

Copyright Reform

Country-wide consultation

Submission by the Canadian Federation for the Humanities and Social Sciences

The Canadian Federation for the Humanities and Social Sciences is the national voice for the university research and learning community in these disciplines. It is a non-profit, charitable organization that represents more than 50,000 researchers in 69 scholarly associations, 75 universities and colleges, and 7 affiliates across the country. Together, we constitute a substantial and integral portion of the intellectual infrastructure on which Canada can rely to build a more competitive and productive economy, as well as a stronger society.

Representing as it does scholars who cherish and produce copyrighted works, the Canadian Federation of Social Sciences and Humanities is supportive of efforts to reduce the commercial-scale piracy. However, the Federation envisions the Copyright Act as a tool to balance the economic rights of creators and/or owners with society's inherent right to gain access to knowledge. In our view, it is short-sighted and detrimental to the long-term interest of our country to think of new rights for creators or publishers as the only way to increase activity in the cultural and cyber industries.

Access to knowledge is a crucial stage in the life cycle of creativity and innovation. The rights of scholars, students, universities, libraries, taxpayers and consumers to access knowledge must be preserved to ensure that this cycle can continue to generate novelty, critique, meaning, and collective cultural experience.

Commerce in intellectual property rights and of innovative products and services is not the only boon new technologies bring to Canadians. These technologies can also make our lives and work easier, allowing us to connect with each other, build understanding and develop new ideas. It is this understanding that allows us to generate creative solutions to problems we all face. Recent years have seen an explosion of new models of creativity and new tools for knowledge dissemination, ranging from Wikipedia to Open Source software to online museum exhibits and university courses.

An appropriate copyright policy for the digital age will support new initiatives in this vein, rather than hemming them in with barriers and uncertainty.

Copyright subtends all the work humanists and social scientists do. In this statement, we first focus on fair dealing and digital rights management (DRM), and then more briefly list several other areas of deep concern to our members.

Fair Dealing

The Federation calls for the concept of fair dealing to be made clearer and more flexible to encompass the reality of teaching, learning and research in the context of digital technology.

In our view, two complementary revisions to Section 29 of the Copyright Act would be appropriate:

- A. the addition of the words “such as,” to make the current list of fair dealing purposes suggestive rather than exhaustive, and
- B. the integration of the Supreme Court’s tests for fair dealing from *CCH v. LSUC* (2004).

Together, these steps would strengthen copyright by enabling reasonable access and potential for follow-on innovation, while also delineating stringent tests for “fairness.” Neither are they extraordinary expansions of users’ rights: they would in fact bring Canada’s act into parallel with other jurisdictions such as the United States.

Digital Rights Management

The Federation asks that the circumvention of digital locks (DRM) only be forbidden if the locks are broken for infringing purposes.

A ban on all circumvention of digital locks would prevent fair dealing entirely. Even a ban with exceptions (such as were proposed in Bill C-61) would not adequately recognize the needs of scholars, innovators, and citizens to make reasonable use of lawfully purchased materials and technologies. It is much clearer to simply state that DRM may not be broken for infringing purposes. This clearly protects the commercial rights of intellectual property owners, while recognizing the fundamental rights of educators, researchers and students to access information for the advancement of knowledge and, ultimately, of Canadian society.

Other Major Concerns

1. Crown Copyright

Crown copyright is a barrier to access and use of materials generated with taxpayer monies. Such materials ought to be freely accessible for use by Canadians.

2. Copyright Term

It is imperative that the term of copyright not be extended. Canada’s term of 50 years after the death of the author is fully compliant with the WIPO treaties; any extension will impede the ability of Canadians to learn from and build upon the past.

3. “Orphan” works or works with unlocatable owners

Going to the Copyright Board for clearance to use materials whose author or owner cannot be contacted is a cumbersome and time-consuming process. A better system would allow

free use should the user make a good-faith effort to locate the owner, and contain default prices for permission should that owner come forward in the future.

4. Statutory Damages

The current system has a serious chilling effect on librarians, and hence on scholars. In a Copyright Act with fair dealing provisions, we need to see some explicit language that when an individual has acted on the understanding that s/he was practicing fair dealing or utilizing users' rights, damages will be reduced or eliminated.

Further issues of particular concern to those working in the various disciplines will be raised in statements submitted by their organizations, and we urge you to consider the views of those whose daily work is or might be affected adversely by copyright restrictions.

We thank you very much for offering us the opportunity to comment on copyright, an area of policy that profoundly affects the work of our community and its contributions to society.

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