



## **Bill C-32 Copyright Backgrounder**

### **Projet de loi C-32: un guide**

**Overview of responses from Canada's education sector**

**Survol des positions au sein du secteur de l'éducation**

**Canadian Conference of the Arts / Conférence canadienne des arts**

**22 October 2010 / 22 octobre 2010**

# EDUCATION ORGANIZATIONS' REACTIONS TO C-32

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## GENERAL PROS

### **AUCC - Association of Universities and Colleges of Canada**

“The Association of Universities and Colleges of Canada welcomes the federal government’s efforts to modernize the current copyright law. The proposed legislation strikes a fair balance between creators and users of copyright works and will facilitate online learning.”<sup>1</sup>

## Fair Dealing: Education Exception

### **AUCC - Association of Universities and Colleges of Canada**

“We are very pleased that the bill amends the fair dealing provision to include the purpose of education,” said Paul Davidson, president and CEO of the Association of Universities and Colleges of Canada. “The bill contains many of the changes the university community suggested during the government’s public consultations last summer such as an exception for educational use of Internet materials that will permit educators and students to use publicly available Internet materials while teaching and learning.”<sup>2</sup>

### **CERC – Canadian Educational Resources Council**

On first consideration, it may seem reasonable that a teacher ought to be able to photocopy several pages of a textbook for use in class. Some would argue that this is a fair dealing use which need not be paid for, as it is “inconsequential”. But the reality is that, every year, in schools across Canada, tens of thousands of teachers across the country copy hundreds of millions of pages of copyright-protected materials.

In a recent ruling, the Copyright Board determined that this was not “inconsequential” and was not a fair use or, in the language of our current Act, a fair dealing of the protected works. So, to simply allow what might have appeared an inconsequential use by an individual teacher would not be in keeping with the principle of “balance”.

The creators and owners of these works have made it possible for schools and other users to access the works through a license – in this case a collective license through Access Copyright. The idea of such a license is to enable educators to have the necessary access while ensuring a fair remuneration of the creators and owners for the use of copyrighted works. Canada’s copyright system needs to ensure the opportunity for fair remuneration if it is to achieve the principle of balance (your Government’s first principle).

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<sup>1</sup> [http://www.aucc.ca/publications/media/2010/copyright\\_06\\_03\\_e.html](http://www.aucc.ca/publications/media/2010/copyright_06_03_e.html)

<sup>2</sup> [http://www.aucc.ca/publications/media/2010/copyright\\_06\\_03\\_e.html](http://www.aucc.ca/publications/media/2010/copyright_06_03_e.html)

Fair remuneration is... needed to foster innovation and investment in high-paying jobs in Canada (your Government's 3rd principle). Publishers invest millions of dollars every year in research and development to create textbooks and other resources for the education sector (as well as for other sectors), directly creating thousands of high paying jobs and indirectly employing the talents of thousands of Canadian freelance writers, photographers and visual artists. Of course, many educational authors are themselves full-time teachers.

Business realities for the future will include print and digital resources being produced that support learning in Canada's schools. Licensed access to such materials – in some cases collective licenses in other cases proprietary licenses – will need to be part of the business model if there is to continue to be incentive to develop the materials. Creating a copyright regime that excepts educational institutions from the rules applied to other users will serve as a considerable disincentive to such development.

We encourage you not to extend the fair dealing (or fair use) exception, as some have suggested. Extensions via the sort of "such as" clauses that have been suggested by some will not only serve to erode fair compensation; they will also serve to undermine understanding of and respect for copyright (an outcome which would be antithetical to your Government's second principle).

Publishers are actively pursuing new business models and opportunities. Expanded fair dealing, new exceptions in the Act, circumvented TPMs, or weakened collectives would undercut these models and our industry's ability to survive and contribute to Canada's future. We encourage you to consider the real impact of such proposed exceptions on the market and their potential negative effect on the ability of thousands of Canadian creators and the Canadian publishing industry to benefit from the products of their labor (your Government's 2nd principle).<sup>3</sup>

## ISP Liability

### **AUCC - Association of Universities and Colleges of Canada**

Canadian universities also welcome educational amendments that will allow the presentation of films in the classroom and the recording of lessons that can be made available for viewing by students at the time of their choosing. They also endorse the approach taken to limiting the liability of Internet Service Providers, including universities.<sup>4</sup>

"Professors and students at Canadian universities are both creators and users of copyright works," said Mr. Davidson. "Canadian universities recognize the importance of balance between the desire of creators to receive fair remuneration for the use of their works and the public interest in being able to use information for purposes such as research and education. This copyright law will result in a fairer treatment for both parties."<sup>5</sup>

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<sup>3</sup> <http://www.ic.gc.ca/eic/site/008.nsf/eng/02121.html>

<sup>4</sup> [http://www.aucc.ca/publications/media/2010/copyright\\_06\\_03\\_e.html](http://www.aucc.ca/publications/media/2010/copyright_06_03_e.html)

<sup>5</sup> [http://www.aucc.ca/publications/media/2010/copyright\\_06\\_03\\_e.html](http://www.aucc.ca/publications/media/2010/copyright_06_03_e.html)

## Digital Locks (Anti-Circumvention Measures)

### **CFS–Canadian Federation of Students & CAUT–Canadian Association of University Teachers**

"When the government asked Canadians what copyright law they wanted, an overwhelming majority rejected the 'made in the USA' approach to digital locks found in this bill," said Dave Molenhuis, National Chairperson of the Canadian Federation of Students." Despite a welcome expansion of fair dealing rights, these new protections for digital locks will seriously undermine the ability of students, teachers, and citizens to access and make use of copyrighted works."<sup>6</sup>

