

# COPYRIGHT MATTERS



**Protecting Fair Dealing  
for Education**



**CASA**  
Canadian Alliance of  
Student Associations

**ACAE**  
Alliance canadienne des  
associations étudiantes

# Copyright Matters

## Protecting Fair Dealing for Education

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## Our Vision for Copyright

The Canadian Alliance of Student Associations (CASA) is a non-partisan organization that represents 365,000 students at universities, colleges and polytechnics across the country. CASA advocates for a post-secondary education system that is accessible, affordable, innovative, and of the highest quality.

A key aspect of achieving this system is upholding the right for students to access information. With regards to the ongoing review of the Copyright Act, CASA strongly believes that fair dealing for educational purposes should be preserved.

**Fair dealing for such purposes has proven instrumental in reducing barriers to learning, fostering innovation, and enhancing the quality of post-secondary education in Canada.**

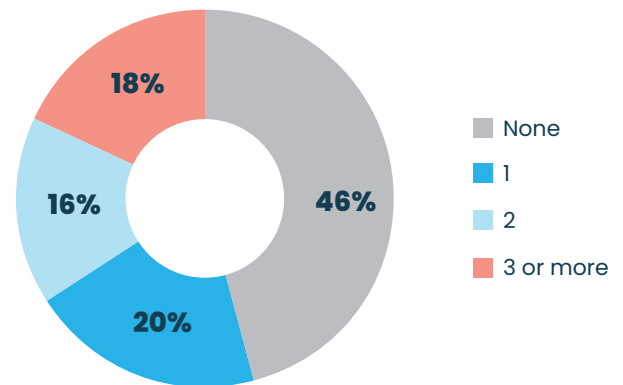
# A Changing Digital Landscape

As Canada transitions into the digital age, the way in which its students engage with, and access, learning materials is rapidly changing. Newly generated open educational resources (OERs), including Massive Open Online Courses (MOOCs), open access journals, and open textbooks, provide more flexible and accessible formats that are increasingly being used to supplement traditional educational learning materials. For example, according to BCCampus, open textbooks have been adopted by 43 post-secondary institutions and 922 faculty across the province, supporting 306,029 students over the last decade<sup>1</sup>. Currently, 93% of all Canadian universities offer online courses and programs<sup>2</sup>, and OERs are increasingly contributing to the rapid digitalization of the sector.

On top of the increasing usage of OERs, creators are more often choosing to distribute their work under open licensing, through platforms like open access journals, open educational resources (OERs), and Creative Commons. These innovative distribution platforms allow for content, such as textbooks and lesson plans, to be used, built upon, or modified freely to meet various accessibility and language needs. Not only do these platforms bring returns to students in terms of cost savings<sup>3</sup>, but they also offer valuable opportunities to foster innovation in learning, as students are not only consumers of content, but also creators.

