

University of New Brunswick Submission to Standing Committee on Canadian Heritage

REMUNERATION MODELS FOR ARTISTS AND CREATIVE
INDUSTRIES IN THE CONTEXT OF COPYRIGHT
DECEMBER 14, 2018

UNB Libraries, Copyright Office

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The University of New Brunswick (UNB) appreciates this opportunity to contribute to the Standing Committee on Canadian Heritage's study on *Remuneration Models for Artists and Creative Industries in the Context of Copyright*. UNB is the province's largest university, attended by over 10,000 students. Seventy-five percent of the research done in New Brunswick is conducted at UNB. UNB helps drive New Brunswick's economy with a total economic impact of roughly \$1.2 billion per year. More broadly, academic institutions are both creators and users of copyright materials. In this capacity, we have a unique perspective that can provide valuable information about the impact current models of remuneration have on our creators and consumers of copyrighted works.

UNB invests significantly in copyright expertise to develop tools and awareness, promoting responsible use of protected works. UNB, like all Canadian universities, is working to grow an innovative economy, which has required adjustments to how we purchase and distribute scholarly works. The purchasing and distribution models we work with today have much more to do with digital access and database licensing than with the Copyright Act. These new models of remuneration are a response to fundamental changes in the way academic institutions are communicating with students, and how researchers are collaborating and producing scholarly works. The changes to UNB's compensation of copyright owners have been happening long before 2012 and 2004, with the landmark Supreme Court decision in CCH [1]. Within the limits of the law and resource licensing agreements, our mission is to provide accessible and relevant materials at the most fair cost to students. The current approach that UNB is taking with respect to the remuneration of copyright owners is the result of more than a decade of careful planning, education, support, and analysis. The information below will show that UNB:

- is experiencing changes in how students and researchers communicate,
- purchases the required materials for our academic community,
- fairly compensates copyright owners for the materials we use,
- is working within international publishing markets that include Canadian cultural content,
- maintains an active commitment to supporting authors and creators

[1] CCH Canadian Ltd. v. Law Society of Upper Canada, [2004] 1 S.C.R. 339, 2004 SCC 13



Meeting the demands of digital scholarship

Instructors today are engaging with students beyond the traditional textbook. Our library usage statistics illustrate the tremendous changes that are happening across all educational institutions. Photocopying or scanning of print-based works are becoming increasingly obsolete and have all but disappeared. Instead, our instructors have turned to new platforms of distributing required materials through our licensed electronic resource collections. Responsibly delivering published works to our researchers, instructors, and students is a priority at UNB. Investment in library resources is increasing. Spending on resources has grown from \$3.2 million in 2013 to more than \$4.7 million in 2017. Our scholarly community expects information that is both relevant and accessible. Fully 90% of our purchasing is directed to electronic resources, reflecting the transformation in scholarly publishing from print to electronic licensed resources. Our ability to negotiate licenses with appropriate terms of access to these resources is paramount to their value for our academic community.

