



Council of Atlantic
University Libraries
Conseil des bibliothèques
universitaires de l'Atlantique

BRIEF TO THE STANDING COMMITTEE ON INDUSTRY, SCIENCE AND TECHNOLOGY AS PART OF THE REVIEW OF THE COPYRIGHT ACT

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Submitted by the
Council of Atlantic University Libraries /
Conseil des bibliothèques universitaires de l'Atlantique
(CAUL-CBUA)

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Introduction

The Council of Atlantic University Libraries / Conseil des bibliothèques universitaires de l'Atlantique (CAUL-CBUA) thanks the Standing Committee on Industry, Science and Technology for engaging with our representatives during the hearings in Halifax as part of the review of the *Copyright Act*. We welcome the opportunity to provide further information and submit this brief as a follow-up to our presentation at the hearings.

CAUL-CBUA is a collaborative partnership of 18 university and college libraries in Atlantic Canada, serving a combined population of almost 97,000 students. CAUL-CBUA member libraries spend over \$27 million dollars annually on print and electronic publications. As a regional consortium, we engage in the licensing of electronic resources — eBooks, online journals, and streaming media — that complement content negotiated on a national level through the Canadian Research Knowledge Network (CRKN-RCDR).

Maintain Fair Dealing and Educational Exceptions

CAUL-CBUA believes in a balanced approach for copyright. Since 2012, increased compliance mechanisms, policies and training have been developed to ensure our communities are aware of their user rights and that they meet their responsibilities under the *Copyright Act* and the Fair Dealing Guidelines developed jointly by Universities Canada, CICan, and the Council of Ministers of Education. CAUL-CBUA members provide copyright education and outreach in the areas of fair dealing and alternative licensing options such as Creative Commons, and initiatives that promote broader sharing, such as Open Educational Resources, and the Tri-Agency's Open Access Policy. It is our experience that this has resulted in a much more informed faculty, staff, and student body.

CAUL-CBUA believes in the paramount importance of maintaining expanded user rights for education. Educational use of copyright protected material supports innovative and topical teaching and learning activities. CAUL-CBUA institutions value fair dealing while respecting its limitations. When the six-factor fair dealing test is applied, as established in the landmark 2004 Supreme Court of Canada CCH decision, if it is determined that a work cannot be copied under the education exception, we seek copyright clearance and pay royalties either directly to the publisher, or through a transactional licence.

Beyond our specific comments below, we agree with statements that have been made during this Review, including those by the Canadian Federation of Library Associations (CFLA-FCAB), the Canadian Association of Research Libraries (CARL-ABRC), and the Canadian Association of University Teachers (CAUT), including the protection of fair dealing exceptions from contract override, revisiting Crown copyright, acknowledging and protecting Indigenous knowledge, and retaining the current life plus 50-year copyright term.

Provide Transactional — Not Blanket — Licensing Options

Our members have serious concerns with the Access Copyright blanket licence model: the repertoire is limited and print-based; the agreement requires institutions to pay for material they do not use or need; licences purchased directly from publishers and through CRKN-RCDR and CAUL-CBUA result in duplicate payments to Access Copyright for use of some of the same copyright-protected material; no option for transactional licences; and the removal of the indemnity protection. Blanket licensing results in overpayments and therefore is not recommended. Options for transactional licences will lead to fewer instances where institutions are forced to pay for something more than once, or for titles that are not used. In addition to the terms and pricing of the blanket licences, the burdensome and intrusive reporting and surveillance conditions in the licences offered is also problematic.

Distinguish Between Use of Academic and Literary Works

Similar to statements put forward by CAUT, the Dalhousie Faculty Association and others, CAUL-CBUA questions the relevancy of post-secondary institutions being included in the conversation of the declining state of literary publishing in Canada. Our libraries spend the bulk of our collections budgets on the academic content most in demand — namely electronic journals, eBooks, and streaming media licences. Universities Canada has estimated that 92% of content in libraries is comprised of scholarly nonfiction and published academic research, not the poetry, fiction, and local interest titles that are the primary output of independent Canadian publishers. These licenced scholarly resources are primarily international, and they are the sources faculty in Canada are most interested in publishing in for the purposes of their research responsibilities and reappointment, tenure and promotion.