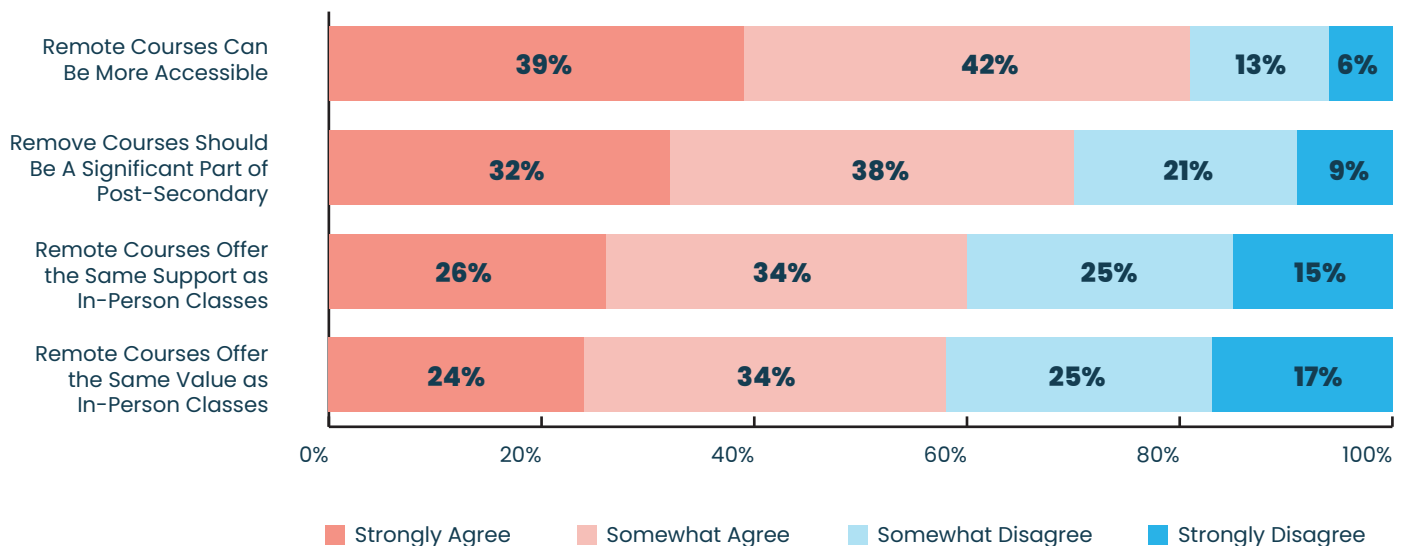
Given the abundance of high quality materials that are available in such readily accessible formats, learning now increasingly takes place online and through digital materials. According to national survey results, 1 in 2 students took an online course during their last semester, including 18% of students who had three or more online courses<sup>5</sup>, as shown in Figure 1.

**Figure 1 – Total Number of Online Courses Per Semester**



Furthermore, the majority of students reported that remote courses are more accessible (81%), should be a significant part of post-secondary education going forward (70%), and offer the same value as in-person classes (58%), as shown in Figure 2<sup>6</sup>. In fact, online learning materials are a highly

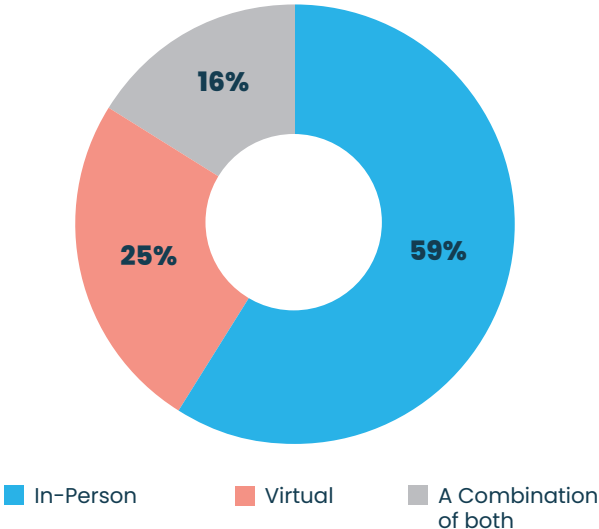
**Figure 2 – Student Support for Online Learning Experiences by Category**



valued resource for post-secondary students in Canada, with 1 in 3 students accessing informal mental health resources during the past year, and nearly a third accessing self-directed programs (including online modules)<sup>7</sup>. 1 in 2 students rated their online learning structure as positive<sup>8</sup>, and a quarter indicated that their preferred method of mental health services was a hybrid mix of both online and in-person components<sup>9</sup>.

In fact, e-learning in Canada is now a significant segment of the post-secondary education sector. In 2023 alone, the e-learning industry generated \$6.925 billion in revenue for 2023, and currently 93% of Canadian universities offer online courses and programs<sup>10</sup>. Learning in the educational space is increasingly taking place online<sup>11</sup>, and as a result, students need access to a flexible catalogue of digital and accessible materials.

