

Education Ministers' Policy Statement on Fair Dealing (2022)

Ministers of education strongly support copyright

In Canada, provinces and territories have exclusive jurisdiction over education. The provincial and territorial ministers who constitute the Council of Ministers of Education, Canada (CMEC) Copyright Consortium,* as responsible stewards of copyright, actively promote compliance with fair dealing in schools. Education ministers view copyright law and copyright compliance as a priority.

Ministers of education strongly support fair dealing for education

Education ministers view the current *Copyright Act* as good public policy that achieves the necessary balance between user rights of teachers and students, and the rights of copyright owners like educational publishers. Fair dealing for educational purposes is good public policy that supports learning, fosters research, and contributes to an innovative economy.

Ministers of education believe the current *Copyright Act* achieves an important and necessary balance between the rights of users and the rights of copyright owners

In 2012, the Canadian copyright law was amended to include “education” as a stated purpose in the “fair dealing” provision of the *Copyright Act*. This amendment gives students access to “short excerpts” from a wide range of material they need to obtain 21st-century learning outcomes. Educational use of fair dealing is not a “blank cheque.” Fair dealing does not mean that an educator can make unlimited use of any copyright-protected work without permission or payment. Fair dealing permits the use of only “short excerpts” for educational purposes.

Also in 2012, the Supreme Court of Canada ruled that fair dealing permits teachers to communicate, or make copies of, “short excerpts” from a copyright-protected work for students in their classes without having to purchase a copy of the entire work for each student in a class. This landmark decision recognizes that students benefit when teachers can use short excerpts—such as one article from a journal—for educational purposes. When longer excerpts are used—such as more than a single chapter of a book—schools pay a fee or a copyright tariff. The decision provided important clarity around another 2004 Supreme Court landmark ruling, which found that fair dealing should not be interpreted restrictively.

The *Fair Dealing Guidelines* were developed to ensure that teachers know how to apply fair dealing correctly in their classrooms

The *Fair Dealing Guidelines* describe “short excerpts.” The Copyright Consortium developed the *Fair Dealing Guidelines* to assist teachers in applying fair dealing in their classrooms. It also developed an online tool—www.FairDealingDecisionTool.ca—so that teachers can quickly determine whether fair dealing applies to an intended classroom use. The *Guidelines* ensure consistent application of the Supreme Court decisions, and are relied on in schools, school boards, and ministries/departments of education across Canada (outside of Quebec) to determine whether dealings with copyright-protected works are “fair” or “unfair.”

The *Guidelines* are a responsible and reasonable interpretation of the *Copyright Act* and the fair-dealing cases decided by the Supreme Court of Canada. Although publishers claim otherwise, the Supreme Court of Canada, in its 2021 decision in *York University v. Access Copyright*, did not address the validity of the *Fair Dealing Guidelines*.

* The CMEC Copyright Consortium is composed of the ministers of education of the provinces and territories, with the exception of Quebec.

Ministers recognize the need for all to stay current with advancing technology and new ideas about teaching and learning

The way textbooks and other resources are used in the classroom is quickly evolving. Many factors have affected textbook sales, including the adoption of semester teaching; declining enrolment in some areas; the longer lifespan of textbooks; increased use of the internet and other electronic tools; increasing use of open access resources; the huge transition from print to digital learning resources; new media players; more resource-based learning; and the development of Open Textbooks, as is the case in Ontario. The educational use of fair dealing is not the reason for the decline of textbook sales.

Ministers support not narrowing the fair dealing provision

Consortium ministers were pleased with MPs' findings in 2019 in the House of Commons Standing Committee on Industry, Science and Technology (INDU) report entitled *Statutory Review of the Copyright Act*. MPs rejected the request of publishers, authors, and copyright collectives to narrow the fair-dealing provision for education, finding that their testimony could not be substantiated. The committee report stated that "the decline of collective licensing in education has arguably more to do with technological change than it does with fair dealing." The committee rejected any new limits on educational fair dealing.

Today, Access Copyright and publishers continue to make the same claims and arguments they made to MPs in 2019. These claims remain unsubstantiated. In order to provide clarity on the issue of support for Canadian authors, the INDU committee recommended greater transparency into the copyright collective's operations and the collective's and publishers' payments to authors.

Ministers believe in preserving a balanced copyright regime

Education ministers believe that the *Copyright Act* is a tool that balances the rights of users and copyright owners. It is not a tool to help subsidize an industry or a cultural sector. Educational use of fair dealing is an essential element of that balance, which is rooted in the *Copyright Act* and in decisions of the Supreme Court of Canada. It strikes the right balance between the needs of Canadian students and copyright owners. Ministers are strongly opposed to any amendments to the country's *Copyright Act* that would jeopardize this important balance. Doing so would severely and negatively impact the quality of education provided to Canadians.



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