



## **Educational Use of the Internet: Is There an Implied Licence?**

Education organizations are asking the federal government to change the existing copyright law in order to make it clear that educational use of publicly available Internet material is not an infringement of copyright. Publicly available Internet material is posted on the Internet without restrictions on access, like a password, and with the intention that it be copied and shared by members of the public.

The problem with the existing copyright law is that it may not protect schools, teachers, or students, even when they are making routine educational uses of this publicly available Internet material. Educational users are seeking a change in the Copyright Act to make it perfectly clear that they can legally engage in routine classroom activities involving the use of text, images, or videos that are publicly available on the Internet.

Some are questioning whether the education amendment is really necessary. The Council of Ministers of Education, Canada (CMEC) believes it is. Those who question the need for the amendment suggest that when someone posts material on the Internet without any password or encryption, they intend that the public will copy it, save it on their own computers, and send it to others. They say that this is obvious and believe that a court would decide that there is an “implied licence” to do all of these things. Others, including the Council of Ministers of Education, Canada are not so sure that an implied licence will cover all educational uses of publicly available Internet material.

The million-dollar question is, “What will an implied licence permit?” It is possible that an implied licence may cover personal use but not cover institutional use involving the making of many copies. It is also possible that an implied licence may cover individual students sharing an Internet work with one another by e-mail but may not cover the posting of that work on a course Web site. The possibilities are too many to even try to list them all.

It comes down to the fact that the implied licence is a theoretical concept whose scope has never been explained by Canadian courts. Some lawyers believe that the courts are more likely to imply a licence for personal use than they are for some uses that occur in educational institutions. There is no way of knowing ahead of time whether a court would decide that there is an “implied licence” for a particular educational use of an Internet work.

It is precisely because educational users do not know whether there is an implied licence for the use of publicly available Internet works and, if there is, what it includes, that they are asking for the Copyright Act to state that educational use of publicly available

Internet material does not infringe copyright. Leaving the existence and terms of an implied licence to be defined by our country's courts and expensive litigation is an unnecessary and wasteful approach with unpredictable outcomes. Parliament has the authority, and the opportunity in the upcoming copyright reform legislation, to clarify the law dealing with educational use of the Internet. The Council of Ministers of Education, Canada is asking the federal government to enact the education amendment so that the law is clear.

The education amendment has many supporters in Canada's education community. It is being championed by the Association of Canadian Community Colleges (ACCC), the Canadian Association of Research Libraries (CARL), the Association of Universities and Colleges of Canada (AUCC), the Canadian Teachers' Federation (CTF), the Canadian School Boards Association (CSBA), the Canadian Home and School Federation (CHSF), and the Copyright Consortium of the Council of Ministers of Education, Canada (CMEC), which is made up of the provincial and territorial ministers of education in every province and territory except Quebec.

Again, Parliament can clarify the law and, thereby, leave nothing to a court's interpretation. A majority of the education community wants certainty with respect to the educational use of publicly available Internet works — and the education amendment provides the clarity that the notion of an implied licence does not.