

University of New Brunswick Submission to the Standing Committee on Industry, Science and Technology

STATUTORY REVIEW OF THE CANADIAN COPYRIGHT ACT
NOVEMBER 22, 2018

UNB Libraries, Copyright Office

UNIVERSITY OF NEW BRUNSWICK LIBRARIES | PO BOX 7500, Fredericton, NB, Canada, E3B 5H5

The University of New Brunswick is the province's largest university, attended by over 10,000 students. Seventy-five per cent of the research done in New Brunswick is conducted at UNB. UNB helps drive New Brunswick's economy with a total economic impact of roughly \$1.2 billion per year. An emphasis on entrepreneurship and innovation has helped launch over 100 start-ups since 2010, the vast majority spearheaded by UNB students.

Balanced intellectual property legislation is essential to the contributions of any academic institution. In particular, copyright legislation has significant implications for academic research and teaching because such legislation dictates how the vast majority of our academic output is shared and built upon. Academic institutions include both creators and users of copyrighted materials. As such, UNB supports the statements and briefs contributed by Universities Canada, the Canadian Association of Research Libraries, the Canadian Alliance of Student Associations, and others. We believe strongly that education as a purpose of fair dealing must remain intact.

Creativity at UNB

UNB is committed to creativity. Our nationally-renowned Creative Writing program is offered at a BA, MA and PhD level. Students of this program rely on an ability to publish their works, often before graduating. UNB students and faculty publish fiction, poetry, create films and digital media. Canada's longest-running literary journal, *The Fiddlehead*, was founded at UNB and continues to be proudly supported and maintained at our university. In 2018, UNB's Faculty of Arts introduced a Certificate in Publishing encouraging new ways to support literary creators and the publishing industry in our region. UNB is actively engaged in supporting authors at all levels – from first draft to final publication.

UNB Libraries is a leader in the support of Canadian publishing. Our Centre for Digital Scholarship hosts 22 journals. We provide expert publishing support and an online platform. Our Archives & Special Collections purchases the works and papers of provincial and regional authors with a commitment to acquire copies of New Brunswick's literary heritage. We promote our writers and celebrate their accomplishments. We work to support our community both as creators and users of Canadian copyrighted material.

We agree that the Canadian publishing industry deserves and requires support. However, in the increasingly digital world of academic publication, it is short-sighted to target fair dealing as an instrument to solve these problems. Not only will it be unsuccessful from an academic context, given that the vast majority of our resources are licensed, but it will hinder the ability of Canadian universities to effectively provide the resources our students require to be competitive and well informed. The balanced exceptions within the *Copyright Act*, and fair dealing in particular, is not the cause of creators' financial challenges and should not be used as a mechanism for providing economic support.

Fair Dealing

The copying of any substantial portion of a protected work requires an individual assessment as defined by the *Copyright Act* and related jurisprudence. This assessment requires a respect for, and familiarity of, the six factors that determine the fairness of a copy and any subsequent distribution. Understanding how to respectfully and legally engage with the works of others is a skill that should not be taken lightly and should not be undermined by means of blanket licensing when responsible alternatives are viable.

UNB's decade-long experience of providing copyright support has led us to believe that past blanket licensing normalized copying practices that were often beyond the established limits set out by both legislation and courts. We see the current strong and flexible fair dealing exception as the mechanism that allows institutions to engage with instructors and students to establish a culture of copyright respect that protects these rights beyond the walls and digital spaces of today's university classrooms. The education sector has invested heavily in training and awareness programs to ensure copyright protected works are used in compliance with the law and we at UNB are making every effort to ensure that our community acts within the constraints of the legislation. We are committed to responsible purchasing and usage of copyrighted materials.

Digital Transition

UNB recognizes its role as a custodian of copyright and academic integrity. Respect for intellectual property is an increasingly important and complex concept in a constantly evolving digital environment. Educational institutions need flexibility to adapt to emerging trends such as online course development and delivering resources across satellite

campuses. Mandating a one-size-fits-all solution will only serve to stifle innovation for educational technologies.

