

Submission to the Standing Committee on Industry, Science and Technology

FOR THE COMMITTEE'S STATUTORY REVIEW OF THE COPYRIGHT ACT

SUBMITTED BY LANGARA COLLEGE

DECEMBER 6, 2018

ABOUT LANGARA

Langara College, located in south Vancouver, was established as an independent public college on April 1, 1994, after offering programs as part of Vancouver Community College for 29 years. The College is also known as snəwəyət lələm - which means *house of teachings* in the hənqəmihəm language - a name given to us by the Musqueam People, on whose unceded traditional territory we are located. Langara provides academic, career, and continuing studies programs and courses. In recent years the College has also increased formalized support for applied research activities among its faculty.

Copyright legislation affects the way students and educators can access and use copyright-protected materials. Langara thanks the Committee for the opportunity to discuss the impact of the *Copyright Act* on teaching and learning.

INTRODUCTION

Colleges and Institutes Canada (CICan) member institutions, including Langara College, play an integral part in Canadian society, providing students with foundational academic skills and industry-ready training. Between 2014 and 2015, Canada's colleges and institutes and those they have trained added \$191.2 billion in income to the country's economy, approximately equal to 12.7% of the Gross Domestic Product.¹

The development and delivery of dynamic programs requires fair and reasonable access to learning materials, including copyright-protected works. The *Copyright Act* exists to create a balance between public good and creator rights.² To achieve this balance, the Supreme Court of Canada advises that exceptions to copyright infringement, such as fair dealing, are better understood as users' rights.³ Shifting the balance too far in favour of the copyright owner stifles creative innovation and creates practical obstacles to otherwise acceptable uses.⁴

The purpose of this brief is to: (1) explain how copyrighted content is used at Langara, and (2) provide recommendations for maintaining a balanced copyright regime that acknowledges the importance of research, teaching, and learning.

¹ Colleges and Institutes Canada. (n.d.). Demonstrating the value of Canada's colleges and institutes. Retrieved from <https://www.collegesinstitutes.ca/policyfocus/impact/>

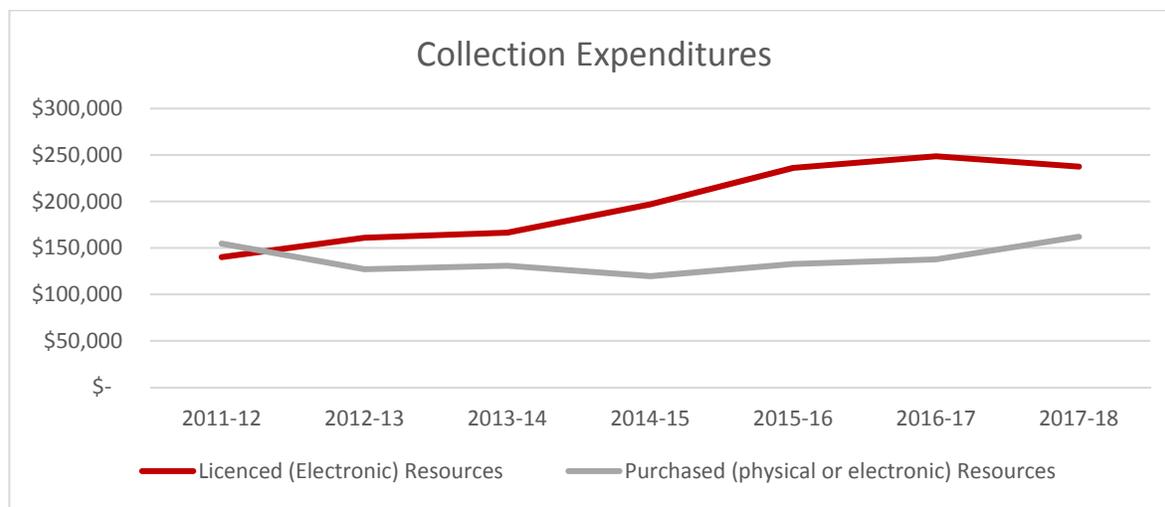
² *Théberge v. Galerie d'Art du Petit Champlain Inc.*, 34 Supreme Court of Canada. (2002). Retrieved from the Supreme Court of Canada Judgments website: <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1973/index.do>. See paras. 30-31.

³ *CCH Canadian Ltd. v. Law Society of Upper Canada*, 13 Supreme Court of Canada. (2004). Retrieved from the Supreme Court of Canada Judgments website: <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2125/index.do>. See para. 12.

