

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

About The Alberta College of Art + Design (ACAD)

Founded in 1926, Alberta College of Art + Design has been a major contributor to Canada's visual culture in the 20th century, with many of its graduates gaining significant national and international reputations as artists, designers and creative leaders. ACAD provides accredited degree standard education and learning opportunities to 1,200 students enrolled in full and part-time studies in a wide range of art, craft and design studio disciplines. In addition to credentialed undergraduate degrees in a variety of program areas, the College offers a Master of Fine Art in Craft Media, making it the only institution in the province to offer and confer university-level undergraduate and now, graduate degree programs in art, craft and design. ACAD achieved university status on Thursday, March 1, 2018.

Copyright Education and Compliance at ACAD

ACAD is committed to the facilitation of, and compliance with, Copyright Law. In order to accomplish this mandate, the University is committed to the continued establishment and ongoing review of clear policies and procedures, and the implementation of best practices, by ensuring that each employee successfully complete a Copyright tutorial as a condition of their employment. In addition, faculty are given an overview of compliance with the understanding that such information and resources be provided to students. The Library website has pages dedicated to understanding copyright compliance and the guidelines for Fair Dealing; all photocopiers and scanners have clear notices of compliance standards; and our Learning Management System has a compliance notice on each page. Supporting and sustaining these measures, the Library has two Copyright Officers who stay current, and provide instruction and information to the ACAD community regarding copyright usage and compliance on campus.

Use of Copyrighted works at ACAD

ACAD's instructional offerings are strongly grounded in studio instruction. As a result, much of the exemplars used within the classroom are sourced from atypical academic resources; ranging from exhibited works, to object demonstrations, to obscure copyrighted works published through small, independent publishers. As such, we require flexibility in our ability to source and use materials for our instructional purposes, and are not served well if we are restricted to only using collectively licenced materials or by a very restrictive Copyright Law. The majority of our usage of academic works falls within our licence agreements for digital offerings, purchased textbooks, works that are in the Public Domain, and works for which we pay royalties directly to the copyright owners. Outside of this, we apply fair dealing on a few works we use in the classroom; however, an environmental scan indicates that fair dealing is needed to be applied in only a minimal context here at the University.

Recommendations

1. Retain fair dealing for educational purposes.

This provision supports the introduction to and incorporation of a broader base of knowledge in the educational setting. It allows instructors and academic institutions to develop their curriculum based on a breadth of research rather than financial affordability.

2. Include Appropriation, or Transformative Art, in fair dealing.

In the article *Appropriation Appropriated: Ethical, Artistic, and Legal Debates in Canada*, Murray and Robertson (2014) refer to the fact that the inclusion of parody and satire in Bill C-32 provided some clarity, but “the status of appropriation that is not satire or parody is unclear” (338). There is need for discussion around transformation as an acknowledged aspect of fair dealing. This would involve opening up the parody and satire exception to include the embodying of protected works within new work that substantively alters the meaning, or recontextualizes it in an unfamiliar way, thus defamiliarizing a copyright protected work.

A specific example of where this could be applied is with artist Brian Jungen, who uses Nike products to create works that reference traditional indigenous art. It would be a very narrow and limiting view to categorize this under satire or parody: Jungen is attempting to challenge the acceptance of the appropriation of native motifs for commercial purposes. But beyond this, Jungen’s work also addresses wider issues of consumer excess and environmental destruction. This interchange would be less effective if he were limited to the current specific categories of fair dealing. As well, the dialogue would be lost if he could not even use this provision at all.



Brian Jungen, *Warrior 4*, 2018, Nike Air Jordans, leather, copper, 34 x 30 x 26 in. (86 x 72 x 66 cm)

The United States, in its Fair Use statute uses the phrase “for purposes *such as* criticism, comment, news reporting...” (emphasis added) to suggest that the list of fair use purposes is not categorical, but rather, illustrative. We would suggest that the Committee consider adopting this wording to allow room for appropriation or transformative art to be considered under this



provision. Or, barring that, to specifically include transformation as one of the allowed categories of fair dealing.

3. No mandatory tariff

A blanket tariff would not be fiscally prudent or reflect how we use copyrighted materials in our programming. We are much more focused on artifacts and object representations for study relative to theoretical and academic ones in our instruction. Additionally with respect to Access Copyright acting as agents on behalf of creators, at our institution, and we assume it is similar at other Art and Design institutions, much of our usage of copyrighted materials lie outside of Access Copyright's agency. We use relatively few academic sources, instead using obscure, marginal works where the creator or copyright owner is not represented by Access Copyright at all, and would not be compensated through the tariff system. Thus, we spend our own time seeking permissions and compensating creators on an as-used basis.

4. Protect copyright exceptions from contract override

We support the University of Guelph's statement in their submission: "As universities primarily gain access to scholarly works via digital subscriptions, it is essential that access to and use of this content is not restricted in ways that print materials are not."

5. Retain statutory damages limit for non-commercial infringement

Removal of the cap will force universities to fear unreasonable punitive damages for unintentional infringement and force us to choose collective licence agreements that limit our Academic Freedoms and further marginalize smaller publishers and independent creators that are not represented in the collective's repertoire.

And finally...

What is getting lost in the submissions from the various interest groups represented is that we are all equal partners in a much larger project: the education, health and welfare of our citizens. What is good for education and research is good for all. Whatever our immediate and long term necessity requires, it is incumbent that we, as a unified voice, express the need for leadership and action from our government to fund education properly. Education is not a burden, nor is it true that publisher's, creator's and educator's interests are at cross purposes. It is essential however, that the basic right and necessity of an education for all cannot be achieved through terms dictated by corporate interests. The commodification of knowledge is an affront to Academic Freedom and intellectual access. Fair Dealing is a user's right. It is not a concession, anymore than it is, as some of the submissions would have us believe, free and uncontrolled access to unlimited resources. Again, users' rights and academic freedom are the cornerstones of intellectual prosperity. An educated population is good for us all; not the least of all, publishers and creators, all of whom are themselves the beneficiaries of these rights and freedoms.

Works Cited:



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