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(some images fair dealing)

Copyright in Canada

Pentalogy & Bill C-11

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September 2012





I am not a lawyer

Myth 1. Copyright was instituted to protect the rights of the copyright owner

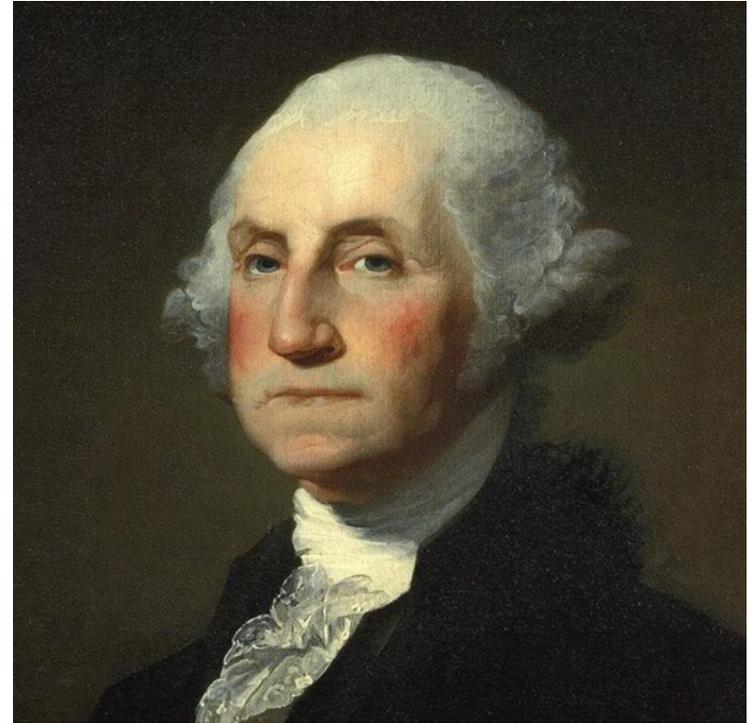


An Act for the Encouragement of Learning

Statute of Queen Anne 1710

USA: Copyright Act 1790:

*An Act to
Promote the
Progress of
Science and the
Useful Arts*



George Washington

Myth 2. Copyrighted materials are intellectual “property”



**“Inventions
cannot be a
subject of
property”**

President Thomas Jefferson



President James Madison

**“incentive NOT
property or natural
law is the foundational
justification for
American copyright -
It is a **privileged
monopoly.**”**

Pentalogy, July, 2012



Canadian Supreme Court

5 Court cases



- **Entertainment Software Association, et al. v. Society of Composers, Authors and Music Publishers of Canada**
- **Rogers Communications Inc., Rogers Wireless Partnership and Shaw Cablesystems G.P., Bell Canada and Telus Communications Company and Respondent SOCAN can be found here:**
- **Re:Sound v. Motion Picture Theatre Associations of Canada, et al.**
- **Society of Composers, Authors and Music Publishers of Canada, et al. v. Bell Canada, et al.**
- **Province of Alberta as represented by the Minister of Education; et al. v. Canadian Copyright Licensing Agency Operating as "Access Copyright"**

Fair Dealing

- All anglophone provinces vs. Access Copyright
- SC strongly restated fair dealing as a RIGHT
- Copy portions without permission for research AND
- Education NOT separate from research



