



# University of Victoria

## Submission on the Statutory Review of the *Copyright Act* University of Victoria December 10, 2018

### About the University of Victoria

The University of Victoria (UVic), located in Victoria, BC, is consistently ranked among the top Canadian comprehensive universities by *Maclean's* magazine, having been recognized globally for its leadership in a broad mix of academic fields. UVic enrolls approximately 21,700 students (full-time and part-time) across 10 disciplines, employing nearly 900 faculty who are responsible for 515 patents, 1,026 invention disclosure and 123 start-up companies filed to date. This community includes authors, creators, and users of copyright material and has a balanced perspective on copyright. UVic believes fair dealing is an important concept that maintains the creative rights of authors and facilitates opportunities for the benefit of students.

### Summary of Recommendations

- Copyright collectives and tariffs should offer dynamic solutions for educational copying.
- Where current acquisition models are governed by license, those licenses should permit respect of the copyright balance intended by Parliament and the courts.
- Support the use of responsible compliance measures that reflect student education needs, and respect Canadian book authors and publishers in regards to educational copying.
- Look beyond the *Copyright Act* to address Canadian author and small publisher concerns.
- Maintain Canada's objectives in implementation of amendments flowing from USMCA: balance term extensions with flexible fair dealing.
- Recognize Indigenous knowledge in a way that reflects Indigenous peoples' conceptions of knowledge creation, authorship or ownership, transformation, publication, and preservation.

### Copyright collectives and tariffs should offer dynamic solutions

More formats and options for learning materials exist than ever before. Post-secondary education increasingly uses online resources and open access solutions in place of traditional print publications. Many resources are obtained by license rather than purchase, and thus, do not directly implicate activities governed by the *Copyright Act*. Indeed, academic publications written for and by the scholarly community and acquired in licensed collections are by far the most used resources for learning and research. The millions of dollars (\$8,718,302 in 2017-

2018) UVic Libraries pays to publishers annually for print and electronic collections evidence this. Traditional academic textbooks are still a material of choice for courses in many disciplines; and, niche segments of the university population use creative and literary works.

As a community of both creators and users of copyrighted works, UVic is committed to ensuring creators are appropriately compensated. We require dynamic solutions. UVic has been operating without a collective license for several years, and copyright clearance activity at the University of Victoria is ongoing. Our continual close evaluation shows this approach works well.

UVic supports an a la carte clearance model, such as the US Copyright Clearance Center (CCC) offers. The model ensures royalties reflect both the content and amount of copying. Although Access Copyright, the collective under which UVic formerly operated, now offers multiple licensing models for academic institutions, its [“Choice” license](#) still requires an initial—and opaque—base payment for access to flexible solutions. In other words, it offers bundled pricing for its services, but does not offer a transactional license for a single work, as the CCC does. Additionally, Access Copyright’s repertoire of works does not cover many materials UVic uses for education, such as sheet music, website material, and business cases, which therefore must be cleared with individual copyright holders.

UVic recommends that a mandatory tariff not be adopted, as it would do little for educational copying. A mandatory tariff effectively removes a university’s ability to choose how it manages copyright by requiring the purchase of blanket licenses, which may not include preferred content, and eliminates options such as the a la carte model favoured by UVic. Further, a mandatory tariff eliminates fair dealing as an option, as the tariff assumes copying always exceeds what is statutorily permissible. UVic supports solutions that reflect paying for the content actually used and rewarding Canadian creators whose works are reproduced for education.

### **Current library acquisition models remain governed by license**

Over the last two decades, libraries have shifted acquisition of many core books and journals from print purchases to licensed digital subscriptions. For books, budget dollars are mainly directed from print titles to ebook packages, where, though the average title cost is higher, multiple user access is the norm. The terms of most ebook licenses already limit copying, downloading, and lending rights. Were such activities permitted by license, UVic would support permissions-based copying or fair dealing, as applicable. UVic supports changes to the *Copyright Act* to prohibit unilateral provisions that would defeat permitted activities such as library lending and fair copying.

