

House of Commons
Standing Committee on Industry, Science and Technology

Individual Submission to: Statutory Review of the Copyright Act
December 10, 2018

Dr. Heather Morrison
Associate Professor
School of Information Studies, University of Ottawa
<https://uniweb.uottawa.ca/?lang=en#/members/706>

This is an individual submission drawing on my background as Principal Investigator of *Sustaining the Knowledge Commons* (SKC), a research program funded through a SSHRC Insight Grant. The goal of SKC is to develop evidence to support the economic transition of scholarly publishing from demand to supply side to support the potential unprecedented public good of a global knowledge commons, a collective sharing of the knowledge of humankind, free for anyone to access and free for all who are qualified to contribute to. I also draw from my broader interest in and value of the arts and culture, and my expertise in the area of development of information policy to support such values. This submission strongly supports the expansion of fair dealing exceptions to copyright that were introduced in the 2012 Copyright Modernization Act. I present evidence to support the retention of sections 29, 29.1, and 29.2 in their present form. In brief, **broad fair dealing exceptions for education (section 29) are inherently generally fair** because the majority of works consumed are produced and/or supported by people in the educational sector who do the work for the public good rather than private gain. In the university context, academic researchers and students create the vast majority of works consumed and, with some exceptions, do not expect or receive economic benefit from their copyrightable works. There is a strong and growing trend for academic researchers to make work freely available to everyone as a public good. Provincial education systems develop curriculum, approve and sometimes commission textbooks. Schools and school boards pay for textbooks and the majority of other resources used by students. I acknowledge that there are creators whose work is important to Canada (local authors, artists, musicians and publishers) who do not benefit from K-12 or post-secondary budgets. For this sector, I **recommend development of a plan to provide direct support for Canadian creators** working outside of the formal educational systems (K-12, universities) to replace the current copyright collectives and to develop new models of creative collaboration **to take advantage of recent technological developments to develop new, more effective approaches to support for creativity in Canada**. I make this recommendation on the grounds that direct subsidies to creators would be more cost-effective than the current system that is in effect an indirect subsidy. Currently, we very limited support to creators in an indirect and non-transparent way as follows: federal transfers to provinces for education; provincial transfers to universities, colleges, and school boards (supplemented by student tuition in the post-secondary sector); purchase of resources and payment of additional fees or licenses for additional copying to copyright collectives; disbursement of \$ from copyright collectives (subtracting administrative costs) to a variety of types of copyright owners, ranging from global for-profit corporations to individual creators. I argue that we should investigate whether it would be less costly and more effective for Canada's creative community to simply give \$ directly to creators through generous subsidies. For clickable links see <https://poeticeconomics.blogspot.com/2018/12/canadas-statutory-review-of-copyright.html>.

The creative contributions of Canada's educational sector

(Why broad fair dealing exceptions for education (section 29) are inherently generally fair)

This section will focus on universities, my area of expertise. As noted in the Universities Canada (2018) submission to the Copyright Act Review, there are more than 75,000 faculty members and university teachers in Canada's university system, making this the largest group of Canadian authors. This data understates the creative contributions of universities as it does not take into account the work of students. Most graduate students and other early career researchers are required to publish and many are prolific researchers and authors. For example, graduate students today are typically required to publish their theses (monograph-length works) online through their institutional repository as open access, that is, free to read. For example, from 2010 – 2018, University of Ottawa students posted more than 10,000 theses in the University of Ottawa's institutional repository:

<https://ruor.uottawa.ca/handle/10393/242>

Students as well as faculty publish articles in peer-reviewed journals, book chapters, and scholarly monographs. Students are taking advantage of the ease of publishing on the internet to develop their own open access peer-reviewed scholarly journals. A few years ago while pursuing my doctoral studies I had the pleasure of participating as an editor, reviewer, and journal manager of the student created and led peer-reviewed open access journal *Stream: Inspiring Critical Thought*, currently in its tenth year of production: <http://journals.sfu.ca/stream/index.php/stream>. Similarly, medical students at the University of Ottawa have created and run a student-led open access journal, the *University of Ottawa Journal of Medicine | Journal Médicale de l'Université d'Ottawa* <http://www.uojm.ca/>

In the classroom, many professors like myself are taking advantage of current technologies to develop pedagogical approaches based on active rather than passive learning. In a passive approach, students absorb information provided in textbooks and lectures. In active learning, students are doing hands-on work including conducting and publishing research. Following are just a few examples from my classes (master's level, information studies): a publishing class created an open access journal in which they peer-reviewed and published their term papers; students in an introductory class create and publish their own professional blog and posts, in which they publish independent research; and this fall students collaboratively conducted and wrote a literature review and analysis of current issues on a particular topic in the field.

