



Brief to the Standing Committee on Industry, Science and Technology for the Committee's 2018 Statutory Review of the *Copyright Act*

Submitted by the Association of Book Publishers of British Columbia, December 2018

Introduction

The Association of Book Publishers of British Columbia (ABPBC) comprises 30 BC-owned companies located throughout the province, and includes trade, literary, scholarly, and children's book publishers. We publish in all genres, and in print, digital, and audiobook formats. The ABPBC works to support the long-term health and success of the Canadian-owned book industry in British Columbia.

British Columbia is the second largest English-language book publishing region in the country. BC books – which include children's literature, literary fiction, local history, Indigenous-authored work, poetry, and works of drama – are also valued in the classroom and regularly included on reading lists. As the new BC curriculum is implemented, BC publishers are being called upon to publish diverse materials, stories, and reading guides for use in the classroom. We have responded by publishing learning material such as *Speaking Our Truth: A Journey of Reconciliation* (by Monique Gray Smith, published by Orca Book Publishers) and the plays of Tomson Highway (published by Talonbooks).

As publishers, we are concerned that changes to the *Copyright Act* in 2012 have undermined the system by which creators are compensated for this critical work.

Recommendations

We believe that fair dealing for education needs to be clarified, and encourage a return to licensing under collective societies.

Since the adoption of the *Copyright Modernization Act* in 2012, educators at both the K–12 and post-secondary level have interpreted new fair dealing provisions very broadly, and have copied and distributed these materials for educational use. The current guidelines promote the following:

- Copying 10% or a whole chapter of a book for free
- Copying entire articles from newspapers and periodicals for free
- Distribution of digital or paper copies to all students in a class
- Selling copied collections to cover “institutional overhead”

In aggregate, Canadian K–12 and post-secondary institutions copy 600 million pages annually without compensation to copyright holders.¹ This practice whereby educators substitute copies in place of finished books to support curriculum delivery is not sustainable for our marketplace. Publishers cannot continue to produce educational materials for free.

¹ *Economic Impacts of the Canadian Educational Sector's Fair Dealing Guidelines*, PricewaterhouseCoopers, 2015.4

Educational fair dealing guidelines threaten the availability of diverse, high-quality Canadian content for our province's classrooms, as well as the livelihoods of local authors, illustrators, and publishers. Licensing royalties, an important source of income for creators and publishers, have also declined dramatically. Before the introduction of the guidelines, licensing income represented 20% of creator income and 16% of publisher profit. This source of income has virtually disappeared. The average creator's income in 2015 was \$12,879. This is 27% lower than the 1998 average.

The judgment in *Access Copyright v. York University* was that the systematic use of the Access Copyright repertoire was not fair. We believe the most efficient way for that photocopying and digital copying to be paid for is a license from collective societies such as Access Copyright. By paying a nominal fee per student, the education system could produce the copies needed, and the creators and publishers were fairly compensated for their work.

Impact on BC publishers

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Talonbooks, a Vancouver-based literary publisher specializing in fiction, poetry, and drama, was founded in 1967. They currently have more than 600 titles in print, a number of which are part of the Canadian literary canon. Their books have been adopted extensively for use in high school and university classrooms. The publisher has seen photographs online of high school classes studying their plays with only one person in the class holding a purchased book and rest of the students holding photocopies.



Grade 12s reading a play, "Only Drunks and Children Tell the Truth" by Drew Hayden Taylor, a Canadian, then responding to a writing prompt .



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Talonbooks is also aware of professors copying entire playscripts that are contained in anthologies and interpreting this as fair dealing since the play accounts for less than 10% of the anthology.

Up until 2014, Talonbooks' annual licensing revenue from Access Copyright was between \$18,000 and \$20,000, or 5% of sales. In 2017, that income declined to \$3,700 – less than 1% of sales. As authors receive the same amount Talon did, this means that Talon authors' income declined by over \$15,000 last year as well.

Conclusion

We recommend the clarification of fair dealing for education in the *Copyright Act*, and we encourage a return to licensing under collective societies. We also join our national organization, the Association of Canadian Publishers, in their recommendations to increase the limit on statutory damages, ensure Canada meets its international treaty obligations, and promote the operation of an effective Copyright Board.

We are hopeful that the BC Ministry of Education will recognize that the tariffs that are certified by the Copyright Board of Canada and designed to ensure that artists, authors and creators are compensated for their work are mandatory and pay the outstanding tariffs for the copying of materials in K–12 schools between 2013 and 2018.

BC publishers are proud to support the educational sector by publishing high-quality material that is used in the classroom. Regional voices and regional stories help students understand their place in the world, and reading local books empowers them to recognize the value of their own voices and stories. But as publishers, we cannot continue to do this work for free. Our ability to do our work – reinvesting in the creation of new works and paying author royalties – relies upon the sale and licensing of our content.

We ask the Government of Canada to take the above-recommended actions to ensure that book publishers can operate in a fair and sustainable marketplace so that they can continue to produce high-quality classroom resources and contribute to Canada’s cultural identity.

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