



Collective management: a modern tool for equitable remuneration

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

Copibec and Collective Management

Société québécoise de gestion collective des droits de reproduction, Copibec, is a non-profit organization created by Quebec authors and publishers on principles of equity. Its board of directors is made up of representatives of groups of Quebec authors (writers, journalists and visual arts creators) and publishers (books, magazines, journals).¹ They meet every month to address the interests of copyright holders and make decisions on managing their copyrights, as well as develop services. Over the years these representatives have adapted their management business to suit the new needs of copyright users.

With the arrival of digital reproduction devices, the representatives tasked Copibec with managing new rights that allow for things such as projecting material in class, digitizing, or using teaching platforms. Copibec gives users the option of paying copyright fees through an annual rate or ad hoc permission for traditional or digital use. Copibec also developed a web service to allow users to request permission and pay royalties, but also to declare any reproductions made under their annual licence. This web service has helped speed up how the data is processed, and how the royalties are paid to copyright holders.

To meet the needs of the education sector, the management company also developed specific digital services such as DONA, which, together with certain publishers, helps educational institutions acquire works on a digital device adapted to the needs of students with perceptual disabilities. In 2014, it also developed [SAMUEL](#), a platform that allows Copibec and its partners to provide schools and colleges in Quebec, but also educational institutions outside Quebec, access to a variety of top-quality Canadian francophone content.

Copibec manages the rights of more than 27,000 authors, journalists, and visual artists, as well as some 1,000 publishers in Quebec. Copibec also manages an international repertoire through reciprocal agreements with 33 foreign management companies. Copibec thereby collects royalties for Quebec works that are used abroad. The money collected through these agreements is paid directly to the authors, journalists, and visual artists and Quebec publishers once a management fee has been deducted.²

Collective management is a globally recognized, effective, versatile remuneration model that guarantees accessibility and cultural diversity. It is modern and part of the future of any company that invests in its culture in the digital era.

¹ Union nationale des écrivaines et des écrivains québécois (UNEQ), Association nationale des éditeurs de livres (ANEL), Fédération professionnelle des journalistes du Québec (FPJQ), Association des journalistes indépendants du Québec (AJIQ), Les Hebdos du Québec, Les Quotidiens du Québec, Regroupement des artistes en arts visuels du Québec (RAAV), Société de développement des périodiques culturels québécois (SODEP).

² Management fees are determined by Copibec's board of directors and have been set at 15% of the royalties collected for many years.

Economic situation of creators and their publishers

The results of a recent survey³ conducted by the *Union nationale des écrivaines et des écrivains québécois* (UNEQ), in collaboration with *The Writers Union of Canada* (TWUC), indicate that the economic situation for Quebec writers remains quite precarious. Only 10 to 15% of them are able to live from their writing by diversifying their activities in order to have several sources of income.⁴ Public Lending Right and collective copyright management account for roughly 12%⁵ of this combination.

For smaller and medium sized publishers in Quebec, on average royalties paid by Copibec represent 18% of their net profits and in some cases 33.5% of their net benefits over a four-year period. This income contributes to helping Quebec publishers invest in publishing new authors, pursuing publishing activities for authors working in literary niche markets, or even sustaining certain specialized local journals.

In a market as small and unique as ours, copyright revenue from secondary uses is especially important for both authors and publishers. In November 2018, Copibec paid authors and publishers participating in collective management licences with educational institutions more than \$7.3 million. In Quebec, 2,202 authors received cheques for anywhere between \$100 and \$35,000.

Enforcing copyright remains essential to authors pursuing creative activities and the survival of the publishing industry. The roughly **\$200 million** paid to authors and publishers by Copibec in the 20 years of its existence actively contributes to sustaining this cultural sector.

Changes to the Act in 2012

Since 2012, we have seen an increase in litigation⁴ and a steady decline in copyright and the remuneration that goes with it. By increasing the number of exceptions and introducing the word “education” in the fair dealing exception, the government opened Pandora’s Box.

