



L'Association des bibliothécaires du Québec
Quebec Library Association

Submission to the Standing Committee on Industry, Science and Technology on the 2018 the Statutory Review of the Copyright Act

ABOUT ABQLA

L'Association des bibliothécaires du Québec - Quebec Library Association (ABQLA) is a bilingual, non-profit voluntary association of library and information professionals, related personnel, and supporters throughout the province of Quebec. The association is made-up of five sections—public libraries, school libraries, youth & children's libraries, college & research libraries, and cataloguing & technical services. ABQLA promotes the role of library and information specialists and their institutions in the greater Quebec community. Among other things, one of the core goals of the ABQLA is to raise political and public awareness on relevant issues and to advocate on behalf of library and information specialists and their institutions.

ABQLA'S PERSPECTIVE ON COPYRIGHT AND CULTURAL PRODUCTION

Quebec libraries are deeply invested in the continued flourishing of the Canadian writing and publishing industries. Our libraries buy Canadian (and especially Quebec-created) content; promote local authors and their work through hosting author events and lecture series; preserve and showcase Canadian content in our special collections; and provide support and infrastructure for open access publishing.

In addition, libraries and library staff serve as models for respecting copyright. Our websites, photocopying policies and informed staff provide information and reference on respecting copyright legislation and best practices for accessing and copying copyright-protected materials.

FAIR DEALING

Fair dealing, as currently articulated in Sections 29, 29.1 and 29.2 of the Copyright Act, is an essential tool that helps librarians and information professionals who work in school, college, university and public libraries to do their jobs by enabling fair and equitable access to information for their users. While access to the majority of information in our libraries is provided through licensing solutions or borrowing, there are important functions that are achieved through fair dealing.

Some of the examples of fair dealing our members support include the following:

- School librarians help teachers source short excerpts from different texts and sources to create custom learning resources tailored for a local geographical, historical or linguistic context.
- In academic libraries, research and scholarship is advanced through fair dealing when researchers are granted access to large corpuses of text upon which they perform computational analyses to provide new insights into existing works.
- Fair dealing allows university and college instructors the freedom to assign and distribute selections of the works that are most appropriate for their students' learning outcomes, regardless of whether or not those works fall into their copyright licensing agency's repertoire of covered works.
- Learners of all kinds benefit from fair dealing in public libraries, where copies of sections of books and journals may be made for the purposes of home schooling, business research, adult education and tutoring.

Licensing solutions not sufficient

Some interest groups have suggested either eliminating fair dealing all together or narrowing the definition, scope or allowed purposes under fair dealing in favour of mandatory licensing arrangements. ABQLA's position is that this would hamper student and adult learning, hinder academic research and stifle entrepreneurial and scientific innovation.

This stifling effect is already apparent to many of our members and their users in sectors in which educators and librarians are strongly encouraged to rely on existing licensing arrangements instead of fair dealing.

For example, teachers report being unable to source short stories of appropriate lengths and reading levels for their students for specific lesson plans because of current licensing agreements, and have had to resort to getting students to buy anthologies that are either too difficult for them, or represent a disproportionate expense to the student as only one or two stories are used from each volume. Teachers have also expressed frustration to our members at the fact that current licensing agreements are sometimes more restrictive than fair dealing and other exceptions in the Copyright Act. For example, under a current licensing agreement, primary and secondary school teachers can combine excerpts and images from various publications only for exams or for digital presentations and slideshows. As such, creating course packs or exercise books bringing together selections from a variety of sources is not permitted,¹ which severely hampers educators' ability to adapt lesson plans to their students' needs.

In addition, libraries are also supporters of intellectual freedom and freedom of expression. Jettisoning fair dealing in favour of licensing would infringe on Canadians being able to exercise their intellectual freedom and freedom of expression (for example, by not being able to pay for rights, not being able to obtain permission because the author does not want criticism, or the desired work simply not being available from a licensing agency due to coverage issues).

¹ <https://www.copibec.ca/en/agreement-elementary-highschool> (See Exams and Presentations, under Types of Use Allowed).

Recommendation:

ABQLA would recommend that the fair dealing provisions of the Copyright Act (Sections 29, 29.1 and 29.2) remain unchanged.

