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🕒 (1405)

[*English*]

The Chair (Mr. Dan Ruimy (Pitt Meadows—Maple Ridge, Lib.)): Good afternoon, everybody. Welcome to meeting 110 of the Standing Committee on Industry, Science and Technology.

We are continuing our five-day, five-cities road trip on the Copyright Act, and so far it has been quite interesting to get the diverse opinions that are coming through, as well, the open mikes have been really well received.

Everything that's being said today is actually being recorded. We'll be able to take it back to the House and it will be part of the official documentation.

Today we have our first panel, the Canadian Copyright Institute, Mr. William Harnum, chair.

We have the International Publishers Association, Mr. Hugo Setzer, vice-president of publishing.

From the University of Guelph we have Ms. Rebecca Graham, university librarian, chief librarian's office. We really wish Lloyd was here for you.

Finally, from the Toronto Public Library we have Ms. Susan Caron, director, collections and membership services.

We're going to start. You have up to seven minutes to make your presentations and then we'll get into rounds of questions.

Just as a reminder to our audience out there, once the gavel has been banged, there is no recording or photography as part of our official House of Commons protocol.

Thank you very much.

We will start with the Canadian Copyright Institute. Mr. Harnum, you have up to seven minutes.

Mr. William Harnum (Chair, Canadian Copyright Institute): Thank you very much, Mr. Ruimy.

Good afternoon. I am pleased to appear before you today on behalf of the Canadian Copyright Institute, an association of creators, producers, publishers, and distributors of copyrighted works. Founded in 1965, the institute seeks to encourage a better understanding of the law of copyright.

Members of CCI have made representation to various levels of government on changes to copyright law and the copyright landscape in Canada, and we participated in international discussions, including the Stockholm Revision of the Berne Convention and, more recently, meetings of the World Intellectual Property Organization in Geneva.

In the interest of full disclosure, I should say that I've worked in academic publishing in Canada since 1984. I've been president of the Association of Canadian Publishers twice, and I have also served on the board of Access Copyright. Most of my volunteer work for the last decade has been in the field of copyright.

In our view, some aspects of copyright in Canada have been in a state of flux since the 2012 changes to the law. We supported some of the changes at the time, but our members were very worried about the inclusion of education as a fair dealing purpose.

Representatives of the educational sector at the time assured parliamentarians, in meetings very much like this, that the inclusion of education as a category of fair dealing would have no effect on revenues to creators, and specifically that they would continue to pay their collective licence through Access Copyright. This, of course, did not happen.

People on both sides of the debate have argued about the extent of the damage to creators, but any reduction of revenues in creative industries, with narrow profit margins and a low income for most writers and artists, is significant.

Let me repeat what John Degen, executive director of The Writers' Union, said on this matter last week. "Fair dealing should apply when an individual student or other person goes to the library to make a few copies for his or her own use, not when that copying is carried out on an industrial or sectoral institutional basis."

This is what we believe is happening in educational institutions. What's happening is wholesale copying, without compensation, of content as a substitution for purchasing books, including textbooks. The promulgation of arbitrary fair dealing guidelines—10% of a work; an entire poem, play, or essay from a work; the whole chapter of a book; etc.—is not, in our view, fair. The Federal Court decision in the recent York University case upholds this position.

None of this is new. When I was in graduate school in the mid-1970s, accessing copyrighted content was difficult and inconvenient. Some of my professors diligently cleared copyright for excerpts handed out in class. Some didn't bother.

With the introduction of Access Copyright agreements around 1991, the need for individual negotiation was eliminated and replaced with a negotiated collective licence. Educators told Access Copyright at the time that they didn't want to keep records of what was actually copied, so sampling and other methods for determining what was copied and whom to pay were devised and agreed upon. It was an easy, efficient, and inexpensive method of accessing content from Canadian and foreign publications.

With all the talk of billions of dollars in spending by universities and libraries on content, it's important to remember that its highest rate, the Access Copyright fee, was set at \$27 per full-time student—less, as my son says, than the price

of a case of beer.

About 20 years later, educational institutions decided, emboldened by the 2012 amendment extending fair dealing to education, that most of what they were copying should not be paid for at all.

We suggest that education as a category of fair dealing needs parameters either in a copyright act or regulation, or both. The parameters must provide some latitude for copying by individuals but not be so broad as to encourage wholesale copying, unless with a licence from a collective society or, alternatively, a tariff determined by the Copyright Board. That's our position on fair dealing.

Second, claims by the education community that tariffs established by the Copyright Board are voluntary are, in our view, absurd. The Federal Court in the York University case has determined that tariffs are, indeed, mandatory. Despite the clear ruling of the Federal Court, however, many in the educational sector are refusing to pay royalties owing under tariffs set by the Copyright Board.