At the time, representatives from the education sector argued that the proposed changes merely sought to clarify the Act and ensure that copyright holders and their management companies did not lose any income since educational institutions would continue to pay fees for licenses to use existing works. Based on those statements and that of teachers strongly in favour of as little

³ UNEQ, *Le métier d’écrivain en voie de disparition au Québec comme au Canada, données sur les revenus des écrivaines et écrivains québécois en 2017*, November 2018. For the results of this survey, consult https://www.uneq.qc.ca/wp-content/uploads/2018/11/Resultats_sondage_UNEQ.pdf

⁴ Ibid., p.5, *Les sources de revenus d’écriture en 2017* ⁵ Idem.

⁴ Note for example the case of *Access Copyright v. York University, Copibec v. Université Laval*, and more recently a complaint filed by Provincial Educational Ministries against the authors and publishers represented by Access Copyright calling for copyright tariffs paid to copyright holders for the use of their works to be returned. <https://publishingperspectives.com/2018/02/canada-access-copyright-sued-by-education-sector/>

copyright as possible, the government turned a deaf ear to our warnings and assured us that the proposed changes did not give carte blanche to educational institutions. And yet...

Impact of these changes outside Quebec

In January 2013, the situation for creators and publishers began to deteriorate quickly. Universities, colleges, and educational departments outside Quebec replaced collective management licences with reproduction policies in which they unilaterally allowed themselves to reproduce works in an institutionalized and systematic way, without paying royalties to copyright holders.

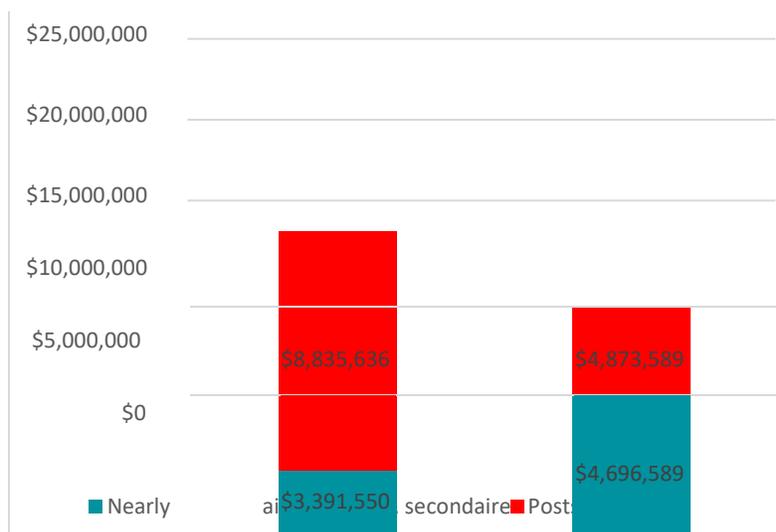
Royalties distributed by Access Copyright plummeted by 80%, which, for Canadian publishers outside Quebec, represents a loss of **16%** of their net income.

The sharp decline in royalties distributed by Access Copyright also has an impact on Quebec creators since Access Copyright is no longer transferring royalties to Copibec to distribute in Quebec for the massive use of Quebec works in educational institutions outside Quebec. Ironically, Copibec pays Quebec creators royalties for the use of their works abroad, but not in the rest of Canada. This is unacceptable.

Impact of these changes on remuneration for creators in Quebec

Note from the outset that in Quebec, the amount of income from licences with educational institutions in Quebec dropped sharply (decline of 22%) between 2012 and 2017, even though the number of students generally increased during that period.

