Act will not require continuous amendment as new media and delivery systems emerge over time.

- d. CNIE /RCIÉ members understand that the education, library and research sectors do not expect access to everything for free. Content creators who wish to be compensated for their works must receive fair compensation for their labours. However, the education, library and research sectors do not enjoy the financial resources of the private sector. In addition, educators and students do not typically use or disseminate copyright-protected works for financial gain. They do so to promote learning, professional development or research- in other words, for the Public Good. A distinction in copyright law must be made between the education, library and research sectors, the commercial sector and the recreational sector normally associated with the general public.

Canada’s new copyright law should provide that the education, library and research sectors will pay only a set proportion of the access rates for copyright protected materials charged by copyright holders to commercial or recreational users.

- e. Even though education is a provincial jurisdiction, the costs for educational use of copyright protected materials should be the same, regardless of where a Canadian student or educator lives or from what location that student or educator accesses the learning materials. This principle is especially important for minority language educational groups, for example English in Quebec, French outside of Quebec and First Nations across Canada.

Canada’s new copyright law should ensure that all students and educators- regardless of their mother tongue, their place of residence, or the language of instruction of their educational institution- have *equal* access to copyright protected learning resources and that all Canadian educational institutions pay the same price for the same material.

- f. The definition of Fair Dealing under any revised Copyright Act should be consistent with the CCH decision and expanded to include non-commercial uses such as education and research.

Canada's new copyright law should define Fair Dealing in accordance with the relevant CCH decision and inclusively, rather than exclusively, with regard to non-commercial uses of copyright protected resources.

- g. Students with perceptual, physical or learning disabilities should have the same legal access to the all learning resources that are legally available to non disabled students.

Canada's new copyright law should ensure that students with disabilities requiring adaptive resource formats have the legal right to access learning resources regardless of their original format, media or delivery mode.

- h. The time limit, as prescribed in Bill C-61, for keeping digital reproductions of learning and teaching resources for courses is not realistic in the education, library and research sectors. Many educators typically teach the same course in different semesters (e.g. January and the following September). To recreate repeatedly the same learning and teaching resources for the same course because of an artificially created copyright time limit is a waste of valuable time and effort, and the vast majority of Canadian educators are paid in some way from the public purse. Moreover, research in learning theory demonstrates that students learn continuously, building on previous knowledge and skills. If educators must by law destroy their course content, while their students keep it for future reference, the question arises: are these students now breaking the law? If so, how is the public interest served?

This same, artificially created time limit impedes digital inter-library loans and prevents graduate students and other researchers from effectively sharing research within their own project teams. Often, such research is conducted over several terms or several years. Copyright protected resources are typically needed as reference for the entire duration of the research project.

Finally, distance education students who study via self-directed modules rather than by calendar periods, write their exams as individuals and at many different time periods rather than during a specific, formal exam period. Practically speaking, the educational institution offering such a course cannot destroy the module's learning and teaching materials every time one student writes the exam for that module.

Canada's new copyright law should facilitate, rather than restrict, educational institutions and libraries in obtaining permission for digital reproductions of learning and teaching resources as part of courses, research, personal or professional education.

2. *Based on Canadian values and interests, how should copyright changes be made in order to withstand the test of time*

- a. Delivery formats and educational technologies will continuously evolve. Therefore a law based on formats and delivery modes will always lag behind the marketplace and educational technology tools available to the education and library sectors. Such an Act will be a continuous source of controversy and a vexatious consumer of legislative effort.

Therefore Canada's new copyright law should state that the user – a student or educational institution - and the end use or purpose – educational and not commercial use - of the copy written material, are the deciding factors in determining access to copyright protected resources, regardless of their format.

- b. Crown copyright should be abolished. Canadians have already paid for the creation of Crown materials through their taxes. Because Canadian Crown copyright charges stretch the already limited financial resources of the Canadian education, library and research sectors, and because American government resources are already free globally, it is often easier to use the American resources rather than the Canadian resources in Canadian courses and research. Clearly, such a situation negatively impacts the understanding of the Canadian realities and the development of Canadian solutions to Canadian issues and problems.

