

Collective management: A modern and balanced solution

Brief submitted to the Standing Committee on Industry, Science
and Technology



606 Cathcart Street, Suite 810, Montreal, H3B 1K9

copibec.ca

Copibec

The Société québécoise de gestion collective des droits de reproduction, Copibec, is a non-profit organization created by authors and publishers based on the principles of equity. Its board of directors, composed of Quebec groups representing authors (writers, freelance journalists and creators in the visual arts) and publishers (books, magazines, newspapers) is based on parity between authors and publishers. Acting as a conduit between creators and users, the organization belongs to the creators and publishers who founded it and who manage it. Copibec remits to them the entire amount of the royalties collected in their name with the exception of its management fees.ⁱ

Presentation of the situation

In the previous legislative review process, cultural representatives alerted the government to the revenue losses that would result from the introduction of new unpaid exceptions in the *Copyright Act*. Representatives of the education community, on the other hand, said that it was a question of clarifying the Act and that rights holders and their collective societies would not lose income.ⁱⁱ

Turning a deaf ear to our message, on the basis of the assertions made by the education community, the government assured us that the proposed amendments did not constitute a “blank cheque” to educational institutions. Yet, starting in January 2013, universities, colleges and education departments outside Quebec substituted copyright collective licences with highly permissive reproduction policies, allowing for the institutionalized and systematic reproduction of works without the authorization of or royalty payments to rights holders. In 2014, in Quebec, Université Laval followed suit and terminated its licence with Copibec.

Today, it is our authors, our creators, our publishers here in Quebec who suffer the harmful effects of these changes. What is threatened here is our culture and the vision we have of our cultural heritage.

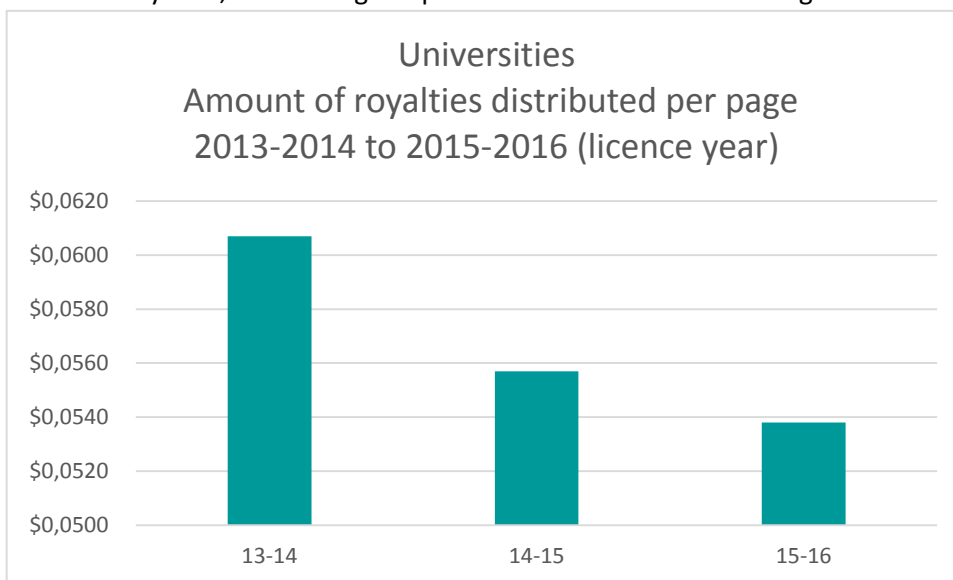
The impacts of the *Copyright Modernization Act*

The economic situation of Quebec writers is quite precarious with only a third of them earning a living as a writer.ⁱⁱⁱ The 2012 amendments aggravated this situation and we are seeing a steady erosion of copyrights and its related remuneration.

