

Copyright and Remix Culture

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Introduction: When we think about quoting, one immediately imagines excerpts from a text. A student can take small portions of other written works and include them into their own, providing they exercise proper attribution. The same can't be said for other forms of copyright protected content. As of now, Canadian copyright law forbids a student from copying almost any portion of a musical or audiovisual work without permission from the copyright holder. This is highly inconsistent with what our research has shown to be the manner in which youths learn in the age of web 2.0. Some posit that the Federal Government's new bill C-11 will change this. We are not so sure...

Educational fair dealing: Bill C-11 seeks to add "education" to the list of fair dealing provisions. While this looks good on its face, the exception is poorly defined (more accurately not defined at all). What we do know is that for the student's use of copyright protected material to be fair it must pass the six factor test set out in the *CCH* decision. This analysis is highly subjective and case specific.

"YouTube" exception: Students often create class presentations using content found online. As it stands, these are almost always an infringement of copyright. Clause 29.21 of C-11 provides a novel provision allowing for the use of copyright protected material in the creation of new works providing, among many other things, the use is non-commercial. This exception is rife with unrealistic requirements. The most important could be the requirement to evaluate the effect the new work will have on the original. How is a student expected to do this?

Research on how children and young adults learn shows preference for a self-directed approach. This approach may at times lead to "illicit" use of copyrighted materials. In order to properly capitalize on the vast resources the internet has to offer, it is vital that students be able to use content in the manner most conducive to their learning. Recognition of the shift in modes of learning should be present in Canadian copyright law.



Photo by Renjith Krishnan

Fair dealing (concept): Common law jurisdictions like Canada provide for what is known as fair dealing in their copyright laws. Fair dealing is a doctrine that protects certain lawful uses (or "dealings") of copyrighted content that would be considered infringement but for the fair dealing provision. In Canada, the fair dealing doctrine was solidified and explained by the Supreme Court in *CCH Canadian Ltd. v. Law Society of Upper Canada*. Here the Court lays out the two-pronged test for fair dealing. In order to qualify for fair dealing, the use in question must fit into one of the statutory categories: Research, private study, criticism, review and news reporting.

"Lessons" exception: Clause 27 of bill C-11 allows for teachers (in certain cases) to make use of copyright protected content in lessons or examinations. This exception fails for two reasons. 1) it forces teachers to destroy their lessons 30 days after students receive their final grades for the course. What teacher wants to reconstruct their lesson plan from scratch every year! 2) The students must also destroy all copies of the lesson 30 days after receiving their marks. This eliminates the ability of students to keep information for future reference. Do students have to destroy their course packs 30 days after receiving a grade? This provision is unrealistic, not technology neutral and unduly impedes pedagogy.

Conclusion: Bill C-11 is inadequate in addressing the needs of today's Canadian students. The prevalence of copy paste literacy and the shift towards digital media in the classroom has not properly been worked into the Governments proposed legislation. It is our fear that this will result in Canada being left behind on the global academic scale as more progressive governments (or in some cases judges) adapt their concept of copyright protection to recognize the shifting paradigm. Instead, it will be Canadian students and educators who will be forced to adapt, an unattractive proposal.