

# Developing a Framework for Controlled Digital Lending in Canada

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# CFLA Copyright Committee

## CDL Subcommittee

- Christina de Castell, Vancouver Public Library
- Mark Swartz, Queen's University/CARL
- Joshua Dickison, University of New Brunswick
- Trish Mau, Burnaby Public Library
- Robert Tiessen, University of Calgary
- Amanda Wakaruk, University of Alberta
- Christina Winter, University of Regina



# CFLA Copyright Committee Process

- Interest in a position statement for Canada
- Reviewed existing materials
- Needed review of legal framework
- Peer and legal academic review
- Next: position statement



# Why is it necessary in Canada?

- Vast physical collections filled with orphan and non-commercially available works
- Limited digital availability
- Unreasonable prices and licences
- Loss of equity & historical record
- Pending copyright term extension



# Controlled Digital Lending

“...libraries use technical controls to ensure a consistent “owned-to-loaned” ratio, meaning the library circulates the exact number of copies of a specific title it owns, regardless of format, putting controls in place to prevent users from redistributing or copying the digitized version.”



# Copyright Principles

## Exhaustion

- “copyright holders cede their power to control various uses of a copy of a work after sale or transfer to a consumer”
- firmly established in our court system in the Canadian Supreme Court’s judgement of 2002, *Théberge v. Galerie d’Art du Petit Champlain Inc.*



# Copyright Principles

## Technological Neutrality

- copyright law "should not be interpreted or applied to favour or discriminate against any particular form of technology
- right to produce or reproduce a work “in any material form whatever”



# Fair Dealing

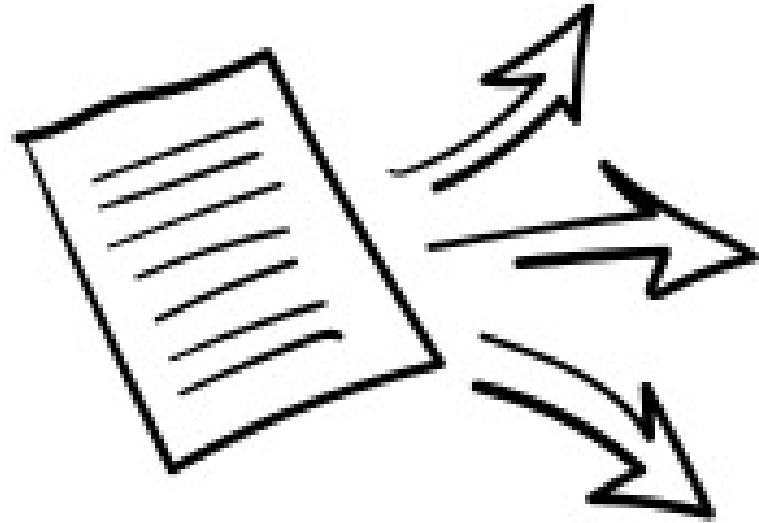
- **S. 29** of the Canadian Copyright Act states that fair dealing for the purpose of research, private study, education, parody or satire does not infringe copyright. Copying is also permitted for criticism, review and news reporting, with conditions around citation
- most important fair dealing decision for this purpose is *CCH Canadian Ltd. v. Law Society of Upper Canada (CCH)*, in 2012





# Fair Dealing: 6 factors

- Purpose
- Character
- Amount
- Alternatives
- Nature of the work
- Effect of the dealing on the work



# Risk Mitigation

- Ensure controls on lending
- Use older/non commercially-available materials
- Consider factual, scientific books or non-fiction
- Limit the users



# Questions

- Are you using CDL or considering it? For what?
- Are you experiencing challenges convincing your institutions that CDL is a viable model? Will this paper help you address those challenges?
- What else is needed to encourage CDL projects in Canadian libraries?
- What would be useful in a position statement on CDL?

