

CLA Statement to WIPO on Education

Thank you, Mr. Chairman. I am speaking on behalf the Canadian Library Association. As this is the first time we take the floor at this meeting please accept our congratulations on your election.

I would like to offer some brief comments in response to some interventions to date.

Delegates were informed that fair dealing and fair use are mere defences against alleged infringing activity. I would like to highlight for delegates that in Canada fair dealing is in fact a user's right following the ruling of Canada's Supreme Court in 2004 in the CCH case. In a unanimous decision the Court found that (quote):

“the fair dealing exception is perhaps more properly understood as an integral part of the *Copyright Act* than simply a defence” The Court proceeded to state;

“The fair dealing exception, like other exceptions in the *Copyright Act*, is a **user's right**. In order to maintain the proper balance between the rights of a copyright owner and users' interests, it must not be interpreted restrictively”. (*emphasis added*)

Canada's highest Court has further built upon this important finding when it ruled on 5 copyright related cases on last Thursday, one of which specifically addressed the issue of education.

In a case on licencing fees for photocopying in schools the Court was clear that a teacher acts with no ulterior motive when making and supplying copies to students; the teacher as copier and the student as the user are in a symbiotic relationship and what matters from a copyright perspective is the use made of the copy by the student. In other words, the copies were made for research and private study and therefore fair dealing applied.

Of particular interest in the context of discussions in this Committee was the Court's finding that that classroom copies are not in competition with textbook sales. After hearing 21 interventions, including 12 from author, publisher and licencing organizations, the Court found that (quote):

“there was no evidence of a link between photocopying short excerpts and a decline in textbook sales. There were several factors, in fact, other than photocopying, that were more likely to have contributed to any such decline.”

I conclude by noting that at almost the same time as these rulings were made, a new copyright Act was passed by the Canadian Government with a number of innovative changes relating to education which included adding education to the definition of fair dealing purposes and explicitly permitting classroom use of freely available and legal content on the Internet.

Canada's libraries are an integral part of the education and learning system and these new developments in jurisprudence and legislation are welcome. Such an approach may be helpful to delegates moving forward in drafting limitations and exceptions which seek to provide the reasonable balance among interests. On a final note, the Canadian Library Association is eager to see a successful result to deliberations on a treaty instrument for the visually impaired and print disabled at this SCCR and looks forward to timely progress on limitations and exceptions for libraries/archives and education thereafter in their order of maturity. We wish delegates well in their deliberations.

Thank you Mr Chairman.