

Brief to the 2018 Copyright Act Review

Submitted on April 9th, 2018 by:
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On behalf of Broadview Press

What is Broadview Press?

We are an independent Canadian-owned publisher of higher education books in the humanities and we're currently in our 33rd year of operation. We specialize in literature, writing, and philosophy textbooks for undergraduates; we have 25 staff, roughly 700 books in print, and over \$3.5 million in annual sales. Though we sell our titles internationally, more than half our publications are Canadian-authored, many of our books are tailored specifically for Canadian students

How has Broadview Press been affected by the fair dealing provision for education that was added to the *Canadian Copyright Act* in 2012?

In November 2012, the word 'education' was added as a fair dealing purpose in the *Copyright Modernization Act*. In the last 5 years, many in the education sector have interpreted that to mean that much of the copying they previously paid for can now be done for free and they could pull out of long-standing collective licensing agreements. The impact on my own business, Broadview Press, has been significant.

Broadview Press revenue derived from the Access Copyright collective licensing agency has dropped from above \$50,000 annually to \$20,000 in 2017, and it is projected to be near zero in 2018. During this period there has been no increase to revenue received from independent permissions requests originating directly from academic institutions—this remains at under \$1000 annually.

But the reduction in permissions revenue is not the effect that has had the most significant financial impact on our business. In reaction to the 2012 changes to the *Copyright Act* copying policies at Canadian Universities and Colleges have changed dramatically. Now that their institutions are indicating that up to 10% of a work may be reproduced for free, in many cases instructors are building whole course reading lists out of readings posted online or photocopies in coursepacks rather than teaching from textbooks as they would have 5 years ago.

The rise of copying as a substitute for the purchase of original works has caused a steep decline in Canadian sales revenue at Broadview Press. 55% of our revenue came from Canadian sales in 2013; this has dropped steadily, with only 41% of our revenue coming from Canadian sales in 2017.

We would prefer to be able to continue to develop books specifically for the Canadian market, but in recent years we've been forced to develop more projects specifically for the American market to compensate for our declining Canadian sales. For many courses within our core disciplines we provide the only textbooks that are developed entirely within Canada. When multinational publishers produce a Canadian edition of a textbook they typically add a Canadian author to a text that was originally developed for the American market. By contrast, our books are authored by Canadians, and edited and marketed by our entirely Canadian staff and freelancer team. Examples include *The Broadview Anthology of Literature*, *The Broadview Guide to Writing*, and a range of applied ethics books that take specifically Canadian contexts into consideration. The danger is not that we will disappear as a publisher, but that our publishing program will become far smaller, far less interesting, and far less culturally significant. If we do receive reasonable compensation for the educational use of our books, we can continue to justify publishing culturally valuable but commercially precarious collections such as *Native Poetry in Canada* and *Introduction to Indigenous Literary Criticism in Canada* or editions that bring back into print early Canadian works such as the nineteenth-century black feminist and abolitionist Mary Ann Shadd's *A Plea for Emigration*, or

A Strange Manuscript Found in a Copper Cylinder, the first Canadian work of science fiction. We would certainly like to continue to publish projects of this sort! (We also like to keep prices very reasonable—unlike some other publishers of post-secondary textbooks, sad to say.) But if we receive no compensation whatsoever, we simply can't continue to publish books of that sort; we cannot work for free. In that case we will simply have to focus on publishing more books for the American market, or focus on publishing more introductory composition texts and introductory logic texts that are less susceptible to being pillaged for “short excerpts.” Such books are, it's fair to say, on average of less cultural value. But if the only way we can pay the bills is by publishing a steady diet of books of that sort, that's what we'll do.

Over time, it's become abundantly clear that writers, illustrators and my fellow publishers are being forced to subsidize the education system. For the publishing industry, this means fewer jobs and less money to invest in new Canadian works.

The Access Copyright versus York University Case

In July 2017, the Federal Court of Canada issued its decision in the case of Access Copyright versus York University. This was the first legal test of the copying guidelines widely adopted by the education sector in 2013.

The Court found:

- the education sector's copying guidelines to be arbitrary and unfair;
- that the guidelines do not meet the test for fair dealing established by the Supreme Court of Canada;
- that tariffs set by the Copyright Board are mandatory (i.e. schools cannot 'opt out'); and
- overwhelming evidence that copying substitutes for the sale of original work.

York has appealed the decision, which means that this issue will continue to play out in the courts at a high cost to rights holders. K-12 and post-secondary schools continue to operate under copying guidelines the Court found lead to illegal behaviour. Their policies and procedures have not changed and remain in contravention of Canadian law, as established by the Federal Court.

