

**Distilling the Canadian Copyright Review 2018:
One Publisher's Path Through Canadian Copyright and Canadian
Coursepacks**

**by
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Abstract

This report examines the current academic publishing market in the light of the ongoing Statutory Review of Copyright Act of Canada (2018), and reconciles the testimonies presented before the review committee by the industry stakeholders. It focuses on the impact on academic publishing since the Copyright Modernization Act (2012) came into effect, which resulted in the education sector opting out of Access Copyright tariff. The report identifies the key concerns of the independent Canadian publishers: publishers' and authors' losses, interpretation of fair dealing guidelines, digital shift in content acquisition, institutional expenditure on Canadian content and the economics of digital environment. The report evaluates if a partnership between an independent Canadian publisher like Arsenal Pulp Press and an upcoming publishers' consortium called the Canadian Coursepacks can help publishers recapture their academic sales revenues. The report highlights the future concerns for independent publishers in the absence of collective licensing and a need for publishers to re-think their distribution strategies, especially their sub-licensing agreements.

Keywords: academic publishing; Access Copyright; Arsenal Pulp Press; Canadian Coursepacks; Copyright Act; Copyright Modernization Act; digital shift; fair dealing

Dedication

To Amit, who taught me to just *be*.

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List of Acronyms

Access	Access Copyright
ACP	Association of Canadian Publishers
AMBP	Association of Manitoba Book Publishers
Arsenal	Arsenal Pulp Press
BCLA	British Columbia Library Association
CALJ	Canadian Association of Learned Journals
CANSCAIP	Canadian Society of Children's Authors, Illustrators and Performers
CARL	Canadian Association of Research Libraries
CC	Canadian Coursepacks
CEL	Canadian Electronic Library
CMA	Copyright Modernization Act
CMEC	Council of Ministers of Education Canada
CPC	Canadian Publishers' Council
CRKN	Canadian Research Knowledge Network
CSBA	Canadian School Boards Association
CTF	Canadian Teachers' Federation
FTE	Full Time Evaluation
K-12	Kindergarten to grade 12
LMS	Learning Management Software
OBPO	Ontario Book Publishers Organization
PLR	Public Lending Right
PwC	PricewaterhouseCoopers
TPM	Technological Protection Measures
TWUC	The Writers' Union of Canada
UBC	University of British Columbia
YA	Young Adult

Section I

1.1 Introduction: Arsenal Pulp Press

Arsenal Pulp Press (Arsenal) is an independent Canadian publisher in Vancouver, British Columbia. Arsenal was founded as Pulp Press Book Publishers in 1971, by a collective of university students and associates who, according to the brief history on Arsenal's website, were disenchanted by what they perceived to be the literary pretensions of Canadian literature at the time. "Pulp" thrived as an alternative arts and literary publisher through the 1970s.

"Pulp" became Arsenal Pulp Press in 1982. According to Mr. Brian Lam (Publisher, Arsenal), who has been at the helm for the last 30 years, Arsenal revitalized its lists with multicultural works such as the *Children of the First People*, a photographic essay of Native children of the west coast by Dorothy Haegert and *Resistance and Renewal*, a BC Book Prize-winning study of the Kamloops Indian Residential School, by Celia Haig-Brown. During the 1990s, Arsenal further shaped its publishing program to reflect on its increasing interest in urban literature and cultural studies, such as, Daniel Francis's *The Imaginary Indian* (1992), a book that deconstructs the Indian image in Canadian popular culture. Arsenal is also well-known internationally for its LGBTQ publishing program. Arsenal published *Queeries* in 1993, the first book of gay male prose ever published in Canada. Since then they have been publishing books featuring diverse voices.¹ More recently, they published *Jonny Appleseed* by Joshua Whitehead, which the

1. Arsenal Pulp Press, *A Brief History*

Globe and Mail reviewed, “Every so often, a book comes along that feels like a milestone, with revolution nestled beneath every sentence, every word.”²

Today, Arsenal has more than 400 titles in print. They publish 14-20 new titles, and reprint 12-15 titles every year. Arsenal’s mandate is to publish “literary fiction and non-fiction and have a distinctive voice that speaks about culture and gender, LGBT and multicultural literature, cookbooks, alternative crafts, graphic novels, visual arts, and books in translation.”³

Thirty years ago, there was no Amazon, no Chapters or Indigo; traditional media was strong and there were more independent books stores selling local books. “It was easier to sell books then,” Mr. Lam contends. To maintain their niche and voice, Arsenal, like many independent publishers, must stay current with the new media and marketing/distribution channels, and constantly look for new revenue streams. Arsenal has tried to be vigilant about mitigating their risks by publishing across genres and formats to adapt to the changing market scenario.⁴

Over the years, Arsenal has evolved strategically and today their books are distributed in Canada, the US, Great Britain, Australia, and English-speaking Europe.

2. Alicia Elliott, review of *Jonny Appleseed* by Joshua Whitehead, *The Globe and Mail*, 4th July 2018

3. Arsenal Pulp Press, *A Brief History*

4. Brian Lam (Publisher, Arsenal Pulp Press), in an interview with the author, Vancouver, July 2018

Their books have been translated for the markets in China, Japan, Taiwan, South Korea, France, Spain, Italy, Germany, Turkey, and Brazil.⁵

Earlier this year (summer 2018), Arsenal decided to participate in a publishers' consortium called the Canadian Coursepacks (CC). CC is an emerging platform that has been designed to fulfill academic course content needs of the educators. Books hosted on this platform can be bought by the chapter, at an affordable price. Arsenal has a substantial list of books that have been course-adopted in ninth to 12th grade and post-secondary education curriculum over the years, not only in Canada, but in the US as well. For more than two decades, Access Copyright (English Canada collective licensing agency) has facilitated the collection and distribution of royalties between the users (education sector) and content owners (publishers and authors). In the last few years, an ongoing tariff dispute between Access Copyright and education sector has reduced Arsenal's earnings from the course-adopted titles substantially.⁶ In an effort to recapture the lost sales, Arsenal has decided to host a dozen books (to start with) on Canadian Coursepacks. Can this venture work?

This report examines the current academic publishing market in the light of the ongoing Statutory Review of Copyright Act of Canada and the testimonies presented to the review committee by industry stakeholders. It identifies the key concerns of the independent Canadian publishers and then evaluates if a partnership between Arsenal and

4. Arsenal Pulp Press, *A Brief History*

6. Brian Lam, Interview, 2018

Canadian Coursepacks can be fruitful in the long run. The scope of this report is limited to the issue of “fair dealing in education” and English Canada stakeholders.

To better grasp the current market dynamics, it is important to understand the chain of events to this point.

1.2 Copyright Modernization Act: Antecedents to Present Day

The Copyright Act of Canada is the federal statute governing the copyright laws in the country. It was first established in 1921 and was amended in 1988 and 1997. There have been multiple attempts to further update the act (Bill C-60 and Bill C-61), but nothing materialized due to political opposition in the House of Commons. In 2011, the Conservative Party managed to garner a house majority and introduced Bill C-11, more commonly known as the Copyright Modernization Act, which was passed on June 29, 2012.

The Copyright Modernization Act (CMA) made significant amendments, such as prohibition of circumvention of digital locks; limiting the statutory damages for non-commercial infringement to—\$100 to \$5,000—for all infringements in a single proceeding for all works; adopting “notice-and-notice” regime for copyright jurisprudence; and most importantly, expanding the scope of fair dealing (s. 29) to include education, satire and parody as exceptions that enable users to make use of fragments of copyrighted works.⁷

7. *Copyright Modernization Act, SC 2012, Bill C-11, c-20 (2012)*

The CMA elicited varied reactions from industry stakeholders. The publishers and creative groups vehemently protested the inclusion of fair dealing for education, fearing erosion of the educational market, while on the other hand, educational institutions, libraries and school boards welcomed this change as it opened a wider range of works to use and build upon.

Right after the CMA came into effect, the Supreme Court of Canada issued decisions in five copyright cases (*ESAC v. SOCAN*, *Rogers v. SOCAN*, *SOCAN v. Bell*, *Alberta v. Access copyright*, *Re:Sound* and *SOCAN v. Bell—song previews*) in July 2012,⁸ reaffirming that fair dealing is a user’s right which must be interpreted in a broad and liberal manner, is flexible and technology neutral, and expands the scope of making and distributing copies for a teaching purpose under the “private study” and “research” fair dealing exceptions.⁹

The fair dealing exception for education permits instructors to include “short excerpts” from copyright-protected works in their class lessons. Post-CMA, institutions across Canada updated their “fair dealing guidelines”, which allows them to use single copy of a short excerpt as a classroom handout. These excerpts can be posted to e-reserves which are password protected and restricted to students enrolled and/or used as part of a course pack. A “short excerpt” means: up to 10% of a copyright-protected work (or a chapter, a poem, an essay). The guidelines prohibit “copying or communicating

8. Michael Geist, *Supreme Court of Canada Stands Up for Fair Dealing in Stunning Sweep of Cases*, 2012

9. Simon Fraser University, *SFU announces it is opting out of the Access Copyright tariff*, 2012

multiple short excerpts from the same copyright-protected work with the intention of copying or communicating substantially the entire work.”¹⁰

Access Copyright, which started as a reprography collective in 1988, tried to expand their “digital” rights in 2010 and had proposed a tariff hike which wasn’t acceptable to the education sector. The tariff setting process had been a contentious issue for both sides. The CMA and Supreme Court’s decision consequently lead to a huge market shift. A considerable number of universities, colleges and schools across Canada opted out of Access Copyright in 2012, which threw the educational publishing market in a state of turmoil.

1.3 Access Copyright

Access Copyright (Access) procures agreements with academic publishers and other rights holders, then provides agency services by arranging collective licensing for institutions and transactional licenses for document delivery services. In 2010, Access proposed a tariff of \$45 per university student and \$35 per college student which gave the users access to all copyrighted works in Access’ repertoire and related copying rights.¹¹ This amount was roughly 13 times more than the previously paid tariff of \$3.4 per student. Previously, Access charges were based on an institution’s Full Time Evaluation (FTE) student count and 10¢ per page copying charges for course packs. Education sector protested this tariff. By 2012, the negotiations whittled the tariff to \$27.5, but the process

10. CMEC, Fair Dealing Guidelines; UBC, Fair Dealing Guidelines for Members of the UBC Community

11. Canada, Copyright Board, Proposed Tariffs, Access Copyright - Reproduction of Literary Works by Post-Secondary Educational Institutions (2011-2013), *Canada Gazette*, 12th June 2010, p. 6

created additional problems. Access demanded invasive audit rights to keep track of shared ‘links’ through emails which, they contested, was equivalent to copying.¹² According to Michael Geist, a law professor at the University of Ottawa, “The tariff purports to licence linking to materials, despite the fact that no licence is or should be needed for such activities. It charges for displays which are not copies, lacks an exclusion for fair dealing (as is found in the current tariff), provides additional protection for digital locks, and features extensive, onerous reporting requirements.”¹³ Since then, the disagreements between both sides have escalated. A string of court cases has surfaced from across the board, accusing and defending their positions. As of this report, it’s a stalemate.

1.3.1 Access Copyright v. York University

The current statutory review comes on the heels of the Federal Court’s decision in the much talked about *Canadian Copyright Licensing Agency v. York University* case. York University had opted out of Access, and introduced guidelines to ensure materials copied for course packs and class supports included a portion of any protected work small enough to fall under “fair dealing” and therefore, exempt from copyright fees.¹⁴ According to s.183 of the court’s decision, “York provided evidence of its use of consortia, particularly the Canadian Research Knowledge Network and the Ontario Council of University Libraries. [...] It did not, however, allay concerns about whether

12. Howard Knopf, *Access Copyright’s excessive \$45 per university student proposed tariff*. 8th August 2010

13. Michael Geist, *Access Copyright’s 1300% Tariff Increase*. 9th August 2010

14. CBC, The Canadian Press, *York University ordered to pay up after losing copyright battle*. 17th July 2017

the dealing was fair.”¹⁵ Justice Michael L. Phelan ruled, “It is evident that York created the guidelines and operated under them primarily to obtain for free that which they had previously paid for. One may legitimately ask how such ‘works for free’ could be fair if fairness encompasses more than one person’s unilateral benefit.”¹⁶ The court ruled in the favour of Access Copyright. York University has decided to appeal this decision.

The proceedings of this case threw into sharp focus the interpretation of fair dealing guidelines throughout Canadian universities and schools. It is estimated that 600 million pages are copied (print and digital) by educational institutions every year and not all of it falls under fair dealing.¹⁷ The publishing industry and creators have grave concerns that under the current interpretation of fair dealing guidelines, the education sector is systematically copying copyrighted content without paying for it—neither through collective license, nor through direct requests. According to Access:

These copying policies reflect the education sector's interpretation of fair dealing and were developed without the input or support of creators and publishers. These copying policies, which mimic the copying limits that had previously been paid for under the Access Copyright licence, effectively replaced the collective licence with an uncompensated exception under the guise of fair dealing for education.¹⁸

In many ways, the verdict of this copyright case set the tone for the copyright review process.