As a faculty member and author, my experience is fairly typical. The cost of doing my research is paid for by my salary as a university professor and my research grant funds. Both are heavily subsidized by the Canadian taxpayer, and student tuition fees today accounts for about half of university budgets. As an author, I receive and expect no remuneration when I publish peer-reviewed journal articles or book chapters. As a peer reviewer, I receive and expect no remuneration. I did receive modest royalties from sales of a scholarly monograph, however from a financial point of view I (and many other authors of scholarly monographs), I would be much farther ahead had I devoted the time required to write the book to a minimum wage job. In retrospect, I wish that I had published this material as an open access book or wiki as the publisher is no longer actively marketing the book. By transferring copyright to the publisher, I made my work less accessible and far more difficult to update.

I seek to make all of my academic writing open access (free to read for everyone), a steadily growing trend in academia globally. As of December 2018, there are over 12,000 fully open access, peer-reviewed scholarly journals listed in the *Directory of Open Access Journals* <https://doaj.org/> According to industry research (Ware and Mabe, 2015) there are about 34,550 peer-reviewed journals published

worldwide; the percentage of these that are fully open access is about a third. Many more journals provide free access to back issues after an embargo period.

The Directory of Open Access Repositories, *OpenDOAR*, lists over 3,800 repositories worldwide http://v2.sherpa.ac.uk/view/repository_by_country/countries=5Fby=5Fregion.html The *Bielefeld Academic Search Engine* <https://www.base-search.net/about/en/> provides a cross-search service of repositories and journals and lists over 120 million documents from over 6,000 sources, of which about 60% are open access, about 72 million documents. This free access to academic works, supported by academic authors, universities, and research funders is a reflection of the fact that academic research is not inspired by, and does not require, the *economic* benefits of copyright. The *moral* rights of copyright (attribution and integrity of the work) are important to academic authors.

The traditional scholarly publishing industry is in the process of transitioning from demand side economics (purchase of books and journal subscriptions) to production-based funding. As recently as 2014, very few of the large traditional commercial scholarly publishers were reflected in the Directory of Open Access Journals (DOAJ). The largest, Elsevier, had 8 titles listed in DOAJ. Today, the largest open access journal publishers by number of fully open access journals are all traditional commercial scholarly publishers. The largest is Springer Nature (including subsidiary BioMedCentral), and second largest is Elsevier (Morrison, 2018). As of the end of November 2018, Elsevier has 347 fully open access journals and offers an open access publishing choice for 2,040 other titles, almost all of their journals (Elsevier, 2018). As of December 7, 2018, the Directory of Open Access Books <https://www.doabooks.org/> lists 285 publishers; 3 of the 4 publisher sponsors listed on their website are traditional commercial scholarly publishers (Brill, Springer Nature, and DeGruyter).

There is a related growing trend towards open access to educational materials. For example, provincial K-12 and post-secondary education is in a process of transitioning from support for textbooks through curriculum development, assessment, and purchase, to funding production for textbooks so that they can be open access, reducing the costs of education for post-secondary students and school boards in K-12. In addition to lowering costs, open access educational resources are typically open for transformation. This makes it possible for educators to update sources such as textbooks, link to additional resources, or customize to meet local needs. For example, a good basic textbook developed in the U.S. could be modified to reflect the Canadian context and include local examples, or the reverse for a textbook developed in Canada. Some resources for further information:

- e-campus Ontario <https://www.ecampusontario.ca/>
- BCcampus <https://bccampus.ca/>
- Open School BC <https://www.openschool.bc.ca/k12/>

In addition to transitioning traditional formats developed before the internet (e.g. journals and books), faculty and students are beginning to explore the potential of the digital medium and the internet. My most important publications today are published primarily in non-traditional formats. Since 2004, I have maintained a scholarly blog called *The Imaginary Journal of Poetic Economics* <http://poeticeconomics.blogspot.com/where> I post, for example, contributions like this to government consultations. In 2014, I developed a research blog for the *Sustaining the Knowledge Commons* <https://sustainingknowledgecommons.org/> (SKC) project. The SKC blog provides a venue for myself and my student research assistants to publish early findings. This is excellent training for students as it gives them a means and incentive to develop and publish small sub-research projects. Data gathered through the SKC project is published as open data in the OA APC dataverse:

<https://sustainingknowledgecommons.org/open-access-article-processing-charges-apcs/> These new

formats require access to technology and hosting services, but there is no longer any need for a publishing intermediary as was the case when academic work relied on the print medium and postal system.