Publishers such as Broadview do not have as deep pockets as the universities and colleges, and we struggle greatly as we wait for many years as such issues play out in the courts.

Length of Copyright Term – An Argument for Keeping the “Life of the Author Plus 50 Years” Term

I should also make clear that we are not the sort of press that regards any and every protection of copyright or extension of copyright as being in the public interest. Another vitally important copyright issue that has been on the table in recent TTP and NAFTA trade negotiations is the international pressure Canada is faced with to increase the length of the copyright term from 50 years after the death of the author (already too long, in our opinion) to a full 70 years after the death of the author, thereby preventing for an additional generation the publication of competing editions of literary classics—editions that can often be of immense cultural and pedagogical value.

Finding an appropriate balance in copyright issues is not easy. But in the one direction it is surely unfair to simply not compensate authors and publishers of copyrighted material that is used to put together what are in effect entire textbooks. And in the other direction it is surely not fair to make it impossible to publish competing editions of century-old works, so that an author's great grandchildren (or, if copyright is held by an organization, a corporation such as Disney) can still retain an exclusive hold on all royalties.

An international reference you may wish to consult regarding this matter is the December 2016 report from the Australian Productivity Commission on Reforming Australia's intellectual property arrangements. This report

argues that the life+70 years term is too long and urges the Australian government to reduce it to 50 years or less in the IP review that is currently underway.

Recommendations

In the review of the *Copyright Act* I urge you, on behalf of my colleagues and the writers we work with, 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.

We recommend that—in light of the findings of the Access Copyright versus York University ruling and evidence of damage being done to the publishing industry—the fair dealing provision for education be clarified immediately. Fair compensation needs to be given for the use of copyright-protected work if the continued production of Canadian learning resources for our students is to remain viable.

We recommend that the Copyright Board of Canada be given more funding and leverage so that they can make decisions in a timely manner and actually enforce their rulings and tariffs.

We recommend that Canada protect or reduce the length of copyright term to be no more than “life of the author plus 50 years”.

Many thanks for taking the time to listen to our views on the *Copyright Act* revisions!

Appendix 1: A Case Study on the Availability of Canadian Introduction to Literature Textbooks

We hope the following example will give some sense of the precariousness of the Canadian textbook publishing industry and the lack of options that professors and students have when seeking Canadian authored and produced texts. Given the current way in which fair dealing for education is being interpreted by Canadian universities and colleges, it is doubtful we will see any new entrants into the market of Canadian editions of Introduction to Literature texts. No other publishers would bother to create a new text for this market given that universities expect to be able to use these readings for free without providing compensation to the original authors or publishers.

Overview: Virtually all English departments at universities and colleges offer an Introduction to Literature course. Typically this course attempts to give students a sense of the range of writing in English from the medieval period to the present in a variety of genres (fiction, poetry, drama, and sometimes literary non-fiction), and it covers writing from all English speaking regions of the world. Though Canadian instructors want to see thorough coverage of American writers, British writers, and English-speaking writers from all parts of the globe, they typically are not, nor should they be, satisfied with simply using an American textbook that does not pay special attention to the role of Canadian writers.

Only one Introduction to Literature textbook has been prepared entirely by Canadian editors, by a Canadian publisher, who employs Canadian staff and freelancers:

The Broadview Introduction to Literature 2e. Edited by Lisa Chalykoff (U of Victoria), Neta Gordon (Brock U), and Paul Lumsden (Grant MacEwan U). 1576 pages. \$72.95. Forthcoming April 2018. (the first edition was published in 2013.)

- Includes **49 Canadian authors**

Two American Introduction to Literature textbooks have been adapted into Canadian Editions:

Elements of Literature 5e Edited by Robert Scholes (Brown University), Nancy R. Comley (Queens College CUNY), Carl H. Klaus (University of Iowa), and David Staines (University of Ottawa). Oxford University Press. 1312 pages. \$74.95. 2015.

- Includes **27 Canadian authors**
- Originally produced for the US market; one Canadian editor has been added to adapt the Canadian edition

The Harbrace Anthology of Literature. Edited by Jon Stott and Raymond E. Jones. Published by Nelson. 2005

- Out of print

All other textbooks that are commonly used in Introduction to Literature courses at Canadian Universities and Colleges are edited and published by Americans for Americans:

Norton Introduction to Literature, Portable 12^e, Edited by Kelly J. Mays (U of Nevada, Las Vegas). Norton. 1472 pages, \$63.75 US.

Backpack Literature, 5^e, ed. Kennedy and Gioia. Pearson. 1232 pages, \$106.50 CDN.

Literature: A Pocket Anthology 6e, ed. Gwynn (Lamar University). Pearson, 1040 pages, \$94.50