



UNIVERSITY OF CALGARY

**SUBMISSION ON REMUNERATIONS MODELS
FOR ARTISTS AND CREATIVE INDUSTRIES IN
THE CONTEXT OF COPYRIGHT**

Prepared for:

**HOUSE OF COMMONS STANDING COMMITTEE ON CANADIAN
HERITAGE**

Introduction

The University of Calgary thanks the Standing Committee on Canadian Heritage for the opportunity to provide input into the study on Remunerations Models for Artists and Creative Industries in the Context of Copyright. As home to both users and creators, universities take a balanced approach to copyright.

Shifts are taking place in the ways Canadians consume information, and, given that the majority of students are digital natives, the university is at the forefront of this transformation. A growing proportion of library spending is on digital resources – due to preference of students and faculty to access resources in digital format and to the greater cost-effectiveness of digital resources. Digital access has become the primary way students and scholars access copyrighted material. This shift can be compared to the travel industry, which has transformed into self-service via online services. In a digital-first world, students and scholars now have access to materials in real time, 24 hours a day, whether they are on campus, at home, or in another city.

It is important not to attribute the effects of the disruption in media consumption—and the accompanying disruption of remuneration models—to provisions in The Copyright Act, but to this digital shift. UCalgary believes the inclusion of educational exceptions in The Copyright Act, including fair dealing, are critical to innovation, education and the digital economy. UCalgary's copyright policies and procedures ensure students and instructors have access to a wide variety of materials for an engaging educational experience, and rights holders receive equitable compensation for the use of their work.

Fair dealing for education ensures students have access to a wide range of ideas and information, allowing them to develop both a breadth and depth of knowledge, and the ability to communicate complex ideas and synthesize information. The development of such skills is critical if new graduates are to compete in an increasingly competitive global economy and become innovators whose ideas will help ensure the future prosperity of Canada. Many peer countries have adopted copyright exceptions similar to Canadian fair dealing for education. For example, the United States fair use exception is more expansive than Canada's and recognizes the valuable role fair use plays in ensuring a high quality educational experience. It is critical that Canadian students are afforded these same benefits.

The Digital Shift

UCalgary ceased operating under the Access Copyright Interim Tariff in September 2011 and opted not to enter a model license agreement with Access Copyright in 2012. UCalgary implemented new policies and procedures in advance of these decisions to ensure compliance with copyright law. Numerous factors influenced UCalgary's decision to opt out, including the shift to a digital learning environment. In fact, transitioning copyright practices to accommodate an electronic and digital learning environment was overdue. Opting out of the Access Copyright reprographic license and allocating funds to compensate creators for permissions to use digital content via the secure learning management system was critical to supporting our institutions learning environment and student and instructor preferences.

In addition, a growing proportion of library spending at UCalgary is on digital resources. Digital license contracts include access and reproduction rights, which allow content to be posted to the learning management system and permit the saving or printing of copies by individuals. The library has a buy-digital acquisition policy, unless a print resource is explicitly requested or electronic version is unavailable. Since 2006, spending on digital materials has increased by 58 percent. UCalgary's library has increased spending on electronic resources by \$2.6 million or 37% since opting out of the Access Copyright license in 2012.

University students today are primarily digital natives who strongly prefer library resources they can read on a screen. Professors and instructors are increasingly sensitive to the cost consciousness of their students. To keep course materials affordable, instructors are using material licensed and paid for by the library (e.g. e-journal articles and eBooks) rather than custom course packs or expensive textbooks. Indeed, the use of course packs has decreased as the availability of licensed digital resources has increased. While 144 courses used course packs in the 2013 school year, in 2017 only 72 courses used them. In 2018, 53 courses used print course packs.

As a result of the digital shift and student and instructor preferences, the Copyright Office purchases transactional licenses for digital materials that are not already available through library licenses or when educational provisions in the Copyright Act do not apply. Transactional licenses allow content to be legally posted on the secure learning management system (LMS) where only students enrolled in a particular course can access them. In 2017/18, the university spent \$96,149 on transactional licenses, including \$45,123 on transactional licenses for course packs, and \$51,026 on transactional licenses primarily for materials posted to the LMS. While spending on transactional licenses has increased, the proportion related to print course packs has been substantially declining.

Furthermore, eBook licenses for use in a course are often a more cost-effective approach for the university. A license for a multi-user eBook can cost less than a transactional license, and access is not limited only to students enrolled in one course. For example:

- A transactional license for two chapters of *Oil: a Beginner's Guide* (2008) by Vaclav Smil for a class of 410 students would cost the library \$2,463 USD. An unlimited license for the eBook version is \$29.90 USD, and the book would be available to all library users.
- A transactional license for two chapters from the print book version of *Negotiating a Vacant Lot: Studying the Visual in Canada* (2014) by Lynda Jessop et al. for a class of 60 students is \$414 CAD, while an unlimited license for the eBook version is \$150 USD.

