

CARL Statement in support of Fair Use/Fair Dealing Week 2017

In recognition of Fair Use/Fair Dealing Week 2017, the Canadian Association of Research Libraries (CARL) would like to draw attention to the value of fair dealing as a key component of the Canadian system of copyright.

As CARL has previously noted, “We believe that fair dealing in the Copyright Act is serving its intended purpose: enabling fair portions from works of creativity or scholarship to be drawn upon in learning environments, thereby stimulating innovation and the creation of new research and new knowledge” (Statement on Fair Dealing and Copyright in Universities, Sept. 6, 2016).

Fair dealing recognizes that certain uses of copyright-protected works do not require permission from the copyright holder or the payment of royalties. The underlying rationale is that some uses, though substantial, are permitted because such uses help serve the public interest. Fair dealing has been part of the Canadian Copyright Act since its inception in 1921, and is understood to be an important component of the Act.

The Supreme Court has expressly upheld in a number of decisions the value of fair dealing as an important user right. The Court’s position over the last 15 years has developed into a fervent recognition of users’ rights, emphasizing the importance of balancing these rights with the rights of creators.

In Canada, there are eight specific purposes under which fair dealing can be applied: research, private study, criticism, review, news reporting, education, parody, and satire. Each use must pass two tests in order to qualify as fair dealing: first, the use must be for one of the eight specific purposes; secondly, the use must be “fair”. Canadian courts have assessed fairness via six factors: the purpose, character, and amount of the dealing; the existence of any alternatives to the dealing; the nature of the work; and the effect of the dealing on the work. The courts acknowledge that additional factors may also be applied to assist in assessing fairness.

Within the post-secondary education sector, the application of fair dealing for the purposes of private study, research, and education is essential for the critical assessment of existing works, for building upon prior findings, and for the production and dissemination of new knowledge — all of which are fundamental to education, scholarship, and innovation.

Fair dealing serves wide-ranging public purposes beyond supporting education. For example, the Supreme Court has recognized that consumers have a right to exercise fair dealing for the purpose of research when sampling online excerpts of recordings that they might wish to purchase, and that this application of fair dealing helps promote cultural products within the marketplace. Fair dealing for the purpose of news reporting allows journalists to quote other sources so long as proper attribution is given, which helps ensure the robust, free press that is central to a functioning democracy.

CARL recognizes that in many disciplines within higher education, individuals (whether students, instructors, researchers) can be both creators and users, and stand to benefit from a balanced Copyright Act that respects and protects the rights of both. CARL also recognizes that in an increasingly online, digital world, the availability of fair dealing can propel rather than hinder innovative and creative endeavours.

In short, the Canadian public benefits from a copyright system that recognizes the importance of both user and creator rights and provides strong fair dealing provisions to help keep the system in balance.

For examples of how fair dealing is having a positive impact on Canada's higher educational sector, please visit fairdealingincanada.com.

For more information on how Canadian university libraries are applying the Copyright Act's fair dealing provision in a responsible and informed manner, please see [CARL's Statement on Fair Dealing and Copyright](#) (September 2016).