



## BRITISH COLUMBIA LIBRARY ASSOCIATION BRIEF TO THE STANDING COMMITTEE ON INDUSTRY, SCIENCE AND TRADE (INDU) AS PART OF THE STATUTORY REVIEW OF THE COPYRIGHT ACT

November 6, 2018

### **Introduction**

The British Columbia Library Association (BCLA) leads and supports the BC library community in advocacy, professional development, and on issues concerning intellectual freedom. The Association works to ensure that all British Columbians have equitable access to information, ideas and works of the imagination. BCLA builds partnerships and relationships with libraries, with all levels of government and with provincial and national organizations that share similar goals and values. BCLA advances the values of the association and promotes a widespread understanding of the benefits of library and information services. BCLA is a cross-sectoral, member-based association representing over 900 individuals and institutions.

### **Fair Dealing**

Fair dealing as currently articulated in Sections 29, 29.1 and 29.2 of the Copyright Act is an essential tool that helps librarians and others who work in school, special, post-secondary and public libraries to do their jobs by enabling fair and equitable access to information for their users. While the majority of information in our libraries is provided through licensing and borrowing, there are important functions that are achieved through fair dealing. Below are some examples:

- Learners of all kinds benefit from fair dealing in public libraries where excerpts from books and journals may be copied for the purposes of home schooling, business research, adult education, music lessons and tutoring.
- Interlibrary loan allows larger libraries to provide patrons of smaller libraries with materials copied under fair dealing, such as journal articles and book chapters. Without fair dealing, equitable access to learning materials would be restricted to those at large educational institutions and those living in large cities.
- School librarians help other teachers source short excerpts from different texts and other sources to create custom learning resources tailored for a local geographic, historical or linguistic context.
- In academic libraries research and scholarship is advanced through fair dealing when: large amounts of text can be copied to allow computational analyses to be conducted to provide new insights about existing works, or to allow for development of artificial



intelligence applications via machine learning; instructors can reproduce short excerpts from texts that are most appropriate for the research and educational purposes of their students.

- Fair dealing allows for use of materials from around the world. Canada's literary reprographic copyright collectives have almost no coverage of materials from Latin America, Africa or the Middle East. Were collective licensing broadened and fair dealing circumscribed as recommended by many Canadian publishing and author groups, Canadian learners would be shut out from making use of foreign linguistic and cultural works, thus greatly diminishing the diversity of voices available to Canadians.

Additionally, Canada will be extending the term of copyright protection by 20 years to meet its obligations under the USMCA. This reduction in the public domain makes it important to balance the public interest by maintaining the current fair dealing exceptions.

*RECOMMENDATION:*

The Government of Canada should leave Sections 29, 29.1 and 29.2 of the Copyright Act unchanged to retain current allowable uses.

**Existing Exceptions for Libraries and their Users**

BCLA members recognize the value of the exceptions for libraries, particularly those relating to the management and maintenance of collections (section 30.1). Public libraries value the addition of the user-generated content exception (section 29.21) for the opportunity it offers the public as they learn and create. Users come to libraries to increase their digital literacy through programs, to access computers with digital creation software, and to experiment with creating new works that build on popular content. These uses support learning, experimentation and future creation, while serving no commercial purpose. This exception helps to ensure that library staff do not feel obligated to discourage this type of experimentation and creation when it is taking place in our spaces.

The Reproduction in Alternate Format provision (section 32 and 32.01) is very important to libraries and our patrons as it allows libraries to more equitably serve our patrons with perceptual disabilities and to assist other libraries by being able to provide reproductions in alternate formats to their patrons.

*RECOMMENDATION:*

The Government of Canada should leave Sections 29.21, 30.1, 32 and 32.01 of the Copyright Act unchanged to retain current allowable uses.



### **Libraries, copyright and the digital environment**

BC libraries spend anywhere from 20%-30% (public libraries) to 80% (post-secondary libraries) of their collections budgets on digital content and in most cases are spending more on their collections than ever before. BC libraries buy Canadian content; promote local authors and their work through events and lecture series; preserve and showcase Canadian content in our special collections; provide support to budding and established authors through research services and writing and promotion workshops; and provide support and infrastructure for open access publishing.

Libraries are paying more for Canadian content and supporting Canadian publishing more than ever, yet author groups and publishers state they are getting less each year in remuneration and some blame libraries, library patrons, and educators for this decline and accuse us of exploiting educational and other exceptions in the Copyright Act to the detriment of creators. The gap between library expenses and publisher/creator remuneration may in fact come from the economics of the digital environment and difficulties faced by Canadian publishers in this environment. A recurrent theme in the consultations on the review of the Copyright Act has been the effect of digital disruption on creators' and publishers' income. For example, in his presentation to the INDU Committee's Statutory Review of the Copyright Act hearings in Vancouver Kevin Williams, president of Talon Books, stated in his brief on May 11, 2018, that "...it's very common for them [students] to sit down in a classroom and for the whole classroom to check out our e-book from the library, and everyone can use that for a course pack. The fact is, our license to the library never included the right for them to be doing that. There is no enforcement; there is no prevention of that."<sup>1</sup> This statement erroneously accuses libraries of colluding in infringement due to a misunderstanding of digital access in libraries. In the digital environment access is completely controlled by the vendor and not by the reader or library. If a publisher, including Talon Books, does not give permission in their agreement with a vendor to make their publications available to more than one user at a time, then it's impossible for more than one student at a time to access the e-book via the library. Digital transitions are not easy for most Canadian publishers as evidenced by some publishers' ignorance of how they sub-license their content and how digital access operates. Quite clearly, this negatively impacts the revenue available to Canadian authors who publish with Canadian publishers.