Figure 1: Royalties collected by Copibec, education sector, 2012-2017



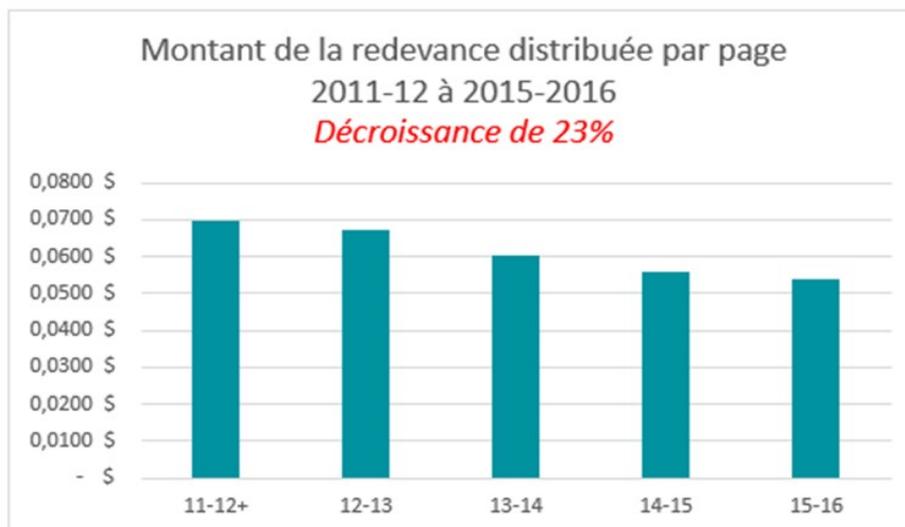
Although, in the context of these legislative changes, the amount of the per-student royalty was renegotiated with Quebec's department of education to consider higher copy limits, the addition of digital, and the inclusion of new needs in licensing, that was not the case for post-secondary institutions.

In the weeks following adoption of these legislative changes, Quebec universities asked that the annual per-student royalty of \$25.50, that they had just agreed on with Copibec, be renegotiated for the period from June 2012 to May 2015. Effective January 2013, the annual per-student royalty dropped by 18% to \$21 for a period ending in May 2014. The cégeps also followed this downward trend during the 2014 negotiations. Ever since, heavily influenced by the extremely broad interpretation of the legislative changes used by the educational institutions outside Quebec, each renegotiation with Quebec's universities and cégeps results in a new cut in royalties. The annual per-student royalty at the university level has dropped by nearly **50%** (from \$25.50 in 2012 to \$13.50 in 2017), and by **15%** at cégeps (from \$12.40 to \$10.50).

In May 2014, Université Laval decided to follow in the footsteps of Canadian universities and ended its licence agreement with Copibec, forcing copyright holders to file a class action suit against it. Fortunately, in June 2018, Copibec and Université Laval came to reached an out-of-court settlement allowing all parties involved to benefit from a favourable outcome.⁵

Representatives from the education sector would have us believe that the lower per-student royalty reflects a decline in the volume of copies of the works in Copibec's repertoire. However, the data collected and analyzed by Copibec show otherwise. If the relationship between the volume of declared copies reproduced under the licence and the amount of royalties had stayed the same between 2012 and 2016, then the amount paid to the authors and publishers per reproduced page would have remained essentially the same. However, that is not the case since the royalties paid to copyright holders for every page copied by the universities simply dropped by **23%** (figure 2), all while Copibec held its management fees at 15%. Therefore, it is the value of the work of the authors that has declined.

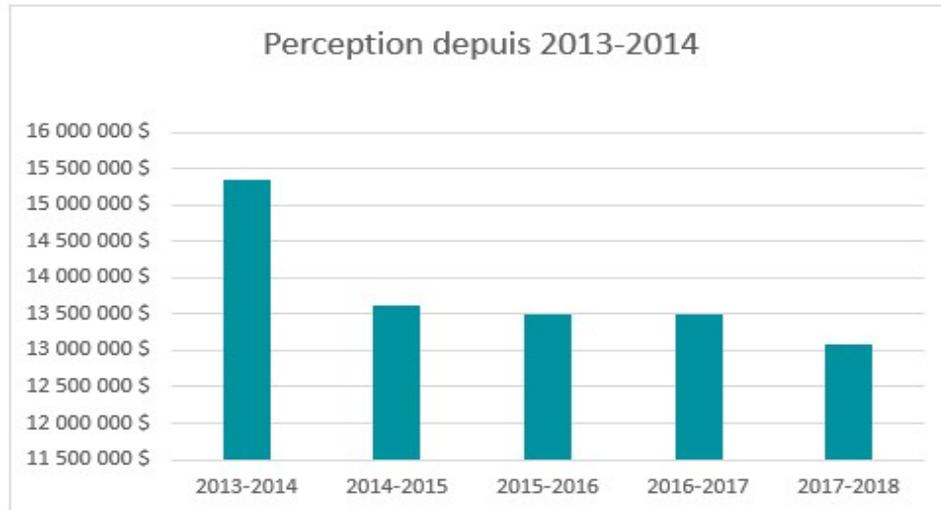
Figure 2: Distribution of University Sector royalties 2011-2012 to 2015-2016



