

# Access in the public interest

# CAUT Submission to the Copyright Board Consultations

September 29, 2017

## Introduction

The Canadian Association of University Teachers (CAUT) represents 70,000 teachers, researchers, and librarians at 122 universities and colleges across Canada. CAUT works actively in the public interest to improve the working lives of its members, and the quality and accessibility of post-secondary education in Canada.

## Our interest in copyright

CAUT members create copyrighted material, including course content, journal articles and textbooks – in traditional and new media forms. CAUT understands the importance of protecting creators' rights in these works and through the collective bargaining process has ensured that its members as academic authors receive credit for, and control over, this material.

In addition to being creators, CAUT members also use copyright material. As researchers, they know that new knowledge does not arise spontaneously, but is built on the past and present work of others. As teachers and librarians, CAUT members also understand that accessibility to works is critical to the learning process. For these reasons, CAUT has sought to ensure that strong guarantees of access are a central part of Canadian copyright law.

## The consultation

CAUT respects the important role the Copyright Board of Canada plays in the administration of copyright law in Canada. In particular, CAUT notes the Board's responsibility as an intermediary between the education community and copyright licensing agencies such as Access Copyright. As Board decisions have a profound impact on the working lives of our members, and the education system as a whole, we welcome this opportunity to provide input on the future direction of the Copyright Board.

## Our position

The Supreme Court of Canada has repeatedly iterated that the purpose of copyright law is to serve the public good, advancing equally the interests of both creators and users of works. With respect to this consultation, our primary concern is that the Copyright Board is provided with the capacity to fully implement this

purpose. In particular, our desire is that the Board has the widest possible latitude to receive input from multiple stakeholders, including non-profit representational organizations such as CAUT.

The Board is currently structured to facilitate participation from large commercial rights holders who are capable of fully engaging in the Board's complex and expensive processes. From experience and observation, however, we know that voices such as ours, and of students, are not able to effectively contribute at this level. This excludes important voices from the Board's consideration. The interrogatory process, in particular, forms an insurmountable barrier to all but the wealthiest of stakeholders.

While the consultation document focusses heavily on the need for greater Board efficiency, this drive for efficiency will not advance copyright administration if the Board continues to exclude input from non-commercial stakeholders, including academic authors and students.

## Recommendation

That the rules respecting the Copyright Board of Canada hearing process be amended to encourage public interest intervention by non-commercial stakeholders, in particular that the rules be amended to provide:

- an opportunity for public interest /non-commercial stakeholders to intervene in hearings and contribute legal argument without involvement in the interrogatory process; and,
- that such public interest intervention be supported by the Board in a manner similar to the costs award program established by the Canadian Radio-television and Telecommunications Commission (see Telecom Information Bulletin CRTC 2016-188).

This document is respectfully submitted on behalf of the Canadian Association of University Teachers to the Department of Innovation, Science and Economic Development, the Department of Canadian Heritage, and the Copyright Board of Canada regarding the Consultations on Proposed Legislative and Regulatory Changes to the Copyright Board's Decision-making Processes.