

**Notes for a presentation to the House of Commons Legislative Committee
on Bill C-32**

**Jay Rahn (York University), Chair
Canadian Federation for the Humanities and Social Sciences
Taskforce on Copyright**

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Thank you, Mr. Chairman, for inviting the Canadian Federation for the Humanities and Social Sciences to participate in your study of Bill C-32 to amend the Copyright Act.

I am Jay Rahn, Chair of the Federation's Task Force on Copyright. The Federation represents more than 50,000 members who work in Canada's libraries and museums, and who teach and undertake research and creative work in Canada's universities.

On their behalf, I commend your initiative to modernize copyright legislation. Forward-looking copyright policies will help researchers and creators leverage opportunities that digital technologies present while ensuring copyright owners are fairly compensated.

I assure you that our community commends several of Bill C-32's proposed amendments: the addition of education to the list of fair-dealing exceptions and the expansion of fair dealing to include parody and satire. We also appreciate the challenge of shaping legislation that incorporates feedback from multiple parties and serves the public good.

However, we believe some areas of the Bill would greatly benefit from minor adjustments. We do not aim these adjustments at avoiding certain costs in producing teaching materials. Indeed educators believe that creators—a group including many teachers—should be fairly compensated for their work. This is intrinsic to copyright. Recent figures show that Canadian university libraries spend over \$300 million annually to buy and license new content for research and learning.

Our written submission identifies several changes to areas that may create unintended barriers to access or result in avoidable problems of compliance.

But, for the purposes of this presentation, I will review the two most important aspects of the Bill for our community.

First, the phrase “such as” or “including, but not limited to” should be added in the list of fair dealing exceptions to make it suggestive rather than exhaustive.

In this regard, we support the inclusion of the fair dealing exception for education. The Supreme Court of Canada has set out factors to help determine if copyrighted materials have been used fairly. These factors were applied in a recent Federal Court of Appeal case, which upheld a decision that prescribing multiple copies of a work to a class of students would be “unfair”.

Adding education to fair dealing does not spell the end of publishing. Instead, it could further facilitate the use of Canadian material in classrooms across the country. For example, a professor could podcast a lecture that includes a copyright-protected image, without unduly worrying about copyright infringement.

We need to ensure that copyright law punishes pirates—not educators trying to teach new content in new ways.

Second, we feel that the language concerning technological protection measures (TPMs) should be amended so it is not an offence to circumvent a TPM for actions that are otherwise non-infringing. This revision is consistent with the 1996 World Intellectual Property Organization Internet Treaties that Canada has signed.

If the digital lock provisions remain unchanged, Bill C-32 would make it an infringing act for anyone—teachers, consumers, even creators—to break a

digital lock for all but a few purposes. For example, those who simply want to shift scholarly articles between devices and formats would be in contravention of the bill. It would also punish creators who increasingly use copyrighted works as a basis for their novel expressions in ‘follow-on’ works.

We believe these changes would result in an Act that would better help Canada meet future digital challenges and seize opportunities, both domestically and internationally.

Thank you for the opportunity to discuss our views. I welcome your questions.