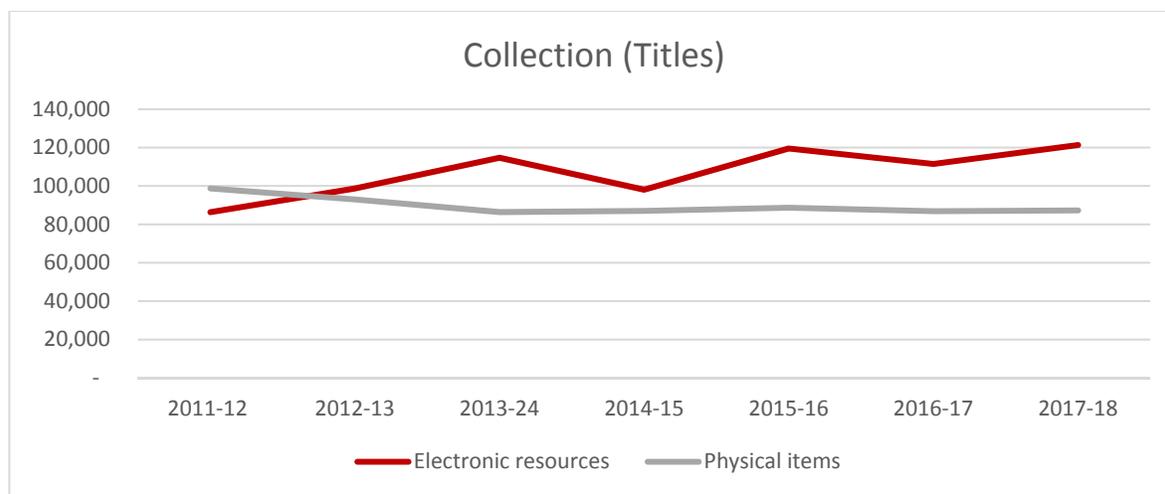
⁴ *Théberge v. Galerie d'Art du Petit Champlain Inc.*, 34 Supreme Court of Canada. (2002). Retrieved from the Supreme Court of Canada Judgments website: <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1973/index.do>. See para. 32.

THE LANGARA LIBRARY COLLECTION IN CONTEXT

Contrary to what some stakeholders have suggested, educational fair dealing has not been a windfall for Canadian colleges and universities. Statistics Canada data indicates that expenditures on print and electronic acquisitions for colleges have increased by 26% since 2012.⁵ In keeping with this trend, collections spending at Langara Library increased by 34% since 2013/14, speaking to the College's commitment to providing access to legally-acquired resources and fairly remunerating publishers and authors.



As with many post-secondary libraries, Langara Library has shifted collection development activities towards digital educational materials, reaching a tipping point in 2011/12. Use of electronic materials (licensed or purchased) is governed by license agreements with content providers; while the terms of these agreements vary, most permit common educational uses.



⁵ Statistics Canada. Table 37-10-0029-01 Expenditures of community colleges and vocational schools (x 1,000)

Although Canadian content exists within the larger core academic electronic collections, Langara Library makes a special effort to collect materials with regional relevance to British Columbia and Canada. The Library subscribes to several databases and collections (journal, book, and media) with exclusively Canadian content. The total cost for Canadian-specific collections in 2017/18 was \$30,683. Langara also has direct subscriptions to several Canadian academic journals and magazines, spending over \$4,000 on these subscriptions in 2017/18.

Langara encourages instructors to adopt, adapt, and create open educational resources (OER). Open educational resources are teaching, learning, and research resources in the public domain or with intellectual property licenses that permit free use and repurposing by others.⁶ Langara is the second heaviest user of open textbooks among B.C. post-secondary institutions, as reported through British Columbia's Open Textbook Project. Since 2013, instructors have adopted over 15 open textbooks, saving students approximately \$521,054.⁷ In 2016, Langara formed a college-wide Open Education Advisory Committee to build awareness, cultivate in-house expertise, and support instructors using and creating OER.

