

## The Internet, Copyright, and the Educational needs of Canadian Students and Teachers

For Canadian students and teachers alike, reasonable access to Internet resources is a critical necessity for learning and teaching. Canada's current *Copyright Act*, however, makes it illegal for students and teachers to participate in routine classroom activities where they download, save, and share Internet text or images that were *intended* to be freely downloaded and distributed.

Copyright infringement is of key concern to educators and authorities across the country. The education sector believes that clarity and balance in the *Copyright Act* must be vigorously championed, such that copyright infringement is eliminated and that every student and teacher can be assured of timely and fair access to Internet materials.

To this end, the provincial and territorial ministers responsible for education across Canada<sup>1</sup>, in collaboration with teachers, school boards, colleges, universities, and professors, have proposed to the Government of Canada that it adopt an **education amendment** in the *Copyright Act* to permit the educational use of freely available Internet materials. The proposed amendment is intended to address educational needs and ultimately clarify and enhance respect for copyright ownership on the Internet.

Broad support exists for the proposed education amendment. Thirteen national organizations representing the K-12 and postsecondary education sectors, as well as museums, libraries and archives support the proposed amendment. Together, the members of these organizations play a major role in furthering education, learning, research, and social, cultural and economic development in Canada. They also function as key players in the provision of public access to Canada's cultural and heritage resources.

The education sector has proposed an amendment that is limited in scope, in two respects:

1. It applies exclusively to **participants in a program of learning** under the authority of an educational institution. For example, the proposed amendment would permit students to use freely available Internet materials by incorporating text or images in homework assignments, performing music or plays on-line for their peers, and exchanging materials with teachers or peers. To encourage copyright awareness and respect in all circumstances, students and educators would be required to cite the source of the Internet materials that they use.
2. It applies strictly to the use of **freely available materials** on the Internet. Freely available materials are those posted online by content creators and copyright owners without any technological protection measures, such as a password, encryption system, or similar technologies intended to limit access or

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<sup>1</sup> Ministers responsible for education in Newfoundland and Labrador, Prince Edward Island, Nova Scotia, New Brunswick, Ontario, Manitoba, Saskatchewan, Alberta, British Columbia, Yukon, Northwest Territories, and Nunavut form the Copyright Consortium of the Council of Ministers of Education, Canada (CMEC). Quebec is not a member of the Consortium.

distribution. These materials, intended to be widely accessed and shared, may include text, images, music recordings, theatrical performances, or instructional demonstrations. The proposed education amendment will ensure that it is legal for students and educators to reasonably access and use freely available Internet materials.

The proposed amendment will *not* exempt institutions from paying for digital materials such as purchasable CD-ROMS, subscription databases, licensed software, on-line courses, and other curriculum resources. Copyright owners who wish to sell or otherwise limit access and distribution of their digital or online materials can continue to do so through subscription, password, and payment technologies. The proposed education amendment will not apply to such materials that are not freely accessible, which allows content creators and copyright owners to continue to sell and receive payment for their works as they intend.

Rapid advances in technology-enhanced learning call for a modernized *Copyright Act* that serves the public interest in permitting reasonable access to, and use of, Internet materials for purposes such as education, teaching, research and innovation, and the dissemination of knowledge. In the absence of an education amendment, schools and postsecondary institutions across the country may be legally obliged to curtail Internet use in order to avoid liability. Imposing limitations on the access to and use of a tool as valuable as the Internet could ultimately compromise the quality of education in Canada.

The Government of Canada has announced its plan to reform the *Copyright Act* and table legislation relating to education and access. The education sector welcomes this focus on the needs of students and educators. Provinces and territories have long maintained that a modern and balanced copyright framework will protect the public interest. The need for such a framework has never been more important than now, when all levels of government are investing in connecting Canadians and promoting skills development and innovation.

By enacting balanced copyright legislation, addressing the needs of students and teachers, promoting access and making other much needed updates, Canada has an extraordinary opportunity to enhance learning opportunities for generations to come.

It is crucial that forthcoming digital copyright legislation contain an amendment for the educational use of the Internet.

## **The FAQs Background Note**

*-- 15 of the most frequently asked questions --*

### **1. What is the issue regarding digital copyright legislation?**

Canadian copyright law needs to be amended immediately so that during routine educational activities teachers and students are able to use material made publicly available on the Internet without breaking the law.

### **2. What is being asked of the government with respect to education?**

A broad coalition of education groups and national stakeholders are asking the federal government to include an amendment to the *Copyright Act* in the next package of amendments in order to make routine use of the Internet for educational purposes legal.

### **3. Why is an education amendment important?**

The education amendment is important because under the existing law students and teachers are breaking the law when they make routine use of the Internet. Simple, commonplace activities like downloading an image for a school project or copying text for research is an infringement of copyright. The law must be changed so that schools can teach students the Internet skills that are crucial in today's information world.

### **4. What is the urgency?**

If this is not addressed in the first package of legislation, it will likely be several years before educational use of the Internet is dealt with at the legislative level. It is not appropriate to ask our educational institutions to work outside the law, or to put Canadian students in the position of having to break the law, when they use the Internet. Further, federal and provincial governments are simultaneously increasing our levels of connectivity, positioning the country to be a leader in the information age and supporting the use of the Internet in classrooms. Unless the copyright law is changed so that students and teachers can legally use the materials publicly available on the Internet, federal and provincial governments are in the position of supporting and funding illegal activities.