### **Strained budgets limit print monograph purchase**

Since most libraries’ material budgets are heavily allocated to continuing resources and their rising costs, little additional discretionary funds can be allocated to print monograph purchases. Any drop in monograph acquisition is largely attributable to inflation, exchange rates, and flat acquisitions budgets, rather than to engagement of fair dealing rights. Notably, the digital trends discussed have had little impact on Canadian fiction authors, because the licensed packages do not include this sector of books. Canadian fiction works are still purchased as individual monographs.

## UVic actively supports Canadian authors

UVic, through our libraries, carries out many activities that support Canadian authors and the Canadian publishing industry:

- we maintain a standing purchase plan for all Canadian university press monographs;
- we have standing purchase plans for Canadian-authored books in a number of disciplines;
- we acquire all monographs by UVic authors;
- the law library acquires multiple copies of textbooks for the JD program and multiple copies of core Canadian law titles (by independent Canadian publishers such as Emond and Irwin); and
- we support the creation of new UVic authored titles through the Libraries ePublishing Service,

UVic's Office of Research Services also offers a fund to support faculty authorship, and the Bookstore and Libraries co-host an annual event to celebrate and promote UVic authors.

## UVic applies a high standard of copyright compliance to respect rights

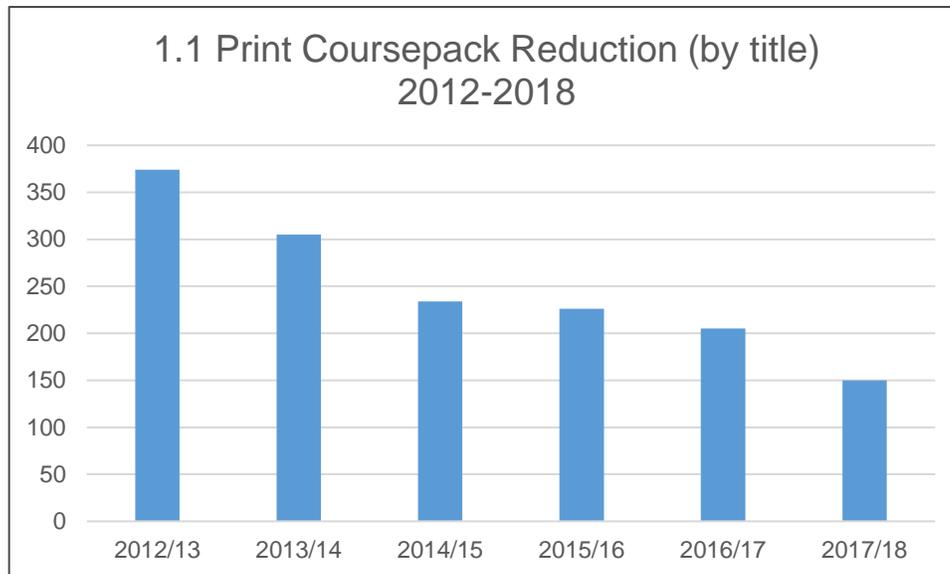
UVic has a detailed Copyright Compliance Strategy designed for the copyright framework, history, and environment in Canada. Access Copyright's proposal to increase the Copyright Board tariff fees rate from \$3.38 in 2011 to \$45 precipitated a decision to operate outside the tariff. This decision preceded both the 2012 Act changes and the 2012 Supreme Court of Canada decisions on copyright. Paramount to the strategy was the creation of a Copyright Office (CO) in 2012 to oversee and advise the university community on copyright issues, in multiple ways:

- educating faculty, staff, and students through workshops, memos, department meetings and individual consultations;
- creating a website with licensing information, and best practice guidelines;
- conducting periodic random audits of courses in the learning management system, and conducting follow-up faculty education;
- posting fair dealing guidelines in multiple locations; and
- clearing permissions for reproductions in library reserves and coursepacks.

UVic adopted *Fair Dealing Guidelines* in 2013, while still operating under an Access Copyright license agreement. We developed these into a new [Copyright Compliance and Administration Policy](#) in 2017. The 2013 implementation of the compliance strategy enabled us to pilot a permissions and fair dealing-based system, while still covered by the license.