Academic publishing is in the midst of a seachange. In an era where the web is omnipresent, the traditional textbook is no longer a panacea. Publisher and author groups point to educational fair dealing as the cause of falling revenues. Yet, the Supreme Court found no link between lost profits and photocopying done by educators. Rather, it identified several other factors that were likely to have contributed to the decline in sales, including increased use of the Internet and a shift towards resource-based learning.⁸

COPYRIGHT COMPLIANCE AT LANGARA

Langara has long been committed to balancing its interests as a place of learning with those of creators and publishers. The Langara Library has always helped students, staff, and faculty manage their rights and responsibilities under Canadian copyright law. The Copyright Office continues to be housed within the Library and is staffed by the Copyright Officer (a title shared by the Director of Academic Innovation and the Copyright Librarian) and a Copyright Technician. Langara's Copyright Office has developed a set of policies and procedures to monitor and guide faculty, staff, and students' use of copyrighted content.⁹ To supplement these policies, educating the College community has been a major focus over the past five years. Copyright education on campus takes place in many forms, including:

- Workshops each semester on such themes as *Copyright for Educators* and *Copyright for Creators*;

⁶ Hewlett Foundation. (n.d.). Open educational resources. Retrieved from <https://hewlett.org/strategy/open-educational-resources/>

⁷ BCcampus OpenEd. (n.d.). Open textbook stats. Retrieved from <https://open.bccampus.ca/open-textbook-stats/>

⁸ Alberta (Education) v. Canadian Copyright Licensing Agency (Access Copyright), 37 Supreme Court of Canada. (2012). Retrieved from the Supreme Court of Canada Judgments website: <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/9997/index.do>. See para. 33.

⁹ Langara College. (n.d.). Policies. Retrieved from <https://langara.ca/about-langara/policies/college-policies/index.html>

- Customized workshops for individual departments on campus;
- Course-embedded copyright instruction for a number of academic programs, including Professional Photography, Publishing, Web and Mobile App Design and Development, and Library & Information Technology.

To supplement these face-to-face sessions, the Copyright Office developed an interactive online tutorial in the College's Learning Management System (LMS) entitled *Copyright for Langara Instructors*. Launched in 2018, the tutorial teaches faculty how to legally use copyright-protected materials through common scenarios they encounter in their day-to-day work.

Outside of educational workshops, staff are readily available to answer questions from students, faculty, and College employees via email, telephone, and in-person consultation, responding to 112 copyright questions in 2017/18.

The Copyright Office works closely with the Langara Bookstore and Print Services to produce print coursepacks. Staff review every coursepack for copyright compliance, maintain a detailed copy log, process licensing fees, and seek permission from copyright owners on behalf of instructors whenever necessary.

The number of print coursepacks produced by the College has fallen significantly in recent years, as more instructors develop their own materials and link to licensed electronic resources. Comparing fall semesters 2012 and 2018, the College now offers 33.7% more sections and produces 32.6% less print coursepacks.

APPLICATION OF EDUCATIONAL FAIR DEALING AT LANGARA

According to the Supreme Court of Canada, fair dealing is more than an exception to infringement: It is a user's right.¹⁰ When fitting, Langara instructors use and share content under fair dealing and other educational exceptions in the *Copyright Act* in accordance with College policy and with assistance from Copyright Office staff.

To help members of the Langara community work within copyright law, Langara has adopted the fair dealing guidelines jointly developed by CIPAC, Universities Canada, and the Council of Ministers of Education, Canada. The College's Fair Dealing Policy and Guidelines are founded on two landmark Supreme Court rulings in 2004 and 2012, rather than the expanded definition of fair dealing introduced by the *Copyright Modernization Act* (though the latter affirmed the former). *Alberta (Education) v. Access Copyright* (2012) confirmed that copying short excerpts is "reasonably necessary to achieve the ultimate purpose of the students' research and private study."¹¹

¹⁰ Society of Composers, Authors and Music Publishers of Canada v. Bell Canada, 36 Supreme Court of Canada. (2012). Retrieved from the Supreme Court of Canada Judgements website: <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/9996/index.do>. See para. 41.

¹¹Alberta (Education) v. Canadian Copyright Licensing Agency (Access Copyright), 37 Supreme Court of Canada. (2012). Retrieved from the Supreme Court of Canada Judgments website: <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/9997/index.do>. See para. 32.

The Guidelines provide some guidance as to what constitutes a short excerpt (i.e.10% or less of a book) where the *Copyright Act* does not, though *CCH Canadian Ltd. v. Law Society of Upper Canada* (*CCH v. LSUC*) (2004) asserts that “it may be possible to deal fairly with a whole work.”¹²

Fair dealing guidelines provide a useful starting point, but copyright law ultimately requires case-by-case evaluation. In *CCH v. LSUC*, the Supreme Court outlines six factors, or tests, to help users determine whether a use is fair.¹³ This is a more rigorous evaluation than required by the U.S. doctrine of fair use, which only uses four factors. Langara Copyright Office staff promote the conscientious application of this framework, providing support and guidance whenever needed. These six factors form the foundation of the College’s online copyright tutorial for Langara instructors.

