



POSITION STATEMENT FAIR DEALING

ISSUE:

One important value that all libraries share is providing information to those who are seeking it. Responding to information requests for creative, educational or informative purposes may require reproducing content. Fair dealing is an important and vital user right that empowers library users to learn and explore new opportunities for personal fulfillment and intellectual or professional growth, supports scholars and scientists in research, and challenges students to think critically about the world. Fair dealing allows the limited copying of copyright-protected material (or portions thereof) without payment of fees, or seeking permission from the rights holder, for the purposes established in Sections 29, 29.1 and 29.2 of the *Copyright Act* of Canada.

BACKGROUND:

Fair dealing has been a part of Canada's *Copyright Act* since 1921. The *Copyright Modernization Act* of 2012 expanded fair dealing to include education, and parody or satire. It also established new rights for user-generated content, all of which support learning, creativity and innovation in a digital age.

Fair dealing is clearly interpreted as a right for users in Canadian Supreme Court decisions such as *CCH Canadian Ltd. v Law Society of Upper Canada* [2004], *SOCAN v Bell Canada* [2012], and in *Alberta (Education) v Canadian Copyright Licensing Agency (Access Copyright)* [2012]. The balance between the rights of the creator, and the rights of the user is a nuanced aspect of public policy, but an important one to ensure that creativity, scholarship, and innovation are not hampered by a lack of access to material protected by copyright—which makes up the majority of most libraries' collections.

Each day in libraries across Canada, users rely on fair dealing to access materials, share knowledge and build opportunities.

- In public libraries, an author copies sections of valuable and rare art books that are out of print as part of research to inspire the writing of a historical novel. An entrepreneurial new immigrant visits to read industry journals, and to copy a few articles and excerpts from business plan resources. A developer sends an assistant to review city directories from the 1980s to determine the past use of an industrial area in order to plan remediation, and brings back copies of the pages to establish that due diligence occurred.
- Teachers in K-12 libraries use fair dealing to copy a wide variety of short excerpts from materials (text, video, images) for instructional purposes, which enables all students to find success as learners. Lessons benefit from using materials that are tailor made for instruction and can be adapted based on local history, cultural relevance or sensitivity, and nuance.

- Academic library users apply fair dealing in many ways. A faculty member might make copies of portions of materials from the library's collection for use in projects, assignments, and as class readings. Fair dealing allows users at an academic library to obtain materials held at another library. Scholars working on digital humanities projects use fair dealing to digitize texts for large scale text analysis. These uses are essential to student learning and success, and for researchers to undertake innovative new projects that utilize new technologies and scholarship models.

The library associations represented by CFLA-FCAB have observed enormous shifts in the content market in the past ten years, as digital material licensed from international distributors and freely available, unrestricted resources continue to increase. Physical copying of print materials is a declining part of the process of education, research and private study when compared to 20 years ago, or even since 2012, when ebooks, tablets, and smartphones were just emerging for the general public. Despite these shifts, the library market still remains an important segment of book publishing sales in Canada, accounting for an estimated 70 million dollars in 2017.¹ The 31 member libraries of the Canadian Association of Research Libraries (CARL) spent 339 million dollars on information resources in 2015-16,² demonstrating a clear commitment to accessing print and digital content legally, and rewarding content owners accordingly. School libraries in Canada rely increasingly on open educational resources and the Internet, while using diverse types of media to support a range of learners.

ANALYSIS:

It is the view of CFLA-FCAB that understanding the impact of the 2012 legislative changes takes time, and five years is not sufficient to properly evaluate the recent revisions, particularly as the recent *Access Copyright v York University* [2017] decision involving fair dealing is being appealed. Over the same timeframe, changes in consumer habits and technology have disrupted the traditional publishing industry immensely.

Each day, library workers inform the public, scholars and educators on how copyright law works, and why it matters to support the creation of new works and the cultural landscape in Canada. In order for libraries of all kinds to effectively serve their communities and connect users with the information and resources that they need in a rapidly-developing digital environment, a flexible fair dealing user right must remain in place.

RECOMMENDATION:

The Government of Canada should leave Sections 29, 29.1 and 29.2 of the Copyright Act unchanged to retain current allowable uses.

¹ Rivera, E. (2017, May). IBISWorld Industry Report 51113CA. *Book publishing in Canada*. Retrieved from: IBISWorld Database.

² Canadian Association of Research Libraries. (2017). Total materials expenditures. *CARL statistics | 2015-2016*. Ottawa, ON.