

NorQuest College Submission to the Standing Committee on Industry, Science and Technology

Statutory Review of the Copyright Act

November 2018

Introduction

NorQuest College welcomes the opportunity to submit this brief to the Standing Committee on Industry, Science and Technology for its Statutory Review of the Copyright Act. NorQuest College, located in Edmonton, Alberta, is a community college serving 17,592 students annually throughout the province in full-time, part-time, distance learning, and regional programs, including foundational and continuing education programs, as well as post-secondary diploma and certificate programs and university transfer courses.

The Role of Colleges in Post-Secondary Education

Colleges play an important role in post-secondary education in Canada. NorQuest College helps learners with diverse educational backgrounds further their studies through foundational programs in academic upgrading, English-language training, and employment preparation. Our post-secondary diploma, post-diploma, and certificate programs offer career paths in health, business, and community studies. As well, a broad range of continuing education and professional development courses and programs enable lifelong learning and new career growth opportunities. By collaborating with business, industry, government and communities, we ensure that our post-secondary education is necessary and workforce relevant.

Our workforce-relevant programs respond quickly to the needs of employers and the community. In order to develop and deliver innovative, quality programs, fair and reasonable access to learning materials, including copyright-protected works, is essential if learners are to achieve their educational goals. As it currently exists, the Canadian copyright regime supports teaching and learning while striking an appropriate balance between the rights of creators and users. It grants economic and moral rights to creators, while giving limited exceptions in support of educational goals and values.

Copyright in Education

Copyright legislation affects how educators and students 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 for educational purposes, and is flexible enough to accommodate changes that will occur in the future. Amendments to the Copyright Act in 2012, together with the ruling by the Supreme Court of Canada that same year establishing that instructors copying “short excerpts” from a copyright-protected work for the use of students in their classes was “fair,” were welcomed by educational institutions and re-established a balance between the rights of creators and those of users—rights that had existed in law for many years—and broadened the understanding of fair dealing.

The goal of fair dealing is to respect the rights of copyright owners while allowing users to access and engage with a variety of works. In the 2012 reform of the Copyright Act, Parliament supported the direction of the Supreme Court of Canada to expand fair dealing and provide additional exceptions to recognize the way that works are used and communicated digitally. Fair dealing is instrumental to education in that it gives broader access to a variety of teaching and research materials. In addition, the technologically neutral approach to fair dealing has changed the face of digital education by ensuring the widest possible access to works and removing barriers to the use of current technologies.

NorQuest College serves communities and students outside the Edmonton area, and distance education and access to online materials are vitally important. As it now exists, the current copyright regime facilitates distance learning and provides easier access to educational materials for students in small towns and in rural, remote, and northern communities. If the scope of fair dealing were to be narrowed, it would have a negative effect on the progress that has been made to deliver 21st century education to anyone who wants or needs it.

Our recommendation is that “education” be retained as a purpose of fair dealing and that fair dealing (Copyright Act S.29) remain as it is currently stated without any changes in scope.

Content Subscriptions

Although fair dealing gives instructors and students access to copyrighted materials, the NorQuest Library is an important source of educational materials at the college. These materials include digital content such as journals, ebooks, and streaming audio and video. Digital resources are purchased with reproduction and distribution rights, allowing their use as course materials. Paying a tariff to Access Copyright would essentially mean paying twice for access to these materials, since many of them are included in the Access Copyright repertoire.

A Changing Landscape

Although some stakeholders have indicated that fair dealing has reduced the purchase of educational materials, reports by Statistics Canada indicate that expenditures by community colleges and vocational schools on print and electronic acquisitions have increased by 26% since 2012,¹ and sales of educational titles for publishers in Canada rose by 5% between 2014 and 2016.²

The variety of programs and credentials offered by a college such as NorQuest (upgrading, certificates, diplomas, university transfer) require a diverse selection of learning materials accessible in different formats. Fair dealing allows instructors to include short excerpts from a variety of sources as supplementary material in addition to the content in textbooks and other copyright-protected works for which licences are purchased. Fair dealing also gives students and instructors reasonable access to required materials from a wide range of sources in order to support the varied learning preferences and requirements of students, including those who require special accommodations. Access to copyrighted material through fair dealing is also beneficial for students who are learning English as an alternative language in programs such as LINC (Language Instruction for Newcomers to Canada).