However, many in the educational sector are refusing to pay royalties owing under tariffs set by the Copyright Board.

Our third point today is a recommendation to extend copyright to 70 years after the death of the author, which would have been required by the Trans-Pacific Partnership agreement if the U.S. had remained on board.

Countries that now protect copyright for 70 years following death include the United Kingdom and all the other members of the European Union, the United States, and Australia. Canada is out of sync with the norm. If concerns were expressed about difficulty in locating deceased rights-holders, we can look to improvements in the copyright owner provision in the Copyright Act, as well as enabling an author to leave a legacy that may benefit grandchildren as well as children, an additional important reason for the extension. It is now more advantageous for a Canadian author to publish first in countries outside Canada, because some countries provide the 70 years protection only on the basis of reciprocity.

We believe that these three changes are important for a thriving copyright environment, for the benefit of both creators and the public.

Thank you.

🕒 (1410)

The Chair: Thank you very much, and we're going to move to the International Publishers Association, and Mr. Setzer. You have up to seven minutes.

Mr. Hugo Setzer (Vice-President, Publishing, International Publishers Association): Good afternoon. Thank you very much for the opportunity to appear before this committee. My name is Hugo Setzer. I am a publisher in Mexico City and currently vice-president of the International Publishers Association or IPA.

IPA is the federation of national, regional and specialist publishers associations with seventy-six member organizations from sixty-five countries throughout the world. IPA has three Canadian members. We have the Association of Canadian Publishers, the Canadian Publishers Council, and la association nationale des editeurs de livres.

IPA has a special interest in educational publishing. Educational publishers are very good at producing and supplying quality textbooks and learning materials, and they develop a wide range of innovative new tools and content in digital, print and blended formats. Education is a legitimate market for publishers and the protection of their investment by comperate encourages and promotes investment and quality educational material.

Publishers are not in principle against exceptions. They have their place in a well balanced ecosystem.

Actually for example, we fully support the Marrakesh Treaty . But when there are too many exceptions [*Inaudible*] when they are too broad, they undermine the very business model that produces high quality educational content in the

first place.

When considering educational exceptions, we think that legislators should consider broader policy objectives notably to establish a sustainable local publishing ecosystem that supports a knowledge and information based economy.

Exceptions for specific well-defined and narrowed occasional purposes are part of the comperate landscape, and publishers accept that. Publishers' experience is that exceptions that are designed for a specific case is contemplated by the Berne Convention's three step test - work best. Since all parties have a common understanding of how the exception works, however, the so called "fair dealing" exception introduced into Canadian law in 2012 is much too broad.

Nowhere in the industrialized world outside Canada is education in the generic sense a permitted purpose for an unrenunerated fair dealing exception, as shown by many studies.

Our concern at IPA is that Canada is now considered internationally an [*Inaudible*] but only with its fair dealing exception for education, but with its court made law that equates fair dealing exceptions with so called user rights, all of which has resulted in loss of income for Canadian publishers and others.

Publishers report with use or even complete withdrawal of investment in Canada's specific K212 education content.

In the IPA submission to other national copyright reviews in places all around the world like Australia, Ireland, Nigeria, Singapore, and South Africa, we have had to argue that Canada is a bad case example of government's interfering with copyright and undermining the local market. It is an unfortunate but direct consequence of the 2012 copyright law changes that Canada now sits with countries like Venezuela, Kuwait and China of a priority watchlist of the section 301 report of the United States trade representative.

Canada has obligations under the Berne Convention in [*Inaudible*] that its exceptions must pass muster under the three step test.

We are hearing arguments from noted scholars that the fair dealing for education exception is subsequently interpreted by the Supreme Court and by a number of educational institutions like York University does not need the three step test.

A well balanced educational publishing infrastructure includes collective licensing. We all know that copying exists and finding a mechanism that remunerates creators and publishers fairly for income [*Inaudible*] when teachers and students copy material is unquestionably the best way of dealing with this activity. Students perform best when they have high quality resources to work with. Collective licensing in the educational field is done at a very low cost [*Inaudible*].

Education is a strategic resource for all countries that want to be part of a knowledge based economy of a [*Inaudible*].

🕒 (1415)

Educational publishers, the authors they employ, many of whom are former teachers, are the professionals best placed to translate curricular into quality textbooks and learning materials. It is publishers who are keenly aware of the latest research into teaching and learning. It is publishers who will use all available and appropriate format and publishers' materials are specifically designed to stimulate academic success. Please help us to continue to invest in education.

Thank you very much.

