# Submission to the Standing Committee on Industry, Science and Technology on the 2018 Statutory Review of the *Copyright Act*

## I.  Introduction

Ryerson University advocates for copyright law that supports innovation in research, scholarly work, and teaching.  Such copyright law includes fair dealing for education, as well as the ability for circumvention of technological protections and related technologies for non-infringing purposes. The law should be forward-focused and flexible to enable innovation in emerging areas like artificial intelligence, augmented reality, and consider text and data mining (TDM) and reuse.

### 1.  Fair Dealing for Education

Copyright law must fairly balance the interests of copyright holders and users of copyright materials. The law should encourage creation by ensuring appropriate payment for use of copyrighted works, and also safeguard public interest in allowing access to works through provisions such as fair dealing

The 2012 changes to the *Copyright Act* align with these objectives, in particular the introduction of fair dealing for educational purposes. Ryerson University adopted the [Ryerson Fair Dealing Guideline](#) that allows for reasonable educational uses, and  put in safeguards to educate users and manage the copyright environment.

### 2.  The Decline of Print Course Readings

The current environment, which allows the limited reuse of content for educational purposes, can co-exist alongside a successful market for creators' works.  Prior to 2010, Ryerson University paid $3.38 per student on an annual basis to the collective rights agency, Access Copyright. All other monies remitted by Ryerson University prior to 2010 were fees collected from students as per page royalty fees for course readings usually in the form of printed course readers. Historically, students paid the vast majority of any fees remitted to the

collective rights agency. Royalty fees for course readers purchased through the Campus Store are still remitted to the collective rights agency through a third-party printing vendor. However, there has been a significant decline in the use of print course readers since 2009. For example, from 2009-2015, while under an Access Copyright licence, there was a 90% decrease in the number of course readings used in print course readers. This decline is influenced by the growth in the availability and purchase of subscriptions for digital access to journal and ebook content from publishers, and Ryerson University's ability to provide hyperlinks to legally-posted resources on the web for use in teaching.

## 3.    Tariff Approach

Under the model licence with Access Copyright (2010-2015), Ryerson University students paid a $26.00 annual per head fee - a 669 percent increase from 2009. However, many students in certain programs like Engineering, Nursing, Sciences and Business did not rely heavily, if at all, on excerpts of readings made available in the repro-text repertoire. An annual tariff model was not fair to impose on all students as many students may purchase textbooks or only use online library materials they could access without additional charge. Ryerson University's full-time students pay an estimated  $774 per year for publisher materials like textbooks.[1] Ryerson University is committed to access to education for all students and the rising cost of textbooks is seen as an important financial issue and often barrier to success for many of our students.  Fair dealing is an important part of creating fair and equitable access for students to short excerpts of course readings that do not fall under student purchased materials like textbooks or library purchased ebooks and journals. It should also be noted that Open Access, Open Education Resources and other models of freely sharing and accessing scholarly and educational material are important positive trends that continue to impact student's access to content.

## 4.    Digital Content and Copyright Safeguards

Ryerson University uses a copyright management E-Reserves system where copyright status of readings is checked on behalf of instructors. More than 1,150 course instructors used the E-Reserve service in 2017-2018. This is an 87% increase in use by instructors since 2011. The vast majority of content available in E-Reserve is scholarly work in journal or newspaper format. More than 85% of the content is made available to students through E-Reserves is covered through licenses for digital materials, links to legally posted publicly available materials, and open access content.

The growth of the ebook market for scholarly and other texts means that works that may have been only available to students as photocopies in the past, now are available via publisher licences we acquire through the Ryerson Library. The monograph collection now consists of more ebooks than print books; there are 521,306 ebooks compared to 466,386 print monographs in the Ryerson Library collection. In many cases ebooks allow for unlimited or multi-user access that make them ideal for use in teaching. This trend is also mirrored in our access to licenced electronic newspapers, magazines and scholarly journals which allow us to  provide links to students or post PDFs to E-Reserves or Course Management Systems (CMS) according to our licenses. There has been a significant shift in the last 15 years to the purchasing of electronic resources by university libraries. In 2005-2006 56% percent of the Ryerson Library budget was spent on electronic journal articles and newspapers, while in 2017-2018 this accounted for 78% of the Library collections budget and ebook purchasing accounted for 11%.. In total 89% of the Ryerson Library collections budget is now spent for digital subscriptions and purchases.As well, the

[1] Brown, M. (2017, Dec. 4th,) The Heavy Cost of Books. *Macleans*. Retrieved from: https://www.macleans.ca/education/most-expensive-books/

cost of information resources  has increased significantly over the last five years – increasing from $3,808,310 in 2011/12 to $5, 220, 689 in 2016/2017.