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](#)

Teaching has moved beyond static classroom learning, and instructors and students now have access to a wide spectrum of learning modalities, including a range of multimedia, to foster learning and enrich the “classroom” environment—today’s classroom has expanded and now encompasses online learners in distant locations. As a result, the use of digital content is now the norm in the modern learning landscape. Students expect immediate, flexible, 24/7 access to educational materials delivered through a variety of platforms and available on diverse devices so they can learn wherever they happen to be.

The diversity of learning materials required for college programs, the necessity to deliver up-to-date content, and the shift to digital content mean that the repertoire available through Access Copyright (mostly conventional textbooks) is no longer adequate. Moreover, as mentioned above, institutions such as NorQuest were paying twice because they were purchasing access to the same copyright-protected materials through both digital licenses and Access Copyright tariffs. Currently, paying for licensed subscriptions from publishers and library database suppliers has provided an efficient and accessible way to access online reading materials and textbooks. This gives instructors a wider choice of materials (audiovisual, chapters, articles) that is complemented by the increased use of open access and open educational resources (OERs), Creative Commons–licensed content, and material that is publicly available on the Internet. NorQuest also licences materials on an “as-needed” basis directly from publishers.

Our recommendation is that educational institutions be allowed to make their own choices for licensing arrangements and not be forced to participate in mandatory collective licensing.

Technological Protection Measures

The reform of the Copyright Act in 2012 introduced the Technological Protection Measures (TPM) provision (Copyright Act S.41). This general prohibition on circumventing TPMs, without any consideration for whether the intended reason is legitimate, undermines the intended benefits of copyright policy. The provision is more of a limit on legal uses than a barrier to the piracy that it is intended to target. In the current copyright review, the provision should be revised to clarify that it is legal to circumvent a TPM for non-infringing purposes such as fair dealing. Currently, users are not allowed break a TPM for fair dealing purposes or even to create closed captions. TPMs also unfairly impact educational resources such as film and audio-visual materials. Also, licences purchased to access 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 override users’ rights in the Act.

Our recommendation is that the Copyright Act be amended to allow the circumvention of TPMs for purposes that are in line with fair dealing (i.e., lawful, non-infringing purposes) and to prohibit the rights of users to be overridden by contractual terms.

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. NorQuest College is committed to including Indigenous education outcomes in its programs, as well as providing education and training for Indigenous peoples. We work closely with Indigenous communities and offer Indigenous-specific education and training

programs, as well as tailored student support services to assist learners through their chosen programs to graduation and then into employment.

NorQuest College understands the importance of being respectful in how we share Indigenous knowledge, and recognize that it must be properly acknowledged and protected. The Copyright Act should be enhanced to address and protect the rights of the Indigenous peoples of Canada as owners of traditional knowledge, whether in oral or fixed format.

Our recommendation is that the Copyright Act be amended to ensure the protection and respectful use of Indigenous traditional knowledge. Further, this should be done in consultation with Indigenous communities and organizations.

A Word on Copyright Compliance

Colleges respect copyright and recognize the importance of complying with current legislation. NorQuest College has copyright compliance mechanisms and policies that are administered by a copyright officer who oversees the application of the fair dealing guidelines (we use the guidelines developed jointly by CICan, Universities Canada, and the Council of Ministers of Education, Canada). To reinforce the guidelines and institutional policies, the NorQuest copyright officer regularly provides faculty, staff, and students with copyright-related training, and the college has recently developed an online “Introduction to Copyright” course that is mandatory onboarding for all new employees.

The Future of Copyright and Education

As technology evolves, education will require the adaptation of elements that support teaching, learning, and knowledge dissemination. Copyright legislation is vital to the process and must remain flexible and able to respond to emerging technologies. In its current form, copyright works well for colleges such as NorQuest who are working to deliver 21st-century education in a digital age. It maintains a balance that supports learners and respects the rights of creators. The current review of the Copyright Act must take post-secondary institutions into account and is an opportunity to safeguard Canadians’ educational standards for generations to come.

Summary of Recommendations

- That “education” be retained as a purpose of fair dealing and that fair dealing (Copyright Act S.29) remain as it is currently stated without any changes in scope.
- That educational institutions be allowed to make their own choices for licensing arrangements and not be forced to participate in mandatory collective licensing.
- That the Copyright Act be amended to allow the circumvention of TPMs for purposes that are in line with fair dealing (i.e., lawful, non-infringing purposes) and to prohibit the rights of users to be overridden by contractual terms.
- That the Copyright Act be amended to ensure the protection and respectful use of Indigenous traditional knowledge. Further, this should be done in consultation with Indigenous communities and organizations.