Preferred Method of Mental Health Service Delivery

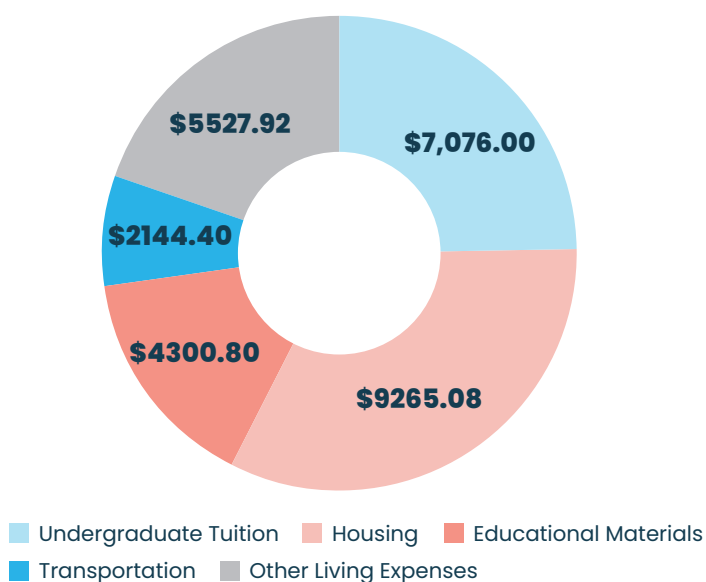


**CASA calls upon the federal government to promote the advancement of OERs development across the country, and to work with the Federal Tri-Agencies to set aside an envelope of funding to fund the development of OERs based on metrics of quality and rate of adoption of materials, across post-secondary institutions.**

# Protecting Educational Fair Dealing

Access to educational materials is essential to student success in post-secondary education. However, students across the country are feeling the impacts of rising costs of living on their educational expenses. Students currently spend an average of \$4,300.80 on educational materials each year<sup>12</sup>, and an average of \$773 on textbooks alone<sup>13</sup>. Educational materials, alone, account for 15.2% of a student's total annual cost of education, as shown in Figure 3. One method of helping students access high quality and affordable educational materials is through educational fair dealing.

**Figure 3 – Post-Secondary Education Expenses by Category for Canadian Undergraduate Student**



Educational Fair dealing is a protected provision under section 29 of the Copyright Act which enables users to access a portion of a copyrighted work for the purposes of education and learning<sup>14</sup>. Fair dealing was first introduced in Canada's Copyright Act of 1921 for purposes including research<sup>15</sup>. In 2012, the government of Canada further clarified the scope of fair dealing to include education<sup>16</sup>, which did not significantly change students' and educator's use of fair dealing, but rather brought the scope of fair dealing closer to the United States (section 107 of Copyright Act 1976<sup>17</sup>).

Canada's current copyright law allows post-secondary institutions the ability to provide the best mix of educational materials to support a student's learning at an affordable price point.

However, Fair Dealing is not Free Dealing. It does not allow students and professors to use any textbook or resource for free or in any way they want; it gives them access to up to 10% of a copyrighted work for purposes of research, education or study<sup>18</sup>. As such, fair dealing as it currently stands allows creators and authors to be fairly compensated for their work while students are empowered to access a wider range of information much more affordably, thus maintaining the balance of Canadian copyright. Under the current Copyright Act, students still pay thousands of dollars on books<sup>19</sup>, and institutions still pay millions to Access Copyright for collections.

Despite usage of fair dealing for over a century (since 1921), collective societies are now asking Parliament to force institutions to licence materials in one way, rather than update their own business model to adapt to a changing and increasingly digital educational landscape<sup>20</sup>. The removal or limiting of fair dealing would not only substantially limit the amount of educational resources available to Canada's educators and students, but would significantly increase the costs of educational materials for students. It is essential that the federal government protect fair dealing and the critical balanced and modern approach to copyright law.