Anti-circumvention provisions found in the bill would make it illegal to bypass digital locks that are used to control how digital works are used. These provisions effectively override the rights of Canadian users and creators, as bypassing these digital locks remains illegal, regardless of whether accessing and/or using the work is legal or not. While the bill proposes an expansion of fair dealing—the right to good faith and limited use of copyrighted works in certain circumstances—the anti-circumvention provisions strip away any rights granted to users through the Copyright Act, granting corporate copyright owners absolute control over how their works are accessed and used.<sup>7</sup>

"This bill will make it even more difficult for students and teachers to access and use copyrighted materials for teaching and learning," added Molenhuis.<sup>8</sup>

### **AUCC - Association of Universities and Colleges of Canada**

However, AUCC is concerned about the overly strict prohibition against circumventing the technical measures used to protect works in digital format. We fear that this prohibition will diminish users' rights that are an integral part of the proper balance in copyright law.<sup>9</sup>

## Solutions

### **CFS – Canadian Federation of Students**

"The government has indicated a willingness to compromise. Step one is listening to Canadians and abandoning blanket protections for digital locks."<sup>10</sup>

### **AUCC - Association of Universities and Colleges of Canada**

AUCC will be studying the bill in more detail and looks forward to expressing its views on the proposed legislation during hearings of the House of Commons Industry Committee. In the meantime, we will draw to the government's attention the areas of the bill which we feel require amendment to ensure appropriate balance in the legislation.<sup>11</sup>

### **CERC – Canadian Educational Resources Council**

Developers of intellectual property – whether that property is in print format or digital format – need the protection that copyright provides. Such protection can best be provided by an Act that creates conditions in which rights holders are assured of a reasonable return for their investments, and users

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<sup>6</sup> [http://www.cfs-fcee.ca/html/english/media/mediapage.php?release\\_id=1139](http://www.cfs-fcee.ca/html/english/media/mediapage.php?release_id=1139)

<sup>7</sup> [http://www.cfs-fcee.ca/html/english/media/mediapage.php?release\\_id=1139](http://www.cfs-fcee.ca/html/english/media/mediapage.php?release_id=1139)

<sup>8</sup> [http://www.cfs-fcee.ca/html/english/media/mediapage.php?release\\_id=1139](http://www.cfs-fcee.ca/html/english/media/mediapage.php?release_id=1139)

<sup>9</sup> [http://www.aucc.ca/publications/media/2010/copyright\\_06\\_03\\_e.html](http://www.aucc.ca/publications/media/2010/copyright_06_03_e.html)

<sup>10</sup> [http://www.cfs-fcee.ca/html/english/media/mediapage.php?release\\_id=1139](http://www.cfs-fcee.ca/html/english/media/mediapage.php?release_id=1139)

<sup>11</sup> [http://www.aucc.ca/publications/media/2010/copyright\\_06\\_03\\_e.html](http://www.aucc.ca/publications/media/2010/copyright_06_03_e.html)

are provided with appropriate channels of access. The language of such an Act should be clear in allowing market forces to shape the business models through which intellectual property will be disseminated. Policies that encourage investment and innovation by the developers of Canada's educational resources will bode well for greater access and choice for teachers and — for the primary beneficiaries — the students in Canada's schools.

The times call for a Copyright Act that establishes balanced, consistent norms, an Act that will enable Canada to implement the WIPO treaties and to re-establish our credibility on the international stage as a respector of the fundamental principles of copyright.

CERC stands ready to provide whatever additional advice and input may be required in order to help you achieve such an outcome from the current consultation process.<sup>12</sup>

## **Reaction to Access Copyright's proposed fee**

### **CFS–Canadian Federation of Students & CAUT–Canadian Association of University Teachers**

"The excessive fees sought by Access Copyright would unfairly burden students and the public post-secondary system," said Dave Molenhuis, National Chairperson of the Canadian Federation of Students.

"The proposal treats students as cash cows and ignores the fair dealing rights granted through the Copyright Act and affirmed by the Supreme Court of Canada."

The proposal would license the reproduction of copyrighted works at participating post-secondary institutions from 2011 to 2014. Under the current tariff, institutions pay a flat fee of \$3.39 per full-time equivalent student, plus ten cents per page copied for use in a course-pack. The proposal would eliminate the per-use fee, and impose a flat fee of \$35 for college students and \$45 for university students - an unjustified increase of between 350 and 400%.

In addition to increasing the amount of the tariff, the proposal would also greatly expand its ambit and require institutions to provide Access Copyright direct and unfettered access to all property, digital or physical, including institutional e-mail accounts, in order to surveil the use of literary works....

"The tariff overreaches to the extent that it attempts to redefine copying to include simply posting a hyperlink to an already publicly available online article, and to double dip by charging for the use of works already paid for by the institution," he added.<sup>13</sup>

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<sup>12</sup> <http://www.ic.gc.ca/eic/site/008.nsf/eng/02121.html>

<sup>13</sup> [http://www.cfs-fcee.ca/html/english/media/mediapage.php?release\\_id=1163](http://www.cfs-fcee.ca/html/english/media/mediapage.php?release_id=1163); [http://www.cfs-fcee.ca/CAUT-CFS\\_Objection\\_to\\_Access%20Copyright\\_Tariff-2010-08-11.pdf](http://www.cfs-fcee.ca/CAUT-CFS_Objection_to_Access%20Copyright_Tariff-2010-08-11.pdf)