

# FAQs on Copyright Law

**Canada's copyright law has changed as a result of 1) an amended *Copyright Act* passed by Parliament; and 2) a significant Supreme Court decision relating to fair dealing.**

**These FAQs (frequently asked questions) address the changes to Canada's copyright law and the new benefits for teachers and classroom learning.**

## **1. What are the key new benefits for the education sector as a result of the new copyright legislation and Supreme Court decision?**

First, the new copyright law provides the legal framework necessary for students and teachers in elementary and secondary schools, colleges, and universities to use publicly available Internet materials in their educational pursuits. This educational use of the Internet provision is essential at a time when governments are simultaneously increasing levels of connectivity, promoting skills development and innovation, and supporting the use of the Internet in classrooms.

Second, the new law establishes that fair dealing is available to students and teachers when using copyright-protected works for educational purposes. The recent Supreme Court decision interpreted fair dealing as permitting teachers to copy and communicate short excerpts from a copyright-protected work for each student in a class. The changes to the fair dealing provision bring Canadians onto a level playing field with teachers and students in classrooms in the United States and other countries.

## **2. What is the significance of the educational use of the Internet provision when classrooms today are using Internet materials?**

The realities of our digital age were not addressed in Canada's *Copyright Act* until now. There was uncertainty about copyright and about students and teachers participating in routine classroom activities that involved downloading, saving, and sharing Internet text or images that were intended to be freely downloaded and distributed.

The educational use of the Internet provision establishes the legal framework for students and teachers to conduct the common everyday activities that are essential in our schools, colleges, universities, and technical institutions. These include activities such as copying publicly available material from the Internet, incorporating it into assignments, and exchanging it electronically with teachers or other students.

This educational use of the Internet provision permits teachers and students to access publicly available Internet material in the process of teaching and learning, while respecting the rights of those creators and other copyright holders who post materials on-line for commercial purposes. This is a reasonable, balanced approach to copyright legislation.

Furthermore, the education sector teaches respect for creators and copyright. Balanced legislation, based on principles of fairness, can be effectively taught and enforced.

National education organizations have long maintained that a modern and balanced copyright framework would protect the public interest. The educational use of the Internet provision is essential in a day and age when federal and provincial/territorial governments are simultaneously increasing our levels of connectivity, positioning the country to be a leader in the information age, and supporting the use of the Internet in classrooms. The educational use of the Internet provision will ensure that students reap the full benefits of government investment without harming the interests of copyright owners.

### **3. With the new Internet amendment, can teachers use any material that they find on the Internet?**

No. The educational use of the Internet provision applies only to material that has been posted to the Internet with the authorization of the copyright owner and without any barriers to restrict access such as encryption or password-protection.

Copyright owners who wish to sell or otherwise limit access and distribution of their digital or on-line materials can continue to do so through subscription, password, and payment technologies.

The educational use of the Internet provision does not apply to materials that are not publicly available, which allows content creators and copyright owners to continue to sell and receive payment for their works when they intend to do so.

The educational use of the Internet provision also does not apply where the copyright owner has included a clearly visible notice specifically prohibiting educational use.

Teachers and students must respect any digital lock (such as encryption or password-protection) that restricts the ability of users of digital content to access or use material on the Internet. The *Copyright Act* prohibits breaking a digital lock even for educational uses that are otherwise permitted by the *Copyright Act*.

Neither does the educational use of the Internet provision apply to pirated textbooks or films. The education sector teaches respect for creators and copyright. Students are required to cite materials no matter what the source, as a matter of appropriate use of material created by others. This teaches respect for, and recognition of, copyright. Teaching the inappropriateness of pirating materials is one way the education sector reinforces respect for creators of copyright materials.

#### **4. Aside from Internet materials, does the new law allow teachers to use a greater range of lesson materials in their classroom?**

The copyright law now includes new provisions to permit:

- recording of news or news-commentary programs for later viewing by students without paying royalties;
- screening or playing of audiovisual works (movies and television programs) in the classroom;
- use of digital displays such as interactive whiteboards and digital projectors (subject to the commercial availability rule) in classrooms;
- recording of lessons to be made available for viewing by students at a later time; and
- school libraries to use digital technology to deliver an interlibrary loan copy of a copyright-protected work.

All of the new provisions permit teachers and students to maximize their learning opportunities within the classroom.

#### **5. Can you explain the “fair dealing” provision in Canada’s *Copyright Act*? How has this provision been clarified for the education sector with the passage of the new law and the recent Supreme Court decision re Access Copyright’s education tariff?**

The fair dealing provision in the *Copyright Act* permits use of a copyright-protected work without permission from the copyright owner or the payment of copyright royalties. To qualify for fair dealing, two tests must be passed.