In addition, Ryerson Library spends approximately  $150,000 annually in transactional permissions for copyrighted works so materials can be scanned and posted for students. This covers copies unavailable as licensed eresources, or when they are outside fair dealing rights. Some of these transactional licenses are direct author or publisher transactions in Canada, or brokered through the US-based Copyright Clearance Centre, which remits to Access Copyright as appropriate.

Ryerson University also has a Copyright Librarian who does regular visits to faculty departments for copyright instruction, answers copyright questions for students and instructors, maintains a copyright website, runs copyright workshops and creates informational resources. This librarian also has the authority and expertise, on a case-by-case basis, to use the six-factor test set out by the Supreme Court to carry out  fair dealing analyses.   Ryerson University also sends copyright notices when courses are created, requiring instructors  to attest that they will abide by copyright law  within  the course management system, and Ryerson University has customized look-up tools for library resources that make transparent to instructors the licensing terms of our resources through such tools as the OUR database Licensing Look-up tool.

## 6.	Canadian Content

The Committee's specific interest in Canadian content and creators and publishers is acknowledged.  The majority of what is used and created at Ryerson University for research and teaching purposes is scholarly material, rather than "literary" or "creative" works.  The scholarly publishing cycle is one in which authors of journal articles are rarely, if ever, paid by publishers for use of their content, and the contracts signed by authors give over the full term of copyright to the publisher for free and with no royalties. A relatively small scholarly publishing industry in Canada, and the global nature of research and knowledge creation, means that much of what we both create and consume is published internationally.  The Ryerson Library did however spend more than $200,000 in 2017-2018 specifically on Canadian collection materials in print and electronic format. Ryerson Library subscribes annually for example to *Toronto Star*, *The Globe & Mail, Early Canadiana*, *Erudit,* and the *Canadian Health Collection*. Our direct E-Reserve transactional licensing fees to Canadian authors and publishers in 2017-18 was almost 1/3 of our $150,000 budget.

## II.	Recommendations

Ryerson University makes the following recommendations to the Standing Committee on Industry, Science and Technology on the 2018 Statutory Review of the *Copyright Act*:

### 1.	Retain Educational Fair Dealing

Ryerson University strongly supports copyright laws that recognize both the rights of copyright owners and the rights of users.  Ryerson University  joins with other higher education sector stakeholders, including Universities Canada and CAUT, in supporting fair dealing for private study, education and research.  The 2012 modernization of the *Copyright Act* allowing limited use of works for education remains an important investment in the future of our country to foster education, innovation and scholarship. In addition the recent term extension of copyright in the trade agreement - USMCA - where the copyright term was extended from 50 to 70 years after the death of the author, is an encroachment on the public domain and disrupts  the balance in copyright between public interest and copyright holders.

Maintaining fair dealing for education helps to more fairly balance the rights of copyright users against this incursion on Canadians user rights.

2. **Support a flexible copyright system that supports innovation, including text and data mining (TDM)**

The ability to copy and freely analyze data using text and data mining (TDM) and other emerging and enhanced approaches underpins technological innovations like machine learning, artificial intelligence, Big Data research and future social and technological research trends. . For example a flexible *Copyright Act* that provides exceptions for non-commercial and personal consumer use of text and data mining (TDM) will have a positive effects on the development of emerging and existing technologies, and support research. Copyright laws should be forward-focused and flexible to enable Canadian innovation in emerging technologies and enable Canada to become a global leader in these fields.

3. **Protect copyright exceptions from contract override**

The majority of Ryerson Library collections are licensed works such as electronic journals and ebooks and are governed by contract. With print works, users have a variety of exceptions and limitations available to facilitate their access and use, including fair dealing, the library, archive and museum exceptions, and the educational exceptions. This is not necessarily the case for all licensed digital works. Ryerson University requests an amendment to the *Copyright Act* to make it clear that no exception to copyright can be overridden by contract.

4. **Allow the circumvention of technical protection measures for non-infringing purposes**

When libraries purchase digitally licensed products such as ebooks, streaming video and DVDs, these are often protected by technological protection measures (TPMs) that often unduly restrict patron use. As with other licensed digital works, university libraries and users should be allowed to circumvent TPMs for any non-infringing purpose.

5. **Recognize Traditional Knowledge**

Ryerson University recognizes that Indigenous and Traditional Knowledge within the intellectual property regime in Canada is an important consideration in the review process. Canada's work in this area must be consistent with the *UN Declaration on the Rights of Indigenous Peoples*, and must recognize the need for Indigenous people "to have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions."[2]

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[2] General Assembly. (2007, October 2nd) United Nations Declaration on the Rights of Indigenous Peoples : resolution / adopted by the General Assembly, A/RES/61/295, available at: https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf [accessed 16 November 2018]