⁵ <https://www.copibec.ca/en/nouvelle/194/fin-du-litige-entre-copibec-et-l-universite-laval-en-matiere-de-droit-d-auteur-laval-en-matiere-dedroit-d-auteur>

This steady decline in royalties from the education sector is particularly punitive for collectively managed income for creators since nearly **75%** of the license revenue collected and distributed by Copibec comes from the education sector (see figure 3).

Figure 3: Collected revenue since 2013-2014, all sectors combined

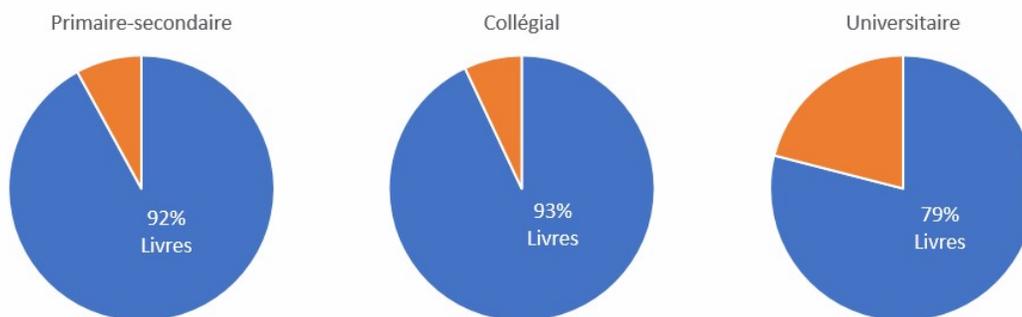


Note that it is the authors, creators, and publishers in Quebec who are affected the most by the **72 million copies** that are declared annually, mostly from Quebec works. Our authors are suffering the brunt of this decline in revenue as their precarious situation and financial capacity to create deteriorates further with every drop in revenue resulting from a break in the copyright chain. **Today, our authors, creators, and publishers are the ones suffering the adverse effects of these changes. Our culture and what we see as our cultural heritage hang in the balance.**

Profile of copied works: the Quebec experience

Throughout the parliamentary review of the *Copyright Act*, both before your committee and the Standing Committee on Industry, Science and Technology, representatives from the educational sector and their experts argued that under collective management licences they had to pay twice as much for copy rights as they were paying through subscriptions with major publishers of scientific journals or online aggregators. In response to those claims, Copibec would point out that through licencing agreements, more than 40 million copies are reported annually by Quebec universities, more than 20 million by cégeps, and more than 3.5 million by a sample equivalent to 10% of primary and secondary schools in the province. Data analysis shows that the vast majority of the reported content comes from **books, not journals**, as the education payment numbers for December 2017 illustrate:

Figure 4: Breakdown of content reported to Copibec according to educational sector, December 2017



If Quebec interpreted copyright law the same way universities outside Quebec do, the impact on creators and their publishers would be quite significant, especially considering that at the primary-secondary and college levels, the vast majority of the content reproduced is from Quebec. From the education sector alone, more than 2,000 Quebec creators (and nearly 500 publishers) would lose royalties paid by Copibec.⁶ Considering their precarious economic situation, these sums make all the difference for many of the creators.

