Brief to the Standing Committee on Canadian Heritage for the Committee's Study on Remuneration Models for Artists and Creative Industries in the Context of Copyright

Submitted for House of Anansi Press / Groundwood Books by Matt Williams, VP, Publishing Operations, 25 September 2018

Our business

House of Anansi Press / Groundwood Books is a Canadian-owned independent publisher based in Toronto. We publish general-interest books for all ages across our two lists. For over fifty years our publishing program has been based on bringing attention to new Canadian writers and illustrators. We have built our business by investing in Canadian creators at the outset of their careers, and then by working to establish their work in classrooms, libraries and communities across Canada and around the world, to the economic benefit of creators and the cultural benefit of readers.

We publish approximately 75 new titles each year, and we have an active backlist of over 1000 titles from some 500 different creators. Over the past three years our annual revenue has averaged around $7m, and in each of the past three years we have paid approximately $2m in royalties to creators.

Our economic model

We have 33 employees, and we also pay for the freelance and contract services of numerous Canadian editors, designers and illustrators. We print primarily with Canadian printers and we distribute our books into different markets – bookstores, libraries, K-12 schools, post-secondary institutions, export. We also sell content from our books for re-use in other markets, for example licenses to educational institutions, translation rights to foreign publishers, and dramatic rights to television and movie producers. Each of these markets provides a separate revenue stream for us, and we pay royalties to our creators based on each of those streams.

As well as paying out royalties on sales of existing books, we continually invest in new books by way of royalty advances. Our financial investment in new work is an important contribution to the livelihood of creators: we reinvest current profits by paying creators in advance to write and illustrate the books of the future.

We have been successful in diversifying our business across the different markets mentioned above. Our investment in each new book will not necessarily be repaid with initial print sales, and many titles become financially viable for us, and remunerative for the creator, only with revenue over the long term from these other markets.

Of particular importance to us is the Canadian educational market, for obvious cultural reasons but also for an important commercial reason: its perennial nature. A book that gets only a few weeks of display in a bookstore when it is first published may have a long sales life in the classroom through the sale of class sets, or through an educational license that pays for ongoing use of part or parts of the book each year.

Our experience since 2012
Since the 2012 changes to the *Copyright Act* and the widespread and unilateral adoption of "Fair Dealing Guidelines" by Canadian educators, the financial effect on us has been: (i) a steady decline in the licensing revenue we receive from Access Copyright and (ii) a steady decline in the permissions inquiries and licensing income we receive that is directly related to use of our material in Canadian classrooms.

With regard to (i), Access Copyright income, we have dropped from approximately $20,000 per year in revenue from post-secondary attributed copying pre-2012 to below $5,500 in 2017, and from approximately $2,000 per year in revenue from K-12 attributed copying pre-2012 to below $100 in 2017. We expect post-secondary income to descend even closer to zero next year because the revenue from unrenewed post-secondary licenses has now largely worked its way through the Access Copyright payment system, and also because of revenue left unrealized as a result of refusal within the educational sector to pay past tariffs certified by the Copyright Board.

With regard to (ii), our annual Canadian permissions income in the years up to and including 2011 was approximately $20,000 per year, and we were getting, on average, 25-30 direct Canadian permissions payments per year. Since 2012 that income has dropped to below $3,000 per year, and we now get only 5-10 direct Canadian permissions payments per year.
The overall reduction in revenue to us has now reached $30,000 per year, which means a reduction in royalty payments to our creators of around $15,000 per year. In order to replace the profit from this licensing income and restore that royalty amount to our creators, we calculate that we would have to sell an extra 7,500 books into classrooms each year – that's around $150,000 worth of books at list price. This is clearly massively unlikely given the prevailing position within the educational sector that, once a book is purchased, material from that book can, under their own guidelines, be systematically copied year after year without further payment.

In effect, a market in which we participated for many years – licensing our content for Canadian classroom use – is now, for us, no longer a market. This has a direct effect on the royalty payments we make to the creators we publish.

Our outlook
We are 100% in favour of widespread educational use of our material. That is why we develop and publish books – so they can be read, taught, enjoyed, used. Our publishing program is dedicated to bringing a diversity of high-quality Canadian work to Canadian readers, and we believe that much of that formative engagement should take place in educational settings, from K-12 to post-secondary.

We object to the fact that we are no longer paid for classroom use of this material. Even as we invest in and and publish more Canadian children's books, more Canadian poetry, more Canadian short stories, more Canadian novels, and more Canadian drama, our income from the Canadian educational market diminishes.