Responsibly delivering published works to our researchers, instructors, and students is a priority at UNB. Investment in library resources is increasing. Spending on resources has grown from \$3.2 million in 2013 to more than \$4.7 million in 2017.

Figure 1. Print Resources as a Percentage of Total Acquisitions

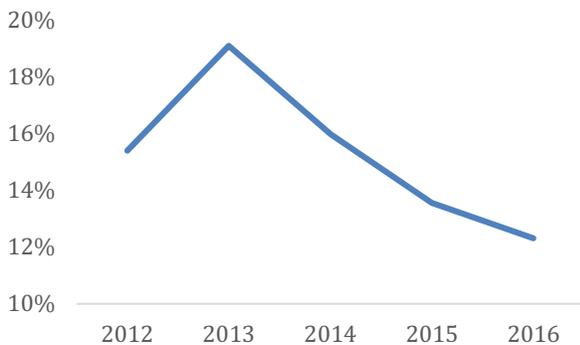
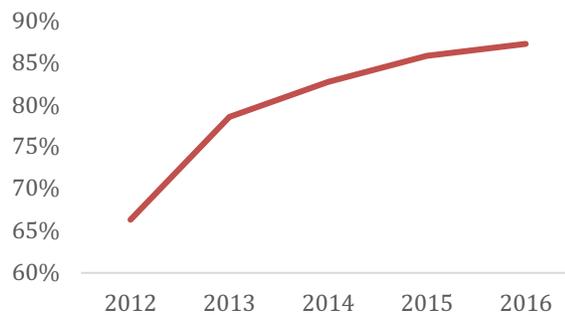


Figure 2. Electronic Resources as a Percentage of Total Acquisitions



Our scholarly community expects and demands information that is both relevant and accessible. The cost of these resources is increasingly high. Fully 90% of our purchasing is directed to electronic resources, reflecting the transformation in scholarly publishing from print to electronic. Our ability to negotiate licenses with appropriate terms of access to these resources are paramount to their value for our academic community. Moreover, educators and researchers seek to access born digital materials that do not offer reasonable licensing options. In both circumstances, the educational and scholarly community need legislation that reflects the modern use of digital materials. Instructors and scholars now frequently find themselves restricted by a resource's terms of use. Digital locks restrict cutting-edge research to only those who can afford access.

UNB considers a student or a researcher's ability to respectfully deal with any copyright-protected works to be integral to the balance of innovation and entrepreneurial growth. The ability to apply fair dealing to digitally-locked works has become essential in this digital age. Technological Protection Measures, as currently defined and regulated, are out of step

with the prevailing definition of user rights from both the intentions of the legislation and over a decade of jurisprudence.

Copyright Office support

Copyright compliance at UNB is led by UNB Libraries' Copyright Office, created in 2009. The Office provides education and consultation, fair dealing assessment, and transactional purchasing. Our fulltime Copyright Officer and part-time assistants across both campuses work directly with librarians and course instructors to build understanding of copyright and to promote a culture of respectful use of published works. Since UNB no longer offers course packs, the bedrock of this relationship is UNB's integrated Course Reserves delivery system. The Reserves system is embedded within our learning management system to ensure responsible sharing of materials is available at an individual course level. Course Reserves operates at the course section level, restricting materials by term and limiting access to course registrants only, allowing us to purchase targeted transactional licenses. Our numbers confirm the robust nature of Course Reserves.

Each year approximately:

- 1000 courses are vetted through our System,
- 6000 items are placed on Course Reserves,
- 1000 scanned documents are reviewed for fair dealing compliance,
- \$5000 is spent on direct transactional licensing,
- And, an additional \$7000 is spent acquiring items for our collection as required for Course Reserve (e.g. purchases of eBooks).