Copyright holders created Copibec because collective management gives them access to revenues they would not be able to collect individually, independent revenues that are critically important to freedom of expressions and cultural diversity.

Collective management: an effective and affordable remuneration system for creators

Educational institutions claim that collective management and copyright hinders access to knowledge and education and refuse to pay what they owe copyright holders. However, collective management provides access to a global repertoire of millions of works and, unlike the unfettered interpretation of fair dealing, it helps achieve the delicate balance between accessibility and remuneration for rights holders.

In 2018, the annual cost of Copibec licences was **\$13.50** per university student, **\$10.50** per college student and **\$4.29** per primary and secondary study.

That is less than 0.4% of the average university tuition fees of \$3,500 (figure 4) and an even smaller portion of annual university operating budgets (figure 5). To claim that these licences are at the root of student debt, that they jeopardize access to Canada's education system, or strain the budget of educational institutions, is to misunderstand the collective management system.

The two tables below show the proportion of the total licensing cost as a share of the annual average tuition fees of Quebec students and university operating budgets.

Figure 5: Cost of a licence vs tuition of a Quebec student, in some Quebec universities

Universities	Annual tuition* (\$)	Proportion of copyright fees** (%)
Concordia University	\$3,814	0.35

⁶ In 2018, Quebec creators received cheques for between \$100 and \$35,000.

University of Montreal	\$3,292	0.41
Université de Sherbrooke	\$3,178	0.42
McGill University	\$4,325	0.31
UQÀM	\$3,704	0.36

*Full-time student (30 credits/year) in first year in Arts and Sciences.

**Based on per-student annual fee of \$13.50.

Figure 6: Annual operating budget of two Quebec universities vs cost of a licence

	Budget annuel de fonctionnement (\$)	Coût de la licence Copibec (\$)	Proportion du coût de la licence par rapport au budget de fonctionnement (%)
Université de Montréal	759 037 000	501 471	0,066
Université Concordia	473 007 000	372 600	0,078

The majority of those in the Canadian educational sector choose to ignore these rational elements and instead take legal action to the detriment of negotiation sending creators, publishers and their management companies to court and putting them under a financial burden they can hardly support.

Collective management for better balance

Over the past few months, representatives from the educational sector and various experts who have been using an evermore permissive interpretation of the Act have appeared before you and the Standing Committee on Industry, Science and Technology. They have argued that Canada should go even further to limit the rights of creators and expand those of the users. In support of their argument they point to the latitude provided by the American fair use policy and the need to introduce in Canadian law provisions from the United Kingdom or France that would prohibit contractually limiting exceptions or make room for rights users to have recourse against copyright holders.

However, they conveniently forget to tell you that the fair use policy comes with a body of case law that just recently underscored that a percentage or a volume cannot be adopted as a general rule (as educational institutions do in their reproduction policy) and that the impact of reproduction on the market is the determining criterion; that the UK's legislation, but also that of Ireland and New Zealand, contains a provision rendering the fair use exception void when a licence is available; that France also has a provision limiting reproduction in educational institutions to illustration purposes only and that royalties are attached.

Collective management is the exercise of copyright and related rights by organizations that act on behalf of copyright holders and protects their interest and that of the users. It is a modern, globally recognized rights-management model that has proven effective by combining accessibility to

works and remuneration.⁷ Collective management is a simple and inexpensive solution that is an integral part of the *Copyright Act*. A fair and balanced copyright regime hinges on collective management and cannot be replaced by unduly broadening the exceptions.

Conclusion

The accelerated erosion of Canadian copyright must stop. The government must urgently express its support for a strong national culture by correcting the adverse effects of the 2012 changes. The government must promote dialogue and a real balance between the authors and the users, including educational institutions, by clearly framing the exceptions, a balance where collective management is the guarantor by combining accessibility and remuneration for authors and their publishers.