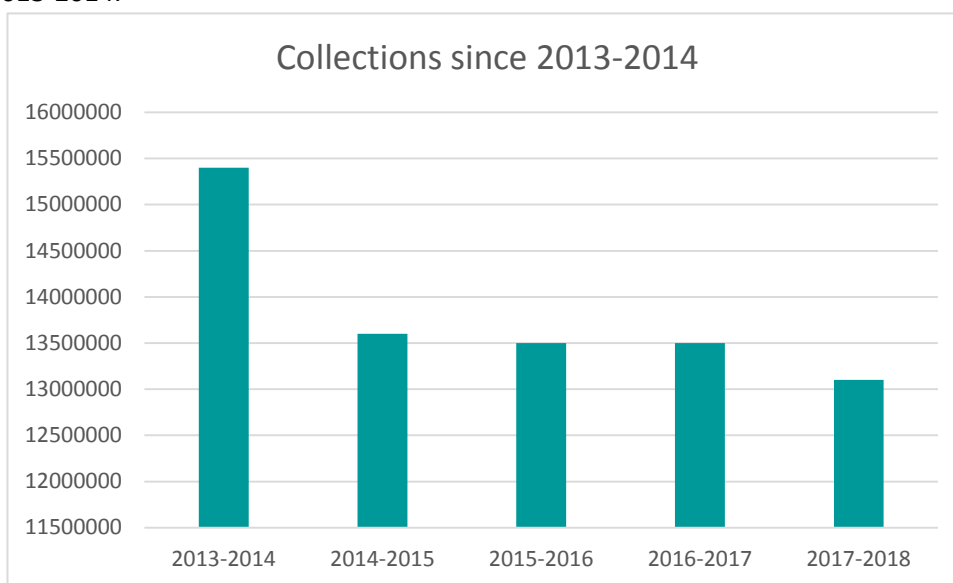
By multiplying the exceptions and introducing the word “education” into the fair dealing exception, the government has opened a Pandora's box, into which the education community dips at will. Contrary to the reassuring speeches made in 2011, the decisions by the education community have led to a considerable reduction in royalties collected by Quebec and Canadian creators and publishers for the use of their works in educational institutions.

Over the last five years in Canada, Access Copyright royalty distributions have dropped 80% compared to 2013 and represent a 16% loss in net profit for publishers. In Quebec, despite the fact that the majority of educational institutions and Quebec’s Ministry of Education and Higher Education have renewed their licences, royalties have dropped while the student population has increased. The royalties collected by universities per student has decreased by almost 50% (15% at the college level) and the amount collected by a rights holder per page reproduced has

decreased by 23%, even though Copibec has maintained low management fees.



The graph below illustrates the significant decrease in overall royalties collected since 2013-2014.



Under the pretext that collective management and copyrights impede access to knowledge and education, educational institutions refuse to pay their dues to rights holders. But collective management provides access to a global repertoire of millions of works, hassle-free, and, unlike the unrestricted interpretation of its use, helps maintain the delicate balance between accessibility and remuneration for rights holders.

\$13.50 per university student, **\$10.50** per college student and **\$4.29** per pupil – those are the 2018 annual licence fees. At the university level, for example, this represents less than 0.4% of the average \$3,500 annual university tuition and an even tinier fraction of university budgets. It is therefore difficult to contend that these licences are at the root of student debt or that they jeopardize access to the Quebec education system.

The two tables below illustrate the proportion of the cost of the licence relative to the operating budget of a university as well as to the tuition fees of a student.

	Annual operating budget (\$)	Cost of the Copibec licence (\$)	Proportion of the cost of the licence relative to the operating budget** (%)
Université de Montréal	759,037,000	501,471	0.066
Concordia University	473,007,000	372,600	0.078