**For these reasons, CASA calls on the Government of Canada to preserve the current balanced approach to educational fair dealing to continue to support high-quality and affordable post-secondary education.**

# Digital Locks As A Barrier to Education

Digital locks are instruments embedded into copyrighted works that are used to prevent or limit their copying, distribution, or any other use<sup>21</sup>. The Copyright Act mandates that digital locks cannot be circumvented without the permission of the copyright holder, even if the user is able to access the work through fair dealing<sup>22</sup>. In effect, digital locks serve as an unnecessary barrier for students who would otherwise have legal access to academic resources under the fair dealings framework. While digital locks are intended to ensure that creators receive appropriate compensation, they in fact prevent students from accessing these materials<sup>23</sup>.

**“While some argue that fair dealing has enabled students and educators to benefit at the expense of creators and publishers, this is simply untrue.”**

With the greater diversity of materials and the constrained nature of student budgets, students will choose accessible content over paying for content under a digital lock.

**CASA recommends that the technological protection measures in the Copyright Act be reformed to ensure that they do not contradict with the framework established by educational fair dealing.**

## Opportunities in the Digital Landscape

While some argue that fair dealing has enabled students and educators to benefit at the expense of creators and publishers, this is simply untrue. The new digital landscape presents both a challenge and an opportunity across sectors,

and the publishing industry is no exception to this. There are in fact many examples of creators who have managed to leverage this new form of content consumption to achieve success and gain worldwide recognition.

### CASE STUDY:

#### Canadian Poet and Author, Rupi Kaur

Rupi Kaur is one of Canada’s rising literary stars and has sold over five million copies of her two poetry books: *Milk and Honey* and *The Sun and Her Flowers*. Kaur first shared her poetry freely on social media, enabling her to reach a large and targeted audience. After successfully gaining a wide following, she self-published and sold her work through Amazon. Eventually, her work was picked up by an established publisher and has since been translated into many languages and sold globally. Her work has topped the New York Times Best Seller

list, and she has been accredited for the recent increase in poetry sales in Canada.

Kaur leveraged digital technologies to young, racialized, Indigenous girls and women, — those who are traditionally excluded for Canadian literature — simultaneously increasing accessibility and making a dying art form relevant to youth globally. Rupi presents a clear demonstration of how creators can adapt to the changing digital landscape, and better yet, use it to their advantage.

# Reforming the Copyright Board

Another element that should be considered throughout the Copyright Act review is the reform of the Copyright Board. Post-secondary students are directly impacted by the decisions of the Copyright Board of Canada, as it is responsible for setting tariffs on copyrighted educational material. While these tariffs are billed to post-secondary institutions, they are often directly passed on to students through the cost of their tuition. The tariffs are paid through the post-secondary institution's operating budget, which either constrains the institution's ability to provide other critical resources, including updated infrastructure and quality teaching staff, or forces the institution to increase tuition costs to maintain funding levels to those critical resources.

Although the Copyright Board's decisions have a direct impact on students, their existing decision-making processes lack transparency, meaning that students are left in the dark with regards to why these fees were set. The lack of transparency through which the fee is proposed as well as the increasingly open nature of information makes the Copyright Board royalty charge an unnecessary barrier to academic materials for post-secondary students.

**"Though the Copyright Board's decisions have a direct impact on students, their existing decision making processes lack transparency, meaning that students are left in the dark with regards to why these fees were set."**

**CASA recommends that the Copyright Board be reformed to provide an opportunity for public interest and non-commercial stakeholders to intervene in hearings and contribute legal arguments without prior involvement in the interrogatory process.**

## The Future of Fair Dealing

A key aspect of achieving an affordable, innovative, accessible and high quality post-secondary education system is upholding the right for students to access information. The addition of fair dealing for educational purposes in the 2012 Copyright Modernization Act has been instrumental in reducing barriers to learning, fostering innovation, and enhancing the quality of postsecondary education in Canada. It is of crucial importance that the committee understand the benefit of preserving educational fair dealing during the statutory review of the Copyright Act.