Figure 1. Print Resources as a Percentage of Total Acquisitions

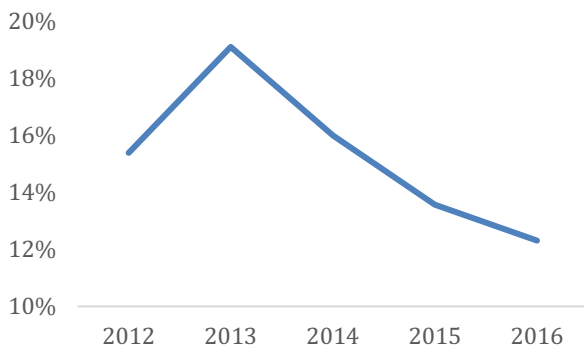
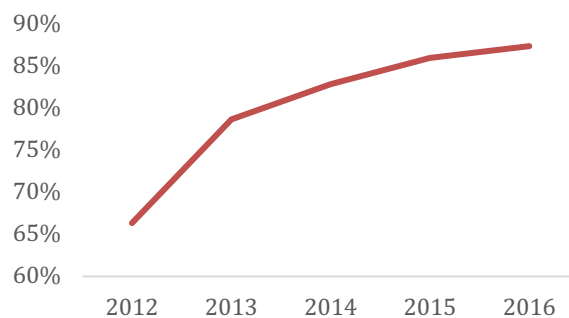
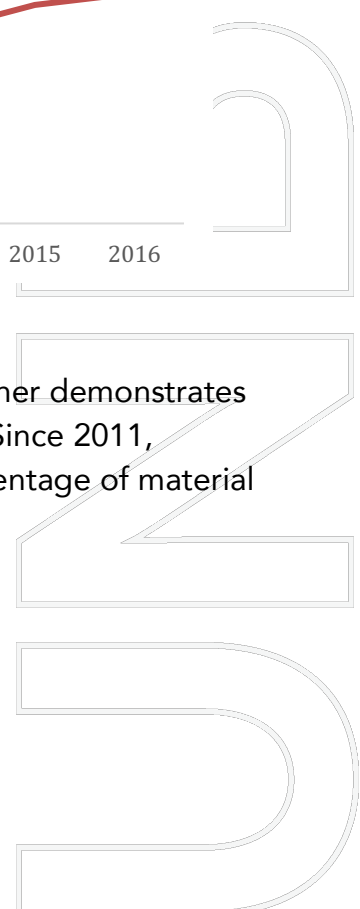
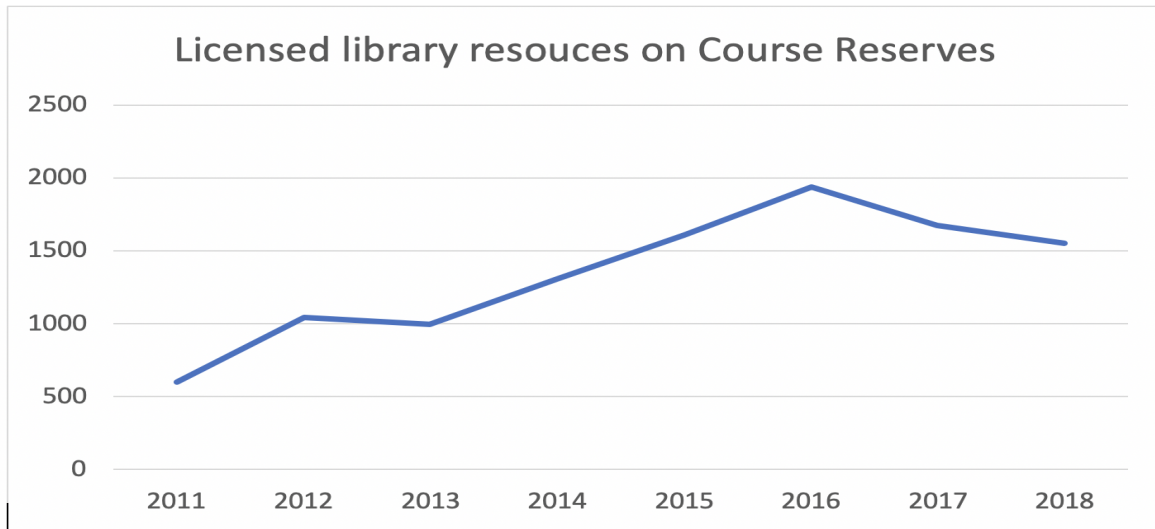


Figure 2. Electronic Resources as a Percentage of Total Acquisitions



Moreover, a recent analysis of our Library Course Reserves services further demonstrates the overwhelming demand for access to licensed electronic resources. Since 2011, electronic licensed materials has increased by more than 60% as a percentage of material placed on Reserve.





