



Colleges and Institutes Canada
Collèges et instituts Canada

Copyright for an Innovative and Inclusive Canada
Submission to the Standing Committee on Industry, Science and Technology
for the Statutory Review of the *Copyright Act*
July 11, 2018

1. Introduction

Colleges and Institutes Canada (CICan) welcomes the opportunity to provide the Standing Committee on Industry, Science and Technology its recommendations related to the review of the *Copyright Act*.

Copyright matters to colleges, institutes, polytechnics and cegeps (hereinafter referred to as colleges), their students, faculty and staff. CICan and its members recognize the importance of both creators' and users' rights. Copyright legislation affects the way students and educators can access and use copyright-protected materials, and consequently impacts teaching and learning. In this digital age, it is imperative that the *Copyright Act* supports new ideas, allows the dissemination of knowledge, permits access to education, embraces technological innovation, and is flexible enough to accommodate changes that will occur in the future.

2. Contributing to an innovative economy

Colleges are pillars of post-secondary education in Canada. They play a critical role in supporting a strong, resilient middle class by helping youth access education, graduates launch careers, and mature workers reskill in response to a changing labour market. Colleges equip the workforce for green jobs and participation in a global, creative economy.

CICan's members add over \$190 billion to Canada's economy each year and contribute to inclusive growth by working with industry and community partners to ensure curricula are aligned with marketplace needs and to provide students with work-integrated learning opportunities. They strengthen Canada's capacity to innovate by undertaking applied research in all sectors to create, refine or adapt products, services, technologies, and processes in partnership with industry and community partners.

Industry requires nimble training programs that respond quickly to employer and community needs. CICan's members offer more than 10,000 education and training programs to a broad range of students from recent secondary school graduates to adult learners, including,

Indigenous peoples, newcomers, international students, and university graduates seeking applied skills and employer connections. There are more than 670 college campuses and learning centres serving communities across Canada, including in rural, remote, and northern regions.

The development and delivery of quality, employer-relevant training programs requires fair and reasonable access to learning materials including copyright-protected works, allowing students to attain their educational goals. The current copyright regime supports teaching and learning in an innovative economy while striking an appropriate balance between creators' and users' rights. It grants extensive economic and moral rights to creators, while granting limited exceptions in support of shared societal goals and values.

3. Fair Dealing Works in a Digital World

The 2012 amendments to the copyright legislation together with the historic ruling by the Supreme Court of Canada that same year establishing that instructors copying "short excerpts" from a copyright-protected work for students in their classes is "fair", were welcomed by colleges and broadened the understanding of fair dealing, a user's right that had existed legally for many years.

Contrary to what some stakeholders have indicated, fair dealing has not reduced the purchase of educational materials. Over 70% of CICA's members have maintained or increased licensing expenditures since 2012. Statistics Canada reports that expenditures of print and electronic acquisitions for colleges have increased by 26% since 2012¹, and sales of educational titles for publishers in Canada rose by 5% between 2014 and 2016.²

The wide-ranging programs and credentials offered by colleges (upgrading, certificates, diplomas, apprenticeship, degrees, post-graduate certificates) require a vast array of learning materials accessible in different formats. Fair dealing allows faculty to provide short excerpts from a variety of sources to supplement the content included in required textbooks and other copyright-protected works for which licences are purchased, thereby enhancing students' learning experiences. The access to short excerpts from supplementary content that fair dealing enables, supports the varied learning preferences of students and allows accommodations for students with disabilities, as well as for international students who may have challenges related to working in a second language.

¹ Statistics Canada: [Table 37-10-0029-01 Expenditures of community colleges and vocational schools \(x 1,000\)](#)

² Statistics Canada: [Statistics Canada Daily Report March 23, 2018](#)

Fair dealing for education supports learning, fosters innovation, and drives knowledge creation by providing students and faculty with reasonable access to materials they need.

What has changed dramatically are the sources of those learning materials and the range of formats. The use of digital content has become the norm in today's learning landscape. Learners expect quick, flexible, 24/7 access to educational materials, multiple devices and learn not just in the classroom but from wherever they happen to be. CICan's members report that digital materials are now the most commonly used educational resources followed by print materials. For example, Humber College uses licensed video streaming across all of its programs and Seneca College's library collection is 90% digital.

Given the diversity of learning materials required for college programs, the need for modern-day content and the significant shift to digital content, the repertoire available through Access Copyright is no longer relevant or adequate. Moreover, double payments were occurring with institutions purchasing access to the same copyright-protected materials through both digital licenses and Access Copyright.

Today, colleges purchase more licensed subscriptions from publishers and library database suppliers as an efficient and accessible way to provide online access to reading materials and textbooks through their Learning Management Systems and e-reserves, reducing the need for course packs and resulting in savings for students. This allows faculty a wider choice of materials (audiovisual, chapters, articles) complemented by the increased use of open access, Open Educational Resources, Creative Commons licensed content and publicly available material on the Internet. Colleges also licence and use a significant amount of industry-sourced copyright-protected materials which are not available in Access Copyright's repertoire.

The current copyright regime also facilitates distance learning and provides easier access to education for students in rural, remote, and northern communities. For many institutions that serve these communities, distance education and access to online materials are vitally important.

Fair dealing and educational use of the Internet establish a legal framework for learning in the digital age. In recent years, federal and provincial/territorial governments have worked to increase levels of connectivity across the country, positioning Canada as a leader in the information age. Narrowing the scope of the fair dealing provision would erode the progress that has been made to deliver twenty-first century education to those who will shape the future of this country.

