

## **Summary Position**

***Do not re-open or amend the fair dealing provision as part of the review of the Copyright Act in 2017.***

### **In 2012, copyright law as it applies to education dramatically changed.**

- Parliament passed amendments to the fair dealing provision for teachers' use of copyright-protected works that were important. *More significant* was the Supreme Court's decision that helped clarify how fair dealing applies in the classroom.

### **The 2012 changes in law have placed Canadian teachers and students on the same playing field as students around the world.**

- Teachers and students now have the access to the content they need within their learning environment. Canadian teachers and students have the same "fair" access as those in U.S. and other developed countries.
- Educational fair dealing supports learning, fosters innovation and drives knowledge creation. It provides the framework for Canadians to acquire the knowledge and skills needed to be competitive globally.

### **Educational publishers want to turn back the clock and reverse the changes made to the fair dealing provision.**

- The Minister of Innovation, Minister of Heritage, and many MPs have been lobbied by educational publishers, writers' groups and Access Copyright to amend the fair dealing provision for education as part of the Government's 2017 *Copyright Act* review.
- This is strictly a self-serving request by these publishers, who want to re-apply tariffs and increase their revenue from the education sector.

### **Fair dealing has been considered by the Supreme Court of Canada multiple times since 2004.**

- In 2012, the Supreme Court interpreted how fair dealing applies in the classroom. Still, publishers and collectives have spent the last few years initiating legal challenges in lower courts and at the Copyright Board. They see MPs' copyright review as another opportunity to bring into question the Supreme Court's decisions on education and fair dealing. They are asking MPs for a legislative fix for the legal arguments they did not win in the Supreme Court.

**Fair dealing has been a subject of extensive debate in Parliament.**

- The *Copyright Act* was amended by Parliament in 2012 to add “education” to the list of purposes for which works can be dealt with.
- Despite a lengthy and hot debate in 2012 on adding “education” as a fair dealing purpose, educational publishers, writers’ groups and Access Copyright have spent the last year asking MPs’ to reverse this amendment and re-open the fair dealing provision in the 2017 copyright review.

**Provincial and territorial governments, which have the constitutional responsibility for education on our country, have made it known to our Government that another prolonged copyright debate is unnecessary.**

- The Copyright Act was overhauled just 4 years ago. It is too soon to overhaul it again. Fair dealing and copyright law is something that directly affects educators – from K-12 through post-secondary. It directly impacts students and their ability to access and use the learning materials they require to be competitive on the international stage.
- Provincial and Territorial ministers of education strongly believe the decisions made by Parliament and the Supreme Court in 2012 were politically and legally correct and should not be changed in 2017.

**For MPs to open up the fair dealing provision as it applies to education, at this time, would be a mistake.**

- It has only been 4 years since the Supreme Court’s ruling – there has been too little time passed to have the federal Parliament open the fair dealing provision yet again. The education sector and those who partner with it to provide educational materials for Canadians are only beginning to settle into their new realities – adjusting to “the new normal”.
- Despite the Supreme Court of Canada’s decisions, fair dealing for education is the target of current challenges in Canada’s lower courts and at the Copyright Board. It remains a litigious issue.
- The Provinces and Territories, who have the constitutional responsibility for education, do not want to see further uncertainty caused by a further legislative review and possible future amendments.

**As MPs are asked to re-open the fair dealing provision, we need to be mindful of the long Supreme Court history and the current legal challenges of this copyright issue.**

- Our Government has the ability to determine the scope and depth of the review of the *Copyright Act*. We have the ability to name and to limit the matters to be studied in the 2017 review of the *Copyright Act*. Fair dealing and education continues to be argued before the courts and it need not be subjected to another legislative study in this copyright review.