15. *Canadian Copyright Licensing Agency v. York University*, 2017 FC 669, T-578-13, s. 183

16. *York University*, 2017 FC 669, T-578-13, s. 272

17. Scheltema, Gwynn. 2018. *Copy That!*

18. Canada, Parliament, House of Commons, Standing Committee on Industry, Science and Technology (2015), *Minutes of Proceedings and Evidence*, 42nd Parliament, 1st sess., INDU-116 (22nd May 2018) at 1540

Section II

2.1 Statutory Review of Copyright Act of Canada

In addition to the changes in the Copyright Act, the CMA also mandated regular five-year reviews of the 2012 copyright law, the first of which is now in progress in the House of Commons.¹⁹ This review cannot come at a better time, considering the current turmoil in the educational publishing sector.

The Standing Committee on Industry, Science and Technology kicked off the first phase of the Statutory Review of Copyright Act of Canada in February 2018. The review committee is chaired by Liberal MP Dan Ruimy, alongside an expert panel, including MPs Frank Baylis, Majid Jowari and Matt Jeneroux.²⁰ The committee has travelled across Canada to meet the stakeholders (Appendix I), has listened to the testimonies of 209 witnesses, and has received 183 briefs from concerned stakeholders. The review is a long process and is expected to continue in 2019. The committee's report is not expected until late 2019. With a Federal Election scheduled for next year, the liberals may or may not be in the House to amend the CMA, but the review committee's report would provide the basis for any forthcoming changes in the copyright law.

Copyright is a polarizing topic. It affects a wide range of industries including publishing, technology, telecommunication, broadcasters and education. It's a complicated process to reconcile varied viewpoints of the stakeholders under one

19. *Copyright Modernization Act*, AS 2012, Bill C-11, c-20 (2012)

20. Canada, House of Commons, Statutory Review of Copyright Act, 1st sess., 42nd Parl. Committee members: Liberals Frank Baylis, Majid Jowhari, Lloyd Longfield, Terry Sheehan; Conservatives Hon. Maxime Bernier, Matt Jeneroux, Dane Lloyd; and NDP Brian Masse, among others.

umbrella. The hearings, up to this point, have provided some important perspectives and opinions. There have been frank testimonies from a long list of interested and/or aggrieved parties. The top concerns that have emerged are: fair dealing exception for education, Crown copyright, circumvention of Technological Protection Measures (TPM), handling of Indigenous knowledge, orphan works and copyright term extension. These concerns, in one form or another, and to varying degrees, impact all the stakeholders.

2.2 Market Impact

2.2.1 Publishers' Losses

The publishing industry has undoubtedly taken a hit post-CMA. Access income had been a steady revenue channel for many years. Considering that Canada is a huge country with a small population scattered all over, it is a logistical nightmare to serve such a market and there isn't much room for huge profit margins for independent Canadian publishers. When institutions across Canada opted out of Access, it effectively cut off that revenue stream. Consequently, the publishing industry has been losing \$30 million on yearly basis since 2012.²¹

The disbursement of royalties collected by Access is a complex system. Access funds the publisher repertoire payment in three ways:

21. Canada, Parliament, House of Commons, Standing Committee on Industry, Science and Technology (2015), *Minutes of Proceedings and Evidence*, 42nd Parliament, 1st sess., INDU-106 (7th May 2018) at 1410

1. Royalties collected from licensees where it is impossible or impractical for us to collect information on the actual works that they have used (this is allocated 50-50 to our publisher and creator affiliates).
2. An allocation of 15% of all revenue available for distribution (this is allocated 50-50 to our publisher and creator affiliates) in recognition of the value our affiliates provide to our repertoire.
3. An allocation of 50% of the royalties available for distribution from public libraries, the corporate sector and the not-for-profit sector.

Publisher repertoire royalties are shared between all affiliated publishers based on revenue totals reported by them to Access Copyright.²²

After a series of adjustments, the distributable income is disbursed to publishers and other rightsholders. A portion of money goes directly to authors, and in some cases, through the publishers, who share a proportion of the earnings based on their contracts with the authors.

In the brief submitted by House of Anansi, Matt Williams (VP, Publishing Operations), stated that their Access income has fallen from \$20,000 every year to \$5,500 in 2017. Their K-12 copying attributed income was approximately \$2,000 before 2012; it now stands at just \$100. There has also been a 50% drop in direct permissions payments.²³

Broadview Press is an independent Canadian publisher of higher education books in the humanities and has been publishing for more than three decades. In their brief to the committee, they disclosed that their Access income has fallen from \$50,000 to \$20,000 per year. There has been no change in the direct permissions income either (for

22. Access Copyright, *Publisher Repertoire Payment*.

23. Canada, Parliament, House of Commons, Standing Committee on Industry, Science and Technology (2018), *Brief*, House of Anansi. 25th April 2018

transactional licensing) and it remains \$1,000 annually. Their revenue from Canadian sales was 55% in 2013. It dropped to 41% in 2017.²⁴

According to Mr. Lam, until a few years ago, Arsenal's Access Copyright Payback²⁵ cheque amounted to about \$30,000. Their last payment, in 2017, was just \$3,000. Mr. Lam noted that the cumulative loss of licensing income for Arsenal amounts to \$50,000 per year. This is money that no longer shows up in their books but is essential for their business operations.²⁶

Nimbus Publishing is the largest English-language publisher east of Toronto. They publish approximately 50 new titles every year, focussed on Atlantic Canadians. With over 1200 titles in their backlist, Nimbus' Access cheque amounted to \$3,000 last year. By their estimation it should be 8 to 10 times that amount.²⁷

David Caron (Co-publisher, ECW press), told the committee that ECW has lost \$102,000 (on average) per year in educational course adoption. Mr. Caron also spoke on the behalf of the Ontario Book Publishers Organization (OBPO):

24. Canada, Parliament, House of Commons, Standing Committee on Industry, Science and Technology (2018), *Brief*, Broadview Press, 16th April 2018

25. Access Copyright, Payback FAQs. Accessed 3rd December 2018. Payback is an annual royalty payment for creators that recognizes the contribution of Access' affiliates to Access Copyright's repertoire of works. These royalties represent non-title specific royalties collected by Access Copyright plus fifteen percent of all revenue available for distribution this year.

26. Brian Lam, Interview, 2018

27. Canada, Parliament, House of Commons, Standing Committee on Industry, Science and Technology (2015), *Minutes of Proceedings and Evidence*, 42nd Parliament, 1st sess., INDU-106 (7th May 2018) at 1410

I have a university-based publisher who has seen a drop of \$65,000 per year in revenue because the institutions it works with believed that one library copy equals unlimited course use. I have a literary publisher who has lost \$39,000 per year in sales, a sizable chunk of its annual revenue; a legal publisher who is now missing \$55,000 of its sales; and a children's publisher who has seen a decrease of \$195,000 per year.²⁸

Glenn Rollans, President of Association of Canadian Publishers (ACP), expressed his disappointment in how the matter has been handled by the Federal Government. The ACP represents about 120 Canadian-owned English-language publishers whose Canadian-authored titles comprise close to 80% of the new books by Canadian authors each year. Mr. Rollans pointed to the evidence from the York University case, referring to the figure of 600 million copied pages. According to Mr. Rollans, “Canada's schools, universities, and colleges pay for *some* of the things they copy beyond legal limits, but not all.” Speaking on the behalf of the ACP’s members, Mr. Rollans stated that first, Canadian publishers had to prove damage through studies,²⁹ which they did. Then they were asked by the government to wait for the York University case verdict, which they did. Now they must wait for this review and the subsequent report *and* the federal elections next year. According to him, Canadian publishers have waited far too long for

28. Canada, Parliament, House of Commons, Standing Committee on Industry, Science and Technology (2015), *Minutes of Proceedings and Evidence*, 42nd Parliament, 1st sess., INDU-110 (9th May 2018) at 1600

29. Association of Canadian Publishers Research, <https://publishers.ca/acp-research/>, Accessed 21st November 2018.

i) *Net Benefit: Canada’s Policy on Foreign Investment in the Book Industry* by Roy MacSkimming, 2017

ii) *Public Opinion on the Value of Books in the English Language Book Sector*, 2015

iii) *Consultation on K to 12 Educational Publishing in Canada*, by Glenn Rollans and Simon de Jocas, 2012

the copyright matter to be resolved. Mr. Rollans called for an interim action to restore balance in the publishing market.³⁰

2.2.2 Fair Dealing

Dru Marshall, Provost and Vice President (Academic), University of Calgary, urged the committee to retain fair dealing for education in the Canadian copyright regime. She insisted that fair dealing is quintessential for a high-quality educational environment for students and to facilitate innovation in teaching, as it enables varied forms of delivering education, giving the students a wide spectrum to produce cutting-edge research.³¹ This sentiment was echoed by other higher education stakeholders, including the University of Guelph, the University of Manitoba, the University of British Columbia, and the University of New Brunswick.³² The universities agree that the fair dealing exemption for education is a right move by the government. Also, it's supported by the Supreme Court of Canada's decision in *Alberta Education v. Access Copyright* case where the court ruled in Alberta's favour. The court reaffirmed that that fair dealing is a user's right that must be interpreted in a broad and liberal manner. The court also provided guidance on interpreting fair dealing with an emphasis on the need for a flexible, technology-neutral approach.³³

30. Canada, Parliament, House of Commons, Standing Committee on Industry, Science and Technology (2015), *Minutes of Proceedings and Evidence*, 42nd Parliament, 1st sess., INDU-103 (26th April 2018) at 1530

31. INDU-117 (24th May 2018) at 1540

32. INDU-110 (9th May 2018) at 1415; INDU-112 (10th May 2018) at 1415; INDU-114 (11th May 2018) at 1405; INDU-106 (7th May 2018) at 1405

33. *Alberta (Education) v. Canadian Copyright Licensing Agency (Access Copyright)*, 2012 SCC 37, [2012] 2 S.C.R 345

Ms. Marshall testified that at the University of Calgary, they take a measured approach to fair dealing, ensuring it is used to “supplement or complement purchased material, not to replace it.” They do not apply fair dealing to print course packs, nor to compilations of works such as literary anthologies. Instead, they look for transactional licenses or go to the original sources. Ms. Marshall stated, “In a sample of 3,200 learning items, such as book chapters, articles, and Internet resources used by instructors in our winter 2017 semester, fair dealing was applied to only 250 items, or less than 8%.”³⁴

Honourable Zach Churchill, Chair of Council of Ministers of Education Canada (CMEC), stated that school boards agree with the current definition of fair dealing—the way it has been understood by the courts—and they feel their educational policies fit “well within it.” He explained that the courts have spent a lot of time looking at this very question and helped them determine what’s fair in terms of balancing two very important public policy priorities. He stated that 98% of copying done in schools is legitimate.³⁵

While the education sector defends the fair dealing exception, the publishers counter that the fair dealing guidelines adopted by the educators are counterproductive to the marketplace. Dr. Rowland Lorimer, Treasurer, Canadian Association of Learned Journals (CALJ), questioned these guidelines and shared that, “. . . many educational

34. Canada, Parliament, House of Commons, Standing Committee on Industry, Science and Technology (2015), *Minutes of Proceedings and Evidence*, 42nd Parliament, 1st sess., INDU-117 (24th May 2018) at 1540

35. Canada, Parliament, House of Commons, Standing Committee on Industry, Science and Technology (2018), *Brief*, Council of Ministers of Education, Canada. 5th Sept 2018. The brief submitted by CMEC expands on Mr. Churchill’s testimony. According to it, “In the legal challenges since 2012, the Copyright Board determined that 97.2% of copying from books, 98.1% of copying from newspapers, and 98.5% of copying from periodicals qualified as ‘fair’ under its fair dealing analysis. The Board’s fair dealing findings were confirmed by the Federal Court of Appeal.”

institutions require their instructors to compile content that pointedly avoids triggering the education community's self-defined rules for compensating authors and publishers.”³⁶

When the review committee questioned H. Mark Ramsankar (President, Canadian Teachers' Federation), about copying on a mass scale, he dismissed the notion and called it “anecdotal incidences”. He explained that the school budgets and teachers’ purchasing power (which is limited) is scrutinized and doesn’t allow for indiscriminate photocopying of entire textbooks.³⁷ In direct contrast, Mr. Caron (OBPO) told the committee, “I have a publisher in Toronto who saw a loss of \$90,000 per year and whose author walked into a classroom where they were studying her Governor General's award-winning novel, but all the copies were photocopied without compensation.”³⁸

While the education sector maintains that publishers’ losses cannot be attributed to fair dealing because they use very little of it, and only with due consideration, the publishers counter that this isn’t the case. Annalee Greenberg, Editorial Director, Portage and Main Press, speaking on behalf of the Association of Manitoba Book Publishers (AMBP), stated, “Several Manitoba publishers have reported drops in copyright revenues between 75% and 90%.”³⁹

36. Canada, Parliament, House of Commons, Standing Committee on Industry, Science and Technology (2015), *Minutes of Proceedings and Evidence*, 42nd Parliament, 1st sess., INDU-114 (11th May 2018) at 1415

37. INDU-117 (24th May 2018) at 1610

38. INDU-110 (9th May 2018) at 1600

39. INDU-112 (10th May 2018) at 1405

The interpretation of the fair dealing guidelines is another sore issue for educators and publishers. The education sector considers using 10% of any work (or a chapter, essay, poem) as fair dealing. Heather Martin, Copyright Officer, University of Guelph shared that the 10% figure has been used since 1984 and is based on, she believes, the US law on “fair use” which allows for multiple copies to be made for teaching purposes. The 10% guideline was not invented by Access; it had existed long before. Marian Hebb (Artists and Lawyers for the Advancement of Creativity), argued that the educators were happy to pay while the 10% copying was allowed under Access (for 20 years). But post-CMA, the education sector suddenly decided that the 10% of all licensed content was “arbitrarily, fair dealing.”⁴⁰

Joy Muller (Colleges Ontario) and Ann Ludbrook (Ryerson University) told the committee that copyright literacy is an important issue at their respective institutions. They’ve been working on raising the awareness of user rights and responsibilities, especially guiding the educators in what content can or can’t be used in a classroom under fair dealing. To which, Sylvia McNicoll (Author) interjected, “Nobody ever consults the writer, though. I don’t feel that they consult the content provider.” Mr. Caron (OBPO) added, “That would be my question also.”⁴¹

The interpretation of fair dealing is clearly a contentious subject and different sides have differing views about what it should be and how it should be used. The

40. Canada, Parliament, House of Commons, Standing Committee on Industry, Science and Technology (2015), *Minutes of Proceedings and Evidence*, 42nd Parliament, 1st sess., INDU-110 (9th May 2018) at 1450

41. INDU-110 (9th May 2018) at 1700

Copyright Act of Canada doesn't define what is "fair". According to the judgement in the *CCH Canadian Ltd. v. Law Society of Upper Canada* case, "whether something is fair is a question of fact and depends on the facts of each case" and "the quantity of the work taken will not be determinative of fairness, but it can help in the determination."⁴² The ambiguity surrounding the fair dealing is an important concern that needs to be addressed in the committee's report.