### **5. What will this allow you to do that you can't do now?**

The amendment will make common everyday activities, like copying material from the Internet for class work and assignments, currently occurring in our schools, colleges, universities, and technical institutions legal.

### **6. Does the education amendment apply to everything on the Internet?**

No. The proposed amendment applies only to material that has been posted to the Internet with no expectation of payment for its use, which has been made available with the authorization of the copyright holder and without any barriers to access like encryption or a password.

### **7. Doesn't this give a widespread amendment for everyone?**

No. This amendment is restricted to use in non-profit educational institutions (as defined in the *Copyright Act*) by students and teachers in formal courses of study.

**8. If students are required to cite materials they use anyway, why is this education amendment necessary?**

Students are required to cite materials used no matter what the source as a matter of appropriate use of material created by others. The amendment will permit the use of the materials in projects and presentations. It will also permit them to transmit those projects and presentations to their instructors, other students and to parents. These activities are currently a violation of the *Copyright Act*.

**9. How much would it cost if you had to pay to use the Internet in a classroom?**

That is an unknown. It is difficult to even imagine an organization that could represent the millions of artists, photographers, writers, composers, and musicians who post material on the Internet. Even if such an organization, or organizations, were formed that is not the point of the amendment. The point is that the education amendment covers material that is posted on the Internet with no expectation of payment. If payment is expected then creators can use passwords or encryption to block access until payment is made. That is perfectly legitimate. What creators will charge when they want payment will depend on a number of factors. Buyers will decide whether to pay the price or not.

**10. What might be the long-term effect on the Canadian workforce if the education amendment is not passed?**

Institutions may reduce the use of this valuable tool in order to avoid potential liability. The end result would be an increasingly large digital divide between students with access to technology outside the school and those without. It would also mean less experience in a digital learning environment in schools. Secondary students in rural communities would have less opportunity to experience online instruction, and hence less ability to compete with students from bigger centres or from other countries.

Students with less experience in an environment are less likely to choose that environment for a career or as the medium for their artistic expression. That means fewer skilled workers and fewer creators developing Canadian resources.

**11. Will this economically harm creators?**

No. The education amendment will not harm creators. In fact, by making it legal to use *publicly available* Internet-based materials, educational institutions and teachers can credibly take a forceful position on intellectual property and the rights of creators to expect payment for their works. It is the current environment in which the day-to-day use of the Internet is illegal that makes it less credible for teachers to model and teach appropriate respect for intellectual property.

**12. Does the educational use of the Internet amendment take away legitimate rights from creators?**

No. The proposed amendment providing for educational use of the Internet only applies to "publicly available" material. This is defined to cover material posted on a publicly available Internet server with the consent of the copyright owner, without any expectation of payment and without any technological protection measures, such as a password, encryption, or similar techniques intended to limit access or distribution. Creator's rights are not taken away by this education amendment because material which is "publicly available" is intended by the creator to be used and shared without payment and having to ask for permission.

**13. Does everyone who puts content on the Internet expect payment?**

Not at all. This is an important point. The Internet does support commercial ventures and profit-making, but it is also a place of communication, sharing, and learning. Most material on the Internet is available without charge. This is true even for most commercial sites: automobile dealers, newspapers, realtors, hotels, restaurants, movie producers, manufacturers, and software manufacturers all have material on the Internet that is publicly available and intended to be seen and used. When these commercial sites expect payment, they do a number of things. If the materials to be used are on the Internet, the site provides the means for secure payment, and blocks use until payment is made. Often, these commercial sites use the Internet like they use newspapers, radio, television or flyers — they tell you about their product or service and how to buy it.

The Internet differs from other communication vehicles because it also contains materials from individuals and organizations around the world who just want you to know about them, their passions, and their perspectives. For example, universities around the world post information, Kennedy Space Centre and related sites provide information regarding the space shuttle, scientists post material regarding their knowledge and research.

The fact is people want to share material. The Internet does that and continuing changes to technology are increasing the ability to do so. Use of material from the Internet must be made legal for educational purposes so that Canadians can have the full benefit of technically enhanced learning opportunities.

**14. Why can't we use a collective to resolve the issue and provide reimbursement for rights-holders?**

The material covered by the amendment is publicly available on the Internet. Individuals and organizations are making it available with no expectation of payment. It makes no sense to pay a collective for using information that is being made available without the expectation of payment.

Collectives collect fees for creators who are seeking payment for their works. On the Internet it makes sense that creators would not make the material publicly available if they expected payment. There is still room for a collective for the licensing of materials that are protected by technological protection measures and therefore with a clear expectation of payment.

**15. Is there is room for both collectives and the education amendment?**

Yes. The amendment will make use of publicly accessible content legal in educational institutions. Collectives will continue to represent creators seeking remuneration for their creations and will provide a vehicle for those institutions that desire it to use them as a vehicle for clearing rights and paying for content. Enactment of the amendment will clarify which materials can be used and under what conditions clearance and licenses must be obtained.