



CERC
Canadian Educational
Resources Council

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The Honourable Tony Clement
Minister of Industry, Science & Technology
House of Commons
Ottawa, Ontario
K1A 0A6

The Honourable James Moore
Minister of Canadian Heritage and Official Languages
House of Commons
Ottawa, Ontario
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September 11, 2009

Dear Ministers,

Thank you, both, for undertaking this Canada-wide consultation on the important topic of copyright modernization. As the Executive Director of the Canadian Educational Resources Council (CERC) I had the privilege of sharing our association's views directly with Minister Clement at the Round Table in Toronto on August 27th.

I would like to take this opportunity to re-iterate several of those views in this written submission.

CERC is the trade association of the major publishers of educational resource materials for the Kindergarten to Grade 12 market in Canada. Our members design, publish and market specifically Canadian materials, to meet provincial curriculum requirements across Canada.

CERC has a strong interest in several of the copyright policy issues on which the Ministers are deliberating. Our members are publishers of educational resources – many of which are print-based materials and textbooks, but which, for some time now, have included an increasing proportion of on-line and digital works. As education publishers develop products and delivery mechanisms to serve the growing demand for online digital educational resources in Canada's schools, the Internet will play an increasing role as a channel for the delivery of our members' products and services. Therefore, we have a keen interest in seeing copyright reformed in ways that are both robust enough and sufficiently flexible to address the issues in today's world as well as the issues that are sure to present themselves in the world that is evolving.

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 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.

Principles of Copyright Modernization:

We believe that the four principles originally articulated by your Government as a basis for copyright modernization point in appropriate directions. They articulate the following aims:

1. Balance between rights of copyright owners and needs of users to access copyright works;
2. Clear predictable and fair rules to allow Canadians to derive benefits from their creations;
3. Fostering innovation to attract investment and high-paying jobs to Canada; and
4. Ensuring our copyright framework for the Internet meets international standards

However, we believe that several sections of the previous draft bill (C 61) fell short of reflecting those principles. From our perspective, that bill eroded several necessary underpinnings for rights holders. At the same time, we recognize there were others who argued that the bill contained too many restrictions. This simply serves to underscore how challenging the task of modernizing copyright can be.

Education Publishing: A Microcosm

Several features of the K-12 education publishing environment make it something of a microcosm in which major copyright issues can be seen to play out.

a) Balance

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).

b) Innovation:

Fair remuneration is also 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.

c) Clarity

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).

d) International Treaties:

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.

Sincerely yours

Gerry McIntyre

Dr Gerry McIntyre
Executive Director