2.2.3 Organizational Impact

The publishing industry has been reeling from the loss of a revenue channel for the last few years. This loss of income has inevitably affected the publishers, who have been reformulating their business strategies to stay profitable.

According to the Statistics Canada (2016) report⁴³, Canadian educational publishing revenue has grown from \$376 million in 2014 to \$395 million in 2016, with an operating profit margin of 10.2%. Terrilee Bulger (Co-owner, Nimbus Publishing), refuted claims⁴⁴ that Canadian publishing is flourishing. Ms. Bulger insisted that considering these figures in isolation would be a mistake. According to the same report, publishers' operating revenue decreased by 0.6% and operating expenses fell by 1.4%.⁴⁵

42. *CCH Canadian Ltd. v. Law Society of Upper Canada* [2004] 1 S.C.R. 339 at paragraph 52, 56

43. Statistics Canada. *Book publishers, detailed financial statistics by country of control*. 2016. Table 21-10-0202-01

44. INDU-103 (26th April 2018) at 1535
Ms. Victoria Owens, on behalf CFLA, claimed that publishing industry is not in decline. Publisher's profit margin has increased, and libraries invest substantially in electronic materials, paid up front for all permitted uses.

45. Statistics Canada. *The Daily — Book Publishing Industry, 2016*, March 23, 2018

To achieve the 10.2% profit margin, publishers have had to reduce their operating expenses by 2%, which amounts to \$7.4 million. This simply translates into lower salaries, wages, commissions and benefits.

Ms. Bulger also pointed out that in the wake of these losses, publishers have had to explore other avenues of income. In 2016, the proportion of publishers engaged *only* in publishing was 52%; this is 5% less than the previous year. Subsequently, the share of publishers engaged in publishing *and* distribution increased by 7%. The export of Canadian books grew by 11.8%, but this was mainly because publishers adopted new business strategies to compensate for the loss of Canadian sales. She also pointed out that regional books have no export market.⁴⁶ This means these kinds of books are less profitable and at the risk of not being published at all.

Dr. Lorimer (CALJ) told the committee that compensating authors for scholarly journal publishing is not an issue as it is offset by a basket of benefits for the authors, such as continued tenure, recognition and prestige, funding, and salary. However, Canada has over 630 scholarly journals with an individual budget of \$50,000 per title. Only 10% of this is supported by the grants from the Social Sciences and Humanities Research Council, the rest is funded from professional, institutional and market sales. According to Dr. Lorimer, the absence of collective licensing undercuts the financial resources that are essential for the “effective and efficient not-for-profit functioning of Canadian journals.”

According to Dr. Lorimer:

46. Canada, Parliament, House of Commons, Standing Committee on Industry, Science and Technology (2015), *Minutes of Proceedings and Evidence*, 42nd Parliament, 1st sess., INDU-106 (7th May 2018) at 1410

In short, the seizure of user rights by educational institutions to deliver course content without compensating creators and publishers weakens the generation and communication of ideas. [...] It deprives Canada and Canadians of jobs and opportunities in copyright-based economic activity. For individual students, it is already erecting unfair barriers to the generation and communication of Canadian knowledge for about the *cost of a case of beer per student*.⁴⁷

David Swail is the president of the Canadian Publishers' Council (CPC), which represents 16 of Canada's largest publishers—Canadian-owned firms and the Canadian subsidiaries of global publishers operating across all segments, including higher education and K-12. Their members include Pearson, McGraw-Hill, Nelson, Scholastic, Wiley and Elsevier. These publishing houses collectively transact 80% of the paid commercial educational business with schools, colleges and universities across Canada.⁴⁸

Mr. Swail drew the committee's attention to employability in the publishing industry. CPC members employ close to 3,000 highly skilled subject experts (mathematics and science) who not only produce high quality content, but also impart guidance in how those subjects are taught in Canadian classrooms, across provinces. The loss of income due to collective licensing abandonment has shaved off 16% of industry profit and in turn, made it inherently less profitable. This comes at a time when publishers have had to diversify their workforce to handle the digital shift and educate schools in optimizing their resources. CPC members have reduced their workforce by 5% every year, which equates to 200 jobs yearly.⁴⁹ Ms. Annalee Greenberg (AMBP) also testified

47. Canada, Parliament, House of Commons, Standing Committee on Industry, Science and Technology (2015), *Minutes of Proceedings and Evidence*, 42nd Parliament, 1st sess., INDU-114 (11th May 2018) at 1415

48. INDU-118 (29th May 2018) at 1605

49. INDU-118 (29th April 2018) at 1535

that, "... before 2012, Access Copyright royalty payments to Fernwood Publishing were enough to support a full-time employee. Now the payments might support a one-third-time worker."⁵⁰

When questioned about CPC's relationship with Access, Mr. Swail replied, "The figure of \$30 million [. . .] is a fairly good estimate of the income that flowed through Access to both publishers and creators in the sector over the course of many years when collective licensing was more prevalent than it is today. Half of that \$30 million would essentially flow back to creators, individual writers, and other contributors."⁵¹

While it is clear that CPC's publishers now have a much-reduced revenue channel, it remains unclear how much they have *actually* lost in absolute money terms. Juxtaposing Mr. Rollans' and Mr. Swail's testimonies highlights one important aspect of the Canadian publishing market. The ACP, which comprises 120 Canadian-owned publishers (including Arsenal), **produces 80% of Canadian-authored content** but the CPC, which predominantly represents subsidiaries of international publishers in Canada, **has 80% of the market**. This clearly suggests a lack of even playing field in the Canadian publishing market. While big publishers, who control majority of the market, can stand in the flow of money (with or without Access), it is the independent Canadian publishers who are left with very little in hand.

50. Canada, Parliament, House of Commons, Standing Committee on Industry, Science and Technology (2015), *Minutes of Proceedings and Evidence*, 42nd Parliament, 1st sess., INDU-112 (10th May 2018) at 1405

51. INDU-118 (29th April 2018) at 1600

According to Mr. Lam (Arsenal), publishing is a unique occupation as it is part culture and part business. Independent publishers must walk the fine line between being cultural gatekeepers and earning enough to keep their businesses in the black. As a publishing house, running in its 47th year, Arsenal is still a small group of passionate people. Mr. Lam contends that staying compact has been a conscious decision because it allows them to manage their growth and remain a viable publishing business. Shrinking margins and loss of licensing income means that while independent publishers can meet essential expenses such as editorial and printing costs, the disposable budget for books is getting smaller and smaller. For the publishers, it simply translates into less money for marketing their books, lower author advances, fewer author tours and inevitably, less visibility for their books. Mr. Lam contends, “Fair dealing is not fair.”⁵²

2.3 Technological Impact

2.3.1 Digital Shift

The last fifteen years have seen a considerable shift in how content is bought and consumed. Digital revolution, which disrupted the trade books market a decade ago, has now extended to the education sector as well. The testimonies of the education sector reveal a shift in their acquisition preferences. Universities, libraries and school boards are increasingly prioritizing buying digital content. In 2002, universities were spending about 80% on print and 20% on digital content. These figures have now essentially flipped.⁵³

52. Brian Lam, Interview, 2018

53. Canada, Parliament, House of Commons, Standing Committee on Industry, Science and Technology (2018), *Brief*, Universities Canada. 4th July 2018

Cynthia Andrew, Policy Analyst, Canadian School Boards Association, sympathized with the publishing industry and the challenges it is facing. Ms. Andrew told the committee, “The industry is struggling to stay current with advancing technology and new perspectives about teaching and learning. Textbooks, once the primary learning resource available to educators, are now just one in a series of choices . . .” Depending on the needs of the students, institutions can choose from a range of “digital-content repositories, subscription-based databases, online libraries, provincially developed or locally developed electronic resources, apps, and, of course, the Internet,” Ms. Andrew stated.⁵⁴

Susan Parker, University Librarian, University of British Columbia (UBC), noted that in 2017, UBC’s total acquisitions budget was close to \$17 million, spent on licensing print (20%) and various kinds of digital content (80%). UBC, like most other universities, has adopted a “digital-first” purchase policy, which means they buy print only when digital format is unavailable first.⁵⁵ A digital-first strategy allows libraries to manage and disseminate content better, giving them room to analyze users’ preferences and making informed decisions about future acquisitions. Under the digital-first policy, libraries may have an embargo period before a physical copy of the content is acquired. Ms. Dru

54. Canada, Parliament, House of Commons, Standing Committee on Industry, Science and Technology (2015), *Minutes of Proceedings and Evidence*, 42nd Parliament, 1st sess., INDU-117 (24th May 2018) at 1540

55. *Brief*, Universities Canada. 4th July 2018

Marshall (University of Calgary) stated in her testimony that 90% of their library acquisitions in 2017–18 were digital.⁵⁶

In a brief submitted to the committee, Kenneth Field, copyright officer at Trent University, states that the expenditure on monographs at their university went from \$30,102 in 2014–15 to \$5,722 in 2016–17, a decline of 81%. During the same period, the expenditure on eBooks went up from \$43,901 to \$97,985, an increase of 46%. According to Mr. Field, “The shift away from print resources and their reproduction is further corroborated by the decline in Trent University’s revenue from photocopying by students between 2012/13 and 2016/17; it went from \$3,630 to \$361, a decline of 91%.”

According to Michael Geist, who Mr. Kenneth references in his brief, site licensing now comprises a major chunk of the libraries’ spending in Canada. The specific terms of licensing may vary, but usually they allow for use in course packs and e-reserves. The libraries have bought many licenses in perpetuity,⁵⁷ which means that the rights to the works have been fully compensated for an unlimited period. This supports the view that fair dealing has not resulted in less spending for copyrighted content.⁵⁸

56. Canada, Parliament, House of Commons, Standing Committee on Industry, Science and Technology (2015), *Minutes of Proceedings and Evidence*, 42nd Parliament, 1st sess., INDU-117 (24th May 2018) at 1545; INDU-110 (9th May 2018) at 1420

Ms. Susan Caron (Director, Collections and Membership Services, Toronto Public Library) affirmed in her testimony that, “In the last five years, the use of digital formats by Toronto Public Library customers has risen by 200%, to over 4.5 million uses in 2017.”

57. INDU-102 (24th April 2018) at 1545

Ms. Carole Shepstone, speaking on behalf of CRKN, told the committee, “CRKN members (75 institutions) have made one-time investments of more than \$11 million to secure perpetual access to the Canadian Electronic Library e-book collection, and \$1.5 million for access to digital, historical *Globe and Mail* content.”

58. Canada, Parliament, House of Commons, Standing Committee on Industry, Science and Technology (2018), *Brief*, Kenneth Field, 13th Sept 2018; Michael Geist, *Canadian Copyright, Fair Dealing and Education, Part Three: Exploring the Impact of Site Licensing at Canadian Universities*, 24th May 2018

While the education sector’s testimony suggests that they are buying more and more digital content, the publishers contend that they haven’t seen a corresponding rise in eBook sales. Arsenal’s eBook sales average to about 9-12% of their total sales revenue.⁵⁹ According to Ms. Greenberg (AMBP), the publishers’ eBook sales have levelled off. They haven’t seen a lot of sales to the universities either. She also added, “We just had a request from a university library for [an] e-book, not to buy it but to have it forever for lending rights [...] They would not give us a limit; they wanted it in perpetuity, and we basically said no.”⁶⁰

With the advent of technology and new media like the Internet, online publications, eBooks, podcasts, audiobooks and other digital native content, there is a decreasing need to print anything, including course packs. Most educational institutions now have e-reserves that house all their licensed electronic material. Depending on the type of user access agreement in the licenses, instructors can now share the content on e-reserves, or simply point the student to the link that gives them access to copyrighted content in the library database. The institutions are buying the digital licenses through a host of aggregators who “package” the content for institutional use. Ms. Ann Lubrook explained, “Some of them allow us to course-pack the content without paying for it. Some of them allow us to post the full text. We usually just link to material, but we have

59. Internal sales data provided by Arsenal, November 2018

60. Canada, Parliament, House of Commons, Standing Committee on Industry, Science and Technology (2015), *Minutes of Proceedings and Evidence*, 42nd Parliament, 1st sess., INDU-112 (10th May 2018) at 1440

licences for that content.”⁶¹ The universities maintain that students want digital content and they are basically responding to that need.