An increasing number of instructors are also using open access resources. In addition to their cost effectiveness for students, open access resources often allow instructors to incorporate a variety of materials and viewpoints into a course. In the Fall 2017 and Winter 2018 semesters, 27 courses at

UCalgary used open access resources as a primary text. UCalgary is actively supporting the creation of open educational resources and provides grant funding to cover costs.¹

The UCalgary experience has indicated that the shift to licensed digital resources would be occurring irrespective of the existence of the education provision for fair dealing.

In addition to the information above, under the Access Copyright blanket license, UCalgary increasingly found itself paying multiple times for the same resource—paying Access Copyright for copies of the print resource, and purchasing licenses for access to digital resources preferred by the university community. Paying a collective license for the reproduction of print material no longer meets the needs of the UCalgary community. In contrast, maximizing the use of licensed digital content and pay-per-use or transactional licenses satisfies the needs of the campus community. It is a fiscally responsible approach, and compensates rights holders.

Copyright Policies at UCalgary

Fair Dealing

UCalgary takes compliance with copyright law seriously, as reflected by its approach to fair dealing. Fair dealing for education is based on well-established principles contained in several seminal Supreme Court decisions. It enhances the student learning experience by increasing the diversity of classroom resources. In our rapidly changing, digital world, course materials must include the most up-to-date material and cutting-edge examples. The speed at which textbooks and traditional print books are produced and distributed often does not allow for the inclusion of such up-to-date information.

UCalgary's approach to fair dealing is consistent with court precedents. Further, fair dealing is applied to a very small portion of classroom materials (less than 8 per cent). UCalgary does not apply fair dealing to print course packs or compilations of work (e.g. literary anthologies). Furthermore, very few classroom resources at UCalgary are literary works—most are materials created by instructors specifically for their course, textbooks, academic books, or academic journal articles written by academics employed by a university. At UCalgary, fair dealing is most commonly applied to a chart or table from a book or academic journal article that is included in the materials for a lecture presentation.

Copyright Compliance

Prior to opting out of Access Copyright, UCalgary implemented policies to ensure compliance with copyright law. The Copyright Office, a one-stop-shop for copyright inquiries, has four FTE employees. In 2017, the Office processed approximately 7760 requests from students, faculty, and staff—a 120 per cent increase since 2013.

¹ See University of Calgary, Open Educational Resources: <https://ucalgary.ca/open/>.

UCalgary takes a comprehensive, proactive approach to educating its community about copyright, including:

- In 2012, UCalgary adopted the Acceptable Use of Materials Protected by Copyright policy that applies to employees, students, and post-doctoral fellows. It includes sanctions (including the possibility of dismissal for faculty and staff, and expulsion for students) for violation of copyright policy.²
- Strongly recommending all course reading lists are reviewed by the Copyright Office to ensure compliance.
- The Provost's Office issues bi-annual reminders for staff and instructors on copyright responsibilities.
- The LMS includes reminders about where to seek advice about copyright and the appropriate use of materials.
- Notices about copyright infringement are posted beside photocopiers and scanners.
- The Copyright Officer holds regular information sessions for instructors, staff, and students on copyright. These sessions inform creators about their rights under copyright law and educate the university community about copyright compliance. In 2017, 22 presentations and workshops were held.
- Copyright education sessions are included as part of our orientations for new professors and instructors prior to the start of each term.

Recommendations

UCalgary strongly believes the following recommendations take a balanced approach to copyright and would strengthen Canada's copyright regime. In addition, UCalgary endorses the recommendations in the submissions from Universities Canada.

1. **Do not introduce a mandatory tariff regime for the education sector.**
Universities take copyright compliance seriously and must be able to choose an approach that meets their needs. While tariff regimes work well for some institutions, others, including UCalgary, prefer to manage their compliance through licensing agreements, including the purchase of digital resources and transactional licenses. Imposing mandatory tariffs would remove a university's ability to choose how to manage copyright, compel them to purchase blanket licenses that may not provide access to preferred content, and result in universities paying twice to reproduce much of their copyrighted content. This would raise costs unnecessarily for many public institutions and negatively impact students.

² See University of Calgary, Acceptable Use of Material Protected by Copyright, <https://www.ucalgary.ca/policies/files/policies/acceptable-use-of-material-protected-by-copyright.pdf>.

On-campus management of copyright involves payment of significant sums for transactional licenses and digital resources to ensure legal compliance. Should an institution wish to re-enter an agreement with Access Copyright, the past management and payment of applicable permission fees must be recognized and parties must not be subject to retroactive payments.

2. Retain fair dealing for educational purposes.

The current fair dealing for education provision appropriately balances creator and user rights and is based on extensive Supreme Court guidance. Fair dealing allows instructors to enrich the learning experience by bringing a wider range of resources into the classroom.

3. Retain the current statutory damages limit for non-commercial infringement of copyright.

The current legislative limit of \$5,000 for non-commercial statutory damages must be maintained. This limit was established in recognition of non-commercial infringement generally being unintentional with limited impact on the market. Removing the limit on statutory damages would be detrimental to both creators and users of content in Canada and have significant potential consequences for universities, including substantial cost implications. Removal of the cap could compel universities to purchase collective licenses due to the threat of unreasonable and disproportionate penalties, thereby effectively removing universities' ability to choose how to comply with copyright law and manage their resources.

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