

# **Copyright: Enabler or Barrier to the Educational Use of The Internet**

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May, 2002

## **What is Copyright?**

Throughout the Commonwealth countries have laws which are modeled on a 1911 law in the United Kingdom. Typically these laws are called the *Copyright Act*. These laws provide creators of materials like books, photographs, visual art, music and, more recently, digital materials with the legal right to control who uses them, under what conditions and at what cost.

In addition to a copyright law providing rights to creators, it also provides for limitations and exceptions to the rights of creators for the public good. Examples of the beneficiaries of these exceptions are libraries, educational institutions and museums.

## **Copyright and Digital Technology**

The way copyright law applies to digital uses is insufficient to meet changing realities. For example, something as simple as a student downloading an image from the Internet for use in a class project is illegal under most copyright laws.

Governments around the world are dealing with the challenges of revising copyright law to reflect digital technology. The World Intellectual Property Organization (WIPO) has prepared two treaties dealing with digital technology and the Internet. Countries around the world wanting to join these treaties must change their copyright laws to bring them in line with the obligations of the treaties. The United States, Australia and Japan, for example, have revised their copyright laws to meet the obligations of the WIPO treaties.

### **What revisions does the education sector want?**

A key objective is a copyright law permitting educational use of the Internet. In revising national copyright laws there are a large number of interests that have to be taken into account. We are here today to discuss the implications for the education of revising domestic copyright laws to address digital technology and the Internet.

The education sector in Canada is seeking a copyright law that would permit students and teachers, in day-to-day instruction, to copy, perform, and exchange copyright materials made publicly available on the Internet.

## **Free vs Fee**

The implied license theory refers to the idea that when a copyright owner posts something on the Internet, and takes no steps to limit use through a technological protection measure, the copyright owner has, by implication, authorized or licensed use of the material. There is an implied authorization that the material can be read, copied and reused without authorization or payment. The act of posting implies that the copyright owner knows and intends that the material be used without asking for authorization or paying.

The Internet is a vehicle for commerce but also for communication. It is important to remember that the digital world generally, and the Internet specifically, is substantially different from the paper and pencil environment that we all are comfortable in and that our copyright legislation was designed to support. The Internet is not only a vehicle for publishing and other commercial ventures; it is fundamentally an environment for global communication. This environment has as many similarities to the town square and speakers corner as it does to a book store or publishing house. These aspects of communication and discussion mean that there will be many uses and performances that never were intended for profit, never were intended to be corralled, counted or paid for. There will always be countless

examples of knowledge, information and intellectual property being freely given and widely shared. This environment will not fit the current models designed for the business side of the new digital technologies. If we reduce this communication environment to a purely business transactional model we will have jeopardized our nations' positions in the global information age and seriously harmed our educational systems, especially in rural and remote areas which depend more heavily on the Internet. Decisions regarding copyright reform must reflect sound public policy and must fit this new complex environment.

The exception that is being proposed for Canadian law applies only to material that is being made "publicly available" on the Internet.

"Publicly available" has a precise meaning that protects the rights of copyright owners to require payment. The proposed exception contains the following safeguards for copyright owners:

1. no technological protection measure
2. posted with consent of owner
3. notice and take down or notice and notice
4. must have knowledge that posting is infringing
5. students required to acknowledge source

## **Why does the education sector need changes to copyright laws?**

Students and teachers often break copyright law when they use the Internet to:

- copy an image for a school project
- copy text to study later
- forward an e-mail to a student or teacher

## **Why does the education sector need these changes?**

Students and teachers need to be able to use the material they find on the Internet without infringing copyright. In the current environment, the typical school use of the Internet is illegal. It is inappropriate for teachers to be modeling illegal behavior in classrooms. The current situation is having a chilling effect on the use of this powerful tool in our schools.

An education exception is necessary to develop the skills needed to participate in a global knowledge economy.

The option of obtaining copyright clearance for day-to-day instruction is not possible or practical. It is not possible because there are literally billions of creators' materials on the Internet. It would not be possible to contact them

every time a student wants to copy text or use an image in a school project.

It is also not practical because of the time that is required to seek individual permission from a copyright owner for school projects.

Blanket licensing through a collective of “publicly available” material on the Internet is not practical. One reason for this is that the vast majority of the material that is “publicly available” on the Internet is posted there with the intent that it be freely used, especially by students and teachers without any expectation of payment. Collectives are not likely to be formed because the people who would form them do not expect any payment.

There are often glaring inconsistencies in government policy. In Canada one arm of the federal government invests millions of dollars in projects designed to develop Internet skills among Canadian students, while another federal policy, reflected in the copyright law, makes much of what students do under these federally funded projects illegal.

## **Digital Copyright Reform**

In the US, Australia, and the European Union copyright laws have been changed to deal with some digital issues:

Caching

Technological Protection Measures (TPMs)

### *Caching*

Caching is the storing of digital information, temporarily or permanently in the process of transmission, storage or viewing.

US, Australia and the European Union have recently amended their copyright laws to permit temporary caching.

### *Technological Protection Measures (TPMs)*

TPMs are things like password protection, encryption and other embedded programming to restrict access to information or programming code in digital material.

Legislation surrounding TPMs is extremely controversial. There is different legislation in the U.S., European Union and Australia.

## **Educational Exceptions**

Countries that have changed their copyright law have not provided for educational use of the Internet.

## **What needs to be done?**

Obtaining appropriate changes to copyright laws will require intense lobbying and enormous political influence. It is our belief that unless strong

pressure is brought to bear, copyright laws will not include measures to permit educational use of the Internet.

## **Implications for Learning**

Educational institutions will be restricted in how they use the Internet. This is already occurring. The current situation is having a dampening effect on the use of the Internet in our schools, colleges and universities.

Schools will not be able to harness the full potential of digital technology because of copyright law.

Investments in Information Communication Technology (ICT) infrastructure will be reduced. Schools will lose ground in their attempts to educate students for the new economy.

Without an exception for educational use of the Internet, the opportunity to learn with your own cultural materials could be lost. We already see our students using the pop culture of Disney and Hollywood rather than their own cultural resources in their projects and presentations. There is a real danger that the richness of individual cultures will become blurred by the domination of the commercial entertainment engines of the United States.

Saskatchewan, Canada has a rich heritage of artists and artisans. Yet it is very difficult for developing artists in our schools to find examples of their work on the Internet on which to model and develop their own talents. It is much more likely that Spiderman, Donald Duck, The Back Street Boys and Madonna will be the models upon which they develop their skills.

### **Action Plan**

Governments need to be convinced of the need for changes to permit educational use of publicly available materials on the Internet.

Convincing governments will involve a prolonged and concerted effort by the whole education community. The notion of bringing the whole educational community together for this issue is important. Governments have failed in varying degrees in the past to provide the necessary balance in copyright laws and it is only with a concerted effort by all education stakeholders that our voice will be heard.

Your role: convince your government that copyright law needs to be changed to permit educational use of publicly available material on the Internet.