2.3.2 Educational Spending and Canadian Content

Based on the collective testimonies put forth by universities and libraries, the cumulative spending for content acquisition is on a rise. It is estimated that \$300 million is spent annually by the education sector for licensing content.⁶² Donna Bourne-Tyson (University Librarian, Dalhousie University) told the committee that out of a \$7 million annual budget, they spend 90% of it on licensed material, mostly through the Canadian Research Knowledge Network⁶³ (CRKN) and other license aggregators, and a big chunk of this money is primarily going to five large publishers—Oxford, Cambridge, Wiley, Springer, and SAGE.⁶⁴ Rebecca Graham, chief librarian at the University of Guelph, testified that out of their \$8 million annual budget, 50% goes to these same five publishers.⁶⁵ This percentage figure (50%) is consistent across the board for university expenditure for content. The rest of it is spent on transactional licenses, print journals,

61. Canada, Parliament, House of Commons, Standing Committee on Industry, Science and Technology (2015), *Minutes of Proceedings and Evidence*, 42nd Parliament, 1st sess., INDU-110 (9th May 2018) at 1715

62. INDU-106 (7th May 2018) at 1415

63. INDU-102 (24th April 2018) at 1645
Ms. Carol Shepstone, speaking on behalf of CRKN, acknowledged that CRKN brokers licenses worth \$125 million on behalf of libraries. Out of which, \$122 million is spent on international journals.

64. INDU-106 (7th May 2018) at 1420

65. INDU-110 (9th May 2018) at 1430

indexed scientific repositories, books and eBooks. Universities pay for hundreds of licenses (collective and transactional) yearly.

The educators also talked about flexibility and efficiency when it comes to acquiring and disseminating content. Ms. Graham pointed out, “the devil is in the details.” Her sentiments were echoed by Susan Caron (Toronto Public Library), who shared that they buy eBooks on a case-to-case basis, ranging from a single copy to 350 copies, depending on the demand. OverDrive, an eBook borrowing platform owned by Rakuten, is one such platform because it provides flexibility and efficiency to the libraries. Not only can they acquire books from OverDrive, they can also store, circulate, lend and manage book lending through the system that contains close to 400,000 books.⁶⁶ Ms. Caron also explained that instead of buying books directly from the publishers or a library vendor, where it’s clear who is getting paid what, the libraries buy from OverDrive, which is a third party in these transactions. The institutions don’t know how OverDrive pays the publishers. She also shared that they’ve talked to publishers who are unaware of how much they are earning from OverDrive or the finer details of their agreement.⁶⁷

One question that has been raised again and again during the review process is— “How much is being spent exclusively on Canadian content?” The educational sector hasn’t been able to give a clear break-down. Part of the reason is that many Canadian

66. Canada, Parliament, House of Commons, Standing Committee on Industry, Science and Technology (2015), *Minutes of Proceedings and Evidence*, 42nd Parliament, 1st sess., INDU-110 (9th May 2018) at 1515

67. INDU-110 (9th May 2018) at 1510

scholars publish in international journals for prestige and validation. This content is then bought back through journal licenses. The Canadian Association of Research Libraries (CARL), in a written response to the review committee's query regarding the expenditure on Canadian content, states that "due to differences in the metadata provided, it is very difficult to assess what percentage of libraries' electronic collections is Canadian." CARL further explains that, "Due to the variety and heterogeneity of online content purchased by libraries, attempting such an analysis across the electronic collections would be a difficult multi-month undertaking." In response to the question of how they pay for Canadian content, CARL explained:

Canadian-produced content (e.g. journals or eBooks) is often mixed in with content from elsewhere in collections or bundles. Canadian universities pay a vendor for access to an online collection; that vendor has, in turn, secured agreements with publishers to have the right to include their works in their collection, and have paid the publisher for that right. Similarly, when Canadian libraries purchase individual print or electronic books through an international vendor, which is common practice, it is the vendor that remits payment to the publisher. Therefore, in most cases, funds do not flow directly from Canadian universities to Canadian publishers.⁶⁸

While speaking about Canadian content acquisitions, Carol Shepstone (CRKN) stated that "CRKN university members are annually committing \$2.9 million to Canadian content licences, and over CRKN's 19-year history have made \$15 million worth of one-time investments in purchasing Canadian content." The educators proclaim that Canadian literature is a minuscule part of a much larger picture when it comes to content.

According to the brief submitted by Universities Canada, the content of a Canadian

68. Canadian Association of Research Libraries, *A Guide to Canadian Research Libraries' Spending on Content: A response to INDU Committee questions from the Canadian Association of Research Libraries*, 2018

university library can be broken down into—a) works other than literature (92%) which covers STM topics, and b) literature (8%). Canadian literature is just one quarter of this 8% content, to put things into perspective.⁶⁹ Ms. Graham (University of Guelph) shared that enrollment in social sciences and humanities courses are on the decline. Hence, there is less buying of related content.⁷⁰

Roanie Levy (CEO, Access Copyright) countered that the education sector is spending increasingly more on **acquisition** of research content (scholarly journals). This is different from the **reproduction** rights of textbooks, which were used widely when institutions were still reporting usage of Access' repertoire of works. Ms. Levy contends that the education sector is no longer paying for the reproduction rights and relying heavily on the fair dealing exemption.⁷¹

In the brief submitted by British Columbia Library Association (BCLA), Anette DeFaveri states that BC libraries spend from 20-30% (public libraries) to 80% (post-secondary libraries) of their acquisitions budget on digital content. The cumulative

69. Canada, Parliament, House of Commons, Standing Committee on Industry, Science and Technology (2018), *Brief*, Universities Canada. 4th July 2018

70. Canada, Parliament, House of Commons, Standing Committee on Industry, Science and Technology (2015), *Minutes of Proceedings and Evidence*, 42nd Parliament, 1st sess., INDU-110 (9th May 2018) at 1430

71. INDU-117 (24th May 2018) at 1600; 1610
When questioned by MP Hon. Maxime Bernier, about the distinction between acquiring licenses versus reproducing works, Mr. H. Mark Ramsankar (President, Canadian Teachers' Federation) contended that they knew the difference and pointed out that Access Copyright is *not* in today's classrooms which are complex in nature. He propounded that a blanket licensing, although convenient, is not the ideal way for content acquisition as it is expensive and limits the scope for schools for varied reasons. Mr. Ramsankar asserted that to have a single way of accessing content through blanket tariffs, for which a school may or may not have a license, will be doing disservice to the institutions that do not have the same type of access (especially in remote areas of Canada).

expenditure is also on the rise. The BCLA rejects⁷² the claim that electronic licenses are misused by educators. BCLA states that “the gap between library expenses and publisher/creator remuneration may in fact come from the economics of the digital environment and difficulties faced by Canadian publishers in this environment.” The brief states that access rights to digital content are controlled by the vendor, not the reader or the library. If the publishers want, they can restrict the access to their books to one user at a time. BCLA also suggests that Canadian publishers are grappling with digital disruption and their ignorance about how they sub-license their content only compounds the problem for them.⁷³

From the point of view of an independent publisher like Arsenal, their sub-licenses might pose a problem. Arsenal has agreements with various aggregators, including the Canadian Electronic Library (CEL). A substantial number of their books are accessible on desLibris, a database hosted by CEL.⁷⁴ When asked if there has been any increase in revenue from alternate sources, Mr. Lam said no. Arsenal only receives about

72. Canada, Parliament, House of Commons, Standing Committee on Industry, Science and Technology (2015), *Minutes of Proceedings and Evidence*, 42nd Parliament, 1st sess., INDU-114 (11th May 2018) at 1615

Kevin Williams (Publisher, Talon Books), representing Association of Book Publishers of British Columbia, stated that “...it's very common for them [students] to sit down in a classroom and for the whole classroom to check out our e-book from the library, and everyone can use that for a course pack. The fact is, our license to the library never included the right for them to be doing that. There is no enforcement; there is no prevention of that.”

73. Canada, Parliament, House of Commons, Standing Committee on Industry, Science and Technology (2018), *Brief*, British Columbia Library Association, 20th Nov 2018

74. The SFU library has licensed to CEL. This allows SFU users to access selective Arsenal books, which are part of a leased collection. The license prohibits course pack and e-reserve use, but the links can be shared on either. The books are 100% accessible on desLibris, with limited printing option. Interlibrary loans are prohibited.

\$400-500 yearly from the desLibris hosting.⁷⁵ This is because such platforms are designed for infrastructure needs, rather than regulatory tariff measures. While CEL license agreement might have been a good option for additional discoverability of Arsenal's books when the institutions were *still paying* the Access tariff, in the absence of collective licensing, this just means that Arsenal's books can be accessed for a fraction of their value.

Mr. Caron (ECW Press) noted that 70% of their licensing income came from digital database providers. According to him, two years ago, the EBSCO database stopped paying them altogether because they claimed ECW's content now falls under education exemption.⁷⁶

By all accounts, CRKN brokers the most expensive licenses (see footnote 63) for Canadian institutions, and most of the revenue flows back to big publishers. Independent Canadian publishers are less likely to receive much of it, despite publishers working hard to scale their digital content to meet market needs, making sure their content is available widely through multiple resources via sub-licenses. Yet, the education sector opts not to pay the only license that pays independent Canadian publishers in relative substantive terms.

75. Brian Lam, Interview, 2018

76. Canada, Parliament, House of Commons, Standing Committee on Industry, Science and Technology (2015), *Minutes of Proceedings and Evidence*, 42nd Parliament, 1st sess., INDU-110 (9th May 2018) at 1635

2.3.3 Textbook Costs and Open Access

While the academic textbook market differs from trade course-adopted books (like Arsenal's), the usage of textbooks can, to a certain degree, be extrapolated to ascertain the consumption of course-adopted books. Focussing on textbook sales, Shawn Gilbertson, on behalf of Campus Stores Canada, stated that pre-CMA, when the licensing model was based on an FTE fee that covered incidental copying and 10¢ per page for print course packs, 75% of revenue was generated through the bookstores. Presently, due to the shift to digital content, there is no need for that kind of licensing. Today, most user rights are covered under library licenses. Mr. Gilbertson also talked about the cost of textbooks, which can cost hundreds of dollars per student, and focussed on the buying psychology of students and the burden it presents in the learning process.⁷⁷ Mr. Noah Berson, a student at Capilano University, shared that a recent survey conducted in British Columbia revealed that 30% of students who couldn't afford expensive textbooks received lower grades in their classes.⁷⁸

According to the Statistics Canada (2017) report,⁷⁹ tuition fees for undergraduate programs and post-secondary programs increased by 3.1% and 1.8% respectively in 2017–18. As the cost of education rises, students are increasingly looking for alternate sources for textbooks. Asked about textbook piracy, Allan Bell, Associate University

77. Canada, Parliament, House of Commons, Standing Committee on Industry, Science and Technology (2015), *Minutes of Proceedings and Evidence*, 42nd Parliament, 1st sess., INDU-101 (17th April 2018) at 1650

78. INDU-115 (11th May 2018) at 1915

79. Statistics Canada. *The Daily - Tuition fees for degree programs, 2017/2018*. 2017

Librarian (UBC), responded, “That's a tough question, because piracy is generally not just a student problem or an educational problem. I think it's a broader societal problem.”⁸⁰ It definitely poses a serious problem for publishers. Students are increasingly tech savvy and are aware of peer-to-peer networks that allow them to download unauthorized content material. There are also self-organised online communities that facilitate textbook exchanges and buying and selling of used textbooks. All these factors inevitably contribute to declining sales of textbooks.

The education sector has also cited the increasing use of open access content in classroom which, to a degree, reduces the burden of buying copyrighted content. Charlotte Kiddell, Deputy Chairperson, Canadian Federation of Students, stated, “Tired of predatory pricing from large corporate content owners, academics have increasingly opted towards models of providing content directly to the education community.”⁸¹ Canadian universities are increasingly publishing scholarship on open access platforms. Open Access is the free, sometimes immediate, online availability of research articles combined with the rights to use this content. Users can use, remix, improve and redistribute, depending on the wider terms of the license. In May 2015, Canadian Government introduced an Open Access Policy which mandated that all publishing that

80. Canada, Parliament, House of Commons, Standing Committee on Industry, Science and Technology (2015), *Minutes of Proceedings and Evidence*, 42nd Parliament, 1st sess., INDU-114 (11th May 2018) at 1450

81. Canada, Parliament, House of Commons, Standing Committee on Industry, Science and Technology (2015), *Minutes of Proceedings and Evidence*, 42nd Parliament, 1st sess., INDU-101 (17th April 2018) at 1540

resulted from research funded by the tri-council⁸² must be freely accessible to the public within 12 months of their publishing.⁸³ Mr. Bell (UBC) said that their tracking indicates that the students saved between \$4.7 million to \$6 million last year. He also said that content worth \$500,000 has become open access.⁸⁴ For teaching, faculty are increasingly using direct links to licensed content, content freely available on the Internet, or faculty-created content to deliver lessons.