We are very concerned that continued use of Fair Dealing Guidelines by ministries of Education and administrators of educational institutions across Canada is encouraging teachers and instructors to copy our content in ways that are not, in fact, fair, and that thus fall outside the protective statutory bounds of fair dealing.

In the Federal Court's Reasons for Judgement in the Access Copyright vs. York University lawsuit last year, one of our books was cited as an example of how York's Fair Dealing Guidelines are "arbitrary" and "not soundly based in principle."[1]

The book is *The Hockey Sweater and Other Stories*, by Roch Carrier, English translation by Sheila Fischman, published by Anansi in 1979. The book contains 20 stories, one of which is "The Hockey Sweater." According to York's Fair Dealing Guidelines, by virtue of the fact that "The Hockey Sweater" was originally published in this collection rather than on its own, the story is stripped of its copyright protection and can be copied without permission or payment.

The insidious effect of the Fair Dealing Guidelines on our remuneration model does not just extend to such classics from the past, but also to brand new work, for example the following two examples from our fall 2018 list. Once we publish Tanya Talaga's 2018 CBC Massey Lectures, *All Our Relations*, under the Fair Dealing Guidelines any of the five individual lectures may be copied without permission or payment due to each being "one chapter from a book."[2] And now that we have published Katherena Vermette's poetry collection *river woman*, any of the poems may be copied freely under the Fair Dealing Guidelines due to each being "an entire single poem … from a Work containing other poems,"[3] again without permission or payment. We, and the authors, face the stark prospect that our revenue from such Canadian educational use of this content will be $0. This cannot be considered fair market value and is no kind of return on investment for us or our authors.

(We note that York's Fair Dealing Guidelines do make provision for collection of copying fees from students, but only to support the institution and its own overhead: "Any fee charged by York for copying a Short Excerpt must not exceed the costs, including overhead costs, of the making of the copy."[4])

Our recommendations

1. We recommend that the Committee respond to the urgency of the situation for publishers and creators whose income has dropped so severely in the past few years and work with the Standing Committee on Industry, Science and Technology to clarify fair dealing provisions. Cumulative losses within the publishing industry since 2013 have now climbed well over $50m. With fair dealing practice in Canada the way it is, we have lost our ability to leverage the value of our work and our investment in it, and thus pay associated royalties to creators. This situation is not sustainable.

[1] Federal Court, Citation 2017 FC 669, between The Canadian Copyright Licensing Agency ("Access Copyright") and York University, Reasons for Judgement, page 12
[2] http://copyright.info.yorku.ca/fair-dealing-requirements-for-york-faculty-and-staff/
[3] http://copyright.info.yorku.ca/fair-dealing-requirements-for-york-faculty-and-staff/
[4] http://copyright.info.yorku.ca/fair-dealing-requirements-for-york-faculty-and-staff/

2. We recommend that the Committee carefully consider two reasons that publishers' ability to collect revenue owed to them in the form of tariffs established by the Copyright Board is limited. One is due to users' assertions that tariffs are not mandatory and that they may "opt out," and the other is due to inconsistency in the remedies offered to collective societies by the *Copyright Act*. Because Access Copyright does not fall under the same regime that applies to SOCAN/Re:Sound, it is not eligible to recover the same level of damages for non-payment of tariffs. This reduces users' incentive to pay and leads to costly and time-consuming legal action. Making it clear that tariffs are mandatory and harmonizing the remedies for collective societies under the *Act* would level the playing field, and we believe this would make the process of collection and distribution of copyright revenue more efficient.

3. We recommend that the Committee carefully consider how one of the purposes of the Copyright Act as stated by the Canadian Intellectual Property Office – "[i]ts purpose is to protect copyright owners while promoting creativity and the orderly exchange of ideas"[5] – may be furthered by *improving* educational access to high-quality Canadian content. Our company is just one of many skilled and committed producers of such content that have been established across Canada in the past few decades with shared goals: to work with creators to develop reliable, lasting content that is beneficial to Canadian students and Canadian society. We require a predictable, sustainable, effective copyright framework within which we can deliver this content to the educational sector, using formats and delivery methods that work for teachers and students. We seek acknowledgement that high-quality content requires investment from all participants in this framework, in pursuit of benefit for all.

[5] "A guide to copyright," Government of Canada, http://www.ic.gc.ca/eic/site/cipointernet-internetopic.nsf/eng/h_wr02281.html