Students now have access to a variety of resources which enriches their learning experience. They are also able to better afford these materials

contributing to the accessibility of post-secondary education. The tariffs imposed by the Copyright Board however continue to serve as an impediment to accessible academic materials. The non-transparent manner in which tariffs are decided leaves many students to conclude that the fees were determined arbitrarily. When considering reform of the Copyright Board, the committee should consider providing an opportunity for public interest and non-commercial stakeholders to intervene in hearings and provide arguments without prior involvement in the fee allocation process.

If accepted, these recommendations would help to ensure that the Copyright Act supports a strong post-secondary education system in Canada.

# SUMMARY

## of recommended changes

**In summary,** CASA recognizes that educational fair dealing is a critical aspect to an accessible and affordable post-secondary education system in Canada. As post-secondary institutions increasingly shift towards more digital learning materials, it is imperative that the federal government protect educational fair dealing under the Copyright Act. Measures to improve students' access to digital learning materials in Canada include:

1

Preserving the current balanced approach to educational fair dealing to continue to support high-quality and affordable post-secondary education.

2

Promoting the advancement of OERs development across the country

3

Setting aside an envelope of funding to fund the development of OERs based on metrics of quality and rate of adoption of materials, across post-secondary institutions.

4

Reforming the technological protection measures in the Copyright Act to ensure that they do not contradict with the framework established by fair dealings for education purposes.

5

Reforming the Copyright Board to provide an opportunity for public interest and non-commercial stakeholders to intervene in hearings and contribute legal arguments without prior involvement in the interrogatory process.