RECOMMENDATIONS

Recommendation 1: Preserve education as a fair dealing purpose

Educational fair dealing enhances pedagogy by facilitating access to short excerpts from copyright-protected works. Fair but nimble use of copyright-protected materials lends itself to innovative research and teaching practice. As such, the College recommends preserving education as a fair dealing purpose under Section 29 of the *Copyright Act*.

Recommendation 2: Permit the removal of TPMs on copyright-protected works for non-infringing purposes

Langara College is home to the Centre for Accessible Post-Secondary Education Resources BC (CAPER-BC), an award-winning service funded by British Columbia’s Ministry of Advanced Education, Skills and Training. CAPER-BC creates alternate format learning materials for print disabled post-secondary students. Over the past decade, CAPER-BC has experienced a 230% increase in demand for its services.¹⁴

Section 41 of the *Copyright Act* permits circumvention of technological protection measures (TPMs) for the purposes of producing alternate formats for persons with perceptual disabilities.¹⁵ However, this is complicated by the condition that such activities “not unduly impair the technological protection measure.” According to the Canadian Library Association, there is no efficient way to remove and restore TPMs after creating an alternate format, essentially nullifying

¹² *CCH Canadian Ltd. v. Law Society of Upper Canada*, 13 Supreme Court of Canada. (2004). Retrieved from the Supreme Court of Canada Judgments website:
<https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2125/index.do>. See para. 56.

¹³ *Ibid.* See para. 53. The six factors are: (1) the purpose of the dealing; (2) the character of the dealing; (3) the amount of the dealing; (4) alternatives to the dealing; (5) the nature of the work; and (6) the effect of the dealing on the work.

¹⁴ Centre for Accessible Post-Secondary Education Resources BC. (2018). Annual report 2017-2018. Retrieved from <https://caperbc.ca/files/2018/05/CAPER-BC-Annual-Report-2017-18.pdf>

¹⁵ Ontario Council of University Libraries. (n.d.). Accessibility information toolkit for libraries. Retrieved from <https://ocul.on.ca/accessibility/law-and-administration/canadian-copyright#sect7>

the exception.¹⁶ This impedes CAPER-BC's ability to provide equitable access to educational materials and, in turn, hinders student learning. If approved by Parliament, Bill C-81: The Accessible Canada Act will require the removal and prevention of accessibility barriers in information and communication technologies¹⁷. As such, the College recommends that Section 41 be amended to allow circumvention of TPMs for non-infringing purposes.

Recommendation 3: Remove copyright protection for publicly available government works

In 2017, Amanda Wakaruk, Copyright Librarian at the University of Alberta, initiated a House of Commons e-petition requesting that the Government of Canada address the long overdue need to modernize Crown copyright. Sponsored by Saskatoon West MP Sheri Benson, the e-petition received over 1,400 signatures. In the U.S., federal government publications have been in the public domain for nearly 130 years. In Canada, however, uses that Wakaruk notes should “not only [be] allowed but encouraged in a liberal democracy” continue to require permission.¹⁸

As one local example, a Langara faculty member developing an open textbook for Environmental Science was chagrined to learn that he—as a tax paying citizen and instructor at a publicly-funded college—required permission to reproduce a chart from a Government of Canada website. The permissions process is often further complicated by inconsistent interpretation and application of Section 12 of the *Copyright Act* by government employees. In keeping with the Government of Canada's commitment to open government, the College recommends that a clause be added to Section 12.1 that removes copyright protection for government works once they have been made publicly available.

¹⁶ Canadian Library Association. (2011, December 12). Protecting the public interest in the digital world revisited for Bill C-11. Retrieved from

http://cla.ca/wp-content/uploads/Protecting_the_Public_Interest_in_the_Digital_World_FINALdec11.pdf

¹⁷ Government of Canada. Employment and Social Development Canada (2018, October 25). Proposed Accessible Act – Summary of the bill. Retrieved from <https://www.canada.ca/en/employment-social-development/programs/accessible-people-disabilities/act-plain-language-summary.html>

¹⁸ Betz, S. (2017, September 13). A simple fix for cringeworthy Crown copyright. *University of Alberta Libraries News*. Retrieved from <http://ualbertalibrarynews.blogspot.com/2017/09/a-simple-fix-for-cringeworthy-crown.html>