Vs



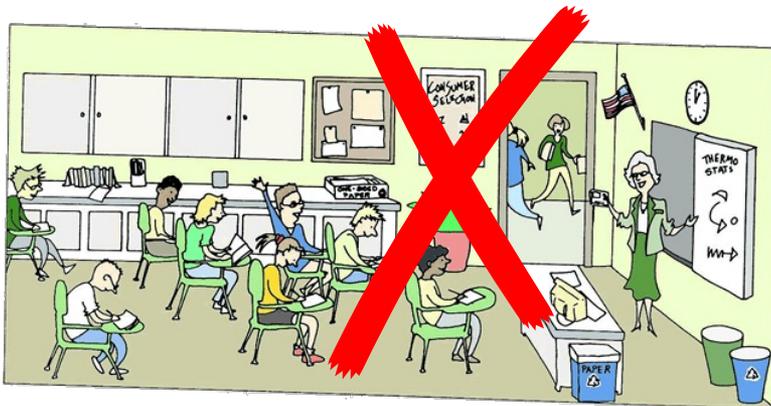
Fair Dealing

WRONG  **AUCC**

RIGHT

NO Class copies

Class copies are ok



Fair Dealing

WRONG 

RIGHT

**NOT when
required for a
course**

**Class copies are ok
when required,
optional or
supplementary**



Fair Dealing

WRONG  **AUCC**

RIGHT

NO course packs

Course packs are ok



Fair Dealing

WRONG  AUCC

RIGHT

**ONLY one copy in
library reserve**

**Library reserve ok
with multiple copies**



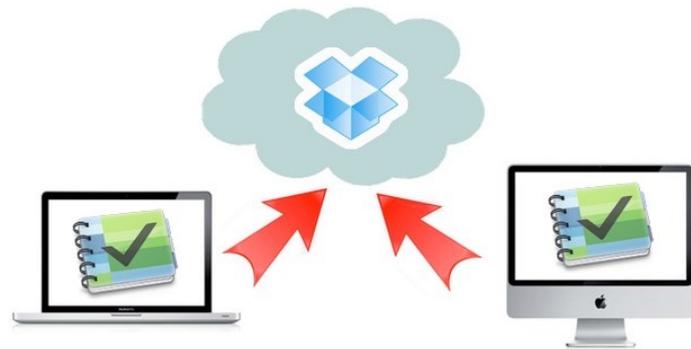
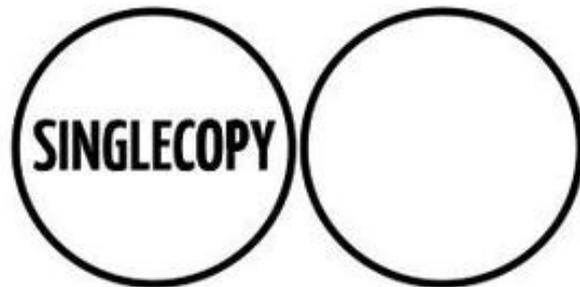
Fair Dealing