While the majority of our user communities are not currently engaged with the output of Canadian independent literary publishers — and we note the broader trend of declining enrolment in the humanities programs that do use such material¹ — our member libraries are nevertheless extremely supportive of Canadian authors and publishers. With this in mind, we look forward to constructive suggestions from the current Parliamentary review of Remuneration Models for Artists and Creative Industries², and would also highlight some examples of our ongoing activity, including our partnerships with public libraries. Our institutions partner with public library systems, whose role it is to collect leisure reading materials, to support literacy and lifelong learning. We promote their fiction collections

¹ See various articles including:

Table 6: Total Enrolment by Province, Major Field of Study**, and Level of Study, 2012-2013 to 2016-2017* (Fredericton: Maritime Provinces Higher Education Commission, 2017) http://www.mphec.ca/media/158829/Enr_Table6_2016_2017_E.pdf; Elizabeth McMillan, "Maritime universities see plunging enrolment in humanities programs," *CBC News*, February 16, 2016, <http://www.cbc.ca/news/canada/nova-scotia/humanities-enrolment-maritime-universities-1.3445694>; and MPHEC and Stats Canada data / trends: "Enrolment", *Maritime Provinces Higher Education Commission*, accessed September 21, 2018, <http://www.mphec.ca/research/enrolment.aspx>; Simona Chiose, "As students move away from the humanities, universities adapt", *The Globe & Mail*, April 14, 2017, <https://www.theglobeandmail.com/news/national/as-students-move-away-from-humanities-programs-universities-adapt/article34207300/>

² "Remuneration Models for Artists and Creative Industries", *House of Commons Standing Committee on Canadian Heritage*, accessed September 21, 2018, <http://www.ourcommons.ca/Committees/en/CHPC/StudyActivity?studyActivityId=10045359>

and encourage our students, faculty, and staff to acquire public library cards and use the systems developed for them there.

In addition to working with public library partners, the post-secondary libraries in Atlantic Canada are committed to supporting Canadian authors and creators in various ways. Several of our institutions organize campus-wide reading initiatives, purchasing thousands of copies of a selected book each year to distribute to students for shared reading experiences. CAUL-CBUA member libraries also host local author readings, literary events, and author-in-residence programs, and fund province-wide literacy activities such as One Book Nova Scotia. For preservation and access purposes, our libraries collect representative creative writing produced by small presses from across Canada and make every attempt to comprehensively collect the creative work of small presses in the Atlantic Provinces. In the case of Dalhousie's Canadian Small Press Collection, the entire literary output of English language small presses from across Canada since 1970 was purchased, resulting in a collection of over 25,000 books.

Canadian publisher groups suggest that educational fair dealing has devastated their industry. In reality, according to Statistics Canada, Canadian-controlled publishers increased the sales of their own educational titles by 7% from 2014–2016. Statistics Canada data also indicates that college and university expenditures for both print and electronic library acquisitions have increased by 26% since 2011–12.

Support Student Demand for Open Educational Resources (OER)

The situation with textbooks in the present landscape differs from the academic or literary works as discussed above. Significant financial demands on students make the decision to buy textbooks challenging, and there is a risk to students' academic success when this financial barrier is too high. In response, provincial governments in BC and Ontario now subsidize the production of open textbooks, made freely available to students and adaptable by faculty — meeting the need for relevant, current, and adaptable content as well as lowering costs for students. Students are demanding a more affordable approach to acquiring learning materials. For example, we bring to your attention the call to the Government of Nova Scotia in a pre-budget submission³ issued by StudentsNS — an alliance of Nova Scotia post-secondary student associations — asking the government to establish an “Open Education Resource Pilot” for the province's top 40 subject areas.

