

# **Freedom to Teach and Learn**

---

## **Educating the Creators and Users of Tomorrow**



---

Brief prepared by: Association of Canadian Community Colleges  
1223 Michael Street North, Suite 200 Ottawa, Ontario K1J 7T2  
Tel.: 613-746-2222 x3123 Fax: 613-746-6721  
Web: [www.accc.ca](http://www.accc.ca)

Submitted to: The House of Commons Standing Committee on Canadian Heritage

Subject: Supporting Culture and Innovation: Report on the Provisions and Operation of the Copyright Act

Date: September 15, 2003

#### Permission to reproduce

Except as otherwise specifically noted, the information in this submission may be reproduced, in part or in whole by any means, without charge or further permission from the Association of Canadian Community Colleges, provided that due diligence is exercised in ensuring the accuracy of the information reproduced; that the Association is identified as the source; and that the reproduction is not represented as an official version of the information reproduced, nor as having been made in affiliation with, or with the endorsement of, the Association. These terms apply equally to a translated version of this document, in part or in whole, with the exception that it must be noted that the Association has not reviewed any translation and that the translated version should indicate both the latter point and the source of the translation.

## Introduction

---

Representing 150 community colleges, institutes of technology, university colleges and cégeps, the Association of Canadian Community Colleges (ACCC) is the national and international voice of Canada's colleges and institutes. These institutions comprise over 900 urban and rural campuses, 850,000 full-time learners and 1.5 million part-time learners enrolled on-campus or on-line. Tasked with educating tomorrow's workforce, colleges and institutes maintain an active and dynamic interest in ensuring that all curricula respond to the needs of the marketplace, chosen careers and Canadian innovation and economic growth models.

To meet these challenges, the materials selected for training purposes must be relevant, challenging and topical. Copyright, access and the instructional capacities of the Internet and new digital technologies are therefore of keen importance to the educational community. A fair balance between the right to create and own and the right to use and reproduce must be achieved. Encouraging creativity and new development in the arts, cultural, entertainment, software and technology sectors are paramount to the success of Canada's innovation agenda. Colleges educate future creator groups (authors, journalists, illustrators, photographers, technologists, computer engineers, digital animators, etc.) and future user groups. Inherent in this charge is the institutional capacity to adopt and transfer a balanced yet encouraging approach to creation and the protection thereof and the application of those creations to knowledge development and the instruction of subsequent generations of Canadians.

ACCC has monitored and examined developments in proposed copyright legislation and associated hearings for several years. The Association welcomes the opportunity to respond to the invitation of the House of Commons Standing Committee on Canadian Heritage to present a submission regarding the content and intent of the document *Supporting Culture and Innovation: Report on the Provisions and Operation of the Copyright Act*. In so doing, the Association is in agreement with the submission of the Council of Ministers of Education, Canada, which responds to the same invitation.

## The Issue – Digital Learning & Copyright

---

Traditional classroom-based and distance learning are increasingly being supplemented by on-line instruction in which learning and teaching are intimately dependent on the Internet. Millions of Canadian learners of all ages currently engage in learning through computers on campus, at work or at home. They are able to access directly materials and experts electronically anywhere in the world. Learning materials themselves may now integrate text, graphics, sound and images in ways never before possible. In a digital world, colleges and institutes must allow students and instructors the option to access information and knowledge that is available primarily in digital format.

As it currently stands, copyright law impedes technology-enhanced learning and does not reflect technological advances and their impact on the creator and user communities. While the *Copyright Act* provides educational institutions with an exemption from liability, under certain conditions, for any infringements committed by persons using self-serve photocopiers in their institutions, this exception only applies to reprographic

reproduction. As it is currently worded, this exception cannot apply to the reproduction of on-line works and other subject matter. Amending the *Copyright Act* to remove this barrier and allow for technologically neutral exemptions for Canada's public educational institutions is essential if Canada is to produce the highly skilled, computer literate population required to position the country as a leader in the global information economy.

### **The Issue – Rights Clearance**

---

Copyright law must also embrace the technical parameters of the digital environment. Imagine a learner accessing a website for course-related research or information. The site contains sound, music, graphics and text. It is not made clear on the site who the rights-holders are and if copyright clearance is required for each element. Some elements may be noted as "free" of copyright contingency, but the extent of the authorization for use of that element/information is not clear. Amendments to the *Copyright Act* must therefore consider ease of access, application and clarity in the digital environment to ensure that the educational use of the Internet is clearly understood and recognized as a fundamental component of Canada's learning society.

By providing legal clarity about the educational use of the Internet, the proposed amendment will reduce the risk of litigation. Legal clarity will also ensure that students and teachers are in a better position to promote best information practices and ethical standards regarding copyright as it applies to publicly available sources.

### **The Issue – Publicly Available Material for Educational Purposes**

---

Of concern are the debates surrounding the use and reproduction of materials that are publicly available and their distinction from those subject to blanket licensing. In the process of amending the *Copyright Act*, the process and criteria used to define materials as publicly available must be determined. Educational institutions should not be subject to a loose definition that may entail different perceptions and interpretations by different stakeholders. To support clarity in the policies and practices of the educational community, the federal government must grant a legislative exception for legitimate educational purposes undertaken within the parameters of a not-for-profit program of learning with the source and author of the work adequately identified, notwithstanding signage or protection measures that would preclude this exception.

### **The Issue – Internet Service Provider Liability**

---

The technological infrastructure of educational institutions is often configured to provide Internet access to on-campus learners, staff and teachers. If a learner, staff member or teacher infringes upon copyright standards, unknown to the institution, is the institution legally liable as an Internet service provider (ISP)? ACCC agrees with the Copyright Consortium of the Council of Ministers of Education Canada that the *Copyright Act*

should be amended to allow the ISP to cache or transfer a file or work sourced by a learner, staff member or teacher that infringes on copyright, if it is unknown as such to the institution. If and when it becomes known to the institution, appropriate measures such as file or access removal should be undertaken.

## **Conclusion**

---

The Association of Canadian Community Colleges firmly believes that Canada's capacity to innovate and prosper will be enhanced by supportive copyright legislation that takes into consideration the digital age and its implications on the creation, acquisition, pace and use of new knowledge. Canada's colleges, institutes of technology, university colleges and cégeps are tasked with ensuring that their graduates have the requisite skills and knowledge that will allow them to continuously contribute to and create the knowledge and innovation economy sought by Canadians. While the Association fully understands the position of the creator and rights-holder communities, it holds to the view that amendments to the *Copyright Act* must seek to balance the rights of copyright owners with the unique role and needs of the educational community.

In preparing this Brief, the Association acknowledges its support of the submission of the Council of Ministers of Education, Canada, which responds to the same invitation.