The Chair: Thank you very much.

We're going to move right on to the University of Guelph, Ms. Graham, you have up to seven minutes.

Ms. Rebecca Graham (University Librarian, Chief Librarian's Office, University of Guelph): Thank you.

Good afternoon, Mr. Chair, and members of the committee. Thank you for the opportunity to speak with you this afternoon.

As you've just heard, my name is Rebecca Graham and I'm the University Librarian at the University of Guelph. I'm joined here today by our Copyright Officer and Manager, E-learning and Reserve Services, Heather Martin.

Today, I would like to share with you, the history of Fair Dealing practices at the University of Guelph. For almost 35 years, we have practised effective management of copyright. In doing so, we facilitate and advocate for responsible and informed uses of copyrighted materials through compliance with the Act, compliance with the many licences and contracts. We negotiate with digital content publishers and providers.

Engagement with Guelph faculty, students and staff, in which we provide expertise and guidance on copyright and authors' rights issues as well as Fair Dealing practices so that they understand both their rights and their obligations as creators and consumers of content. We also have the commitment of staff and other resources to support copyright education and compliance.

In 1984, the University of Guelph was among the earliest Canadian institutions to implement an institutional copyright policy, one which included specific guidelines on Fair Dealing. Guidelines adopted at that time did not differ substantially from Fair Dealing policy in the use at universities today. A specified copying from books “may not exceed 10% of the monograph” and for periodicals “One article in five from a single issue not more than 10% of the full issue”.

There were dramatic shifts in our collection development strategy from the mid-1990s to 2010 as we moved away from the acquisition of individual books and journals in print to the increasingly larger scale acquisition of digital content to the benefit of our patrons made possible through technological advances.

During the period, the university paid for a collective licence with access copyrights to authorize photocopying of print materials, paid transactional licences to access copyright for copying that exceeded what could be copied under the terms of the blanket licence, paid publishers and creators directly for the right to digitize and post course materials online and continued to use Fair Dealing to authorize copying works that were excluded from access copyrights repertoire.

By 2010, the majority of journal and book content utilized for courses was from our subscriptions to digital publications. Given this rise in an increasingly networked world which in turn enabled both digital publishing in new learning environments, the collective licence for reproducing print materials no longer had value.

In January 2011, the University of Guelph was one of a number of Canadian universities choosing to opt out of the access copyright model and choosing to manage our own copyright practices. Subsequent developments between 2012 and 2017 supported this decision. Most notably the Supreme Court decision in Alberta Education Access Copyright which affirmed that Fair Dealing for purposes such as private study and research extended to teachers making copies for their students.

The addition of education as a Fair Dealing purpose in the 2012 Copyright Modernization Act provided further clarity on the scope of Fair Dealing in an educational context. In 2012, the university adopted the Fair Dealing policy for universities developed by Universities Canada based on the Supreme Court decision.

In 2017 through 2018, the recently completed fiscal year, our acquisition budget was \$8 million with which we purchased or subscribed to international scholarly [*Inaudible*] including substantial portions of Canadian University Press output as well as literary works by Canadian authors. We subscribe to E-books from the Association of Canadian University Presses. We provide a digital publishing platform for a number of scholarly journalists and we contribute to the National Journal Publishing efforts including [*Inaudible*].

We also spent \$100,000 in that period on transactional licences to accompany educational materials that fall outside the limits of fair dealing. Currently, 92% of the materials we acquire are digital, and the rights we negotiate provide for greater legal opportunities for the use of those materials.

Students at the university access course readings in a variety of ways: they purchase textbooks from the university bookstore; they access materials placed on reserve in the learning management system, including 54% through direct links from licenced materials, 24% open and free Internet content, 6% via transactional licences, with the remaining 16% under fair dealing.

I would like to conclude by stating that we support the retention of fair dealing as it currently exists in the legislation. I would like to thank you again for this opportunity to speak with you today.

The Chair: Thank you very much.

Finally, we're going to move to the Toronto Public Library.

Ms. Caron.

Ms. Susan Caron (Director, Collections and Membership Services, Toronto Public Library): Thank you for inviting me to address you this afternoon, and for leading the review of the Copyright Act.

I am the director of collections and membership services at the Toronto Public Library, and I'm going to talk about inter-library loans, technological protection measures and equitable access to e-books.

Public libraries have long played a role in assisting people to undertake personal research and study. Since it is recognized that no library can be entirely self-sufficient in fulfilling this role, the Toronto Public Library is an active participant in the inter-library loan process, in which library materials are lent to and obtained from other libraries to fill customer requests. As the largest public library in Canada and owner of unique materials, we welcome the opportunity to share our collections and to support the work of researchers outside Toronto. We regularly lend and provide about 4,500 books and copies of documents a year.

