



**Canadian Association
of Research Libraries**

**Association des bibliothèques
de recherche du Canada**

March 17, 2015

Nathalie Théberge
Director General, Copyright and International Trade Policy Branch
Canadian Heritage
25 Eddy Street
Gatineau, Quebec K1A 0M5

BY ELECTRONIC MAIL

Dear Ms. Théberge:

We are writing to you today regarding changes introduced into the *Copyright Act* with its 2012 amendments, and specifically with respect to the fair dealing category of education that was introduced at that time.

On behalf of those directly engaged in higher education – namely the students, educators and researchers whom our member libraries serve – the Canadian Association of Research Libraries (CARL) would like to provide a positive message about the users' right of fair dealing for education.

The provision has been welcomed across the higher learning environment, and we believe it is being applied in a responsible and informed manner.

The new fair dealing category of education in Section 29 of the *Copyright Act* recognizes education as a permitted purpose for the use of copyright-protected works without authorization or compensation to the copyright owner, provided that the use is fair. It is one of a number of users' rights specifically for education set out in the *Act*, including the provisions that represent the education exceptions in Sections 29.4-30.04.

The Supreme Court has written extensively on the correct interpretation of fair dealing in this country, and legal analysis received by universities was directly based on this interpretation. The education community, assisted by legal specialists, has developed guidance to support educational institutions and their libraries in consistent and judicious application of Canadian law. For example, the Supreme Court of Canada's interpretation of the *Act* clearly allows an educator to copy short excerpts of works for the students in a class; in practice, educational institutions and libraries have adopted guidelines that identify 10% as the 'fair' amount of a work that can be reproduced under fair dealing in most cases – although the Supreme Court has clearly stated that entire works can be copied fairly in some circumstances. Canada's practice of 10% aligns with 'Fair Use' guidelines in the United States.

Examples of the guidance that has been made available to educators and learners can be seen at University of Western Ontario's "Copyright Guidelines"

(http://copyright.uwo.ca/guidelines_requirements/guidelines/fair_dealing_exception_guidelines.html) or

University of British Columbia's "Copyright Guidelines for UBC Faculty, Staff, and Students"

(<http://copyright.ubc.ca/guidelines-and-resources/copyright-guidelines/>).



In order to navigate this shifting copyright landscape, Canadian universities have made significant investments in staff and copyright infrastructure. Universities have actively engaged in outreach to their faculty, staff, and students, educating them on their rights and responsibilities under the *Copyright Act* and ensuring that uses of material under copyright fall well within the provisions of the law.

The universities' investments in copyright infrastructure have already begun to bear fruit. For example, situations of student double-paying have been reduced through identifying and addressing situations where students were being asked to pay for books or other content which the university had already licensed for that use or which were clearly usable under a reasonable interpretation of fair dealing. Where educational uses are more substantive and therefore fall outside of fair dealing exceptions, content is either added to licensed collections, or rights clearances are obtained, and royalties are paid for these uses. Trained, knowledgeable library staff support these activities.

Furthermore, libraries in educational institutions continue to buy and to license access to published works, at substantial cost, using public funds and student tuition dollars. CARL member libraries' collective expenditure on information resources in 2013 amounted to \$289 million.

As institutions devoted to the creation, dissemination, and preservation of knowledge and culture, the CARL universities and their libraries are deeply committed to Canadian authors, students, and educators, and we believe that the Court and Parliament have struck a balance that will empower Canadian authors and publishers to continue the excellent work that they have accomplished so far.

In short, we believe that the fair dealing category of education 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 the creation of new research and new knowledge.

We congratulate the Government of Canada for having had the foresight to adopt a modern, balanced approach to copyright that helps put Canadian education and scholarship on equal footing internationally. We would be happy to furnish further evidence of its positive impacts in education, or would be available to meet to discuss this issue.

Yours sincerely,



Gerald Beasley, President
Vice Provost and Chief Librarian
University of Alberta



Susan Haigh, Executive Director
susan.haigh@carl-abrc.ca

About CARL

The Canadian Association of Research Libraries (CARL) represents Canada's 31 largest research libraries, 29 of which are located in Canada's most research-intensive universities. Those universities attract over \$6B in research funding annually. CARL member libraries serve thousands of students and researchers every day at over 200 locations, employ over 6000 people, and collectively spend over \$289M annually on information resources. They play a vital role in the creation, preservation and dissemination of the scholarly information resources that support Canadian education, research and innovation.