

**Statutory Review of the *Copyright Act***  
**Submission to the Standing Committee on Industry, Science and**  
**Technology**  
**Submitted by Brush Education Inc.**  
**15 August 2018**

**Introduction**

Our Publisher and co-owner has had considerable opportunity to present evidence to the Standing Committee on behalf of Canadian-owned book publishers, as the current president of the Association of Canadian Publishers (ACP).

This submission is therefore intended as a more personal account of the position—and the perceptions—of a small Canadian-owned book publisher working within Canada’s dysfunctional copyright landscape.

Brush Education Inc. was founded in 1975. We serve authors, readers, educators, learners, booksellers and the community by developing and publishing educational resources for higher education, including professional education.

We specialize in resources for medical and health-services professions, education, and the humanities and social sciences. Under our Dog Training Press imprint, we publish the world’s only series of resources for training working dogs for search and rescue, law enforcement, and other related services.

We sell books and ebooks throughout North America and Europe, and we have licensed some of our titles for publication in China, India, Pakistan, Korea, Sweden, and other countries. Exports account for roughly half of our sales.

Brush approaches educational-resource publishing as an important cultural project. We believe our role as Canada’s only independent book publisher specializing in medical and health-services resources has particular cultural significance, because Canadians routinely identify Canada’s universal health-care system as one of the most important components of a distinctive Canadian identity in North America.

Our customers demand both digital and print formats. We use an XML-first workflow and a range of digital-delivery strategies to respond to their media preferences.

Our recent titles include, for example:

- *The Elements of Indigenous Style* by Gregory Younging
- *Pathology Review and Practice Guide*, by Dr. Zu-hua Gao
- *Neither Married Nor Single: When your partner has Alzheimer's or other dementia*, by Dr. David Kirkpatrick,
- *Education Policy: Bridging the divide between theory and practice*, by Jerome G. Delaney, and
- *K9 Explosive and Mine Detection*, by Resi Gerritsen and Ruud Haak.

## **Impact of the Copyright Modernization Act**

The amendment of the Copyright Act in 2012 disrupted a smoothly functioning marketplace. Before that disruption, the education sector's Access Copyright licences allowed legal, convenient copying of partial works within set limits. This provided simple, inexpensive access to the whole world of copyright-protected works while fairly compensating publishers and authors.

After the Act was amended in 2012, the education sector throughout Canada (with the exception of Quebec) abandoned collective licences and stopped paying mandatory tariffs, and instead unilaterally implemented policies claiming to represent the new limits of fair dealing. These new policies arbitrarily advised staff and students that all copying within the limits of the old licences and tariffs was now available for free. Copyright creators and publishers including our company were shocked—and hurt—to learn that the only significant difference between the new policies and the old licences and tariffs was that publishers and authors would no longer be compensated.

This was the exact opposite of what the education sector had promised to do during the pre-amendment consultations.

Our licensing revenues from Access Copyright in 2012 represented 5.9% of our total 2012 sales revenue. That was the last year we received licensing revenues from Access Copyright that had been collected before the amendment of the Copyright Act.

In contrast, our licensing revenues from Access Copyright in 2017 represented 0.6% of our total 2017 sales revenue.

From 2012 to 2017, the licensing revenue we received from Access Copyright fell by 86%. No new licensing revenue from the Canadian educational sector has arrived to fill that gap.

In the current unlicensed educational environment, it is impossible for us to know how widely our works are copied. But we do know from evidence reviewed in the Federal Court of Canada and at the Copyright Board that widespread copying beyond the limits of fair dealing has continued in unlicensed schools and post-secondary institutions. The copying continues, in print and digital forms, while

authors and publishers, including our company, are no longer properly compensated for that copying.

## **Resetting the Discussion**

As a small company with limited resources, we are constantly stressed by having to defend our interests against large-scale copyright users who are determined to obtain our products for free. We urge you to be alert against eleven common arguments commonly made in favour of broad exceptions to copyright and against collective licensing, which you may have read in submissions or heard witnesses describe to the committee:

1. *“We must be thrifty with public money, so we should not be required to pay for the use of copyright-protected materials.”*

Obviously, thrift does not justify theft. There is no justification for treating Canada’s authors and publishers as uncompensated suppliers.

2. *“We already spend a great deal on copyright-protected materials, so we shouldn’t have to pay for additional licences or tariffs.”*

No one, least of all Brush or the Copyright Board, asks copyright users to pay twice for uses they have already purchased, or to pay for uses available for free within legal limits. Whether in a licence negotiation or a tariff hearing, the first task is always to determine through evidence how much actual, uncompensated use goes beyond fair dealing, and the next is to set a fair price for those actual uses.

3. *“Licence fees and tariffs are an unreasonable burden on students.”*

Students are not harmed by educational resources available at a fair price any more than they are harmed by instructors or facilities paid for through fair tuition and fees. Excellent resources in fact depend on fair prices, just as excellent instructors do, and both support a student’s education. Licences or tariffs of a few dollars per year are not driving the high cost of education.