The creation of the Copyright Office resulted from an assessment of course copying at UNB in 2008. We learned that most materials shared in the classroom were available through our electronic licenses. The Access Copyright (AC) blanket license was redundant for already licensed materials. Supplementary, transactional (or item by item) licensing continues to be a far more reasonable and responsible approach. Moreover, an AC license would not eliminate our current copyright expenses because the need for copyright education and advocacy would still be required, and the AC repertoire is not comprehensive.

Course Reserves

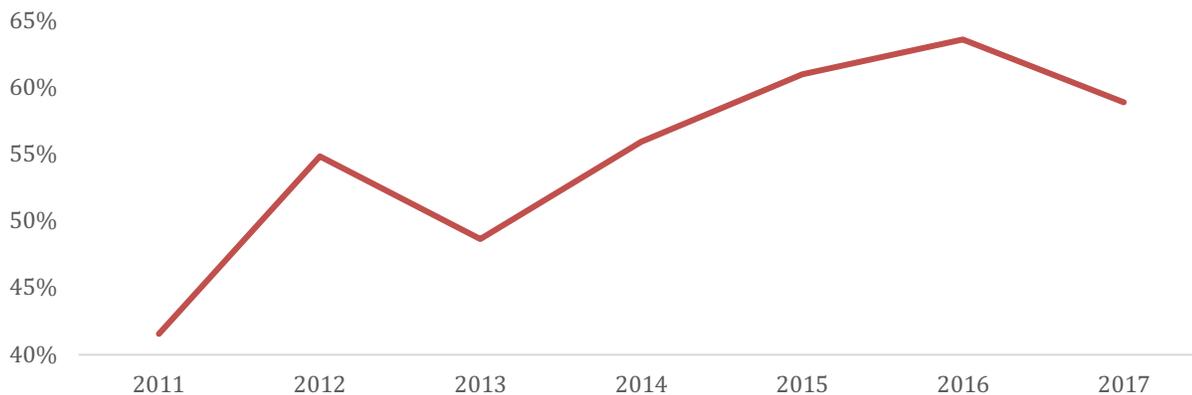
Figure 3 shows the trend toward using licensed resources in UNB Libraries' Course Reserves, since 2011. While the total amount of scanned documents has remained relatively

consistent over the period, UNB instructors have increased the use of UNB Libraries' licensed resources by close to 60%. The Course Reserves system has facilitated UNB Libraries' engagement with instructors and the creation of new courses where providing licensed access to specific materials best fits student needs.

On May 7, 2018, during UNB's testimony to the Statutory Review of the Copyright Act, a Committee member asked if our institution could provide data that showed the potential reproduction cost to students. Essentially, what would the cost of copyright clearance be if *fair dealing* did not allow for short excerpts to be copied for student use? To answer this question, the Libraries reviewed all copied materials placed on Course Reserves since 2011.

As shown below, figure 3, the percentage of scanned materials on Reserve has dropped by approximately 20% since 2011. While the number of actual documents has remained relatively stable this shows the marked increase in the use of licensed resources. Since 2011, the average permissions costs for UNB are \$145 per request. Given these costs and the stability of the number of copied materials since 2011, students at UNB would have paid \$145,000 if fair dealing for education that allowed for this copying did not exist.