The assessment of course materials use on campus showed already changing trends in course materials use:

- Some faculty use the same edition of a textbook until the release of a major revision, enabling students to purchase used textbooks.
- Faculty use links to licensed resources and open content instead of reproductions in coursepacks, giving a 15-20% coursepack usage reduction every year.



- Faculty adopt, adapt, or create open textbooks and release them as openly accessible resources.
- Science and engineering disciplines tend to adopt high cost textbooks rather than use coursepacks.

The education sector has flexible options for using copyrighted material. Faculty can choose content available through the library-licensed resources, use content openly accessible and in the public domain, and purchase permissions directly from the publisher or creator. The increased cost (which ranged from \$26 to \$45 per FTE student) of an Access Copyright license therefore was not justified.

### **Methods other than copyright can address Canadian author and small publisher needs**

In our experience, copyright-related concerns and fair dealing in the education sector are not at the root of industry challenges, meaning, solutions must lie elsewhere.

UVic values the remarkable field of Canadian authors and books. We support government efforts to bolster the industry and to enable authors to continue to write for a living.

UVic recommends that Canada explore other strategies to support this valued industry:

- By extending the Public Lending Rights program beyond public libraries, to include academic and college libraries that lend materials to the public.
- In developing government support programs to spur and support the industry, as was done to support the struggling but crucial Canadian journalism industry

**Balanced amendments to the *Copyright Act* are consistent with USMCA**

Our study of the United States–Mexico–Canada Agreement (USMCA) is preliminary. It seems one outcome of USMCA, should it be ratified by Parliament, would be that Canada will have agreed to implement some extended terms of copyright protection.<sup>1</sup> This could extend the period during which creators and researchers will be unable to work with older texts of little resale value. Their authors (already having been deceased for at least 50 years) and their immediate heirs have little to gain in royalties or reputation from the extension of term of protection.

Nevertheless, a responsive review of the *Copyright Act* can minimize deleterious effects. Canada's commitments are in the context of resolutions that include Canada's inherent right to set legislative and regulatory priorities consistent with our legitimate public welfare objectives, fostering creativity and innovation.<sup>2</sup> Specific USMCA objectives relating to intellectual property include contribution to the promotion of technological innovation to the mutual advantage of creators and users, and to a balance of rights and obligations.<sup>3</sup> Canada should take full advantage of its negotiated right, in formulating or amending laws and regulations, to adopt measures necessary to promote the public interest in sectors important to our socio-economic and technological development and to adopt measures that will prevent abuse of copyright by rights holders.<sup>4</sup>

The value of older works can increase where texts are explored and exploited for research, study, and development of new creative efforts. Texts can also be transformed for accessibility and preservation, which promotes continued use and sale of works of interest to researchers, teachers, and students. UVic recommends any term extension should be accompanied with other *Copyright Act* changes to continue to support research and study. A fair dealing application akin to transformative use in the US context, for instance, would support research efforts such as those described, while respecting copyright.

### **Copyright legislation must address principles applicable to Indigenous knowledge**

UVic is a creator, collector, and user of materials that have Indigenous knowledge at their core. Many Indigenous peoples' conceptions of knowledge creation, authorship or ownership, transformation, publication, and preservation may differ from the traditions that underlie the *Copyright Act*. A bill is before Parliament that would enable Parliament to implement the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).<sup>5</sup> This bill would ensure the laws of Canada are in harmony with UNDRIP, which refers to the recognition of Indigenous knowledge.

UVic urges the committee to examine and prepare appropriate amendments to the *Copyright Act*, consistent with the standard proclaimed in UNDRIP, to further the recognition of intellectual property and knowledge as conceptualized by the various Indigenous peoples on whose land Canada rests.

