

“No Time for Complacency”: Fair dealing at a Crossroads

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Fair Dealing and Education

Current interpretations and guidance

Meaning and scope of fair dealing continues to evolve

Threats and challenges

Value of fair dealing

Urgent need for action

What is Fair Dealing?



“The fair dealing exception, like other exceptions in the Copyright Act , is a user’s right. In order to maintain the proper balance between the rights of a copyright owner and users’ interests, it must not be interpreted restrictively.”

SCC
Decisions
and CMA

- 2012

Provincial &
Territorial
Tariff
Decision

- May 2015

K-12 Tariff
Decision

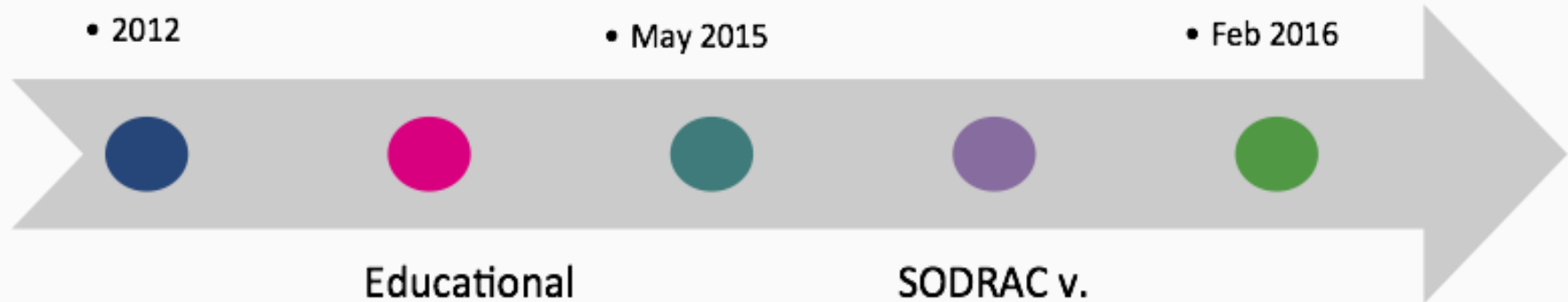
- Feb 2016

Educational
Fair Dealing
Policies

- Fall 2012

SODRAC v.
CBC

- November
2015





Supreme Court decisions

Alberta (Education) v. Access Copyright, and SOCAN v. Bell

Affirmed CCH - fair dealing is a user's right

Purpose of the dealing is that of the end user

Teachers may make fair dealing copies for their students, for private study and research

Amount of dealing should be assessed in proportion to the work, not in aggregate



Copyright Modernization Act

Addition of three new fair dealing purposes, including education

Revisions to existing educational exceptions

Addition of new exceptions for educational purposes

Parliamentary Review in 2017

Educational Fair Dealing Guidelines

Common interpretation for education sector - a safe harbour

Based on copyright laws and court decisions, negotiated agreements and settlements - in Canada and elsewhere

Provides definition of fair dealing in an educational context

Includes numerical definition of short excerpt

Considered to be a middle ground, a “reasonable” interpretation

Copyright Board Tariff Decisions

Governments (provincial & territorial) ,and K-12 Schools

Endorsed the education sector's interpretation of fair dealing, including amounts up to 10%

Affirmed that the fair dealing purpose should be that of the end-user.

Rejected using aggregate numbers of copies to assess the fairness of the amount.

Amounts of 1 or 2 pages (up to 2.5% of a work) is insubstantial copying.

Current litigation

Judicial review of Government tariff decision

Judicial review of K-12 tariff decision

Post-secondary tariff decision

York v. Access Copyright

2017 Parliamentary Review



Parliament **will review** the Copyright Act in **2017**.

Interest groups across Canada **will be lobbying** for changes to the Act.

Authors and publishers groups have had **24 meetings** on lobby register since November.

Stated objective: Amend fair dealing to limit the rights of educational users



In the press

Don Lepan. “Unfair interpretations of ‘fair use’ damaging publishing industry”
<http://sites.broadviewpress.com/blog/copyright-canada-damage-caused-unfair-interpretations-fair-use/> Originally published in The Hill Times on Wednesday, April 6, 2016.

Kate Taylor. “Kids will suffer if Canada’s copyright legislation doesn’t change”
<http://www.theglobeandmail.com/arts/books-and-media/kate-taylor-kids-will-suffer-if-canadas-copyright-legislation-doesnt-change/article29720114/>
Published Friday, Apr. 22, 2016.



Kate Taylor, Globe and Mail

"...publishers are not merely suffering lower revenue from Access Copyright; more importantly, they are also losing sales. They suspect that schools are copying far more than 10 per cent: Where they used to get orders for classroom sets, they will now get an order for a single book".



John Degen, Globe and Mail

“The educational copying market for Canadian writing is, frankly, a mess that requires an immediate fix. Changes to the Copyright Act, enacted in good faith....in 2012, have since been broadly misinterpreted by Canada’s educational sector to mean payment for copying is often no longer required”.

John Degen. “Two ways to halt the decline of authorship in Canada.” [John Degen Two ways to halt the decline of ... - The Globe and Mail](#).
Published November 8, 2014.



Value of fair dealing to education

Fair Dealing covers everything!

No more double paying

It empowers libraries and library users

It saves students money

It is important to protect users rights.

“The Policy Battle is not over”

Educational users of fair dealing need to express their views on

What the parliamentary review can include

How it should be conducted

Strenuously oppose the opening up of the fair dealing provision - once opened it is completely up for grabs.

Oppose AC and the publishers and authors' groups by providing evidence of copyright compliance.

Key Messages (Wanda Noel)

Let current litigation play out in the courts

Five years is not long enough to truly assess impact of changes

Invest in and commit to producing evidence of fair dealing compliance at our institutions (if you don't have data, you don't know if there is compliance)

Enough is enough - publishers and authors need to accept parliament's and the courts' views on fair dealing.

“Now is not the time for complacency”

Now is the time to deliver key messages to government officials and key MPs

- On behalf of your institution

- On behalf of a professional organization

- As a concerned citizen

Don't do form letters; customize your message.

Provide data and evidence to refute the claims made by AC, publishers and authors groups.

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