4. *“Education has changed, it’s digital now, and educators don’t need to license outdated materials.”*

Like almost all book and educational-resource publishers, Brush publishes in both digital and print formats. Licences and tariffs can include digital uses, and those rates are set based on evidence of actual use in both print and digital formats. Printed books are still widely used in education, and they are also widely photocopied and digitally scanned. Far from being the wave of the future, broad exceptions allowing widespread, high-volume, uncompensated copying for education harken back to an unjust bygone era before collective licensing, and they go against Canada’s international commitments under copyright conventions and treaties.

5. *“Statistics prove that the Canadian book publishing sector is doing just fine despite uncompensated copying.”*

This is no argument for theft, regardless of what statistics show. But, in fact, Statistics Canada data and other court-tested research show a dramatic decline in book publishing revenues from post-secondary and K-12 education since the amendment of the Copyright Act.

6. *“Access Copyright licensing revenues were only about one percent of publishers’ revenues, and the loss of one percent of revenues is insignificant.”*

If one percent of revenues is insignificant, why do post-secondary institutions in Canada outside of Quebec fight so hard against paying even a small fraction of one percent of their revenues to buy licences that would ensure that their instructors and students copy legally, and that authors and publishers are properly compensated? Why do the provinces outside of Quebec avoid paying a tiny fraction of one percent of their K-12 education budgets for the same purposes?

In the publishing sector, losing one percent of revenues means lost jobs, unpublished titles, lost opportunities for today’s students, and lost contributions to Canadian education, community and culture, especially from small and medium-sized, independent publishers. And as we described above, Brush’s loss because of disappearing licensing revenue alone is closer to five percent. We can only guess at how much revenue we have missed out on because our potential audiences for our digital and print resources have already been served unfairly with free copies.

7. *“Grants should be used to compensate for any economic harm caused to authors and publishers by broad exceptions to copyright.”*

Attempting to use grants for this purpose would simply shift costs from the publicly funded education sector to other branches of government. It would subject authors and publishers to the unknown future of all granting programs. It would abandon the Government of Canada’s responsibility to repair a fair and competitive marketplace. It would therefore not compensate for the real harm done to Canada’s authors and publishers by broad exceptions to copyright.

8. *“Broad exceptions to copyright are necessary to encourage technological innovation.”*

Some commentators argue, for example, that research into artificial intelligence requires broad copyright exceptions allowing machine learning to “ingest” large volumes of published works. Using exceptions for this sort of purpose is unfair and unnecessary; collective licences could easily cover this kind of use while providing compensation to authors and publishers. There is no justification for turning authors and publishers into unpaid suppliers to technology developers—in other words, for requiring a sector that operates on very thin margins to subsidize a sector that can well afford to pay a fair price to its suppliers.

9. *“The education sector spends a lot of money training staff and students to respect the limits of fair dealing.”*

This practice supports illegal copying when such training is based on policies and procedures that are outside the law, as is now the case since the July 2017 decision in *Access Copyright vs. York University*. If applied to collective licences, the money that schools, universities and colleges now spend on misdirected training could ensure legal copying while also ensuring fair compensation to authors and publishers.

10. *“Copyright users are harmed when copyright holders are protected.”*

As Brush’s Publisher and co-owner said to the Standing Committee in his opening statement on behalf of the ACP at the hearing of 26 April 2018, “This is not a zero-sum contest between copyright creators and users. The rights you protect for us and our colleagues are not taken away from anyone, they are protected for everyone. We want readers; readers want the works we create and publish. Real balance is when both sides win. That’s what’s desirable and attainable.”

11. *“Relicensing the education sector would be impossibly complicated.”*

Quebec’s schools and post-secondary institutions are going through the same digital transitions, doing the same research, facing the same fiscal challenges, and operating under the same Copyright Act as schools and post-secondary institutions in the rest of Canada. Yet Quebec’s education sector is fully licensed under collective Copibec licences, while the education sector in the rest of Canada is almost completely unlicensed.

With few exceptions, Quebec’s schools, universities and colleges never abandoned their Copibec licences. Instead, they renegotiated as circumstances changed. They recognize publishers and authors as important suppliers to education and essential parts of our cultural fabric, they recognize that collective licensing is simple, practical and affordable, and they are showing the rest of Canada the way forward.

Canada’s authors and publishers are ready and willing to negotiate licences through their collective, Access Copyright. The available licenses are no more complicated than the arbitrary and unfair copying policies now in place in schools and higher-education institutions. If the rest of Canada followed Quebec’s example and recommitted to collective licences for its schools and post-secondary institutions, the simple change in the copyright landscape would be that authors and publishers would again be properly compensated for their valuable contributions to education.

## **Recommendations**

We support the recommendations made by the Association of Canadian Publishers in its submission of July 2018:

1. Clarify fair dealing for education.
2. Promote a return to licensing through collective societies.
3. Increase the limit on statutory damages.
4. Ensure Canada's international treaty obligations are met.
5. Promote the operation of an effective Copyright Board.