



THE INTERNET AND COPYRIGHT

Direction des ressources didactiques

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Québec 

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THE INTERNET AND COPYRIGHT

The increasingly widespread use of the Internet in schools raises the question of respect for copyright in the information environment. Some teachers have wondered about the legality of certain practices pertaining to the Internet. In this context, it is important to recall a few basic ideas with respect to copyright and to clarify certain points.

The *Copyright Act* grants certain sole rights to authors

The *Copyright Act* grants sole rights to the creator of a work, or to the person holding the copyright for the work in question, including : the right to reproduce the work, to perform it in public, to convert or adapt it, to translate it, to publish it, to make a contrivance by means of which it may be reproduced, to communicate it to the public by telecommunication. These sole rights are defined as « economic ». The Act also gives the creator of the work, or the holder of the copyright for it, the right to authorize the above-mentioned acts.

In addition to these economic rights, which belong to the author of a work or the holder of the copyright for the said work, the Act grants the author the following moral rights : the right to authorship, that is, the right to be associated with the work as its author, as well as the right to the integrity of the work, that is, the right to prevent the work from being distorted, mutilated or otherwise modified, or being used in association with a product, cause, service or institution if this modification or use is to the prejudice of the honour or reputation of the author.

Whoever uses a work protected by copyright, whether to reproduce it, perform it in public, communicate it to the public by telecommunication, etc., or to modify it in any way whatsoever, without the authorization of the author or the holder of the copyright, commits an infringement of copyright. This offence may have to do with a work done on a fixed conventional or analogic support (book, soundtrack, videocassette, etc.), one done on a digital support (CD-ROM, diskette, hard disk, etc.) or one accessible via the Internet.

The exceptions to the Act for educational institutions do not apply to the Internet

The *Copyright Act* grants certain exemptions from copyright to educational institutions, in other words, in precise situations in which the exercise of a right attributed exclusively to the author of a work or to the holder of the copyright for that work, without the

consent of the author or copyright holder, does not constitute an infringement of copyright. However, none of these exceptions apply to the Internet. The *Copyright Act* does not refer to the Internet, at least not explicitly, but this is of minimal importance since the Act protects the right to communicate a work to the public by telecommunication and this right applies to the circulation of works on information highways such as the Internet.

Thus, if an Internet user makes an unauthorized reproduction of a work accessible on a Web site (for example, a magazine article or a literary text, a photograph or an illustration, a song or a musical piece, etc.), he or she commits an infringement of copyright, unless a notice or some mention on the site consulted¹ explicitly authorizes such a use. In the same way, if someone makes an unauthorized reproduction of a work protected by copyright and posts it on the Internet (for example, during the creation of a Web page or Web site), this, too, is an infringement of copyright simply because the reproduction of the work and its communication to the public by telecommunication are two rights granted exclusively to the author of the work or to the holder of the copyright for that work.

Agreements between the Ministère and collective societies do not apply to the Internet

It seems that there is currently a mistaken interpretation of the law in certain circles, an interpretation which holds that teachers and their pupils benefit from an exemption that would entitle them to use 10 percent — or even up to 25 percent — of a work for purposes of education or training. This is a mistake and is explained undoubtedly by the fact that an agreement between the Ministère de l'Éducation and COPIBEC² allows teachers in preschool education and in elementary and secondary school to reproduce printed works (books, newspapers, magazines, etc.) that belong to COPIBEC's repertory, and this within certain limits, namely, the lesser of 10 percent or 25 pages. It is worth recalling, however, that this agreement authorizes only copies on paper or acetate; it does not in any way authorize reproduction via the Internet, or the reproduction of a printed work for distribution over the Internet.

The Ministère de l'Éducation has also reached agreements with other collective societies (AQAD,³ SOCAN,⁴ SODRAC⁵ and SOPROQ⁶), but none of these agreements

1. In some sites one can, by clicking on the the word *copyright* or the equivalent sign (©), obtain information pertaining to copyright or to certain authorizations granted by the authors.

2. Société québécoise de gestion collective des droits de reproduction

3. Association québécoise des auteurs dramatiques

4. Society of Composers, Authors and Music Publishers of Canada

5. Société du droit de reproduction des auteurs, compositeurs et éditeurs au Canada

6. Société de gestion collective des droits des producteurs de phonogrammes et de vidéogrammes du Québec

grants the right to use protected works accessible on the Internet, or to use protected works to make them accessible on the Internet.

The problematic concept of « fair dealing »

Teachers may also feel justified in reproducing or using in any other way protected works accessible on the Internet, or in making them accessible on the Internet, by resorting to the concept of « fair dealing ». In effect, the *Copyright Act* contains an exception which stipulates that the fair use of a work for the purposes of research or private study, or for criticism or review, does not constitute an infringement of copyright. First, it must be mentioned that these purposes are not necessarily those for which one might want to use protected works accessible on the Internet, or make accessible protected works on the Internet. One should also know that, in the case of a presumably fair use of a work for the purposes of criticism or review, the source and the name of the author, if it appears in the source, must be mentioned by the user.

Furthermore, Canadian courts have decided that the use of a work in its entirety cannot be considered fair dealing. The use of a work may be deemed fair dealing only if it pertains to a part of the work, which may be quantitatively significant. But this situation is complicated by the fact that case law has also established that the use of part of a work may be unfair if this part is judged to be qualitatively too significant, which would be equivalent to appropriating the substance or an essential portion of the work, and could be tantamount to using the whole of the said work. Thus, using even a quantitatively insignificant portion of a work could constitute an infringement of copyright if this use is deemed qualitatively too significant. Given how difficult it is to determine whether the use of part of a work can be qualitatively fair, recourse to the exception relative to fair dealing involves a high risk of infringement of copyright. In this case, it would perhaps be better to not make use of this exception, which case law has, moreover, considered more as a defence argument than as a privilege.

Caveat

To conclude, it is appropriate to recall that, in the event of infringement of his or her rights, the author of a work or the holder of the copyright for that work may take civil action (injunctions, damages, accounts, etc.), or if copyright is infringed upon for private profit, or for the purpose of trade, or in ways that are prejudicial, criminal proceedings (leading to fines or imprisonment) may be instituted.

Requests for information

For more information on copyright, contact Jacques Laurendeau, who is the person responsible for this matter at the Direction des ressources didactiques of the Ministère de l'Éducation. Mr. Laurendeau may be reached at (514) 873-7685.

Those wishing more in-depth information on the *Copyright Act* may obtain the document entitled **Principes généraux de la Loi sur le droit d'auteur**, written by Marc Baribeau, by contacting Publications du Québec at (418) 644-3836. This document is also accessible at the following electronic address :

http://doc.gouv.qc.ca/droitauteur/html/principes_generaux.html.

Note : Given that things change quickly in this area, this document could be updated if the *Copyright Act* is revised or if changes are made to the agreements reached with the collective societies.

Jacques Laurendeau

January 2000