The educational institutions have also cited exorbitant prices as one of the reasons for the decline in textbook sales. The AMBP counters, “The Canadian Association of University Teachers says that course book prices have increased by 200% in the past 20 years. While there have been price increases, they are not for the books produced by independent Canadian publishers. At Fernwood Publishing, for example, a publisher of academic books since 1991, average prices of these books have increased by 50% since 1995, about the same as general inflation for that period.”⁸⁵

Independent publishers must keep a check on their prices in a shrinking market where the consumption of books is going down. This problem is further compounded due to the digital shift, where the content is consumed differently.

82. Tri-council comprises of three major federal granting agencies—Social Sciences and Humanities Research Council of Canada, Natural Sciences and Engineering Research Council, and Canadian Institutes for Health Research.

83. Government of Canada, Tri-Agency Open Access Policy on Publications, 2015

84. Canada, Parliament, House of Commons, Standing Committee on Industry, Science and Technology (2015), *Minutes of Proceedings and Evidence*, 42nd Parliament, 1st sess., INDU-114 (11th May 2018) at 1450

85. Canada, Parliament, House of Commons, Standing Committee on Industry, Science and Technology (2018), *Brief*, Association of Manitoba Book Publishers. 3rd August 2018

Ms. Greenberg explained the plight of AMBP's members by quoting Mr. Wayne Antony (Fernwood Publishing):

A few days ago, we received a request for a desk copy of a book that will be released this spring. This is from a prof at Carleton U. She also sent her course outline with the request. The course outline (for a senior undergraduate course) shows no textbook but rather a list of book chapters and journal articles that will be posted for the course on the Carleton LMS. It included several chapters from Fernwood books, including 2 from a book yet to be published and 2 from a book recently published, and single chapters from other Fernwood books. We have had no request from Carleton for permission to reprint these chapters.⁸⁶

The digital shift allows educators to take parts of works and link them on a Learning Management Software (LMS), which is covered under license agreements with various aggregators. For independent publishers, this presents a very dismal picture. Between the declining textbook usage, open access content and the way the content is consumed digitally, publishers need to re-evaluate how they package their content. The institutions *do use* books; they just don't use them as a whole.

2.4 Future Concerns

2.4.1 Cultural Impact

The industry stakeholders have repeatedly expressed concerns for the future of academic publishing in the absence of collective licensing, as it doesn't support a

86. Canada, Parliament, House of Commons, Standing Committee on Industry, Science and Technology (2015), *Minutes of Proceedings and Evidence*, 42nd Parliament, 1st sess., INDU-112 (10th May 2018) at 1520

marketplace. Reduced earning for publishers and disappearing income of writers inevitably hinders the sustainability of the industry.

Canadian authors and artists have probably been hit the hardest in the wake of CMA. The abandonment of collective licensing by schools and universities has shaved off close to 80% of writers' licensing income.⁸⁷ Author earnings, which weren't large to begin with, have fallen to a new low.⁸⁸ The Writers' Union of Canada (TWUC) conducted an income survey of Canadian writers in 2018. The report, *Devaluing Creators, Endangering Creativity*, reveals that writers in Canada are making 27% less (adjusted to inflation) from their writing than they were making in 1998 (since the last comprehensive survey). 45% of respondents also indicated that they are working harder to earn this amount. Canada's national average income is \$49,000 and a writer's average income is \$12,897, which is \$36,000 below the national average. For 81% of respondents, income from writing wouldn't allow them to live above the poverty line. Similar findings have emerged from recent income surveys in the US and the UK. Writers' income is in steep decline across the English-language publishing industry. According to TWUC, "Changes to contracts and publishing practices (declines in royalty percentages and advances on sales), industry consolidation, as well as worldwide pressure

87. Canada, Parliament, House of Commons, Standing Committee on Industry, Science and Technology (2015), *Minutes of Proceedings and Evidence*, 42nd Parliament, 1st sess., INDU-103 (26th April 2018) at 1545

88. Canada, Parliament, House of Commons, Standing Committee on Industry, Science and Technology (2018), *Brief*, Bernice Friesen. 16th April 2018
Bernice Friesen, a YA author from Saskatoon, has been writing for 25 years. She shared that the only time her income was above poverty line was when she'd received Canada Council Grant. She testified, "It is simply outrageous that Canadian universities and school boards are making attempts to steal my work—our work—when most writers earn below the poverty line. It is certainly not fair use."

on professional creators to work in a disastrously weakened copyright environment, are all likely contributors.”⁸⁹

Author Sylvia McNicoll, president of the Canadian Society of Children’s Authors, Illustrators and Performers (CANSCAIP), demanded a roll back on fair dealing guidelines and compared the licensing fees to the speed limits on the 401 (Toronto’s busiest highway). She contends:

If the limit is 100 kilometres, most people drive at least five to ten kilometres over. So, while the fees were intended to compensate us for a few pages of copying and downloading, here and there, mostly for the purposes of research for a project—we knew that schools were copying well over the 100-kilometre speed limit. [...] Bill C-11 Fair Dealing Exemption alone is not responsible for my income decline. But Fair Dealing is a beacon of disrespect for content. The world watches as Canadian schools download and copy curated content in a government sanctioned theft of 10%. You have turned the 401-speed limit in reproduction of materials into the Autobahn. No speed limit at all!⁹⁰

Academic publishers invest their precious resources to be able to produce works of high quality. But diminishing returns on these investments is slowly driving the publishers to spearhead their resources in different directions to be able to sustain themselves. Ms. Greenberg stated that post-CMA, Portage and Main Press have “quit publishing textbooks and other curriculum materials, as revenues no longer cover the

89. The Writers' Union of Canada, *Canadian Writers Working Harder While Earning Less*. 2018

90. Canada, Parliament, House of Commons, Standing Committee on Industry, Science and Technology (2015), *Minutes of Proceedings and Evidence*, 42nd Parliament, 1st sess., INDU-110 (9th May 2018) at 1605

Ms. McNicoll has been writing for 30 years and has had bestsellers along the way. In 2012, before the CMA took effect, her income was \$46,000, including licensing income of \$2,578 (which paid for two months mortgage and three weeks groceries). Her cumulative income has now shrunk to \$12,000 and her Access cheque amounted to just \$400 (just enough to buy a week’s worth of groceries); both the figures are down by 90%.

costs that are necessary to attain the quality standards that are expected by educators and that the company has become known for.” She also testified that within a year since the CMA came into effect, Les Éditions des Plaines (one of the few French content publishers outside of Québec) saw a decrease of 35% in its overall sales because of copying. Their sales revenue continued to decrease year after year until, in 2016, Les Éditions des Plaines completely ceased educational publishing. She also stated that AMBP’s authors are seeing a substantial drop in their earnings because of declining royalties. Many authors have taken up other jobs as their writing can no longer support them.⁹¹

The authors and publishers also have concerns regarding the use of Canadian content in the classrooms. Nick Mount, professor of Canadian literature at University of Toronto, stated in his brief, “The vast majority of assigned texts at Canadian universities are by foreign authors, mostly dead ones (the humanities), or living academics (textbooks in the sciences and social science). Even in English departments, the amount of works by living Canadian writers is just a small fraction of the works we teach . . . you can complete a major in literature without any of it being Canadian.”⁹²

Leslie Dema (President, Broadview Press), questioned the extent of “Canadian content” in classrooms, she observed that American publishers, when publishing for the Canadian market, usually include a Canadian author in the text to give it legitimacy, but

91. Canada, Parliament, House of Commons, Standing Committee on Industry, Science and Technology (2015), *Minutes of Proceedings and Evidence*, 42nd Parliament, 1st sess., INDU-112 (10th May 2018) at 1410

92. Canada, Parliament, House of Commons, Standing Committee on Industry, Science and Technology (2018), *Brief*, Nick Mount, 4th December 2018

really, these books are usually written for the US market. Ms. Dema highlighted the diminishing use of Canadian content in the classrooms and what it invariably means for the future of such works. Ms. Dema asked the committee “to work to restore balance between the need to compensate our creators for educational copying and the need to promote access to quality content. Balance shouldn’t be achieved by taking from one side to serve the other: both sides serve the public interest, and both should be supported.”⁹³

Ms. Caron explained that the aggregators who package the content for institutions are the ones who negotiate licenses with publishers. She shared that there is Canadian content, like the Louise Penny books, which are accessible through American libraries, but not through Canadian libraries. When asked why, the aggregators say, “Well, we forgot to negotiate the Canadian rights.”⁹⁴

It is quite apparent from the testimonies of authors and publishers that Canadian cultural capital is at risk. Canadian content is losing in Canadian classrooms to international content. Considering the buying preferences of the education sector, the

93. Canada, Parliament, House of Commons, Standing Committee on Industry, Science and Technology (2018), *Brief*, Broadview Press, 16th April 2018. Ms. Dema reinforces her point by sharing a case study about the availability of Canadian Introduction to Literature textbooks. The study points out that most universities and colleges offer an Introduction to Literature course. This course typically features a study of English language from the medieval period to the present times, usually featuring writing from across genres and featuring English-speaking writers from across the world. *The Broadview Introduction to Literature* is the *only* “Introduction to Literature textbook has been prepared entirely by Canadian editors, by a Canadian publisher, who employs Canadian staff and freelancers.” It features 49 Canadian authors. There are two American textbooks on this subject that have been adapted to Canadian editions; *Elements of Literature 5e* by Oxford University Press and *The Harbrace Anthology of Literature* by Nelson (out of print). *Elements of Literature 5e* features 27 Canadian authors and was first produced for the US market. Later, a Canadian editor was added to adapt the Canadian edition. The study also points out that the most commonly adopted books in Canadian universities for this course are published by Americans for Americans (*Norton Introduction to Literature, Portable 12e* by Norton, *Backpack Literature, 5e* and *Literature: A Pocket Anthology 6e* by Pearson).

94. Canada, Parliament, House of Commons, Standing Committee on Industry, Science and Technology (2015), *Minutes of Proceedings and Evidence*, 42nd Parliament, 1st sess., INDU-110 (9th May 2018) at 1510

publishers need to regroup and reconsider their sub-licenses so that they have better control over how their content reaches the users. Especially, the independent publishers need to be wary of bundling their content with big aggregators, which inevitably dilutes their work and leads to diminished returns. If authors and publishers don't get paid for their work, it will likely lead to the collapse of the whole cultural ecosystem.

2.4.2 Copyright Compliance

Enforceability of copyright is complicated. Canada has a **notice-and-notice** regime for jurisprudence to discourage online copyright infringement, provide copyright owners with a tool to enforce their rights, and give respect to the interests and freedoms of users. The downside of a notice-and-notice regime is that it puts the onus of proving damages on copyright owners and is far too reliant on costly legal proceedings. The absence of a take-down provision means that the responsibility to enforce an alleged copyright infringement lands on copyright owners.⁹⁵

The education sector has maintained that they have mechanisms to ensure that users are aware of copyright and that they meet their responsibilities under the Copyright Act and its fair dealing guidelines. Training for teachers and reminders for students to adhere to copyright guidelines are part of the sector's due diligence process.

Copyright compliance in digital environment is tricky. The Internet has brought down market boundaries, making copyright enforcement increasingly murky. The future of copyright compliance can potentially see major changes as technologies like

⁹⁵. CIMA, *What You Need to Know About: The Notice and Notice Regime of the Copyright Modernization Act*. 18th June 2014

“blockchain” evolve further. The rightsholders are anticipating a major overhaul in how digital rights can be potentially managed in future, making royalty accounting, tracking and protecting intellectual property a manageable mechanism. Although, Lawyer Jeffrey Neuburger cautions against using blockchain as a vehicle for content distribution:

[...] content owners and their counsel [...] focus on the use of blockchain as a means of effectuating a decentralized digital rights management-type system to allow distribution of content to authorized users in a secure way. Copyright anxiety arises, however, with the recognition that the technology can also be used to facilitate the distribution of infringing content, notably in the form of anonymous transactions that are embodied in a block in a permanent and immutable manner.⁹⁶

The digital marketplace is rapidly evolving, and the Canadian copyright act needs to be equipped to handle the future of copyright compliance. Access had expressed a need to harmonize the remedies applicable for statutory damages for all collective societies (only SOCAN and Re:Sound are entitled to enforce their rights). According to Access, “As a right is only as valuable as a party’s ability to enforce it, all copyright Collectives should have the same ability to enforce rights. All Collectives should be able to claim statutory damages under s. 38.1(4) of the Act when seeking the enforcement of rights. Doing so constitutes sound public policy that will benefit many more than just the collective societies.”⁹⁷ Unless Access is granted this wish, the universities and school boards won’t likely be inclined to return to blanket licensing.