First, the “dealing” must be for a purpose stated in the *Copyright Act*: research, private study, criticism, review, news reporting, education, satire, and parody. Educational use of a copyright-protected work passes the first test.

The second test is that the dealing must be “fair.” In landmark decisions in 2004 and 2012, the Supreme Court of Canada provided guidance as to what this test means in schools and postsecondary educational institutions.

The Supreme Court of Canada has clarified that fair dealing permits a teacher to make copies of short excerpts for each student in his or her class. This speaks to the second part of the Supreme Court’s two-step test.

The inclusion of “education” in the fair dealing provision does not mean that teachers can copy whole textbooks. Photocopying whole textbooks would not pass the second test of fairness.

## **6. Can you summarize what the Supreme Court ruled on the fair dealing provision?**

With its decision regarding the Access Copyright tariff for K–12 schools, the Supreme Court of Canada has clarified the fair dealing provision in the *Copyright Act* for education. The Supreme Court decision is legal authority for the principle that teachers can make copies of short excerpts from a copyright-protected work, such as a book or a newspaper, for distribution to students in their classes.

Short excerpts from textbooks and other copyright-protected works can be reproduced and communicated by teachers to teach students without paying a copyright royalty or obtaining permission from the copyright owner. Canadian teachers are now on a level playing field with teachers in other countries like the United States, Japan, and Germany.

## **7. What is a “short excerpt”?**

Teachers, instructors, professors, and staff members in non-profit educational institutions may communicate and reproduce, in paper or electronic form, short excerpts from a copyright-protected work for the purposes of research, private study, criticism, review, news reporting, education, satire and parody. A short excerpt means:

- a. up to 10 per cent of a copyright-protected work (including a literary work, musical score, sound recording, and an audiovisual work);

- b. one chapter of a book;
- c. a single article from a periodical;
- d. an entire artistic work (including a painting, print, photograph, diagram, drawing, map, chart, and plan) from a copyright-protected work containing other artistic works;
- e. an entire newspaper article or page;
- f. an entire single poem or musical score from a copyright-protected work containing other poems or musical scores;
- g. an entire entry from an encyclopedia, annotated bibliography, dictionary or similar reference work.

Teachers may use any of the above definitions; they are not limited to the most restrictive definition. For example, if a particular book has a chapter that is more than 10 per cent of that book, a teacher may copy the entire chapter under “b.”

There may be some instances where more than 10 per cent of a copyrighted work can be copied or communicated. However, copying or communicating that exceeds the limits in the guidelines established for fair dealing should be referred to a supervisor or other person designated by the educational institution for evaluation.

Teachers and students should be aware of the reference document that interprets the fair dealing provision for education, the *Fair Dealing Guidelines*, which are available at [www.cmec.ca](http://www.cmec.ca).

## **8. Where can I get more information on copyright?**

The Council of Ministers of Education, Canada (CMEC) provides a good overview of what the education sector needs to know about Canada’s copyright law. Visit CMEC’s Web-site at:

<http://www.cmec.ca/139/Programs-and-Initiatives/Copyright/Overview/index.html>

CMEC publishes a guide for K–12 educators, *Copyright Matters!*, which can be downloaded and printed from here:

<http://www.cmec.ca/139/Programs-and-Initiatives/Copyright/Overview/index.html>

It is also recommended to download and print the *Fair Dealing Guidelines*.

## ***About the CMEC Copyright Consortium***

### **What is the CMEC Copyright Consortium?**

The CMEC Copyright Consortium comprises the ministers of education of all provincial and territorial governments across Canada, with the exception of Quebec.

CMEC is the collective voice of Canada's ministers of education. It provides leadership in education at the pan-Canadian and international levels and contributes to the exercise of the exclusive jurisdiction of provinces and territories over education.

### **Who exactly does the CMEC Copyright Consortium represent when it states that “we are speaking for the education community?”**

For years, education ministers of the CMEC Copyright Consortium have worked with several leading national education organizations (Canadian Teachers' Federation, Canadian School Boards' Association, Association of Universities and Colleges of Canada, Association of Canadian Community Colleges, Canadian Home and School Federation) in proposing to the federal government a balanced approach to copyright and education matters.

The CMEC Copyright Consortium speaks for ministers with the constitutional authority for education in our country. Consortium ministers also speak in a broader context on copyright law as partners within a chorus of national organizations representing seven million Canadians, from teachers to school boards, parent groups to educational institutions, as well as elected representatives and governments.