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ONLINE STORYTIMES: COPYRIGHT GUIDELINES FOR CANADIAN PUBLIC LIBRARIES DURING COVID-19

Many public libraries in Canada are shifting to digital program delivery, and are delivering children's storytimes online, or would like to. Libraries normally deliver children's storytimes to meet early¹ literacy goals, helping children develop a love of reading and learning from an early age that will prepare them for future success in school and life. Research demonstrates that children who are ready to read when they enter school are better prepared for the future -- early literacy is an inextricable component of education.

In the time of COVID-19 libraries are unable to offer storytime in-person, in the library, and are temporarily delivering their storytimes online. This early literacy programming typically relies on the use of copyright-protected materials, therefore, librarians must consider copyright legislation and whether permission, a license, or use of the fair dealing exception is required. This guideline describes these options, and provides an example of a fair dealing analysis for an early literacy-focused storytime.

What does CFLA-FCAB recommend as an approach to online storytimes by libraries?

Note: The guidance in this document does not constitute legal advice. Individual libraries take responsibility for the choices they make in providing online storytimes. There are protections in the Canadian Copyright Act under s.38.1(1), that limit damages for non-commercial purposes.

Libraries are encouraged to use materials from Canadian authors, publishers and rightsholders. Many have explicitly granted permission for their works to be used in online storytimes by Canadian libraries and educators through the [Read Aloud Canada program](#), and have provided guidelines.

Libraries can check individual multinational publishers' Canadian websites for express grants of permission for online storytimes and their terms, for example [Scholastic Canada](#) and [Penguin RandomHouse](#). Be aware that US rights are separate from Canadian rights, and the Canadian rightsholder is normally a separate organization.

¹ Early literacy may also be referred to as emergent literacy, particularly in academic environments.

Permission granted by the US publisher does not apply in Canada unless there is no Canadian rightsholder.

CFLA supports libraries in holding online storytimes that promote a love of reading and early literacy during the COVID-19 pandemic. Given that the purpose is educational, the storytime can be considered to meet the first stage of a fair dealing analysis -- that it be for one of the purposes listed in s.29 of the Copyright Act. The second stage of analysis is described below. An online storytime that falls under a fair dealing exception does not require separate permission.

As a good practice for online storytimes, libraries should:

- Clearly acknowledge the author, illustrator and publisher, including a written acknowledgement or shot of the cover/back cover when possible. Make it easy for the caregiver to find the book in the future.
- Use live videos or set a timeline for how long records will be available that is limited to within the likely duration of the pandemic restrictions that prevent gatherings.
- Provide library contact information or your website address so the author or publisher can reach the library if they want the recording removed or have concerns.

Fair Dealing Analysis for Online Storytimes with an Early Literacy Education purpose

In CCH², the Supreme Court of Canada provided a framework to help assess whether a dealing is fair. The first stage is noted above and the second stage involves the consideration of multiple factors; they noted six factors in CCH. The factors are rarely equal in analysis, and a detailed explanation of [fair dealing analysis by Prof. Micheal Geist can be found here](#). The following is an analysis for online storytimes designed and delivered to achieve early literacy goals by public libraries during the COVID-19 pandemic.

1. Purpose of the dealing is EDUCATION. Expanding on the listed purpose as noted above, this is also a consideration of motive. Given that libraries deliver storytimes to build language skills for young children, and to teach parents about the importance of language play in preparing children to be ready to read and learn, the purpose of online storytimes is likely to be considered fair. Libraries can mitigate their risks by being clear about the early literacy purpose of storytime, and ensuring learning goals are being identified and met in the development of the program.

² CCH Canadian Ltd. v. Law Society of Upper Canada, 2004 SCC 13, [2004] 1 S.C.R. 339

2. Character of the dealing: Online storytimes are typically widely delivered on the web, through platforms like Facebook, Zoom, or YouTube. Since broad distribution can tend to be considered less fair, the library can mitigate its risks by:
 - Providing live storytimes only
 - Removing the storytime after a specified period of time (e.g. 1 month, 3 months, at the end of physical distancing health orders)
 - Clearly stating that copying of the storytime is not permitted
 - Offering contact information for a takedown request

3. Amount of the dealing: This refers to the amount of the work being used. In the case of storytimes, it is likely to be the whole work, rather than a portion of the work. CCH observes that sometimes the use of a whole work is fair (CCH, para 56).

4. Alternatives to the dealing: During COVID-19, there is no alternative to online delivery. The CCH decision notes that availability of a license does not require that the license be treated as an alternative in the context of a fair dealing analysis. (CCH, para 70)

5. Nature of the work: Storytimes will normally use published picture books, and these are often commercially available in print, and may be available in digital format. This does not replace the experience of a storytime as an early literacy activity.

6. Effect of the dealing on the work: An online storytime has the same effect of the dealing on the work as the in-person storytime. As with storytime in general, the use of the work in storytime is more likely to have a positive effect on the market than a negative one. The most likely effect of a storytime is promoting the book and author, providing the potential for a purchase of the book, or other books by the same author.