CONTRACT OVERRIDE OF USER AND LIBRARY AND ARCHIVES RIGHTS AND EXCEPTIONS

Due to the current lack of clarity in the Copyright Act about the relationship between contract and copyright exceptions, Quebec libraries are currently in a position in which the rights and exceptions accorded to libraries and their users are effectively cancelled out by virtue of clauses in licenses and contracts.

As we provide an ever-growing amount of content to our users in digital formats (e.g. e-books, databases or institutional accounts to magazine and other serial content), we (and by extension our users) are bound by the terms and conditions of an increasing number of licences. We have identified licences to which our members and their users are subject that limit or forbid the exercise of, among others, the following rights and exceptions outlined in the Copyright Act: interlibrary loan, fair dealing and preservation.

While we endeavor to look out for our users' best interests, libraries are often at the mercy of the vendor. Academic libraries effectively have little choice concerning the vendors with whom they contract, due to the monopoly that large journal and database publishers hold. Additionally, smaller libraries lack the resources and leverage to identify and/or negotiate those provisions of licenses that limit the rights they are accorded by law. These exceptions have been incorporated into the Canadian copyright regime through a careful consideration of the balance between the interests of rights holders and the rights of users and should not be vulnerable to the vagaries and potential for power differentials often inherent in contractual relationships.

Recommendation:

ABQLA recommends that the Canadian Copyright Act be amended to include language explicitly asserting that no exception to copyright can be overridden by contract.

INDIGENOUS KNOWLEDGE

As community spaces that facilitate discussions around the Truth and Reconciliation Commission, custodians of collections that include print and digital resources on Indigenous knowledge, and hosts of educational programs that provide support to teachers and help student learning on Indigenous perspectives, Quebec libraries are concerned with the current status of Indigenous knowledge in the Copyright Act. In this regard, we would point the Committee to the recommendations made in the CFLA-FCAB position statement on Indigenous Knowledge in the Copyright Act.²

² http://cfla-fcab.ca/wp-content/uploads/2018/05/CFLA-FCAB_Indigenous_knowledge_statement.pdf

STEPS FOR ALTERNATIVE MEASURES OUTSIDE THE COPYRIGHT ACT

ABQLA strongly supports systematic efforts to ensure the sustainability of the writing and publishing industries, but believes that limiting the user rights accorded the Copyright Act is not the appropriate mechanism for such efforts.

Rather, the Government of Canada should investigate other means of incentivizing and supporting cultural production and ensuring that creators, rights holders and publishers are aligned with the preferences of readers to make sure that their products are responding to the needs of the market.

A recurrent theme in the consultations on the review of the Copyright Act has been the effect of digital disruption on creator and rights holders' incomes. ABQLA believes the expansion of the Public Lending Right to include e-books and audio books is a step in the right direction. Making Canadian content available in the format readers want should be encouraged and we would echo Michael Geist's recommendation that government "support expanding the availability of e-books and should consider linking current publishing assistance to the inclusion of an e-book option."³

In addition, ABQLA commends the government's continued efforts to support open access to federally funded research, through initiatives such as the Tri-Agency Open Access Policy of Publications.⁴

ABQLA also believes that the continued development of open educational resources (OERs) is one of the more promising avenues to ensure that students have affordable access to high quality, context-specific educational materials. While government support has been instrumental in the growth of OERs in many of Canada's regions, Quebec currently lags behind. As such, ABQLA applauds the government's willingness to explore federal programs, such as the adoption by the Standing Committee on Finance of the Canadian Alliance of Student Associations' recommendation to support a pilot grant through the Tri-Agencies to incentivize students and faculty to develop open educational resources.⁵

³ <http://www.michaelgeist.ca/2018/05/canadian-copyright-fair-dealing-and-education-part-four-fixing-fair-dealing-for-the-digital-age/>

⁴ http://www.science.gc.ca/eic/site/063.nsf/eng/h_F6765465.html?OpenDocument

⁵ <http://www.ourcommons.ca/Content/Committee/421/FINA/Reports/RP9312006/finarp21/finarp21-e.pdf> (p. 46)