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<sup>1</sup> United States–Mexico–Canada Agreement (USMCA), Chapter 20, Intellectual Property Rights, Article 20.H.7 <https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/20%20Intellectual%20Property.pdf>

<sup>2</sup> USMCA, Preamble <https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/00%20Preamble.pdf>

<sup>3</sup> USMCA, Article 20.A.2. Objectives

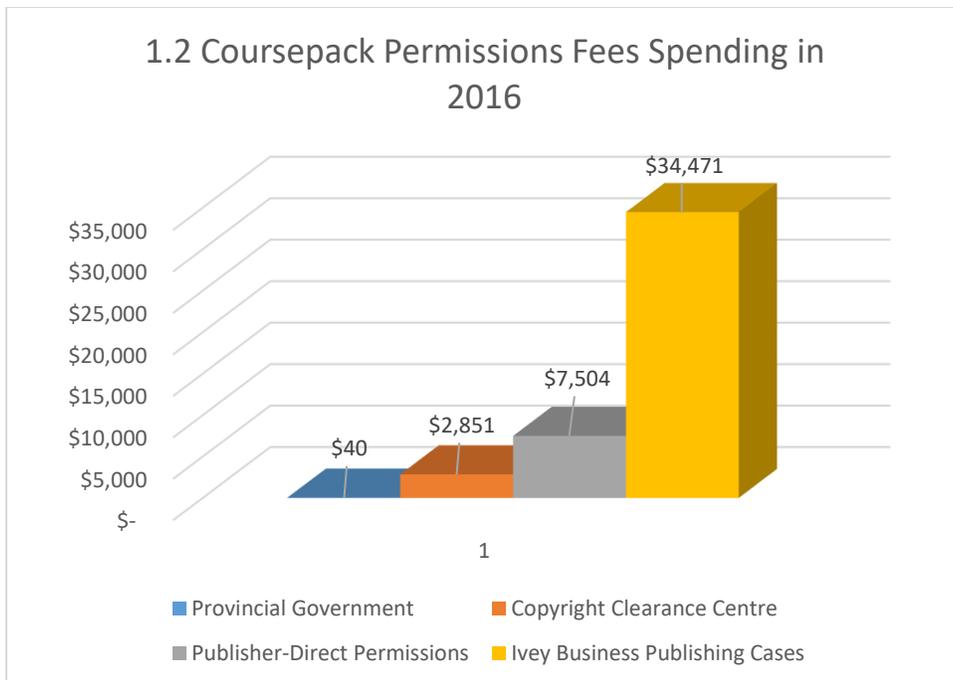
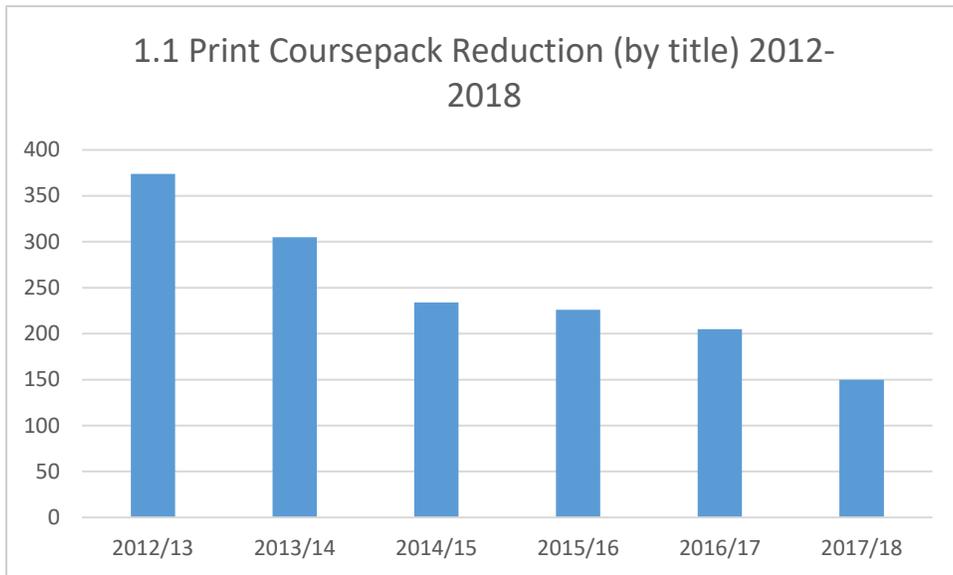
<https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/20%20Intellectual%20Property.pdf>