As in labour law, we can always learn from the most permissive aspects and those that least protect workers in foreign statutes. The question is rather simple: how important is it to Canada, collectively, to respect its creators and the development of a healthy and innovative cultural sector? If it is an important aspect of our identity, then the law should be changed to better protect creators when their works are used, especially systematically as is the case at educational institutions. It is not about limiting access to works, but about restoring the difficult balance between access and remuneration.

Our recommendations

1. **Section 29: Clarify that the fair use exception does not apply to educational institutions when the work is *commercially available***

At section 2 of the *Copyright Act* there is a provision that helps promote a return to balance in negotiations between creators and educational institutions, through a collective society. **It is simply a matter of introducing in section 29 a reference to the definition of “commercially available” stipulated in section 2 of the Act.** Commercially available, a concept already used in the Act to promote the balance between creators and institutional uses, is worded in such a way to ensure access to works without excessive constraints and at a reasonable cost while preserving the possibility for creators to be paid. If a collective society licence can be obtained on the Canadian market, according to the criteria set out section 2, the educational institution will have to negotiate with the collective society. Such limits on exercising the fair use exemption exist in jurisdictions similar to ours including the United Kingdom and New Zealand.

2. **Revert back to pre-2012 wording for reproduction for education purposes and exam questions (Sections 29.4 (1) to (3))**

⁷ For UNESCO this is the way to favour “the lawful exploitation of works and cultural productions” and “an essential element in the construction of a modern national system of protection of copyright which would effectively promote a dynamic cultural development.”, UNESCO, *Guide to the Collective Administration of Authors’ Rights*, 2000, Paula Schepens, p.9

Since 2012, the application of sections 29.4 (1) and (2) is no longer limited by the possibility of getting licences granted by a collective society in accordance with subsection 2(b) of the definition of commercially available under the Act. This change is not justified by the intention of the exception and harms the interests of creators who are unable to make their works available on a digital platform and can no longer collect the royalties attached to these reproductions.

3. Guarantee effective remedies for creators

a) Align predetermined damages and interests for infringement for non-commercial purposes (Sections 38.1 (1) (b), 38.1 (1.12) and 38.1 (1.2))

The notion of *non-commercial purposes* is not defined in the Act while the line between commercialization and non-commercialization is less and less clear in the digital environment. The predetermined amount of damages and interest in the Act (\$5,000 maximum for any infringement, all works (section 38.1 (1) (b)) and all copyright holders (section 38.1 (1.2)) is so low that it gives creators very little recourse, dampens the desired deterrent effect, and does little to encourage negotiations or informal resolutions, including in the case of systematic or institutionalized non-commercial infringement.

b) Align legal damages provided to management societies (sections 38.1(4) and 67).

We were disappointed that the recent changes to modernize the Copyright Board did not extend legal damages to all collective societies. There is no reason for musicians and composers to have the means to ensure that they are paid for the use of their work, but not authors and visual artists. By giving all societies the right to access legal damages, the fees certified by the Copyright Board would make sense and guarantee that actors, visual artists, and publishers get paid when their works are copied in accordance with these fees.



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APPENDIX 1 – Notes, citations and bibliography

ⁱ A few excerpts from evidence provided by representatives from the education during the committee meetings in 2012:

Paul Davidson, ASSOCIATION OF UNIVERSITIES AND COLLEGES OF CANADA (February 15, 2011):

“Simply put, the proposed amendments to fair dealing would not undermine the sale of books, especially textbooks, or the revenue base of copyright collectives.”

Ramona Jennex, CONSEIL DES MINISTRES DE L'ÉDUCATION (March 24, 2011):

“Nothing in Bill C-32 alters the current relationship among education, publishers, content providers, copyright collectives, and the Copyright Board.”

“I feel there's a misconception about a loss of revenue for authors and for the creative community. What we, the ministers of education from CMEC, are seeking is to have the amendments in here so that there's clarification. This will not affect any of the revenues that any of our creative people will receive. They would stay the same. There's no loss of income in this.

We're asking for this for reasons of clarity. At this point, there's no clarity about what teachers and professors can do within their classrooms. We also have to look at what students can and cannot use in their assignments and reports. So that's what we're asking for.”