# Endnotes

- 1 BCCampus, 2023, <https://open.bccampus.ca/advocate-for-open-education/open-textbook-stats/>
- 2 Made in CA, 2024. <https://madeinca.ca/distance-e-learning-statistics-canada/#:~:text=The%20revenue%20from%20e%2Dlearning,or%20programme%20before%20the%20pandemic.>
- 3 According to BCCampus, over the past decade, students in BC have saved over 36 million in costs through the use of open textbooks. BCCampus, 2023, <https://open.bccampus.ca/advocate-for-open-education/open-textbook-stats/>
- 4 Currently, students spend \$4,300.80 on school-related costs, including textbooks. Abacus Data 2023, [https://docs.google.com/spreadsheets/d/1fDfODkCb3Thb5DXvWYeSWLZXsl2sxuf\\_gVh015lpBU/edit?usp=sharing](https://docs.google.com/spreadsheets/d/1fDfODkCb3Thb5DXvWYeSWLZXsl2sxuf_gVh015lpBU/edit?usp=sharing)
- 5 Canadian Alliance of Student Associations, “Moving Mountains – Student Resilience Against Cost of Living Pressures”, <https://assets.nationbuilder.com/casaacae/pages/3601/attachments/original/1707327910/MovingMountains.pdf?1707327910>
- 6 Canadian Alliance of Student Associations, “Moving Mountains – Student Resilience Against Cost of Living Pressures”, <https://assets.nationbuilder.com/casaacae/pages/3601/attachments/original/1707327910/MovingMountains.pdf?1707327910>
- 7 Canadian Alliance of Student Associations, “Moving Mountains – Student Resilience Against Cost of Living Pressures”, <https://assets.nationbuilder.com/casaacae/pages/3601/attachments/original/1707327910/MovingMountains.pdf?1707327910>
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- 9 Canadian Alliance of Student Associations, “Moving Mountains – Student Resilience Against Cost of Living Pressures”, <https://assets.nationbuilder.com/casaacae/pages/3601/attachments/original/1707327910/MovingMountains.pdf?1707327910>
- 10 Made in CA, <https://madeinca.ca/distance-e-learning-statistics-canada/#:~:text=The%20revenue%20from%20e%2Dlearning,or%20programme%20before%20the%20pandemic.>
- 11 In fact, some provinces are now requiring high school students to complete e-learning courses in order to graduate. For example, Ontario requires all students to earn at least two online learning credits as part of the requirements for their Ontario Secondary School Diploma (OSSD), unless they have been exempted or opted out. Source: Government of Ontario, <https://www.ontario.ca/page/online-learning-secondary-students#section-2>
- 12 According to results from Abacus Data collected from a sample of 1,500 post-secondary students across the country, students pay \$4,300.80 each year on educational materials, including textbooks, or \$358.40 per month. Abacus Data 2023, see Advo Doc “Ask #7 Fair Dealing” Calculations [https://docs.google.com/spreadsheets/d/1fDfODkCb3Thb5DXvWYeSWLZXsl2sxuf\\_gVh015lpBU/edit?usp=sharing](https://docs.google.com/spreadsheets/d/1fDfODkCb3Thb5DXvWYeSWLZXsl2sxuf_gVh015lpBU/edit?usp=sharing)
- 13 Maclean’s, <https://education.macleans.ca/financial-tips/the-cost-of-a-canadian-university-education-in-six-charts/> – for the \$773 number, the same number we used in the Advo Doc
- 14 Government of Canada, Copyright Act, <https://laws-lois.justice.gc.ca/eng/acts/C-42/page-6.html?txthl=dealing+fair#s-29.1>
- 15 Canadian Association of Research Libraries, [https://www.carl-abrc.ca/wp-content/uploads/2017/09/CARL\\_FD\\_myths\\_facts\\_EN.pdf](https://www.carl-abrc.ca/wp-content/uploads/2017/09/CARL_FD_myths_facts_EN.pdf)
- 16 Fair Dealing Works, <https://fair-dealing.ca/#:~:text=Parliament%20clarified%20the%20scope%20of,institutions%20was%20already%20well%20established.>
- 17 Cornell University, <https://www.law.cornell.edu/uscode/text/17/107>
- 18 Fair Dealing Works, “Fair Dealing in Canada Myths & Facts”, <https://fair-dealing.ca/>
- 19 As mentioned previously, post-secondary students in Canada pay an average annual cost of \$4,300.80 in educational materials, including textbooks. <https://assets.nationbuilder.com/casaacae/pages/3601/attachments/original/1707327910/MovingMountains.pdf?1707327910>
- 20 House of Commons Canada, “Responding to the Challenges of Our Time”, <https://www.ourcommons.ca/Content/Committee/441/FINA/Reports/RP12208633/finarp10/finarp10-e.pdf>
- 21 Copibec, <https://www.copibec.ca/en/nouvelle/409/digital-locks-and-copyright>
- 22 Brandon University, <https://libguides.brandonu.ca/copyright/vidfsdl#:~:text=This%20means%20that%20if%20there,to%20post%20a%20copy%20onto>
- 23 Michael Geist, <https://www.michaelgeist.ca/2022/10/canadian-copyright-digital-lock-rules-finally-open-to-reform-right-to-repair-and-interoperability-exceptions-advancing-in-house-of-commons/>

# About CASA

The Canadian Alliance of Student Associations (CASA) is a non-partisan, not-for-profit advocacy organisation representing students at 24 student associations across the country. Through our partnership with the Quebec Student Union/Union étudiante du Québec (UEQ), CASA represents 365,000 students across Canada. CASA advocates for accessible, affordable, innovative, and high quality post-secondary education in Canada. For over 25 years, CASA has done so successfully through policy and research development, awareness campaigns, government relations efforts, and partnerships with other stakeholders in the education sector. Part of this work is ensuring that conversations surrounding post-secondary education are undertaken with the most up-to-date information and with direct feedback from students and other leading advocacy stakeholders across the country.

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## Our Members



Together, we represent 365 000 students across Canada.