



March 9, 2012

Christine Holke David, Clerk
Bill C-11 Legislative Committee
House of Commons
Ottawa, ON
Via e-mail: CC11@parl.gc.ca

Dear Clerk David,

I am pleased to provide the committee members with promised information in follow up to my appearance last week representing the Association of Canadian Community Colleges (ACCC). I wish to again thank legislative committee members for allowing our testimony respecting education and copyright on Tuesday, February 28.

There were two issues that ACCC was asked to review and respond to the committee: 1) codifying the Supreme Court's CCH 6 factors into the fair dealing provision, and 2) the Bill C-11 requirement to destroy on-line materials within 30 days of completing a course.

RE codifying the Supreme Court's CCH 6 factors into the fair dealing provision

Codification of the Supreme Court's fairness test and 6 fairness factors is not necessary since these elements are already established in Canadian law. ACCC is concerned that codification could have unexpected results on the evolution of our law in Canada, if it is not carefully placed within the new copyright law. It may have an unintentional effect, limiting future court decisions. It is important to note that the Supreme Court itself had directed that the 6 factors are not the only ones to be considered when factoring fair dealing; that other factors may also be relevant in conducting a fair dealing analysis.

Two points to consider should Members of Parliament contemplate codifying the Supreme Court's factors for fair dealing. First, the legislative language should expressly state that the codified factors are illustrative and not exhaustive so that courts can add additional factors that are relevant in the cases being decided in the future. Second, the legislative language should expressly state that one factor is not more important than another.

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ACCC appreciates that this suggestion to codify the fairness factors in the fair dealing provision arises from the desire to further clarify the education inclusion in fair dealing. We recommend that clarification of this amendment is best accomplished by expressly stating that a teacher may make “multiple copies for class use.” This additional wording respects the spirit and intent of the copyright legislation as described in the government’s background documentation to Bill C-11. Furthermore, it is not without precedent as similar wording can be found in the United States Copyright Act’s fair use provision, enacted and enforced since 1977.

RE the Bill C-11 requirement to destroy on-line materials within 30 days of completing a course

Under the proposed section 30.01, students [paragraph 30.01(5)(a)] and the educational institution [paragraph 30.01(6)(a)] would be required to destroy any recording of an online lesson within 30 days after the students who are enrolled in the course receive their evaluations. What this exactly means is not clear and, as demonstrated at the committee, there are many differing views of what is considered as a recording of a “lesson” and what are “class notes.” Our interpretation of this section is that the lesson recording must be destroyed.

This new exception in the copyright legislation is intended to put students who are receiving instruction “online” in a similar position as students receiving instruction in a “face-to-face” teaching situation. However, as was pointed out at the committee, there are many students who attend classes on campus today who choose to follow classes online because they can take advantage of digital class content as well as the ability to replay a professor’s lesson presentation. So, in considering what is a “lesson” and a “class note,” there may be instances when lessons and class notes are one and the same.

The fact is that online courses are reused by both teachers and students. The requirement for teachers and students to destroy their lessons / class notes is unfair, unnecessarily costly, and problematic. The 30-day destruction requirement does not reflect the way online learning is reused by teachers and students in educational institutions, and/or over time in successive courses. ACCC’s recommendation is that the proposed section 30.01 of the Copyright Act be amended to eliminate the requirement to destroy reproductions of lessons.

ACCC is the national and international voice of Canada’s 150 colleges, institutes, polytechnics, cégeps, university-colleges and universities. ACCC is part of a larger education sector voice, along side national organizations such as Canadian Teachers’ Federation, Canadian School Boards’ Association,

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Association of Universities and Colleges Canada, Canadian Home and School Federation, and the Council of Education Ministers, Canada (CMEC). Together, we represent interests of teachers, school boards, parent groups, educational institutions, as well as elected representatives and governments. We have come together to reach consensus on some of the most significant education and copyright issues facing learning Canadians today.

It is important to note that, though our priority copyright issue remains the educational use of the Internet, we share policy positions on both clarifying the inclusion of education in the fair dealing provision and removing the requirement to destroy on-line lesson recordings after 30 days.

I trust this written response will accompany the information contained within ACCC's January 2011 original submission to the Bill C-32 Legislative Committee, as well as our addendum submitted shortly after the recent committee appearance on February 28th, 2012. Should the Bill C-11 Legislative Committee Members require any further response from the Association of Canadian Community Colleges, please do not hesitate to contact me directly.

Sincerely,



Michèle Clarke
Director, Government Relations and Policy Research

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