Recommendation:

Recognize that no changes to the scope of fair dealing are required within the Act.

While CICA and its members support the current copyright regime, two specific elements could be enhanced to promote learning in a digital world. Firstly, Technological Protection Measures (digital locks or TPMs) are too restrictive. Currently, users cannot break a digital lock for fair dealing purposes or even to create closed captions, an accessibility requirement in some jurisdictions. Digital locks also unfairly impact programs that rely heavily on audio-visual teaching materials such as Film, Media and/or Television Production. Accessing a video is allowed, however, breaking a digital lock to show video clips is not. The circumvention of TPMs for non-infringing purposes should be allowed.

Recommendation:

Amend Section 41 to allow the removal of Technological Protection Measures on copyright-protected works, for non-infringing purposes.

Secondly, licenses purchased for access to digital works often contain clauses that restrict the use of the purchased material. In many cases, these restrictions override what is allowed in the *Copyright Act*, such as a fair dealing use for education. Licensing contracts should not supersede users' rights in the *Act*.

Recommendation:

Prevent contracts for the purchase or license of copyright-protected works from taking precedence over provisions within the Act.

4. Copyright Compliance

Colleges respect copyright and the importance of compliance. They have copyright compliance mechanisms and policies administered by dedicated staff and apply the Fair Dealing Guidelines developed jointly by CICA, Universities Canada and the Council of Ministers of Education, Canada. The Guidelines help educators understand their rights and limits when dealing with copyright-protected works. CICA member consultations indicate that almost 90% of colleges (excluding those in Quebec covered by Copibec) have adopted these Guidelines or implemented new policies to manage copyright compliance. In addition to the Guidelines and institutional policies, colleges regularly engage faculty, staff, and students in copyright-related training and also provide kits, videos and other tools to ensure the importance of copyright compliance remains top-of-mind.

5. Sharing and Protecting Indigenous Knowledge

In its final report, the Truth and Reconciliation Commission recognized education as one of the best ways to foster greater understanding between Indigenous and non-Indigenous peoples. Sharing traditional Indigenous knowledge with learners is not only essential, it is an important step towards reconciliation.

Colleges are committed to improving Indigenous education outcomes across the country and are the main providers of post-secondary education, as well as skills upgrading, for Indigenous peoples. They work closely with First Nations, Métis and Inuit communities and offer Indigenous-specific education and training programs as well as tailored student support services to see learners through to graduation and transition into employment. Through their relationships with these communities, colleges deepen their understanding of Indigenous knowledge and culture and enhance the learning experience for all students, thus contributing to advancing reconciliation.

Approaches to sharing Indigenous knowledge in colleges and institutes are as diverse as the stories, teachings, healings and cultures of Indigenous peoples:

- *The [Nicola Valley Institute of Technology](#) and [the Saskatchewan Indian Institute of Technologies](#) are grounded in Indigenous culture, tradition and knowledge and were established to respond to the need for quality post-secondary education for First Nations people in an environment that promotes traditional ways and fosters student success.*
- *Recognizing that language is a vehicle by which the values, beliefs, histories and identity of Indigenous people are maintained, [Sault College](#) is dedicated to maintaining and revitalizing Indigenous languages through the delivery of the one-year [Anishinaabemowin Immersion certificate program](#) with the goal of contributing to the wider process of strengthening community by understanding the connection between language and cultural well-being.*
- *There are many Elders-in-residence offering spiritual, academic and personal guidance, and Indigenous gathering places like the [Iniikokaan Centre at Bow Valley College](#) and [Mawiomi Place at New Brunswick Community College](#).*

Colleges understand the importance of being respectful in how they share Indigenous knowledge and recognize it must be properly acknowledged and protected. The *Copyright Act* should be enhanced to address and protect the rights of the First Nations, Inuit and Métis peoples of Canada as owners of Indigenous traditional knowledge and stories, whether in oral or fixed format. The [Tri-Council Policy Statement on Ethical Conduct for Research Involving](#)

[Humans](#), and the educational website [Local Contexts](#), are informative resources to begin this work.

Recommendation:

Ensure the protection and respectful use of Indigenous traditional knowledge; consult Indigenous communities and national Indigenous organizations to work towards this protection.

6. Planning for the Future:

The education sector has been greatly impacted by the information age. Technology will continue to evolve and require the adaptation of elements that support teaching, learning and knowledge dissemination. Copyright legislation is one of those vital elements and must remain flexible to respond to emerging technologies. The current copyright regime works well for colleges and their students and contributes to the delivery of twenty-first century education in a digital era. It strikes a good balance that respects the jurisprudence and supports learners who will go on to stimulate innovation, drive productivity, and contribute to Canada's inclusive economic growth. In the same way as the Copyright Board reform must take educational institutions into account, the review of the *Copyright Act* is an opportunity to safeguard Canadians' learning objectives for generations to come.

7. Summary of Recommendations:

- **Recognize that no changes to the scope of fair dealing are required within the Act.**
- **Amend Section 41 to allow the removal of Technological Protection Measures on copyright-protected works, for non-infringing purposes.**
- **Prevent contracts for the purchase of copyright-protected works from taking precedence over provisions within the Act.**
- **Ensure the protection and respectful use of Indigenous traditional knowledge; consult Indigenous communities and national Indigenous organizations to work towards this protection.**