Recognizing that some teaching materials require permissions, UNB libraries created a Copyright Office. Subsequently, a 2008 assessment of course copying at UNB verified that most materials shared in the classroom were available and paid for through our electronic licenses. Essentially, in many cases our students had been paying for access to materials twice – first through electronic licences and then through Access Copyright. It is part of the Copyright Office’s mandate to address this inefficiency. A full-time Copyright Officer and part-time assistants across both campuses work directly with librarians and course instructors to build an understanding of copyright and to promote a culture of respectful use. Since UNB no longer offers course packs, the bedrock of this relationship is UNB Libraries integrated Course Reserves delivery system. The Reserves system is embedded within our learning management system (LMS) to ensure responsible sharing of materials is available at an individual course level. Course Reserves operates at the course section level, restricting materials by term and limiting access to only course registrants and allowing us to purchase targeted transactional licenses.

UNB proved that the Access Copyright (AC) blanket license was redundant for already licensed materials. Supplementary, transactional (or item by item) licensing continues to be a far more responsible and reasonable approach. An AC license would not eliminate our current copyright expenses because the need for copyright education and advocacy would still be required. Furthermore, the AC repertoire is not comprehensive. It would be unfair

and counterproductive to give legislative authority to one model of remuneration, a model that would result in a monopoly on published instructional resources. Mandating a one-size-fits-all solution will only serve to stifle innovation for educational technologies. Collective rights management has served and continues to serve in many situations; however, AC's financial stability should not be unfairly sustained by students' debt.

Academic Publishing

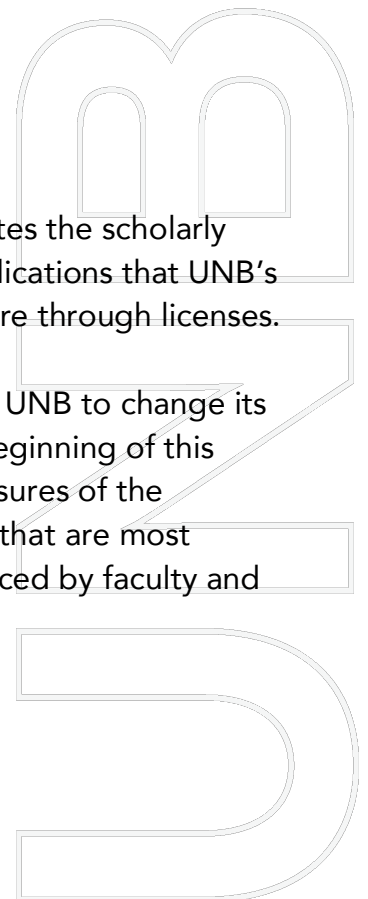
It is misguided and unconstructive to frame a discussion about creator remuneration as a polarity between educational institutions and creators. Indeed, academic institutions are also experiencing a remuneration problem that is quickly becoming a financially unsustainable model. The academic publishing model has been well defined by multiple testimonies and submissions throughout this Study. However, it is important to note that there are multiple forms of remunerating and purchasing of creative published works that take place across academic institutions in Canada.

In the testimony from Ariel Katz, this Committee heard the important publishing contributions from the University of Toronto. These numbers further substantiate the fact that academic institutions are publishing the majority of the materials that we consume for educational and research purposes. Similarly, UNB's full-time faculty members contribute to these numbers of published works, from the period of 2015 and 2017:

- Book Chapters = 275
- Papers Published = 1794
- Books = 201

These works are part of the international publishing model that dominates the scholarly output of academic institutions throughout Canada. It is these very publications that UNB's students are purchasing in the form of textbooks and our libraries acquire through licenses.

These concerns over access within our scholarly community have driven UNB to change its acquisition model for educational works. As we have identified at the beginning of this Brief, educational institutions are already dealing with the financial pressures of the prevailing scholarly publishing licensing models. Even though materials that are most valuable to academic success at our research institutions are also produced by faculty and



students within these institutions, access is becoming more and more costly. Indeed, it is UNB's experience that the articles and chapters readily consumed by students are the very works created by the Canadian and international academic community. These creators are remunerated by the students and public funding models that support higher learning in Canada.