Reflect Technological Advances in the *Copyright Act*

There are a number of issues related to new technologies and existing legislation. Rights granted in the *Copyright Act* must be flexible enough to respond to emerging technologies. There is a growing demand by researchers to create large, new datasets derived from the mining of existing digital content. This text

³ StudentsNS, *StudentsNS Pre-Budget Submission 2018/19*. (Halifax: StudentsNS, 2018), <http://studentsns.ca/wp-content/uploads/2018/01/StudentsNS-Budget-Submission-2018-19.pdf>.

and data mining use is not acknowledged in the *Act* and use is currently secured with licences. Other jurisdictions, such as the United Kingdom, have introduced clauses in their copyright legislation that include text and data mining, keeping pace with our evolving digital environment.

Also, the implementation of blockchain technology could circumvent user access rights that are established in legislation. Libraries are a trusted gateway to ensuring that only licenced users have access to content through the use of protection measures such as proxy servers and single sign-on authentication. It is critical that users' rights cannot be undermined or overridden by contracts, digital locks, or other technological innovations.

In regard to digital locks and Technological Protection Measures (TPMs), accessibility is a major concern. Students who require accommodations to be successful in their studies are presently unfairly disadvantaged by the inability to break a digital lock for non-infringing purposes, such as the addition of closed captioning to a video. The current legislation prohibiting a technology or device for the purposes of circumventing TPMs (Section 41.1(1)(c)) essentially renders useless users' rights in Section 32 in many circumstances. This is a legislated accessibility requirement in many jurisdictions including Ontario, Manitoba and, most recently, Nova Scotia. Generally, the restrictions set out in the legislation effectively deny users their fundamental right to fair dealing in the digital landscape that drives current research and learning. It is essential that this be addressed at the national level by amending the *Copyright Act* to allow the removal of TPMs for non-infringing purposes.

Support Open Access Initiatives in Addition to Fair Dealing

There are additional ways to support Canadian culture, research and academic success, beyond fair dealing and transactional licences already mentioned, including: the Canada Book Fund, the SSHRC Aid to Scholarly Journals Fund, and Public Lending Rights Program negotiated with the libraries. Additionally, there are new initiatives such as Coalition Publi.ca, a Canadian partnership between Érudit and the Public Knowledge Project dedicated to working with academic and small press journals to move towards an open access, sustainable national publishing model.

Models elsewhere to consider include OA2020, an international initiative working to convert the existing corpus of scholarly journals from subscription-based access to open access by 2020. Libraries work with the journals to create a sustainable open access model, funding them largely to the same extent that we do now through a commercial subscription with the commitment that they will make the journal open access so it is not only available to a closed academic community, but benefits society in general.

Conclusion

CAUL-CBUA endorses a balanced approach for copyright, one which respects creators and the rights of users under the educational fair dealing exceptions in the *Copyright Act*. As a long-established right for

all Canadians, fair dealing is essential for our faculty to teach and conduct research while supporting our students in their studies. CAUL-CBUA strongly encourages the Committee to recommend that user rights remain in the *Act* as they are now written and that tariffs remain optional, allowing educational institutions the independence to decide how best to invest in our learning communities.

Summary of Recommendations

In summary, CAUL-CBUA recommends that the Government of Canada:

1. Maintain fair dealing and educational exceptions.
 2. Provide transactional — not blanket — licensing options.
 3. Distinguish between use of academic and literary works.
 4. Support student demand for Open Educational Resources (OER).
 5. Reflect technological advances in the *Copyright Act*.
 6. Support open access initiatives in addition to fair dealing.
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About CAUL-CBUA

The Council of Atlantic University Libraries / Conseil des bibliothèques universitaires de l'Atlantique (CAUL-CBUA) is a collaborative partnership of 18 post-secondary libraries in Atlantic Canada. CAUL-CBUA is a dynamic community of librarians and library staff bringing valuable experience and a willingness to ensure the best quality of service to meet user needs. All of our members are actively involved in pursuing innovative and cost-effective ways to benefit our faculty and students. Collaboration maximizes benefits to, and builds capacity within, our member institutions. More information about CAUL-CBUA is available at <https://caul-cbu.ca/about-caulcbua>.