These services rely on the current fair dealing framework, primarily the exception to research and private study and the exceptions for libraries to copy material for customers.

This balanced and flexible framework is critical to the future success of resource sharing between public libraries, which extends access to library collections across Canada. Therefore the current fair dealing provisions that support this use and exceptions for libraries should be retained unchanged.

However, as electronic materials make up more of our collections, our ability to lend those materials is often restricted by the contract provisions in our licences. This means that we cannot lend digital material to other libraries that cannot afford expensive digital resources. Contract language is complex and difficult to interpret so librarians err on the side of caution and do not lend or copy digital material for other libraries.

In order to be able to provide equitable service regardless of format, we recommend amending the act to explicitly state that contract provisions cannot override fair dealing and library exceptions. This would allow us to provide inter-library loan services in the digital age.

Second, technical protection measures, TPMs, on materials such as materials such as e-books can prevent the library from non-infringing sharing that would otherwise be recognized as a fair dealing exception. For example, if a library customer wants to make a copy of a small portion of an e-book for private study or research, the TPM prevents this even though it is allowed under fair dealing. Publishers see TPM as the way to protect digital books against copyright infringement and piracy, however many researchers dispute this.

According to a 2017 study by Britain's Intellectual Property Office 17% of e-books read by U.K. customers are illegally downloaded and there is no reason to believe Canadians are any different and I think, as Mr. Setzer alluded to,

for example, in its 2017 report, the Intellectual Property Alliance kept Canada on its watchlist stating that online infringement remains widespread in Canada.


Briefly, TPM appears to have little effect on e-book piracy. It's fairly easy to crack e-book encryptions and there are thousands of illegal sites to choose from. Publishers are spending a great deal of money on TPMs and in the meantime are blocking users from legitimate sharing of content.

Many see TPM-free e-books as the obvious solution, and this is gaining ground in the academic world. However, we simply recommend that the act be amended to allow for non-infringing circumvention of TPMs to allow libraries to lend and customers to copy within existing exceptions regardless of format or TPM applied.

Last, I want to speak about the challenges libraries are facing in building e-book and e-audio book collections. In 2016, Toronto and Ottawa city councils, at the request of their library boards, adopted a resolution to, and I quote, "request that the Department of Canadian Heritage and Industry Canada investigate current e-book pricing practices of multinational publishers as part of any upcoming statutory review of the Copyright Act". This was also endorsed by the Federation of Canadian Municipalities.

In the last five years the use of digital formats by Toronto Public Library customers has risen by 200% to over 4.5 million uses in 2017. This is great news, but we, like public libraries across Canada and around the world, are dealing with multinational publishers who may charge us four to five times what consumers pay for a licence that allows customers to access one copy of an e-book. Furthermore, three out of the five multinationals require that we repurchase these licences after a set time or number of uses. This is an unsustainable licensing model and despite repeated efforts over six years to discuss a reasonable model with publishers, there has been little movement.

Canadian libraries have also been unable to access the same titles as American libraries, although we share the same vendor.

 (1425)

We have been told that this is because Canadian rights have not been negotiated and some of these titles are Canadian.

We submit that the book importation regulations may offer a model to address the lack of availability and excessive pricing faced by libraries in the digital era.

Thank you for the opportunity to speak.

The Chair: Thank you very much.

We're going to jump right into our questions with Mr. Jowhari. You have seven minutes please.

Mr. Majid Jowhari (Richmond Hill, Lib.): Thank you, Mr. Chair. I welcome all the presenters. Thank you for taking the time, coming down, and sharing your input with us.

I'm going to start with Ms. Graham from the University of Guelph.

You indicated your university has spent about \$8 million in 2017 on purchase of the content. Can you give me a sense, since 2012 to 2017, what kind of percent increase had it been on the expenditure?

Ms. Rebecca Graham: I can actually tell you from 2007-8. We spent \$6 million, to the most recent year we just completed we spent \$8 million. So it's been a \$2 million increase.

Mr. Majid Jowhari: Over what period?

Ms. Rebecca Graham: Ten years, \$2 million.

Mr. Majid Jowhari: Thank you.

You indicated that 92% of that expenditure in 2017 was on digital. Can you also give me a sense of the percentage change on digital during the same time period, roughly?

Ms. Rebecca Graham: It's a different time frame.

Mr. Majid Jowhari: Over the last five years.

Ms. Rebecca Graham: What I can tell you is we had 64% digital expenditures in 2002 to 2003. Guelph was very early in making that move, to the 92% in 2017-8.

