

Brief to the Standing Committee on Canadian Heritage regarding the Study on Remuneration Models for Artists and Creative Industries.

Submitted by The Writers' Union of Canada, December 5, 2018

Who We Are

The Writers' Union of Canada (TWUC), founded in 1973, is a not-for-profit organization with over 2100 professional writer members working in every region of Canada, and earning their living in whole or part by writing books. A significant number of its members are also teachers, though mostly on a part-time or occasional basis. TWUC works to unite writers for the advancement of their common interests, and to foster a diverse and vibrant writing profession in Canada.

Since its founding, the Union has been engaged in advocacy issues affecting copyright law. It took part in the consultative process preceding amendment of the *Copyright Act* in 1988. That amendment authorized the collective licensing of copyright works in Canada by collectives like Access Copyright, which opened for business as CanCopy in 1989. TWUC was also an active advocate on behalf of writers prior to the 1997 amendment of the *Copyright Act*. It has previously made representations to the federal government on issues of copyright reform, intervened in and supported many court cases related to the protection of creator rights, and appeared before parliamentary committees struck to review amendments to the *Copyright Act*, including submission prior to the 2012 amendments and a recent presentation to the current Statutory Review of the *Copyright Act*.

As well, TWUC has chaired the International Authors Forum (IAF) for the past five years. The IAF was created as an umbrella organization of author associations worldwide. It now counts 66 organizations as members, and represents 700,000 individual writers and visual artists around the globe. The IAF regularly attends meetings of the Standing Committee on Copyright and Related Rights (SCCRR) at the World Intellectual Property Organization (WIPO) in Geneva, and advocates for clarity and fairness in author contracts within the publishing industry.

What We Know

Earning a living as a writer is difficult at the best of times. It's been immeasurably more difficult in the past decade as we've seen sweeping digital disruption across the creative industries. We hear that content is king in the Internet Age, but the creators of that content are being paid and treated like serfs.

It's true that we are in a time of changing business models, but one fact remains consistent for authors across all models in our sector. The rights provided us under copyright law are core to how we, as creators, earn a living. Erode copyright and you'll erode income to writers. It's that simple.

In 2012, Canada's authors and publishers were asked by Parliament to trust and respect a new understanding — a new model — around educational copying and fair dealing. What followed was anything but fair for writers. It's been a disaster, and our members have felt it firsthand.

Our recent survey of Canadian authors received almost 1,500 responses and here's what they told us:

- Authors have suffered a 27% income decline in the last three years alone.
- Compared to 20 years ago, we seen our real incomes decline by 78%.
- The average net income from writing is only \$9,400
- Even worse, income from educational copyright royalties has declined, on average, by 42% in five years as a result of the illegal, free copying of the education sector

How We Adapt

In 2012, as Parliament was reforming the Copyright Act, writers knew that we faced a difficult road ahead. So, we have been adapting. More of our member authors are self-publishing, and the Writers Union has been delivering professional develop workshops on self-publishing, book promotion and publicity. Many authors are embracing entrepreneurship. Yet writers are now expected to do more for less—or worse, for nothing.

Producing content isn't free: researching, writing, re-writing, editing, graphic design, layout, distribution—these all cost money.

Yet authors are now expected to work for free for the benefit of the educational sector. In fact, with the recent proposed changes to the Copyright Board, our serfdom has been confirmed. The reality for Canada's writers is that the Copyright Board is toothless. We work for it, but it doesn't work for us. We put in time and effort to get tariffs approved, and when they are approved, the education sector simply ignores them.

We have asked for statutory damages for our tariffs to encourage compliance by educational institutions, but the government has declined to make that simple change. We are discouraged and disappointed by that decision.

Perhaps we should look to Europe for how to balance copyright, privacy and online content in the Digital Age. The European Parliament recently approved a new directive laying out rules for how content is protected and paid for by giant tech platforms that have long avoided regulation. The directive requires platforms and aggregators online to pay licenses for the use of content snippets. As well, the Directive imposes greater responsibility on platforms for lawful sharing of online content — a measure that should help in the fight against content piracy, and provide a new licensing opportunity to authors for the use of their work online.

The Europeans are disrupting the disruptors, and telling Silicon Valley that a business model built on others' free labour is unacceptable.

Another disruption—from the tech sector itself—could also prove valuable for creators. There's increasing talk that new decentralized technology could allow creators to circumvent the centralized platforms and connect with readers directly. The technology, called a distributed ledger (or blockchain), has been around for decades but has become famous for powering cryptocurrencies such as bitcoin. Blockchain could now disrupt books.

How does the technology work? The platforms of Amazon, Apple, Facebook and Google are essentially gargantuan, centralized relational databases. They are intermediaries, controlling our relationship to readers and facilitating sales transactions.

Distributed ledger technology, in contrast, has no centralized authority controlling a database. Instead, transactions are stored on an immutable ledger which is replicated on many computers across a peer-to-peer network. Since the ledger exists in many places, it's harder to hack.

Transactions can be bundled into digital blocks on a chain giving the technology its popular name: blockchain. For a book, these transaction blocks could be for the authorship, publishing, distribution and, ultimately, the reader's purchase.

The technology could have several applications for authors:

- it could guarantee attribution for a digital work to an author or rights holder;
- through “smart contracts”, it could distribute and authenticate copyrighted materials to readers;
- and via a digital wallet, it could automatically distribute a royalty directly and immediately back to an author.