To summarize this section: the fair dealing exception for education (29) is inherent generally fair because the educational sector is a net creator. Academic faculty are the largest single group of creators of copyrightable works. The creation of copyrightable works by post-secondary students is substantial if not fully known, and the trend is towards more creation of copyrightable works by students. The post-secondary and K-12 sectors are moving towards production-based support of educational resources such as textbooks to provide for free access to enhance the affordability of the educational system. Creation in the educational sector is done primarily for the public good, and the economic benefits of copyright are generally unnecessary, as illustrated by the growing trend towards open access, that is, access to anyone that is free of charge, and the constrictions on readership associated with copyright protection for economic reasons is counter-productive to the creation and sharing of knowledge.

Fair dealing exceptions for research by academics (29.1) and news reporters (29.2) are necessary so that individuals and organizations cannot use copyright in a way other than originally intended, e.g. to suppress criticism or to deny what they have said in the past. For example, my research involves studying the pricing and business models of scholarly publishers based largely on information posted on their websites. This material constitutes the evidence on which my research is based, and I need to be able to publish excerpts of this material to substantiate my claims. Publishers do not always appreciate this research, for example when I document price increases far beyond inflation. Overly strong copyright without this balance would make it possible for publishers to weaken criticism by suppressing evidence.

Transition support for creation

As a prolific academic author, I never have been and never will be represented by Access Copyright. The work of Access Copyright is antithetical to the purposes of my work (to serve the public good). I recommend the abolition of Access Copyright and redirection of funding by universities and school boards to directly support open access in academia and the K-12 sector (e.g. funding for open access monographs, journals, and textbooks).

This will not meet all of the needs of Canada's creative communities. In my opinion, Canada's artistic creators (authors, artists, musicians, independent publishers and intermediaries who work closely with and for the artistic community) deserve our respect and support, and are not well served by our outmoded approach to copyright collectives. I argue the continuing existence of these collectives is counter-productive as it entrenches outmoded approaches and business models when creators would be better served by developing new types of collectives to take advantage of new technologies to create new relationships with society and consumers.

For example, imagine a collective of Canadian musicians working together to develop packages of music for use in places like coffeeshops and restaurants (perhaps based on genre) that is integrated with the business' wifi so that customers can:

- instantly purchase and download a piece of music they enjoy
 - connect with the website of the musician(s)
 - find out about upcoming live gigs
 - purchase merchandise

- suggest musicians / music to include

I argue that this approach would be far more effective in creating a healthy and productive relationship between our artists and society than the current impersonal, non-transparent approach involving requiring payment of tariffs that positions copyright collectives as impersonal, non-transparent enforcers of rights.

To accomplish this vision, I recommend financial support for artists in the transition phase as well as targeted funding to develop mechanisms for transition such as research and education on the use of new technologies to support more productive artist / society relationships. As I explain in the introduction to this submission, direct support would likely be more cost-effective than the current system of indirect, non-transparent subsidies.

References

Elsevier (2018). *Pricing*. Retrieved November 27, 2018 from <https://www.elsevier.com/about/policies/pricing>

Morrison, H. (2018). Global OA APCs 2010 – 2017: major trends. Connecting the knowledge commons: from projects to sustainable infrastructure. Elpub 2018: the 22nd international conference on electronic publishing. Toronto June 22 – 24, 2018. Retrieved December 7, 2018 from <https://elpub.episciences.org/4604>

Universities Canada (2018). *The changing landscape of Canadian copyright and universities: Universities Canada's submission to the Standing Committee on Industry, Science and Technology's statutory review of Canada's Copyright Act / June 2018*

Ware, M. & Mabe, M. (2015). *The STM report: an overview of scientific and scholarly journal publishing*. The International Association of Scientific, Technical and Medical Publishers. Retrieved Dec. 4, 2018 from https://www.stm-assoc.org/2015_02_20_STM_Report_2015.pdf