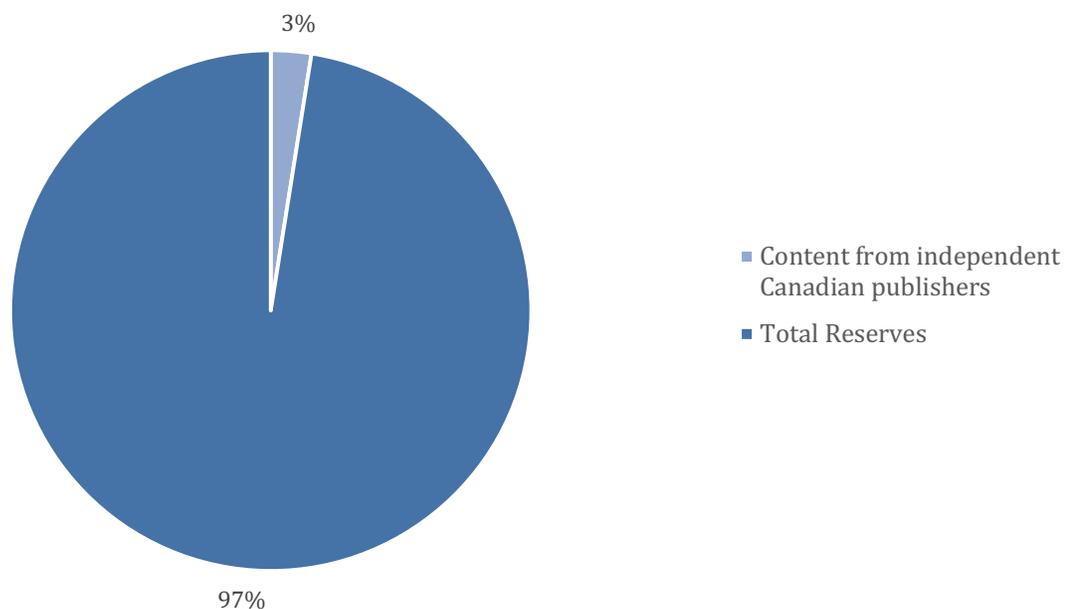
Figure 3. Licensed Resources as Percentage of Electronic Course Reserves



From this data, we further identified three categories of rights owners: international publishers, independent Canadian publishers (including university presses) and instructor-created content (course syllabus, class slides, etc.). The following summary extrapolates from the 1000 scanned items placed on Reserve. Finally, figure 4 shows the total

percentage of scanned materials from independent Canadian publishers since 2011. In particular, we found that each year, less than 180 scanned items can be traced to independent Canadian publishers since 2011. In terms of total Course Reserves holdings, **copies of independent Canadian published excerpts represent approximately 3% of the total materials instructors are sharing with students.** At UNB, the numbers show that eliminating education as a permissible purpose under fair dealing will not have any real benefit to the Canadian publishing industry.

Fig. 4 Canadian Publisher Content copied for Reserves



Research and Scholarship in Digital transition

The education sector has taken responsible steps toward respectful use of short excerpts. However, the difficulty of using works where the copyright holder cannot be identified creates a pending bottleneck for many scholars. Canada has been a leader in its approach to orphaned works. The issue of orphaned works is closely linked to the legislated term of copyright protection. The current term of life of the author plus fifty years has served owners and users of protected works well. Our orphaned works regime is a critical issue with the potential impact of the US-Mexico-Canada free trade agreement which proposes to increase the term of copyright protection to life of the creator plus seventy years. UNB recognizes the value of retaining the current term of copyright protection, and also providing the necessary resources to the Canadian Copyright Board’s orphaned works

regime that will enable this system to deal with the evolving demands of future creative users.

Recommendations

With regard to the Statutory Review of the Canadian Copyright Act, UNB Supports other institutional and association Testimonies and Briefs that identify the importance of:

- fair dealing right for the purpose of education
- contract override and the circumvention of technological protection measures for non-infringing purposes
- the current copyright term of 50 years after death of the creator
- strengthening the current orphan works regime

We appreciate the opportunity to share our experience working with the current form and interpretation of the Canadian Copyright Act. We invest in copyright expertise and education. We continue to develop tools and awareness to promote the responsible use of copyright protected works. From our perspective, the alternative solutions that have been suggested by Access Copyright are not fair to educators, researchers, or students. We pay for what we use and we actively support our creators. We ensure that our students have access to the materials they need for academic success. Fair dealing is a responsible tool in an evolving landscape.

Submitted for the University of New Brunswick by UNB Libraries Copyright Office.
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