96. Jeffrey Neuburger, *Blockchain as a Content Distribution Technology: Copyright Issues Abound*, 2018

97. Government of Canada, *Consultation on Options for Reform to the Copyright Board of Canada*, Access Copyright, 2017

2.4.3 Collective Licensing

Publishers have repeatedly expressed the need to reinstate a functional collective licence that recognizes the rights of content creators. According to publishers, the Access model is proven and affordable. But the education sector is against the idea. Ms. Marshall strongly discouraged reinstating blanket licensing and mandatory or retroactive tariffs⁹⁸ on universities, claiming that it would take away their ability to choose the content that works best for them. According to Ms. Marshall:

At the University of Calgary, we also strongly discourage introducing any measures to harmonize tariff regimes, imposing statutory damages, or introducing mandatory licensing into Canada's copyright regime. Doing so would remove or threaten a university's ability to choose how to manage copyright, compel them to purchase blanket licences, and result in a university paying twice for the ability to reproduce most of its copyrighted content.⁹⁹

Mr. Churchill (CMEC) insisted that the educational institutions would lose tens of millions of dollars if they have to pay for blanket licensing or any retroactive tariffs.¹⁰⁰ When questioned if he was supportive of fair dealing because *that's* the amount the school boards are saving by not paying the copyright tariffs (considering the \$30 million

98. At this point, there is no definitive figure of what the retroactive tariffs might be. Although, it has been widely speculated by the industry that if imposed, they may amount to tens of millions of dollars, but the final amount would be subject to intense negotiations.

99. Canada, Parliament, House of Commons, Standing Committee on Industry, Science and Technology (2015), *Minutes of Proceedings and Evidence*, 42nd Parliament, 1st sess., INDU-117 (24th May 2018) at 1540

100. INDU-116 (22nd May 2018) at 1540

loss of the publishing industry), Mr. Churchill maintained, “We’re defending it because we believe it’s fair.”¹⁰¹

The exchange between the committee and CMEC highlighted the contentious topic of 600 million copied pages.¹⁰² This figure (600 million) was used by Access in their testimony (based on a PwC study and the court’s findings in the York University case¹⁰³) and has since been used by the publishing stakeholders repeatedly throughout the hearings. According to Access, out of the 600 million figure, 380 million is attributed to the K-12 sector and based on the Copyright Board’s findings (based on a volume study survey in 2005–6¹⁰⁴). The board found 60% of copying to be fair dealing. But it still leaves 40% or 150 million pages uncompensated. The balance of 220 million pages come from the post-secondary sector copying, more specifically the findings during the York University case where they found an average of 360 pages per student copied every year.¹⁰⁵

According to Mr. Geist, the data used to arrive at this figure pre-dates the 2012 reforms and is outdated. Mr. Geist argues that the use of textbooks is on the decline, as is the use of course packs. The Copyright Board data is over 13 years old and is based on a

101. Canada, Parliament, House of Commons, Standing Committee on Industry, Science and Technology (2015), *Minutes of Proceedings and Evidence*, 42nd Parliament, 1st sess., INDU-116 (22nd May 2018) at 1550

102. INDU-116 (22nd May 2018) at 1545–55

103. Access Copyright, *Economic Impacts of Education Sector’s Fair Dealing Guidelines*. 2018 The report was first accessed in September 2018. But the report was inaccessible on Access’ website as of 22nd November 2018. https://www.accesscopyright.ca/media/94983/access_copyright_report.pdf

104. Canada, Copyright Board, *Annual Report 2015-16*, 2016. p. 27

105. INDU-116 (22nd May 2018) at 1710

copying survey done in 2005–6. The Copyright Board has warned against using this data without due consideration.¹⁰⁶ He also suggests that extrapolating a single university's example to estimate the copying practises of all universities and colleges across Canada is just wrong.¹⁰⁷

Once the pieces of this complex puzzle are put together, the emergent picture shows a disrupted market. Creators want greater control of their copyrights and need the institutions to pay for copyright usage. Reinstating Access tariff seems to be the easiest solution. But Access, which has instituted and enforced the tariffs since the 1990s, may no longer be the answer for the publishers in its current format, considering the issues put forth by the education sector. The education sector wants autonomy, feasibility, flexibility and efficiency for copyright compliance in print and digital formats, and the freedom to disseminate content in numerous ways. By all accounts, it seems that Canadian publishers and creators are producing content for a market that seems to have moved elsewhere (digital and/or overseas).

106. Canada, Copyright Board, Decisions, Reproduction of Literary Works, *Access Copyright (Elementary and Secondary Schools) 2010-2015*, Reasons, p. 29, 19th Feb 2018
According to the Copyright Board, "Both of the parties (Access Copyright and school boards) rely on the 2005-2006 Volume Study in their calculation of a royalty rate for the Proposed Tariffs. While we believe it is still possible to use this study for the purposes of establishing a royalty rate for this Tariff, it may not be so in the future. The study may then be sufficiently dated as to call into question its representativeness."

107. Michael Geist, *Misleading on Fair Dealing, Part 2: Why Access Copyright's Claim of 600 Million Uncompensated Copies Doesn't Add Up*, 20th Nov 2018

Publishers need the market and the education sector needs the creators. Perhaps it's time now to find a new middle ground, maybe in the form of a new agreement, new technology such as blockchain¹⁰⁸, new platforms, or a constitutional reform.

108. Sue Carter, *How blockchain technology promises to disrupt the publishing industry*, *Quill & Quire*. 3rd December 2018

According to the article, Access has been following blockchain closely for several years. This summer (2018), they built a rough proof-of-concept, dubbed NFluencer. In October, Access also launched Prescient Innovations, a separately incorporated lab dedicated to further investigating blockchain and other technologies as rights-management solutions.

Section III

3.1 Canadian Coursepacks

One industry initiative is the Canadian Coursepack (CC), an online platform created by Canadian Publishers Hosted Software Solutions which is a not-for-profit consortium of five independent publishing houses (Between the Lines, Irwin Law, Fernwood Publishing, Formac Publishing and Lorimer). CC has been created to offer middle ground in the polarized conflict between Canadian universities and Access.

On CC's platform, course instructors can search inside listed books and identify the chapters that meet their course requirements. These chapters can then be bought by instructors piecemeal at a reasonable price and then be put together in a course pack for the students enrolled in a class with a "unique identifier", which can then be shared with the campus bookstore. Depending on the university's need, these course packs can be printed on campus, or sourced out to third-party printers. For an additional cost of \$6–7, CC can print these course packs for the university, which can then be sold by the university with their usual mark up (if they wish). If the course packs are meant for digital use, they can be uploaded on the institution's LMS.

According to James Lorimer, one of the publishers behind the CC initiative, the price of the chapters is set by the publishers. Most chapters are priced at 10¢ per page, give or take. A course pack of 300 pages would amount to about \$30 per student, which

is a “reasonable expense” for the entire course material. CC’s current mandate is to focus on social sciences and humanities, but they plan to expand the scope in the near future.¹⁰⁹

Circling back to independent publishers like Arsenal, and their existing problem of revenue erosion in the education market, CC offers a unique solution that addresses some of the gaps in the market.

1. Canadian Content

Mr. Lorimer shared that CC is intended to be a one-stop shop of Canadian content for the educators across Canada. By the end of June, they were to have more than 600 books and 6,000 chapters in their database.¹¹⁰ More content is being added as more and more publishers join the venture.

2. Copyright Management and Affordability

The education sector’s testimony has revealed an overlap in content and copyright compliance problems in the existing copyright collective model. CC addresses this problem by breaking down books into sections that can be bought as whole or in parts. Course instructors can select chapters from multiple works and put them together into a single course pack. The price they pay not only licenses them the content, it comes inclusive of copyright clearances and can be used by instructors as they wish, in whatever format they prefer. There is no need for universities to pay large sums for blanket

109. Canada, Parliament, House of Commons, Standing Committee on Industry, Science and Technology (2015), *Minutes of Proceedings and Evidence*, 42nd Parliament, 1st sess., INDU-106 (7th May 2018) at 1615

110. INDU-106 (7th May 2018) at 1635

licensing or spend costly resources to manage the copyright in-house. CC also makes textbooks more affordable by facilitating access to relevant sections of the book.

3. Discoverability of Books

One important feature of the CC platform is the easy to use interface which facilitates in-depth search functionality through the hosted content. The participating publishers (including Arsenal) have harvested the metadata of books. It's a simple process of summarizing individual chapters and classifying the subject codes at chapter level. This metadata, when fed into CC's system, facilitates a taxonomy that is unique to CC. According to Mr. Lorimer, CC is a platform not just for selling, it's also a way for university professors to find books and material that they don't know exists. "If someone was to search the platform for material relating to policing and the impact on aboriginal people and on black Canadians, the system will find surprising material and interesting discussions (previously undiscovered due to limitations of software and metadata) across multiple different fields: law, sociology, social work, economics, and politics," notes Mr. Lorimer.¹¹¹ This feature goes a long way to increasing the discoverability of books, a continuing problem that plagues the entire industry.

4. Fair Dealing

CC tackles the elephant in the room—the contentious 10% copying by educational institutions, or up to one chapter, essay or poem. Mr. Lorimer contends that there is no longer a need to take a chapter for free if it's easily available when you want

111. Canada, Parliament, House of Commons, Standing Committee on Industry, Science and Technology (2015), *Minutes of Proceedings and Evidence*, 42nd Parliament, 1st sess., INDU-106 (7th May 2018) at 1700

it, where you want it and in whatever format you want it. It clears the ambiguity when it comes to fair dealing in classrooms of Canada. Why take it for free when you can pay a nominal price for its use? Mr. Lorimer framed his argument this way:

We think university administrations can believe that the education exemption is fair and may use them to take our chapters for free, but still opt to advise course instructors and bookstores to use our platform and purchase course packs that they can sell to students. Why would they do that? Because, as I've said, our option is easy for course instructors to use, requires no staff time for copyright clearances, produces reasonably priced course materials for students, and leaves universities free of the risk that in a few years the courts will rule that they should have been paying.¹¹²

Mr. Lorimer also pointed out that the universities spend large sums in assembling permissions from rights holders for each individual portion of a book and negotiating fees for each item in the traditional course pack. This isn't only a cumbersome way of doing things, it's also expensive, often frustrating, and unpredictable in terms of the bottom-line cost.¹¹³

5. Age of The Work

Another important issue that CC addresses for creators is the age of the work. Under Access, works older than 20 years do not qualify for their Payback system. For example, a book such as *The Imaginary Indian* (first published in 1992 by Arsenal) would earn nothing under Access (unless a newer edition is in print). Publishers need to

112. Canada, Parliament, House of Commons, Standing Committee on Industry, Science and Technology (2015), *Minutes of Proceedings and Evidence*, 42nd Parliament, 1st sess., INDU-106 (7th May 2018) at 1615

113. INDU-106 (7th May 2018) at 1500
Dr. H.E.A (Eddy) Campbell (University of New Brunswick) revealed in his testimony that the total cost of copyright support at their university is approximately \$200,000 a year.

expend their resources to keep books in print and re-publish them when required, to stay current in the payback system. This book is still relevant in Canadian classrooms. CC, unlike Access, doesn't make an age distinction. If the book is used, it will be paid for.

6. Origins

Probably the most important feature of CC is the fact that it is foremost a platform for Canadian literature. As noted earlier in this report, universities are unable to give a breakdown of what is being spent exclusively on Canadian content produced in Canada. There is no accounting of the money that is flowing outside Canada versus the money staying in Canada. A section of industry stakeholders has questioned Access' tariff disbursement over the years. According to an open letter to Access Copyright by Brian Brett, Canadian poet, journalist, editor and novelist, out of the distributable income of \$23 million (in 2012), very little reached Canadian content creators. Much of it was expended on exorbitant administration and litigation costs, and a big chunk of what was left went to large publishers, leaving very little for Canadian publishers.¹¹⁴ Essentially, CC claims, the money spent by Canadian institutions for Canadian works, stays in Canada.

7. Cost of Operation and Pricing

CC offers a transparency in the disbursement of revenues. According to the agreement between CC and Arsenal, a fee of 30% of net sales applies for distribution, administration and marketing costs (which is a huge expense for the creators). The rest will be distributed to the publishers and subsequently to the authors as royalties for the

114. Brian Brett, *An open letter on Access Copyright and the Canadian copyright emergency*. 26th July 2012

works that have been copied. This can go a long way to filling the void left in the wake of the education sector opting out of the Access tariff. CC is essentially flipping the pricing model from blanket licensing to a pay-to-play model. The micro pricing model not only absolves the universities from unwanted expenditure, it should provide greater transparency in the handling of funds and subsequent payout.

CC hopes to move forward with a collaborative approach between creators and content users. They welcome suggestions and concerns from their users. If someone is looking for a book currently unavailable on CC, they can request it and CC will contact the right holders on their behalf. Ultimately, as the platform gains an audience, CC hopes to host an exhaustive repository of all Canadian works, old and new.

But a system is only as good as the people it serves. CC's initial awareness campaign hasn't been well received by universities. Mr. Lorimer told the committee that they have reached out to 35 universities across Canada and only two have responded favourably, committing to pass on the information to instructors. Seventeen universities refused to meet with CC; Dalhousie University being one of them. Interestingly, David Westwood (President, Dalhousie Faculty Association) was present in the same audience as a witness. When asked if he would be interested in this platform, Mr. Westwood responded favourably by saying, "In the notion of fair dealing, as we said, the key there was to strike a balance so that education can continue and the people who produce

content are compensated, in a balanced manner. This idea of custom course packs, I think, is an interesting concept.”¹¹⁵

CC has other potential hurdles in its way. The educators’ testimony indicates that enrollment in humanities and social sciences courses is declining. This means CC is entering a declining market. Though not a huge concern yet, if the trend continues, it could present serious problems not just for CC, but the academic sector as well.

