

May 29, 2018

Sent by email: indu@parl.gc.ca

Mr. Dan Ruimy
Chair, Standing Committee on Science, Technology, and Innovation

Dear Mr. Ruimy:

RE: DFA Copyright Brief

The Dalhousie Faculty Association is a member of the Canadian Association of University Teachers and includes librarians, instructors who need fair dealing to teach and conduct research effectively, and creators of copyrighted material. Our interests in this legislation are diverse, and lie behind our commitment to the core principle of fairness to both users and owners. These interests lead us to support CAUT's position on copyright.

We wish to begin by making it clear that we understand concerns expressed about the health of Canadian publishing and the livelihoods of Canadian authors and other creators, but question the relevance of higher education to discussions of those concerns. Small presses and Canadian writers are typically assigned for only a handful of courses in Canadian universities that could not have any measurable impact on Canadian publishing. At Dalhousie, there are only two courses on contemporary Canadian literature next year, with a total maximum enrolment of about 80 students; there are three courses on Canadian History that might include some post-1950 material, with a total maximum enrolment of about 210 students. For context, there are about 14,000 students at Dalhousie taking up to 10 courses per year.

Canadian editions of textbooks are used by many more students across many more undergraduate programs, but they are not written by struggling authors working with a small Canadian press; university-level textbooks are generally produced by higher-education instructors working with large international presses. See, for instance, Canadian editions of *Microeconomics* (Worth Publishers, a US subsidiary of Macmillan Palgrave), *Sociology* (Pearson), *Educational Psychology* (Pearson), and *Understanding Financial Accounting* (Wiley). Fair dealing already protects these works from excessive copying.

We should also be mindful that most material used in Canadian universities under fair dealing is scholarly. Scholarship is vital across all university disciplines for both education and research—and it is often not Canadian-published. Even *The Canadian Journal of Political Science* is not published in Canada. The biggest academic publishers are Elsevier (US), Sage (US), Springer (Germany), Taylor & Francis (UK), and Wiley-Blackwell (UK). These five corporations publish more than half of the world's scholarly articles: see "The

Oligopoly of Academic Publishers in the Digital Era,” by Vincent Larivière, Stefanie Haustein, and Philippe Mongeon. It is worth noting that these authors all work at the Université de Montréal and they published this article in a US journal (<https://doi.org/10.1371/journal.pone.0127502>).

It is international, not Canadian, publishers that produce most of the material used in research and teaching at our universities, from scholarship to textbooks. The doi.org url above makes another relevant point. Ten years ago, a university instructor would have to put an article from a scholarly journal into a coursepack produced by the university printshop (which would handle copyright fees) or on reserve in the library; now that professor can simply give students a link to the online library copy. It is a modern version of putting work on reserve in the library but so convenient and ecological that it has reduced interest in coursepacks. Copyright cannot alter Canadians’ access to public library resources, or the digital environment we all inhabit now.

The move to online access for most of the world’s scholarship is having a significant impact on the global publishing industry, as is the growing control of a small group of international publishers over academic journals and textbooks. These transformations, for instance, are increasing costs to our libraries for both journal subscriptions and digital infrastructure. But this is unrelated to copyright terms, or to the challenges faced by small Canadian presses and Canadian creators. It is in this context that we express our support for CAUT’s five key points, though we would add a sixth.

First, fair dealing for educational purposes is essential to ensuring that appropriate content is accessible by researchers and students. The key criteria for selection in a course or a scholarly study has to be usefulness and relevance, not cost, in order to ensure the highest quality instruction and research as well as academic freedom. Some literary estates and corporate owners have tied permissions to the way in which material is discussed; fair dealing protects our classrooms from such interference.

Second, the copyright term of 50 years after the death of the creator must also be maintained. 50 years is fair to creators’ heirs, but ensures that material regularly becomes available in the public domain for scholarly publication. This is especially crucial to university disciplines concerned with the study of culture, disciplines that contribute to the education of new creators. Academic publishing, education, and research all require a stable and predictable copyright term.

CAUT also raises a concern about digital locks, impeding fair dealing and archiving of materials. Imagine a book sitting on a library shelf with a lock on it. Why do we allow locks that prevent inserting a movie-clip into a powerpoint for a lecture in a course, or the archiving of material for research purposes only?

We also support CAUT’s recommendation of advancing copyright law through a meaningful consultation with First Nations, Inuit, and Métis organizations to develop regulations that better reflect their traditions regarding “custodianship, dissemination, and compensation.” Reconciliation requires at least this.

And, fifth, we too would like to see government-produced materials enter the public domain as soon as they are released. This would bring Canada into line with the principles of open government, open access, and open data.

We would add to the CAUT's five concerns an interest in further clarification on the impact of a digital environment on fair dealing in the normal course of academic activities. Dissertations are now often archived by universities online, raising questions of whether permissions (often costly) are required for copyrighted content addressed in the dissertation: does posting such a dissertation online constitute "publication" since it's made public, or "fair dealing" because it serves an educational purpose (for the dissertation author and the readers of the dissertation)? Dalhousie and other universities in Canada are allowing graduates to request that their dissertations not be posted online when they include copyrighted material or may impact patents (partly because this only affects a very small proportion of graduate theses). Does this *ad hoc* solution strike the right balance between the educational value of the dissertation and the protection of the copyrighted material in it? There are no easy solutions here, and we would appreciate further guidance on protecting fair dealing in a digital world—especially fair dealing's commitment to balancing the interests of both owners and users.

Universities exist in a symbiotic relationship with publishers and other sectors involved in copyrighted material. Members of the Dalhousie Faculty Association write, create, invent, and contribute to those sectors, as well as help to educate the next generation of writers, creators, and inventors. Our Members also help to educate more widely readers of scholarship and the users of creative copyrighted material, from film and music to literature and theatre. Expertise cannot be built without access to the relevant material, in research and in the classroom. Maintaining fair dealing and the current copyright term, and limiting digital locks, is crucial to sustaining the circulatory system for scholarly information that is vital to research and post-secondary education.

Yours sincerely,



Julia Wright
President-Elect, DFA

c: Mr. David Robinson, Executive Director, CAUT
Dr. David Westwood, President, DFA