WRONG 

RIGHT

**Single copies only
for personal use**

**Class copies are
allowed**



Fair Dealing

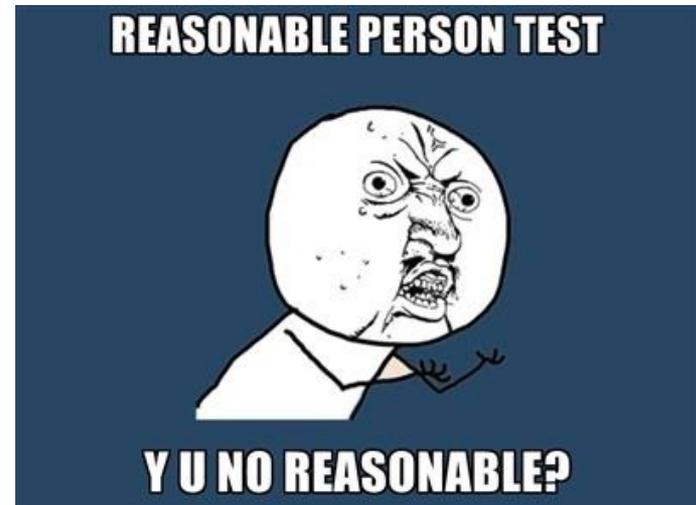
WRONG 

10% limit or
even 5%



RIGHT

A “reasonable amount”
can be copied with a
liberal interpretation



Fair Dealing

WRONG  **AUCC**

RIGHT

Only for published works



Applies to ALL works



Fair Dealing

WRONG  AUCC

RIGHT

Digital “book burning”
is necessary

Destroying copies
has little relevance



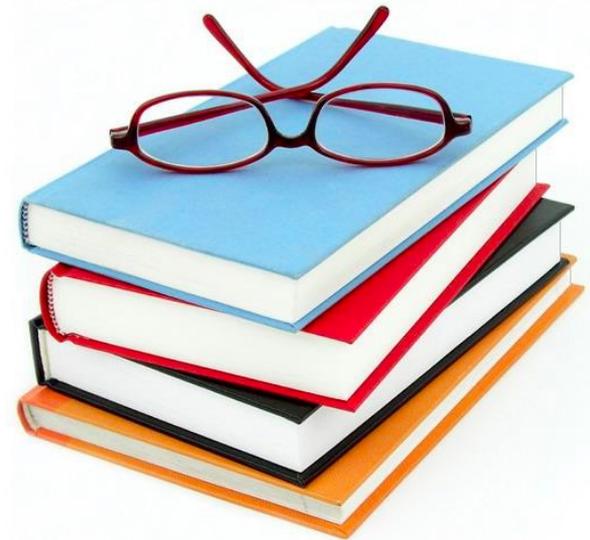
Fair Dealing

WRONG  AUCC

RIGHT

Different rules for paper & digital

Technologically neutral

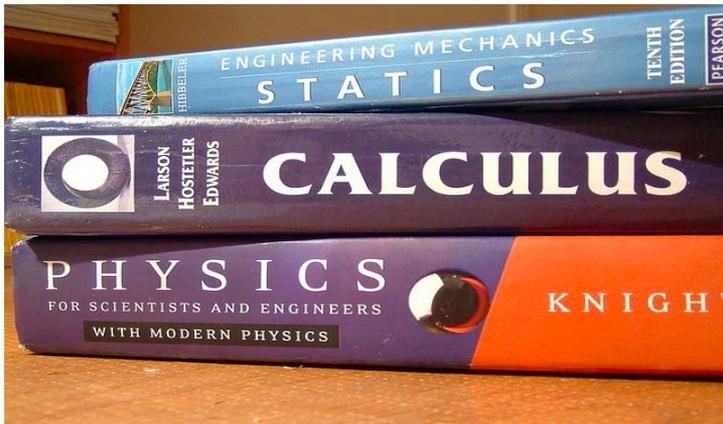


Fair Dealing

WRONG  AUCC

RIGHT

Digital reserve cannot substitute for buying whole book



Using a portion of a work should NOT force the institution to buy the whole book

Fair Dealing

WRONG 

RIGHT

Overly restrictive & unnecessary requirements

Liberal interpretation



Fair Dealing

WRONG 

RIGHT

Course content is only fair dealing until the end of a course after which the copy must be destroyed

Not necessarily limited by time





Bill C-11

The Copyright
Modernization
Act



SEVENS
HEAVEN

Technological Protection Measures



Bill C-11

The Copyright Modernization Act



- Includes **EDUCATION** in Fair Dealing
- Expands the pentalogy conditions even further

**Fear of being sued is reduced:
MUST prove financial harm
\$5K limit on fines for non-commercial
infringements**

AUCC .Silence



• The “Pentalogy” and *Alberta v. AC* vindicate the principled decision to oppose the AUCC’s recommendation for a fair dealing policy and opt out of the AUCC-Access Copyright model license -

- Mark McCutcheon

Copyright Board

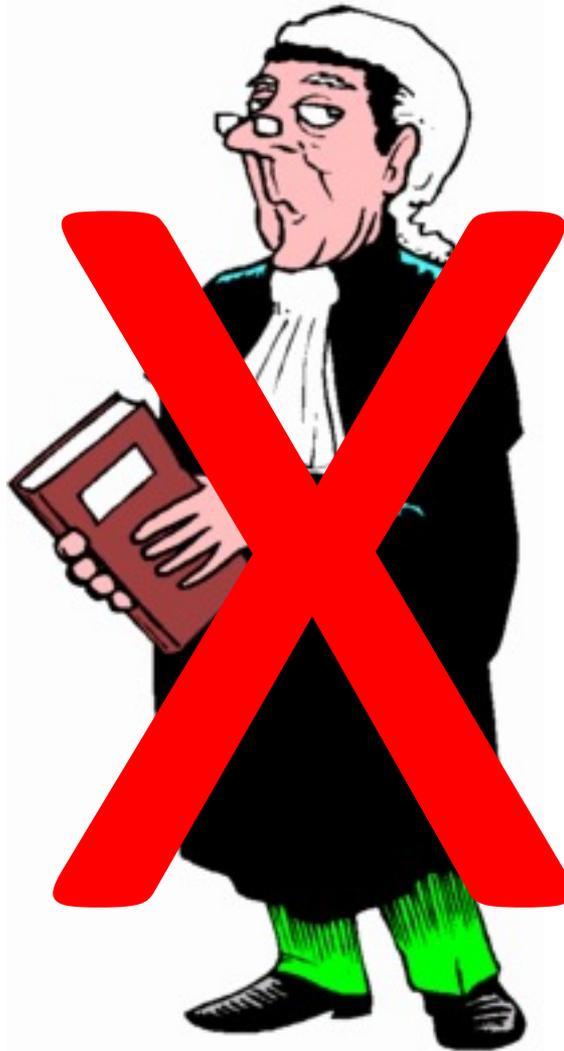
- Access Copyright’s “enforcer”
- SC decision is referred back to them
- AUCC is not on our side
- A “copyright grab” by AC is possible – compulsory tariff



Support for Authors

- Universities and students buy texts
- Universities license works
- This supports authors
- This is not a copyright free-for-all





I am not a lawyer

Thank
You

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