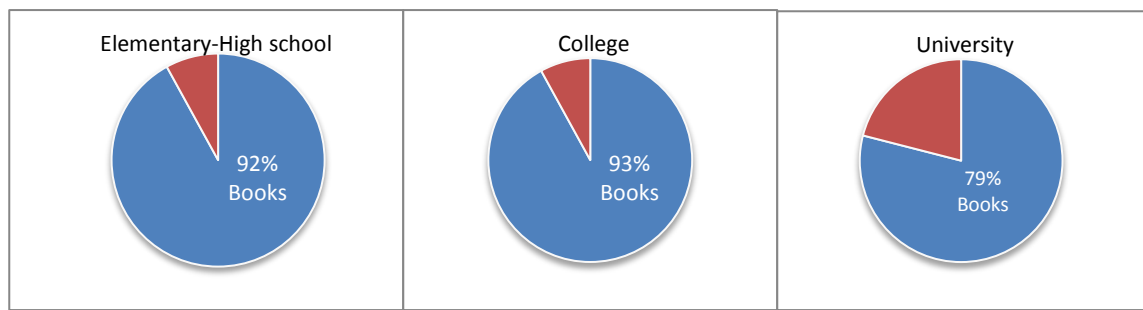
Universities	Status	Annual School tuition* (\$)	Proportion of the cost of the licence relative to the operating budget** (%)
Concordia University	Quebec students	3814	0.35
	Canadian students	8825	0.15
Université de Montréal	Quebec students	3292	0.41
	Canadian students	8304	0.16
Université Laval	Quebec students	3023	0.44
	Canadian students	8035	0.16
Université de Sherbrooke	Quebec students	3178	0.42
	Canadian students	8190	0.16
McGill University	Quebec students	4325	0.31
	Canadian students	9501	0.14
UQÀM	Quebec students	3704	0.36
	Canadian students	8516	0.15
UQÀC	Quebec students	3204	0.42
	Canadian students	8380	0.16

* Example of a full-time undergraduate student (30 credits/year) in Arts and Sciences.

** Based on the annual student fee of \$13.50.

Yet by ignoring these sound facts, most of the Canadian education community has opted for litigation to the detriment of negotiation, pushing creators, publishers and their collective societies to the courts and imposing a financial burden on them that they can scarcely support.

University institutions also argue that they would be paying twice for reproduction rights when subscribing to magazines. Without evaluating the scope of these subscriptions, it should be noted that the vast majority of reproductions reported to Copibec come from books, not magazines, as illustrated by the figures of the last education payment (December 2017):



Furthermore, at the elementary-high school and college level, the largest proportion of reproduced titles are from Quebec. A generalization of the university model has significant impact on Canadian rights holders. In November 2017, 281 authors and 151 Quebec publishers were paid \$1,000 or more for the reproduction of excerpts from their works in Quebec educational institutions. Amounts that make a difference for many of them.

Rights holders created Copibec because collective management gives them access to income that they would not otherwise be able to collect themselves. These are autonomous incomes that promote their freedom of expression and the diversity of our culture. Since 1997, Copibec has been providing easy access to works for millions of users and payments of more than \$195 million to rights holders.

Royalties paid out by Copibec represent on average more than 18% of the net profits of small and medium-sized Quebec publishers. They can even reach, in the case of some book publishers, up to 33.5% of their net profits over four years. These revenues also contribute significantly to the sustainability of specialized magazines and sometimes make the difference between their survival or failure.

Collective management for a better balance

Collective management is the exercise of copyright and related rights by organizations acting on behalf of rights holders, in their interest and that of users. It handles the millions of uses, the individual management of which would be too complex for rights holders and users.

Collective management has been a proven model for many years by combining accessibility to works and remuneration. **For UNESCO, it is the means of promoting “the lawful exploitation of works and cultural productions” and “an essential element in the construction of a modern national system of copyright protection which would effectively promote a dynamic cultural development.”^{iv}**

The creation of Copibec by Quebec publishers and authors is part of this modern perspective. As a simple and inexpensive solution, collective management, the cornerstone of equity and balance, is an integral part of the *Copyright Act* and, as such, should not be overshadowed by an undue broadening of exceptions.

Recommendations

The last five years have shown the disastrous effects brought on by the exceptions, and in particular, the use of fair dealing for educational purposes on the incomes of rights holders who are paid through collective management. The sought-after balance has not been achieved, it has even deteriorated. We are in favour of the free choice of authors who must be able to determine the conditions of use of their work (direct management, collective management, open access or other).

While millions of pages are reproduced without permission or remuneration to authors and publishers and while Canadian law has been denounced on the national and international stage, the education community still maintains a reassuring tone of innocence. But their refusal to pay licences is leading to the inevitable decrease of revenues for authors and their publishers.