Though CC offers a value proposition to the education sector that cuts through the chaos currently surrounding the academic publishing market, it is unclear how this system would integrate with educational institutions. The point of sale—their website—is built to cater the instructors, who don’t usually have pre-approved budgets to pay upfront for content.

CC also needs to establish its viability in the long run. For a system to be viable, it needs to generate enough returns to sustain itself. Ms. Caron (Toronto Public Library) had shared their experience with building a Canadian-made platform for eBooks called eBOUND, which had eventually proved to be unsustainable due to high costs of operation.¹¹⁶

Another concern for CC is the fact that its success hinges on the absence of collective licensing. If in future, by way of negotiations, the education sector agrees to return to the Access model, where would it leave CC? Why would educators buy from

115. Canada, Parliament, House of Commons, Standing Committee on Industry, Science and Technology (2015), *Minutes of Proceedings and Evidence*, 42nd Parliament, 1st sess., INDU-106 (7th May 2018) at 1720

116. INDU-110 (9th May 2018) at 1515

CC if they have already paid blanket licensing? Without a steady revenue, it would be difficult to maintain such a platform in the long run.

Canadian Coursepacks, as an initiative, is greater than the sum of its parts. It considers the current condition of the market and has been designed to bridge the gap between what is offered and what is needed. The system is easy to use, easy to access. The hosted content is easy to procure and easy to disseminate. It offers autonomy to the users to make an informed choice before buying content, as opposed to blanket expenditure that blurs the line between what is copyrighted and what falls under fair dealing. Users only pay for content they use. CC also makes all reasonable efforts to inform users that ownership of a work confers no additional licence or right to make further copies of the work. CC is designed to be effective, efficient and affordable. If uptake of CC reaches a tipping point, it could restore the flow of revenue to Canadian interests, and at a reasonable cost to the educators. On a deeper level, this may facilitate flow of money back into the hands of Canadians, revive publishing of Canadian literature and help authors and artists to achieve a sustainable living.

For Arsenal and other independent publishers, participation in CC is a strategic step forward. At this point, they have nothing to lose. Apart from the potential revenue, CC offers a unique platform for Canadian books and addresses discoverability, without compromising the access rights to the book (which isn't the case with many sub-licenses). The advent of technology has thrown the tried and tested methods off the track. Publishers not only need to regroup and reinvent the packaging of their content to serve users better, they also need to reimagine the channels that lead to them. In a market that is

reeling from a seriously squeezed revenue stream, CC offers a platform to initiate a new dialogue between creators and content users. Are they going to talk? Only time will tell.

3.2 The Road Ahead: Recommendations

The Standing Committee needs to mediate a dialogue between two sides that are no longer speaking the same language. There are gaps in the stakeholders' narrative across the board. Between what is thought, what is conveyed, what is heard and what is understood, a lot gets lost. The committee has been mindful and has consistently asked for concrete numbers that support the testimonies. The final picture has yet to present itself and predicting what it might be is beyond the scope of this report. The fact remains that a crucial revenue channel has been nearly decimated. The committee has the unenviable task of bringing the negotiations back to table and reaching a zone of potential agreement where both sides see the benefit.

The revenue which used to flow into the hands of the creators through Access is now, by all estimates, flowing into the hands of big publishers, most likely outside Canada. The committee needs to find a way to redirect this flow of money back into the Canadian market. It can be through Access or it could be through legislative reforms. It could be in tax rebate for buying from a Canadian content agency, or it could be mandating the education sector to spend a small percentage of their purchasing budget on Canadian content.

An important point that needs to be addressed is the ambiguity regarding the interpretation of fair dealing. In the stakeholders' defense, the last few years have been riddled with disputes. In a dynamic market where every resource is important, they've

had to expend time and money to tackle disagreements. There have been concerns about the tariff setting process, which took a long time. In the meantime, the Supreme Court and Federal Court decisions have been inconsistent when it comes to the interpretation of fair dealing. The Supreme Court of Canada held up fair dealing as a users' right (*Alberta v. Access Copyright*), while the Federal Court found York University's guidelines wanting.¹¹⁷

Over the years, the copyright law, which was founded for the protection of the rightsholders, now serves in establishing the rights of the users as well. Throughout the copyright review, the need to balance the cost and benefits of enforcing the copyright law has been central to the discussion. The "balance" in question varies, depending on who is looking at the equation. There is a need for a copyright law that not just supports the wide dissemination of works and allows the users to innovate, but also establishes a mechanism for compensating the creators adequately.

There is also an immediate need for publishers to rethink their sub-licensing agreements as they might not be working for them. Independent publishers who host their content with big aggregators might see the value in making their content available widely, but it might hurt their revenues in the long run. The education sector can source Canadian content from a host of aggregators and hence, they see no value in paying a blanket license. Without collective licensing in place, publishers will continue to dilute their works through sub-licenses, while the big publishers receive the biggest payouts.

117. Secker, Jane. *Access Copyright v. York University (2017): In Defence of Fair Dealing*. UK Copyright Literacy (blog), July 25, 2017.

Independent publishers also need to re-evaluate their digital strategy and reimagine how content reaches their users, and the innumerable ways in which it can be consumed. Educators' testimonies throw some light on what happens within the walls of an institution. Publishers need to consider the access rights that they allot to their works (sometimes in perpetuity) and be cognizant of ways these access rights can be used in a classroom.

Fair dealing is not a new concept. It has existed for a long time. Since Access tried to reinvent its tariff policies to reflect the digital world, fair dealing has become the weapon of choice to serve each group's self-interest. What is free? What is fair? Who decides? These are some very difficult questions to be answered. Differences may divide both sides over matters of compensation, but underneath all this discontent lies a common denominator that unites everyone involved in this matter—the survival of Canadian stories. And for that reason alone, the committee needs to find a middle ground that can make this possible.

Mr. Glenn Rollans summarised the tenuous market condition quite aptly:

I want to impress on you that this is not a zero-sum contest between copyright creators and copyright users. The rights you protect for me and my colleagues are not taken away from anyone. They are protected for everyone. We want readers, and readers want the works we create and publish. Real balance is when both sides win. That's what's desirable and attainable.¹¹⁸

118. Canada, Parliament, House of Commons, Standing Committee on Industry, Science and Technology (2015), *Minutes of Proceedings and Evidence*, 42nd Parliament, 1st sess., INDU-103 (26th April 2018) at 1530

Bibliography

Briefs

- Canada, Parliament, House of Commons, Standing Committee on Industry, Science and Technology (2018), *Brief*, Association of Manitoba Book Publishers. 3rd August 2018.
<https://www.ourcommons.ca/Content/Committee/421/INDU/Brief/BR10006788/br-external/AssociationOfManitobaBookPublishers-e.pdf>
- *Brief*, Australian Copyright Council & Others, 12th June 2018.
<https://www.ourcommons.ca/Content/Committee/421/INDU/Brief/BR9963977/br-external/AustralianCopyrightCouncil-e.pdf>
- *Brief*, Bernice Friesen. 16th April 2018.
<https://www.ourcommons.ca/Content/Committee/421/INDU/Brief/BR9762444/br-external/FriesenBernice-e.pdf>
- *Brief*, British Columbia Library Association, 20th Nov 2018.
<https://www.ourcommons.ca/Content/Committee/421/INDU/Brief/BR10166131/br-external/BritishColumbiaLibraryAssociation-e.pdf>
- *Brief*, Broadview Press, 16th April 2018.
<https://www.ourcommons.ca/Content/Committee/421/INDU/Brief/BR9762443/br-external/BroadviewPress-e.pdf>
- *Brief*, Council of Ministers of Education. 5th Sept 2018.
<https://www.ourcommons.ca/Content/Committee/421/INDU/Brief/BR10008279/br-external/CouncilOfMinistersOfEducation-e.pdf>
- *Brief*, House of Anansi. 25th April 2018.
<https://www.ourcommons.ca/Content/Committee/421/INDU/Brief/BR9798343/br-external/HouseofAnansiPress-e.pdf>
- *Brief*, Kenneth Field. 11th August 2018.
<https://www.ourcommons.ca/Content/Committee/421/INDU/Brief/BR10008891/br-external/FieldKenneth-e.pdf>
- *Brief*, Monica Graham. 25th May 2018.
<https://www.ourcommons.ca/Content/Committee/421/INDU/Brief/BR9894068/br-external/GrahamMonica-e.pdf>
- *Brief*, Nick Mount, 4th December 2018.
<https://www.ourcommons.ca/Content/Committee/421/INDU/Brief/BR10186458/br-external/MountNick-e.pdf>

----- *Brief*, Universities Canada. 4th July 2018.
<https://www.ourcommons.ca/Content/Committee/421/INDU/Brief/BR10002433/br-external/UniversitiesCanada-e.pdf>

Evidence

Canada, Parliament, House of Commons, Standing Committee on Industry, Science and Technology (2015), *Minutes of Proceedings and Evidence*, 42nd Parliament, 1st sess., INDU-101 (17th April 2018), Ottawa, Ontario.

<https://www.ourcommons.ca/DocumentViewer/en/42-1/INDU/meeting-101/evidence>

----- INDU-102 (24th April 2018), Ottawa, Ontario.

<https://www.ourcommons.ca/DocumentViewer/en/42-1/INDU/meeting-102/evidence>

----- INDU-103 (26th April 2018), Ottawa, Ontario.

<https://www.ourcommons.ca/DocumentViewer/en/42-1/INDU/meeting-103/evidence>

----- INDU-106 (7th May 2018), Halifax, Nova Scotia.

<https://www.ourcommons.ca/DocumentViewer/en/42-1/INDU/meeting-106/evidence>

----- INDU-110 (9th May 2018), Toronto, Ontario.

<https://www.ourcommons.ca/DocumentViewer/en/42-1/INDU/meeting-110/evidence>

----- INDU-112 (10th May 2018), Winnipeg, Manitoba.

<https://www.ourcommons.ca/DocumentViewer/en/42-1/INDU/meeting-112/evidence>

----- INDU-114 (11th May 2018), Vancouver, British Columbia.

<https://www.ourcommons.ca/DocumentViewer/en/42-1/INDU/meeting-114/evidence>

----- INDU-115 (11th May 2018), Vancouver, British Columbia.

<https://www.ourcommons.ca/DocumentViewer/en/42-1/INDU/meeting-115/evidence>

----- INDU-116 (22nd May 2018), Ottawa, Ontario.

<https://www.ourcommons.ca/DocumentViewer/en/42-1/INDU/meeting-116/evidence>

----- INDU-117 (24th May 2018), Ottawa, Ontario.

<https://www.ourcommons.ca/DocumentViewer/en/42-1/INDU/meeting-117/evidence>

----- INDU-118 (29th May 2018), Ottawa, Ontario.

<https://www.ourcommons.ca/DocumentViewer/en/42-1/INDU/meeting-118/evidence>

References

- Access Copyright, “Economic Impacts of Education Sector’s Fair Dealing Guidelines”. 2018
https://www.accesscopyright.ca/media/94983/access_copyright_report.pdf
- Access Copyright, Payback FAQs. Accessed 3rd December 2018.
http://www.accesscopyright.ca/media/1316/2018_payback_faqs.pdf
- Publisher Repertoire Payment. <https://www.accesscopyright.ca/publishers/publisher-repertoire-payment-1/>
- Alberta (Education) v. Canadian Copyright Licensing Agency (Access Copyright), 2012 SCC 37, [2012] 2 S.C.R. 345. <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/9997/index.do>
- Arsenal Pulp Press, “A brief History”
http://pexod.arsenalpulp.com/titleimages/PDFs/Arsenal_Brief_History.pdf
- Association of Canadian Publishers Research, <https://publishers.ca/acp-research/>, Accessed 21st November 2018.
- Authors’ Licensing and Collecting Society, *What are words worth now?* (London: Queen Mary University, 2013). https://wp.alcs.co.uk/app/uploads/2017/07/Authors-earning_2017-download-version.pdf
- Brett, Brian. “An open letter on Access Copyright and the Canadian copyright emergency.” *Georgia Straight*. 26th July 2012. <https://www.straight.com/news/open-letter-access-copyright-and-canadian-copyright-emergency>
- Canada, Copyright Board, *Annual Report 2015-16*, 2016. p. 27. <https://cb-cda.gc.ca/about-apropos/annual-annuel/annual-2015-2016-e.pdf>
- Canada, Copyright Board, Decisions, Reproduction of Literary Works, *Access Copyright (Elementary and Secondary Schools) 2010-2015*, p. 29, 19th Feb 2018. <https://cb-cda.gc.ca/decisions/2016/DEC-K-122010-2015-19-02-06.pdf>
- Canada, Copyright Board, Proposed Tariffs, Access Copyright - Reproduction of Literary Works by Post-Secondary Educational Institutions (2011-2013), *Canada Gazette*, 12th June 2010, p. 6
<https://cb-cda.gc.ca/tariffs-tarifs/proposed-proposes/2010/2009-06-11-1.pdf>
- Canada, Parliament. House of Commons. INDU - Statutory Review of the Copyright Act. Accessed October 30, 2018.
<https://www.ourcommons.ca/Committees/en/INDU/StudyActivity?studyActivityId=9897131>.
- Canada. Statistics Canada. “The Daily—Book Publishing Industry, 2016.” March 23, 2018.
<https://www150.statcan.gc.ca/n1/daily-quotidien/180323/dq180323c-eng.htm>