<sup>4</sup> USMCA, Article 20.A.3. Principles

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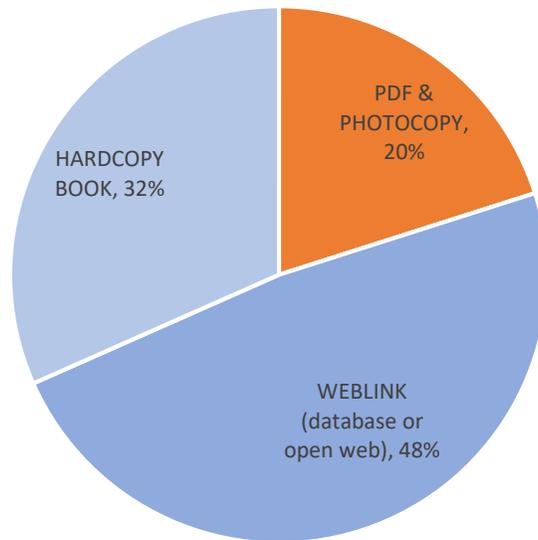
<sup>5</sup> Bill C-262, 42nd Parliament, 1st Session, United Nations Declaration on the Rights of Indigenous Peoples Act

## Appendix A: Coursepack Use

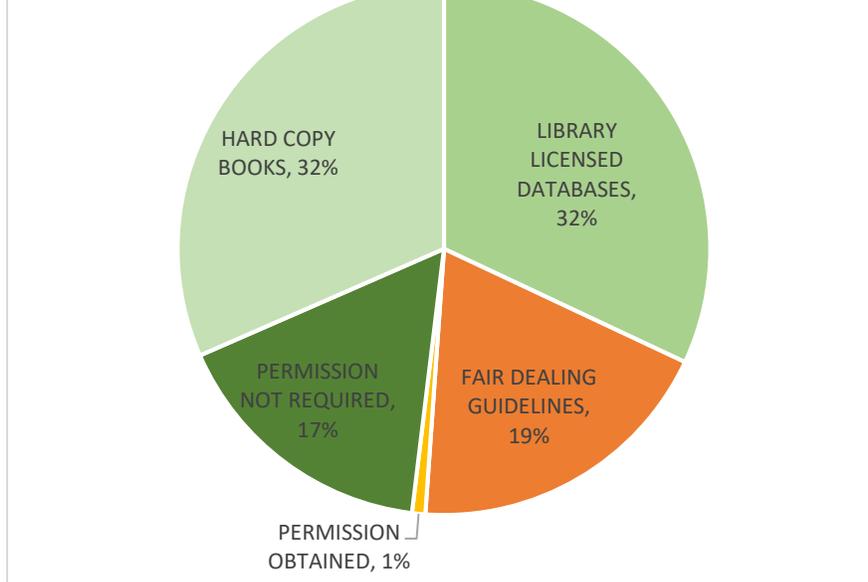


## Appendix B: Items on Library Reserves Fall 2017 Snapshot

### 2.1 LIBRARY RESERVE RESOURCES BY TYPE



## 2.2 LIBRARY RESERVE COPYRIGHT CLEARANCE



## APPENDIX C

### APPROVAL PLAN FOR CANADIAN MONOGRAPHS

(These are “university appropriate” titles from Canadian Publishers/Presses)

Started this special acquisitions fund in 2015

	CAAP1 (Canadian Approval Plan)	SPCL5 (Special Collections, Canadian Small Press Orders)	TOTAL	No of Books
2017-2018	\$12,892	\$4,209	\$17,101	277
2016-2017	\$16,636	\$1,412	\$18,048	
2015-2016	\$14,866	\$5,582	\$20,448	

**Note:** The above stats do not include purchasing one-off titles directly from the publisher or from self-published Canadian authors. They also do not include titles purchased from other fund codes. The SPCL5 is set up to acquire BC specific titles and from small indie publishers in BC. The above spending represents about 3% of our monograph budget. The CAAP fund is for primarily academic audience.

**PRINT MONOGRAPH approval plan and firm ordered print monographs (including Law)**

2017-2018	\$569,919
2016-2017	\$808,690
2015-2016	\$593,943
2014-2015	\$634,450

***EBOOKS: Collections and individually firm ordered titles (including Law)***

2017-2018	\$590,194
2016-2017	\$433,420
2015-2016	\$369,054
2014-2015	\$618,615

## APPENDIX D

How we have saved students on cost of textbooks