Adding to the complexity of this issue is the growing recognition that publicly funded research results should be available to the public. The tri-council funding agencies support open access to the published output of publicly-funded research. Open access initiatives and policies are another form of remuneration for published works. These initiatives focus on the materials most readily consumed at the post-secondary level, such as open educational resources (OERs), Open Textbooks, and institutional and discipline-specific repositories. Primarily created by the academic community, open access resources continue to provide access to teaching materials that meet the demands of tomorrow's educators. Mandating a one-size-fits-all solution will only serve to stifle innovation for educational technologies

University support of digital disruption

Legislating a subsidy for one collective's remuneration model will diminish an academic institution's ability to invest in the focused licensed content that is most valuable to our students and researchers. Instructors at UNB depend on being able to choose the most innovative, appropriate, and engaging materials for the classroom. Students should not be responsible for financially supporting past models of access that do not serve their needs.

UNB also supports the evolving market of creativity and helps disseminate published academic and cultural materials. Our nationally-renowned Creative Writing program is offered at a BA, MA, and PhD level. Students of this program rely on the ability to publish their works, often before graduating. UNB students and faculty publish fiction and poetry; they create films and digital media. Canada's longest-running literary journal, *The Fiddlehead*, was founded at UNB and continues to be proudly supported and maintained at our university. In 2018, UNB's Faculty of Arts introduced a Certificate in Publishing, encouraging new ways to support literary creators and the publishing industry in our region. UNB is actively engaged in supporting authors at all levels – from the first draft to final publication.



UNB Libraries is a leader in the support of Canadian publishing. Our Centre for Digital Scholarship hosts 22 journals, all of which compete on the international publishing market. We provide expert publishing support and an online platform. We have in-house expertise who provide advice to faculty in sharing their content while meeting publisher policies. Our Archives & Special Collections purchases the works and papers of provincial and regional authors with a commitment to acquiring and preserving copies of New Brunswick's literary heritage. We promote our writers and celebrate their accomplishments. We work to support our community both as creators and users of Canadian copyrighted material.

We do not dispute that the Canadian publishing industry deserves and requires support. However, in the increasingly digital world of academic publication, it is short-sighted to look to past models of remuneration as an instrument to solve these problems. Not only will it be unsuccessful from an academic context, given that the vast majority of our resources are licensed, but it will hinder the ability of Canadian universities to effectively provide the resources our students require to be competitive and well-informed.

Under the proposed form of the recent US-Mexico-Canada trade agreement, the Canadian educational sector will lose access to 20 years of content from our Public Domain. As new ways to make this information available continue to emerge, this setback should be implemented with an eye to re-balance the Copyright Act and compensate for the loss of a generation's worth of content. UNB supports the proposals set out in testimonies such as that of Brian Adams and Michael Geist that would see a reversion of rights back to creators after 25 years, with particular support for this right to be non-negotiable. Furthermore, we support the creation of a registry for works that wish to have the term of copyright extended beyond the current life-plus-fifty limit of protection.

Recommendations:

- Support the current balance of user and creator rights in the Copyright Act.
- Add protection to the remuneration rights of authors in negotiating contracts with publishers.
- Assess the accuracy of the copying claims suggested by Access Copyright (i.e. 600 million pages).
- Encourage the growth of Open Access initiatives such as Open Educational Resources Open Textbook and Repositories.



- Amend the Copyright Act to allow for the transfer of rights back to the creator 25 years after the date of transfer.
- Create a term extension registry for copyright protection beyond the life-plus-fifty limit of copyright protection.

Canadian universities strive to be leaders for tomorrow’s innovators. New licensing and transactional models of remuneration are being adopted by academic institutions across the country and globally. We recognize our shared responsibility of fostering growth for tomorrow’s creators and users of creative works and we have invested in fair models of remuneration for the works we use. From UNB’s perspective, the alternative solutions put forward by Access Copyright are not fair to educators, researchers, or students. We ensure that students have access to the materials they need for academic success and object to the collective models that would limit accessibility by forcing a double payment for the use of a single work. Innovation and growth need responsible and flexible principles of intellectual property to remain competitive in a global economy dominated by technological and digital change.

Submitted for the University of New Brunswick by UNB Libraries Copyright Office.
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