- Canada. Statistics Canada. 2016. "Book publishers, detailed financial statistics by country of control." Table 21-10-0202-01.
<https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=2110020201>
- Canada. Statistics Canada. 2017. "The Daily—Tuition fees for degree programs, 2017/2018." 2017-09-06 <https://www150.statcan.gc.ca/n1/daily-quotidien/170906/dq170906b-eng.htm>
- Canadian Association of Research Libraries. 2018. "A Guide to Canadian Research Libraries' Spending on Content: A response to INDU Committee questions from the Canadian Association of Research Libraries." http://www.carl-abrc.ca/wp-content/uploads/2018/08/Library_Expenditures_Memo.pdf
- Canadian Copyright Licensing Agency v. York University. 2017 669. FC. Retrieved from:
<https://www.canlii.org/en/ca/fct/doc/2017/2017fc669/2017fc669.html>
- CBC. The Canadian Press. "York University ordered to pay up after losing copyright battle." 2017 <https://www.cbc.ca/news/canada/toronto/york-university-ordered-to-pay-up-after-losing-copyright-battle-1.4202058>
- CCH Canadian Ltd. v. Law Society of Upper Canada [2004] 1 S.C.R. 339 at paragraph 52, 56
<https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2125/index.do>
- CIMA, "What You Need to Know About: The Notice and Notice Regime of the Copyright Modernization Act." 18th June 2014. https://cimamusic.ca/news/recent-news/read_article/3486/what-you-need-to-know-about-the-notice-and-notice-regime-of-the-copyright-modernization-act
- CMEC, Fair Dealing Guidelines.
http://www.cmec.ca/docs/copyright/Fair_Dealing_Guidelines_EN.pdf
- Coalition of Associations, "I Value Canadian Stories." I Value Canadian Stories. Accessed October 20, 2018. <http://www.ivaluecanadianstories.ca/>
- Copyright Modernization Act, AS 2012, Bill C-11, c-20, online: Department of Justice
https://laws-lois.justice.gc.ca/eng/AnnualStatutes/2012_20/
- Elliott, Alicia, "Review: Joshua Whitehead's Jonny Appleseed Is a Milestone Novel about Love, in All Its Messy Forms," *The Globe and Mail*. Accessed October 26, 2018.
<https://www.theglobeandmail.com/arts/books/reviews/article-review-jonny-appleseed-is-about-love-in-all-its-messy-forms/>.
- Geist, Michael. 2010. "Access Copyright's 1300% Tariff Increase - Deadline to Object Is August 11, 2010." <http://www.michaelgeist.ca/2010/08/access-copyright-tariff-increase/>
- 2012. "Supreme Court of Canada Stands Up for Fair Dealing in Stunning Sweep of Cases." 07 12. <http://www.michaelgeist.ca/2012/07/scc-copyright-cases/>

- 2018. "Canadian Copyright, Fair Dealing and Education, Part Three: Exploring the Impact of Site Licensing at Canadian Universities"
<http://www.michaelgeist.ca/2018/05/copyrightfairdealingeducationpartthree/>
- 2018. "Misleading on Fair Dealing, Part 2: Why Access Copyright's Claim of 600 Million Uncompensated Copies Doesn't Add Up" 20th Nov 2018.
<http://www.michaelgeist.ca/2018/11/misleading-on-fair-dealing-part-2-why-access-copyrights-claim-of-600-million-uncompensated-copies-doesnt-add-up/>
- Government of Canada, *Consultation on Options for Reform to the Copyright Board of Canada*, Access Copyright, 2017.
[https://www.ic.gc.ca/eic/site/693.nsf/vwapj/CBconsultations_2017_Submission_Access_Copyright.pdf/\\$FILE/CBconsultations_2017_Submission_Access_Copyright.pdf](https://www.ic.gc.ca/eic/site/693.nsf/vwapj/CBconsultations_2017_Submission_Access_Copyright.pdf/$FILE/CBconsultations_2017_Submission_Access_Copyright.pdf)
- Government of Canada, Tri-Agency Open Access Policy on Publications, 2015.
www.science.gc.ca/eic/site/063.nsf/eng/h_F6765465.html
- Knopf, Howard. 2010. "Access Copyright's excessive \$45 per university student proposed tariff." 8th August 2010. <http://excesscopyright.blogspot.com/2010/08/access-copyrights-excessive-45-per.html>
- Neuburger, Jeffrey. 2018. "Blockchain as a Content Distribution Technology: Copyright Issues Abound" <https://www.blockchainandthelaw.com/2018/05/blockchain-as-a-content-distribution-technology-copyright-issues-abound/>
- Scheltema, Gwynn. 2018. "Copy That!". <http://writescape.ca/site/2018/04/copy-that/>
- Secker, Jane. 2017. "Access Copyright v. York University (2017): In Defence of Fair Dealing." *UK Copyright Literacy* (blog), July 25, 2017. <https://copyrightliteracy.org/2017/07/25/access-copyright-v-york-university-2017-in-defence-of-fair-dealing/>
- Simon Fraser University. 2012. "SFU announces it is opting out of the Access Copyright tariff." 09 6. <https://www.lib.sfu.ca/system/files/28410/AccessCopyrightOptOutAnnouncement.pdf>.
- Sue Carter, "How blockchain technology promises to disrupt the publishing industry," *Quill & Quire*, 3rd December 2018
- UBC, Fair Dealing Guidelines for Members of the UBC Community.
<https://copyright.ubc.ca/files/2011/09/Fair-Dealing-Guidelines.pdf>
- Writers' Union of Canada. 2018. "Canadian Writers Working Harder While Earning Less".
<https://www.writersunion.ca/news/canadian-writers-working-harder-while-earning-less>
- Zwar, Jan, David Throsby and Thomas Longden, *The Australian Book Industry: Authors, publishers and readers in a time of change* (Sydney: Macquarie University, October 2015).
http://www.businessandconomics.mq.edu.au/our_departments/Economics/econ_research/reach_network/book_project/authors/1_Key_Findings.pdf

Appendix I

Abridged List of INDU Meetings (Publishing and Education Stakeholders)

Standing Committee on Industry, Science and Technology					
Meeting Details					
Meeting No.	Date	Location	Witnesses		
			Name	Designation	Representing
INDU-101	Tuesday, April 17, 2018	Ottawa, Ontario	Paul Davidson	President	Universities Canada
			Wendy Therrien	Director Research and Policy	
			Charlotte Kiddell	Deputy Chairperson	Canadian Federation of Students
			Pamela Foster	Director, Research and Political Action	Canadian Association of University Teachers
			Paul Jones	Education Officer	
			Shawn Gilbertson	Manager, Course Materials, University of Waterloo	Campus Stores Canada
INDU-102	Tuesday, April 24, 2018	Ottawa, Ontario	Michael McDonald	Executive Director	Canadian Alliance of Student Associations
			Susan Haigh	Executive Director	Canadian Association of Research Libraries
			Mark Swartz	Program Officer	
			Suzanne Aubry	President	Union des écrivaines et des écrivains québécois (UNEQ)
			Laurent Dubois	General Manager	
			Carol Shepstone	Past Vice-Chair, Chief Librarian, Ryerson University	Canadian Research Knowledge Network
INDU-103	Thursday, April 26, 2018	Ottawa, Ontario	Glenn Rollans	President	Association of Canadian Publishers
			Kate Edwards	Executive Director	
			Victoria Owen	Chief Librarian, University of Toronto Scarborough	Canadian Federation of Library Associations
			Katherine McColgan	Executive Director	
			John Degen	Executive Director	Writers' Union of Canada
			Denise Amyot	President and Chief Executive Officer	Colleges and Institutes Canada
			Mark Hanna	Associate Dean, The Business School, Humber Institute of Technology and Advanced Learning	

Meeting Details					
Meeting No.	Date	Location	Witnesses		
			Name	Designation	Representing
INDU-106	Monday, May 7, 2018	Halifax, N.S.	Donna Bourne-Tyson	Chair of the Board of Directors and University Librarian, Dalhousie University	Council of Atlantic University Libraries
			H.E.A. (Eddy) Campbell	President and Vice-Chancellor	University of New Brunswick
			Terrilee Bulger	Co-owner	Nimbus Publishing
			Teresa Workman	Communications Manager	Association of Nova Scotia University Teachers
			David Westwood	President	Dalhousie Faculty Association
			Scott Long	Executive Director	Music Nova Scotia
			James Lorimer	Treasurer	Canadian Publishers Hosted Software Solutions
			Andrea Bear Nicholas	Professor Emeritus	As an individual
INDU-110	Wednesday, May 9, 2018	Toronto, Ontario	William Harnum	Chair	Canadian Copyright Institute
			Hugo A. Setzer	Vice-President, Publishing	International Publishers Association
			Rebecca Graham	University Librarian, Chief Librarian's Office	University of Guelph
			Susan Caron	Director, Collections and Membership Services	Toronto Public Library
			David Caron	President	Ontario Book Publishers Organization
			Sylvia McNicoll	Author	Canadian Society of Children's Authors, Illustrators and Performers
			Joy Muller	Chair, Copyright Interest Group, Heads of Libraries and Learning Resources	Colleges Ontario
			Ken Thompson	Chair	Artists and Lawyers for the Advancement of Creativity

Meeting Details					
Meeting No.	Date	Location	Witnesses		
			Name	Designation	Representing
INDU-112	Thursday, May 10, 2018	Winnipeg, Manitoba	Patricia Robertson	Author	As an individual
			Naomi Andrew	Director and General Counsel	University of Manitoba
			Annalee Greenberg	Editorial Director, Portage and Main Press	Association of Manitoba Book Publishers
			Sherri Rollins	Chair of the Board of Trustees	Winnipeg School Division
			Lynn Lavallee	Vice Provost Indigenous Engagement, University of Manitoba	As an individual
			Alexis Kinloch	Public Art Project Manager	Winnipeg Arts Council
			Sharon Parenteau	General Manager	Manitoba Metis Federation Inc.
			Camille Callison	Indigenous Services Librarian, PhD candidate, University of Manitoba	As an individual
INDU-114	Friday, May 11, 2018	Vancouver, British Columbia	Susan Parker	University Librarian	University of British Columbia
			Christine Middlemass	President	British Columbia Library Association
			Rowland Lorimer	Treasurer	Canadian Association of Learned Journals
			Kim Nayyer	Co-Chair, Copyright Committee	Canadian Association of Law Libraries
			Kevin Williams	Past President and publisher, Talonbooks	Association of Books Publishers of British Columbia
			Jerry Thompson	Author and Journalist	As individuals
			Maya Medeiros	Lawyer, Norton Rose Fulbright Canada	
			Carellin Brooks	Author, university and college instructor	
INDU-115	Friday, May 11, 2018	Vancouver, British Columbia	Mr. Noah Berson	Student, Capilano University	As individuals
			Ms. Christina de Castell	Chief Librarian, Vancouver Public Library	

Meeting Details					
Meeting No.	Date	Location	Witnesses		
			Name	Designation	Representing
INDU-116	Tuesday, May 22, 2018	Ottawa, Ontario	Hon. Zach Churchill	Minister, Nova Scotia Department of Education and Early Childhood Development	Council of Ministers of Education, Canada
			Wanda Noel	External Legal Counsel, Copyright Consortium	
			Frédérique Couette	Executive Director	Copibec
			Roanie Levy	President and Chief Executive Officer	Access Copyright
INDU-117	Thursday, May 24, 2018	Ottawa, Ontario	H. Mark Ramsankar	President	Canadian Teachers' Federation
			Cynthia Andrew	Policy Analyst	Canadian School Boards Association
			Dru Marshall	Provost and Vice-President	University of Calgary
INDU-118	Tuesday, May 29, 2018	Ottawa, Ontario	John Hinds	President and Chief Executive Officer	News Media Canada
			Jean-Philippe Béland	Vice-President	Wikimedia Canada
			David Swail	President	Canadian Publishers' Council
INDU-119	Thursday, May 31, 2018	Ottawa, Ontario	Christine Peets	President	Professional Writers Association of Canada
			Nancy Marrelli	Special Advisor, Copyright	Canadian Council of Archives
INDU-140	Wednesday, Nov 28, 2018	Ottawa, Ontario	Jeremy de Beer	Professor of Law, Faculty of Law, University of Ottawa	As individuals
			Marcel Boyer	Emeritus Professor of Economics, Department of Economics, Université de Montréal	
			Mark Hayes	Partner, Hayes eLaw LLP	
			Howard P. Knopf	Counsel, Macera & Jarzyna, LLP	

Meeting Details					
Meeting No.	Date	Location	Witnesses		
			Name	Designation	Representing
INDU-141	Monday, Dec 3, 2018	Ottawa, Ontario	Georges Azzaria	Director, Art School, Université Laval	As individuals
			Ariel Katz	Associate Professor, Innovation Chair, Electronic Commerce, University of Toronto	
			Barry Sookman	Partner with McCarthy Tétrault and Adjunct Professor, Intellectual Property Law, Osgoode Hall Law School	
INDU-143	Monday, Dec 10, 2018	Ottawa, Ontario	Casey Chisick	Partner, Cassels Brock & Blackwell LLP	As individuals
			Michael Geist	Canada Research Chair in Internet and E-Commerce Law, Faculty of Law, University of Ottawa	