As well, when purchasing e-books, a significant portion of license fees (15-25%) paid go to the vendor of the e-book - multinationals such as OverDrive or Ebsco - rather than to the publishers and authors. This is a significant change from the paper world and presents another challenge to Canadian publishers.

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<sup>1</sup> <https://www.ourcommons.ca/DocumentViewer/en/42-1/INDU/meeting-114/evidence>



Library patrons want digital delivery but digital has a different commercial system than that of paper books. Publishers and authors also face changing attitudes towards reading. A recent study<sup>2</sup> in the USA found that in 2016 only 16% of grade 12 students read from a book or newspaper (digitally or in print) that was not assigned for school. In 1980 the percentage was 60%. There is no reason to think Canadian students are any different in their reading habits. Such developments mean that Canadian publishers and authors will face increasing pressures on their income streams.

The above examples show that the problem of remuneration for Canadian publisher and creators lies not with the Copyright Act's exceptions, but with the changing environment in which publishers and creators operate.

#### **RECOMMENDATIONS:**

Do not use the Copyright Act as the mechanism to expand the remuneration and supports to creators. Instead we recommend the following:

Expand the Public Lending Right (PLR) to include textbooks, professional guides and practical guides as educational publishing also contributes to Canadian culture and the understanding of our nation. The PLR should also include the holdings of post-secondary libraries.

The Government of Canada should investigate other means of incentivizing and supporting cultural production by Canadians, including ensuring that authors and publishers are aligned with the preferences of Canadian readers to ensure that their products respond to the needs of the Canadian public. For example, research that helps to identify what Canadians choose to read and thus encourages the writing and publication of more of that content would increase the financial wellbeing of Canadian literary authors and publishers by causing Canadian readers and libraries to buy more Canadian content over international content.

Government support of publishing, such as the Canada Book Fund, should expand to include assistance in bringing digital versions of books to market.

#### **Protecting Copyright Exceptions from Contract Override**

License agreements govern how libraries and their users can use digital content. While Canada's Copyright Act sets out exceptions for fair dealing that library users depended on in the print environment, the exceptions are often overridden by contract terms for digital content. Licenses that libraries sign may prevent the copying of digital content or its interlibrary loan, even when the Copyright Act would permit this. These licenses prevent the

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<sup>2</sup> Twenge, J. M., Martin, G. N., & Spitzberg, B. H. (2018, August 16). Trends in U.S. Adolescents' Media Use, 1976–2016: The Rise of Digital Media, the Decline of TV, and the (Near) Demise of Print. *Psychology of Popular Media Culture*. <http://dx.doi.org/10.1037/ppm0000203>



exercise of legitimate exceptions that the government included in the Copyright Act because they deemed it to be good public policy.

Other nations recognize this issue. These jurisdictions include the United Kingdom, where individual exceptions are protected from contract override, and Ireland, where legislation states the following: “Where an act which would otherwise infringe any of the rights conferred by this Act is permitted under this Act it is irrelevant whether or not there exists any term or condition in an agreement which purports to prohibit or restrict that act.”<sup>3</sup>

Compounding this problem, licenses in libraries are rarely negotiated by legal experts but instead are negotiated between a librarian with little, if any, specialized licensing training and a salesperson from a publisher or vendor. The agreement itself is usually prepared by the legal counsel of the publisher or vendor. In many cases the library’s choice is to accept the terms or be unable to offer the content. In other situations, the librarian negotiating the agreement does not understand that the terms can be negotiated. Even in negotiations it is rare for a publisher/vendor (often a multinational corporation) to agree to not override the Copyright Act. The most effective protection for Canada’s public that will ensure they can exercise exceptions is to implement measures that protect these exceptions from contract override. The negotiation of contracts by non-expert parties, with libraries in the weaker position, should not govern content use in Canada.

**RECOMMENDATION:**

The Government of Canada should amend the Canadian Copyright Act to make it clear no exception to copyright can be overridden by contract, using the Irish legislation as a model.

**Indigenous Knowledge**

As community spaces that facilitate discussions around the Truth and Reconciliation Commission, custodians of collections that include print and digital resources on Indigenous knowledge, and hosts of educational programs that provide support to teachers and help student learning on Indigenous perspectives, BC libraries wish to ensure that Indigenous knowledge is respected.

**RECOMMENDATION:**

We would like to point the Committee to the recommendations made in the Canadian Federation of Library Associations – Fédération canadienne des associations de bibliothèques position statement on Indigenous Knowledge in the Copyright Act<sup>4</sup>.

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<sup>3</sup> <http://www.irishstatutebook.ie/eli/2000/act/28/section/2/enacted/en/html#sec2>

<sup>4</sup> [http://cfla-fcab.ca/wp-content/uploads/2018/05/CFLA-FCAB\\_Indigenous\\_knowledge\\_statement.pdf](http://cfla-fcab.ca/wp-content/uploads/2018/05/CFLA-FCAB_Indigenous_knowledge_statement.pdf)



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