Canada's new copyright law should state that Canadian educational institutions and Canadian taxpayers may access without charge all Canadian Crown resources not protected by privacy or national security legislation.

- c. Many CNIE-RCIÉ members are involved in the archiving of learning and teaching materials; in researching the development, dissemination, cataloguing and organization of learning and teaching resources; and in facilitating access to such learning and teaching resources by students, instructors and researchers. Sometimes these learning and teaching resources are from other countries, in foreign formats, as the resources are not available from a Canadian source (e.g. foreign films for Media or Film studies and electronic format resources for foreign language acquisition or for heritage language classes). Sometimes the resources are not yet available in Canada, so researchers must break DRM processes built into them in order to study how these resources may be made available in Canada or how they will or would impact Canadian students and researchers. In such cases, Canadian educational institutions need to be allowed to break DRM codes without penalty.

Canada's new copyright law should ensure that provisions prohibiting the circumvention of Digital Rights Management processes and tools do not restrict or impinge upon any exceptions made in the Act, including Fair Dealing, for these types of resources and for non-commercial purposes in the education, research and library sectors. DRM circumvention should be permitted in non-infringing non-commercial activities, such as, but not exclusively: archival and

protection against loss of irreplaceable materials; format alterations for people with disabilities; or research and educational uses of foreign media.

3. *What sorts of copyright changes do you believe would best foster innovation and creativity in Canada?*
 - a. Negotiating permission to use existing, copyright protected material in another production, be that multimedia, print, electronic or traditional audio-visual, is a time consuming and laborious process. The many levels of creative process rights holders; distribution rights holders; and jurisdictional rights holders make for a chain of ownership that is often unfathomable, convoluted and confusing. While copyright law must be written in specific, legal language and format, its typical complexity will not help end users- especially educators, researchers & students- to understand their rights or the rights of the owner(s) of the materials.

Canada's new copyright law should create one national copyrights clearing agency for all intellectual property. Such an agency should have expertise in the provisions of the Copyright Act and navigating the maze that is actual copyright ownership. Such an agency should be designed to advise those seeking to invoke their copyrights or those seeking to acquire rights to copyright protected materials; to set and collect copyright fees from users; and to distribute the copyright fees as royalties to the appropriate rights holders.
 - b. **Canada's new copyright law should ensure that the Internet is not "monetized or commercialized" for the education, research and library sectors** as this will further marginalize educational institutions, libraries and students, whose funds are already limited and severely constrained by existing priorities.
4. *What sorts of copyright changes do you believe would best foster competition and investment in Canada?*
 - a. Educational access to, and public support for, affordable research resources would encourage research in all disciplines, foster innovation, and thus attract investment.
 - b. A legally enshrined distinction between educational, library and research sectors on the one hand, and the commercial and recreational sectors on the other hand would encourage research and the competitive creation and legal use of copyright protected intellectual resources.
5. *What kinds of changes would best position Canada as a leader in the global, digital economy?*
 - a. Protect copyright holders from plagiarism, use without their permission, or outright theft.

- b. Exempt the Canadian education, research and library sectors appropriately, so that they may use and disseminate all formats and types of intellectual property for legitimate purposes of teaching, learning & research without incurring onerous costs and unrealistic time constraints or restrictions.
- c. Expand the definition of Fair Dealing for the education, research and library sectors to include all formats and types of intellectual property.
- d. Change the basis for negotiating permissions to use copyright protected materials, and attendant user fees, from format, technology and place of use to end user and purpose of use.
- e. Do not monetize / commercialize the Internet.
- f. Ensure that all learning environments (physical spaces, cyber spaces, personal learning spaces, private homes, public institutions, urban and rural geographical areas) and all students (on site, distance education, K-12, post-secondary, life-long, continuing education, professional development) have equal access to learning and teaching resources based on purpose of use and not on format, delivery mode and location of use.