



Fostering a National Copyright Advocacy Conversation

Implications of the 2017 Copyright Act Review for copyright advocacy in Canada



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Who we are

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Background

2017

Standing Committee on Industry, Science and Technology (INDU) announced *Copyright Act* review.

2018

INDU held 52 meetings, heard from 263 stakeholders, and received 192 briefs.

2019

INDU released its report and recommendations. Federal election.

2022

Next *Copyright Act* review expected to be launched.



The meetings

- 52 meetings total
 - 10 in camera (no public transcripts)
 - 3 partially in camera related to drafting the INDU Committee's final report
- Our corpus: transcripts of 34 meetings with stakeholders plus 5 open mic sessions
 - Open mics: anyone interested could speak for 2 minutes - but no Q&A or interaction with INDU



Our current research question(s)

Q: What picture do the Committee meetings paint as a whole, and what impact might these meetings have had on the committee and the outcomes of the review?

- Who/what stakeholder groups contributed to the meetings?
- Do specific communities present cohesive messages before the Committee?
- What kind of questions do committee members ask witnesses? What can we derive about committee members' approach to copyright based on these questions?



High level impressions

- Lack of consistency and simplicity in library/education messaging, compared with creator groups
- Inability to satisfactorily and consistently respond to recurring questions or compelling data
- Lack of personal, relatable stories



Now what?

- Next Copyright Act review expected to launch by end of 2022
- Ongoing, consistent messaging from the publishing sector
- Our findings suggest more coordination is needed across the academic library sector
- How can individuals, institutions, and associations work together?
 - Mark Swartz, CARL
 - Victoria Owen, CFLA

Breakout discussions





Topic 1 - Compliance

Have there been instances of infringement among faculty/staff?

How are these handled/how would they be handled?

Are there repercussions or do you leave it up to the courts if an infringement is identified?

Do you track use of fair dealing?

How do you ensure compliance in course pack preparation?



Compliance - examples

Mr. Brian Masse: If you catch somebody, though, a professor or instructor, and they're violating the Copyright Act, what is the punishment at your university? What are the consequences for such an activity? Do you have a measurement or do you leave it to the court system?

Mr. Brian Masse: It's a simple thing. If you're working for a university and you photocopy a book and put it up on the Internet to share with your students, and you're caught doing that, what would be the result? Would it be case by case or would there be a specific action, like dismissal?



Compliance - examples

Mr. Dane Lloyd: How are you able as an institution to regulate copyright infringement? For example, if I were to go to your library, and take a book out, and go to my own home, and scan a copy or photocopy something digitally or in hard copy, would you be able to prevent me from infringing on copyright?

Mr. Dane Lloyd: One thing you mentioned is that you don't have the capacity to monitor whether people are infringing on copyright, so you can't really say, "Well, we don't know if this is happening; therefore, we shouldn't do anything about it." If you can't monitor it, how can you say that this isn't happening? The evidence we're hearing from the publishers is that this is happening.



Topic 2 - Library Spending (particularly on Canadian Content)

If Libraries are spending more and more on collection purchases, why are Canadian publishers and creators suffering?

Where/how are libraries spending their collection budgets?

How much of library spending is going to Canadian content?

Has fair dealing impacted library spending on collections?



Library Spending - examples

Mr. Frank Baylis: First, we heard about your increasing expenses vis-à-vis copyright. I think you said \$370 million this year. By the same token and on the other side of the coin, we're hearing a lot from small Canadian publishers who are coming to us and saying they've seen a radical drop-off. Where's the money going? You're paying more and they're not getting any. They're not satisfied. What's happening?

Mr. Frank Baylis: This is your chance to talk to us, because they're going to be talking to us and telling us that you should be clamped down in fair dealing. We need to address their concerns. It's not working for them. Unless they're misleading me or whatever, they're saying that they're seeing the point of even bankruptcy. So we need to know.



Topic 3 - Collective Licensing

What is the value of an AC/Copibec license? Why do you stay with them/why did you opt out; what might make you return?

Wouldn't liability protection be worth the cost of the AC license?

What are the differences between the AC license and library licenses? Explain how you might pay twice for something

In 2012 universities said they would continue to pay for content; what happened?



Collective Licensing - examples

Mr. Matt Jeneroux: How would you assess the value and impact of collective licensing agreements proposed by Access Copyright and Copibec, since 2010, on students, teachers, and copyright holders?

Mr. Dane Lloyd: However, you agree that there is no way you can actually monitor and regulate copyright infringement. I guess my follow-up question is this. To ensure that authors and publishers are compensated for their work, even for your safety legally, wouldn't collective licensing be the best means to protect institutions such as yours from accusations of being conduits for copyright infringement, and also to compensate creators, to ensure that they're fairly compensated for their works?



Topic 4 - Fair Dealing

How is “fairness” determined; what amount is it fair to copy?

What is the ongoing value of education as a fair dealing purpose?

What (if any) relationship is there between the inclusion of education as a fair dealing purpose and the reduction in creator incomes in Canada?

Is the difference in cost to students with/without fair dealing measurable?



Fair Dealing - examples

Mr. Frank Baylis: In that sense, in the end it comes down to what's fair: I have written a book, and you're using a chapter of the book. If there are only two chapters in the book, you're using 50%. If there are 10, chapters you're using 10%. I'll ask both of you, but starting with you, Ms. Kiddell, what in your world view would be fair dealing in, say, taking a book and taking a section of the book and not paying for it? What would be fair in your world view and in the view of the students?

Mr. Frank Baylis: Why are you trying to defend your fair dealing if it doesn't have an impact for you? I need to understand that. If it doesn't have a financial impact, why do you need to defend it?

Why are so many people coming here to defend it and at the same time saying it has no financial impact? There's a reason that you want to defend it. You just said tens of millions. Can you make that link?



Fair Dealing - examples

Mr. Matt Jeneroux: There's a copyright law expert from Osgoode, Professor Vaver. He expressed a concern that clarity in terms of the exact meaning of fair dealing has been left up to the courts, given the ambiguity of its definition in the Copyright Act.

Do you believe copyright should be updated to provide a clearer definition of fair dealing, or should the responsibility be left to the courts?

Mr. Dane Lloyd: What would be your comment on Mr. Lorimer's very interesting suggestion that we redefine education as an individual right? If professors want to access copyrighted material, that's fine. If students want to access copyrighted material under fair use, that's fine. But it would be limited so that an institution couldn't mass-produce materials for educational purposes. What would be your comment on that?