A number of tech start-ups are already using the technology to distribute content and reward creators, including blockchain publisher Publica.io, Smoogs.io, Po.et and Authorship.com. A month ago, Access Copyright launched its own start-up, Prescient Innovations Inc., to build and test blockchain applications that are creator focused. The Writers' Union supports Access Copyright on this pioneering work.

What We Need

The Writers' Union of Canada is committed to innovation and empowering our members to adopt to new technologies, skills and business models to survive. Given the sorry state of our earnings, we have little to lose and much to gain.

There is possibly promising technology on the horizon to help us develop new, innovative remuneration models. However, stronger copyright is key. Canada's Copyright Act will not provide strong protection for Canada's creators as long as contentious and ill-defined loopholes like educational fair dealing remain unaddressed. Asked for solutions, we have suggested several:

- **remove “education” as a category of fair dealing;**
- **adopt a European model where fair dealing is not applicable when a reasonable licence is on offer;**
- **harmonize statutory damages across all tariffs at the Copyright Board to incentivize payment of educational copying tariffs.**

Fair dealing needs to be fair, not free, for educators, and we need a Copyright Board that is more than a paper tiger. Students and teachers already have access to “research” and “private study” fair dealing; an undefined and poorly regulated “education” category is unnecessary and damaging. Reasonable collective licensing systems exist with most of our trading and treaty partners. That Canada does not have this requirement is a source of grave international concern. Significant statutory damages will give the Copyright Board some teeth in dealing with those who don't pay their tariffs.

Distractions

In its own presentations to the Statutory Review of the Copyright Act, the educational sector has made many claims about its copying practices, its materials acquisition, and its reliance on fair dealing. TWUC feels it's important the Committee and the government see these claims for what they are – incorrect assertions and distractions from the issue at hand.

An estimated 600 million pages of work are copied by education in Canada every year, without a licence and without compensation to the author.

Education's Claim: The 600 million page estimate is inaccurate, too old, or in some other way compromised.

Why this is wrong: The estimate of 600 million pages copied arises from evidence tested and accepted by Federal Court (in the York University proceedings), and at the Copyright Board (in the K-12 tariff proceedings), based on actual copy counts. These counts are the most current available because the educational sector has since refused audited tracking of its copying. If the educational sector continues to insist this number is inaccurate, they should submit to new audited testing to prove their claim. Until a new count can be made, and because copying is easier within digital materials delivery, we can assume that the 600 million page count is only growing.

Education's Claim: Education spends millions of dollars on materials acquisition, new site licences and e-reserves.

Why this is a distraction: We do not dispute that educational institutions continue to spend on acquisitions, or even that their spending may be increasing in certain areas. That is an understandable cost of doing business in the sector. But while they are spending this money on foreign site licences and subscriptions to academic journals they also continue to copy vast amounts of work — without a licence and without payment — under a discredited interpretation of fair dealing. Claims that all e-book licenses come with perpetual copying allowances are not reflective of the reality of the marketplace.

With this claim, education is essentially saying that because they buy some work, they should be allowed to get a vast amount of other work for free.

Education's Claim: Educational materials delivery has shifted primarily to digital Learning Management Systems (LMSs), which has reduced the amount of copying from books. The days of print course packs are over.

Why this is a distraction and wrong: There are currently no studies of educational copying to support this claim (see above for education's reluctance to study their own copying habits). Online LMSs are essentially course packs in digital clothing — collections of readings assigned as core to the course at hand — and these course packs have always contained a

mixture of site-licensed or subscribed material, and material copied from books. Whether the percentage of unlicensed copying in digital course packs is falling or rising (and evidence accepted in the York trial suggests it is actually rising), the total volume of uncompensated copying is known, and it is massive. At least 600 million pages per year, between print and digital delivery.

Education's Claim: A rise in e-book licensing, which may include perpetual copying permissions, means that unlicensed copying is falling rapidly.

Why this is a distraction and wrong: We do not dispute that educational institutions have increased e-book acquisition and licensing. It is, however, not true that all e-book purchases come with a licence to copy. In fact, most do not. What's more, the works collected in academic libraries (including in e-books) are most often used for research, not teaching. The teaching materials that appear in course packs (both print and digital) are sourced by teachers and students. These works are rarely licensed by libraries, and now appear in course packs in unlicensed form under a discredited interpretation of fair dealing.

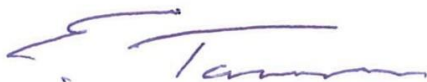
Conclusion

All of education's distracting claims suggest in one way or another that reliance on fair dealing for copying of educational materials is in rapid decline. If that is so, why then is the education sector so intent on denying educational fair dealing's negative impacts and protecting its standing in the Act?

Canada's writers have watched our incomes decline rapidly since 2012. We have gathered evidence of economic damage, we have defended our rights in court and at the Copyright Board, and we have worked to debunk the mythology around fair dealing and copying that administrators at our schools, colleges and universities have spread in their own self-interest. What's more, we have continued to innovate and build new business models for our work. It is time for the government to return to us access to one of our most important markets.

If we value culture, then we must value the work of those who produce it.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Eric Enno Tamm". The signature is stylized with a long horizontal stroke and a small flourish at the end.

Eric Enno Tamm, Chair
The Writers' Union of Canada