



Educational Use of the Internet:

“Fair Dealing” Just May Not Be Enough

Educational institutions and their students, teachers, and staff use the Internet in unique ways, some of which may be infringing copyright. Educational users require an amendment to the Copyright Act making it clear that no infringement occurs when publicly available Internet material is used for educational purposes.

Publicly available Internet material is posted on the Internet with the intention that it be copied and shared by members of the public. The problem is that the current copyright law may not protect schools, teachers, or students, even when they are making routine educational uses of this publicly available Internet material.

The Copyright Act provides rights to people who use copyright material — generally referred to as “users’ rights.” One users’ right is called “fair dealing.” This is available to any user, not just someone involved in education. The Copyright Act provides that it is not an infringement of copyright to “deal fairly” with a work for five specified purposes: research, private study, criticism, review, or news reporting. The act does not define what is “fair,” nor does it define what is included in research, private study, criticism, or review. It is left up to the judgment of a user to decide whether a use is “fair.”

This is a difficult exercise for someone who is not knowledgeable about copyright. What one person thinks of as “fair,” another may not. If a copyright owner disagrees with your judgment, he or she can sue you for copyright infringement.

It is precisely because it is so difficult to decide whether many educational uses are permitted under fair dealing that education organizations seek a clear statement in the law that all educational uses of publicly available Internet material are not infringements of copyright.

One example of a use of publicly available Internet material in educational institutions that may or may not be permitted under fair dealing is the use of the whole of a work. Whether or not a complete work is needed depends on the nature of the instruction. A teacher copying an entire audiovisual work (such as a TV program) from the Internet for use in a media studies class requires the entire program. The Supreme Court of Canada has said that in some circumstances using a whole work may be fair dealing while in other circumstances it may not be fair dealing. As a result, the law is not clear about

whether this use and other uses of the whole of an Internet work for educational purposes are fair dealing.

Another example is the making of multiple copies of publicly available Internet materials for educational purposes. An instructor placing publicly available Internet material on a class Web site and instructing each student to conduct research, study, review, or criticize the material could be considered to be the same as making multiple copies — a copy is made available for each student in the class. Similarly, an instructor who e-mails publicly available Internet material to each student in a class could also be considered to be engaged in making multiple copies of the material. The Supreme Court of Canada has said that making multiple copies and distributing them widely tends to be unfair. Given what the Supreme Court said, it is not clear to a teacher whether making these kinds of multiple copies for students is fair dealing.

An amendment to the Copyright Act is needed to create a safe harbour for all educational uses of publicly available Internet material. Without the amendment, educational institutions and their students, teachers, and staff will remain in a most uncomfortable position — contorted in a legal limbo — awaiting some future court ruling to clarify more precisely the notion of “fair dealing.” So, in light of the uncertainty surrounding the application of fair dealing to certain common educational uses of publicly available Internet material, it is necessary to amend the Copyright Act to make it clear that any educational use of publicly available material is not an infringement of copyright.