The findings are alarming. The government must amend the *Copyright Act* to return to a more rigorous application of the fair dealing exception for educational purposes and educational institutions must agree to resume constructive dialogue with collective societies and once again pay authors and publishers the reproduction royalties owed to them.

Here are our recommendations:

Fair dealing for the purpose of education and private study (Section 29)

Without the removal of the word “education” from section 29, there are provisions in the *Copyright Act* that promote balance. In that respect, the introduction of a reference in section 2 paragraph (b) of the Act would ensure the accessibility of works without undue burdens, at a reasonable price, when a licence exists, and would also preserve the possibility for rights holders to be paid for the use of their works.

Not only is such a limitation on the use of an exception already permitted in the Act (e.g., section 29.4, section 32(1)), but it also exists in other jurisdictions with a concept of fair dealing comparable to ours (United Kingdom, New Zealand).

Reproduction for instruction and examinations (Sections 29.4 (1) to (3))

Since 2012, the application of sections 29.4(1) and (2) is no longer limited to the requirement of obtaining a licence granted by a collective society in accordance with section 2 of the Act.

Considering the intention of the exception, this amendment was not justified and undermines the interests of small publishers and creators who are not able to market their works digitally and who no longer collect the royalties related to those reproductions. **The provision must be reinstated to its pre-2012 formulation.**

Statutory damages - infringements for non-commercial purposes (Sections 38.1(1)(b), 38.1(1.12) and 38.1(1.2))

The notion of non-commercial purposes is not defined while the line between commercialization and non-commercialization continues to blur in the digital world. The amount of damages (up to \$5,000 for all infringements, all works [Section 38.1(1)(b)] and all rights holders [Section 38.1(1.2)]) is so low that it does not allow the authors to properly exercise their remedies, particularly in the case of large-scale, systemic or institutionalized non-commercial infringements.

To promote the continued development of creation on a national level and to support our authors, **the government must ensure effective remedies in the Act for rights holders, even for infringements for non-commercial purposes.**

Conclusion

The accelerated erosion of Canadian copyright must stop. It is imperative that the government show support for a strong national culture by correcting the adverse effects of the 2012 amendments, that it promote dialogue and a true balance between authors and users, including educational institutions by clearly defining the exceptions. Collective management is the guarantor of this balance by combining accessibility and remuneration to authors and their publishers.



Société québécoise de gestion collective des droits de reproduction

606 Cathcart Street, Suite 810

Montreal, Quebec

H3B 1K9

Telephone: 514 288-1664 / 1 800 717-2022

Fax: 514 288-1669

info@copibec.ca

www.copibec.ca



APPENDIX 1 - Notes, citations and bibliography

ⁱ Management fees are determined by the board of directors.

ⁱⁱ Some statements from the testimony of representatives from the education sector during hearings held in 2012:

Paul Davidson, ASSOCIATION OF UNIVERSITIES AND COLLEGES OF CANADA (February 15, 2011):

“...Simply put, the proposed amendments to fair dealing would not undermine the sale of books, especially textbooks, or the revenue base of copyright collectives.”

Ramona Jennex, COUNCIL OF MINISTERS OF EDUCATION (March 24, 2011):

“Nothing in Bill C-32 alters the current relationship among education, publishers, content providers, copyright collectives, and the Copyright Board.”

“I feel there's a misconception about a loss of revenue for authors and for the creative community. What we, the ministers of education from CMEC, are seeking is to have the amendments in here so that there's clarification. This will not affect any of the revenues that any of our creative people will receive. They would stay the same. There's no loss of income in this.

There will be no loss of revenue. The claims that you brought forward are misconceptions. You talk about making efficient use of our money. We would definitely not in any way be affecting anyone who would be making a living at creating materials, creating art, creating music. That is not any part of this. What we're here for is to make sure there's clarity.”

ⁱⁱⁱ <http://ici.radio-canada.ca/actualite/enjeux/reportages/2003/031209/ecrivain.shtml>

^{iv} Paula Schepens, *Guide to the Collective Administration of Authors' Rights*, UNESCO, 2000, p. 9.