Mr. Majid Jowhari: Other than 92%, what percentage of it is Canadian content specifically?

Ms. Rebecca Graham: That's a hard number to get at because we have many large package deals. There's Canadian content with all of those. We have a number of e-book deals, Canadian content within many of those as well. We don't have a drill-down number.

🕒 (1430)

Mr. Majid Jowhari: Can you quickly break down the \$8 million? How much of it is actually going on the purchase of content? How much of it is going into building any type of digital platform that you might be investing in? How much of it is going into the administrative.... This is just purely—

Ms. Rebecca Graham: It's purely content.

Mr. Majid Jowhari: Purely content.

Ms. Rebecca Graham: Purely content.

Mr. Majid Jowhari: Can you give me a breakdown, plus or minus whatever percent is reasonable, of where is that money going? Is it going directly to the content creator or is it going to the publishers?

Ms. Rebecca Graham: It's going to the publishers primarily.

Mr. Majid Jowhari: Can you give me—?

Ms. Rebecca Graham: I'm looking at my experts.

It's going to the publisher.

Mr. Majid Jowhari: Can you give me a sense of which publishers or are these a certain group of publishers? This is broadly how many publishers that...?

Ms. Rebecca Graham: We participate in licensing at the national level through the CRTN, who you heard from in Ottawa. Those would be the five major publishing entities. Those licences get paid on an annual basis so they represent a significant portion of this.

Mr. Majid Jowhari: What would a significant portion be?

Ms. Rebecca Graham: I can only hazard a guess at this point, that it's probably 50%, at least.

Mr. Majid Jowhari: So 50% of the \$8 million is going to five publishers.

Ms. Rebecca Graham: Correct.

Mr. Majid Jowhari: Okay.

Can you just submit to the clerk those publishers that you're investing nearly 50% of that \$8 million?

Thank you.

Ms. Rebecca Graham: In terms of the names?

Mr. Majid Jowhari: Yes.

Ms. Rebecca Graham: Springer, Wiley, Elsevier, Taylor & Francis... I'll have to figure out what the fifth one is.

Mr. Majid Jowhari: No problem.

Can you give me some ideas around what the other \$4 million are being spent on?

So 50% is going to the publisher, the other 50%.

Ms. Rebecca Graham: Resources like JStor, online scientific resources that are more index in nature—so they provide access to resources—as well as print materials, either books, a very limited number of print journals any more, as well as electronic books that we purchase packages typically for.

Mr. Majid Jowhari: At some later point, could you submit the breakdown for us?

Ms. Rebecca Graham: Sure.

Mr. Majid Jowhari: We're hearing 92% digital over and over and over again.

One of the things we're trying to do is we're trying to get an understanding of the investment and where it's going, and how much of it is actually going back into the Canadian content creators, because we also hear from Canadian content creators that their revenue is going down, and I see university expenditures going up, most of it, over 50% of it, going to publishers, again, to certain groups of publishers. Yet the revenue of the content creator is going down and we are trying to deal with that dilemma.

Ms. Rebecca Graham: I think this has been mentioned in a couple of other presentations that have taken place, but I certainly would pose the question, as we see—certainly at our institution—a drop in the number of students pursuing arts and humanities degrees, we will be purchasing less content that flows out of the Canadian creative literary market.

Mr. Majid Jowhari: That's a very interesting comment, because we also heard that the expenditure on arts and literature is actually going down, whereas the investment by universities in scientific research and scientific content base material is going up.

Do you see the same trend? I'm going to let you finish, I apologize.

Ms. Rebecca Graham: That trend has been in place long before the fair dealing changes. That's a market reality, that scientific publishing in particular has increased annually well beyond CPI, and if you look at the revenue reports from the publishers I mentioned, you'll recognize where a lot of that money has gone.

Mr. Majid Jowhari: Okay, so if we look at the revenue from the publisher....

Mr. Chair, how much time do I have?

The Chair: Thirty seconds.

Mr. Majid Jowhari: Thirty seconds? I will give it back to the chair.

The Chair: Thanks. I will take your 30 seconds and put them in my pocket.

Thank you. We're going to go to Mr. Jeneroux. You have seven minutes.

⌚ (1435)

Mr. Matt Jeneroux (Edmonton Riverbend, CPC): Thank you, Mr. Chair.

Thank you for being here today, everyone.

We heard the opening comments by Mr. Harnum stating that there was an agreement in place initially, and even some of the comments that were made in previous committees with regards to fair dealing and what that meant, and then we heard Ms. Graham's comments about how they opted out of the Access Copyright agreement.

I'm trying to figure out, from where the legislation comes into place in 2012 to where we are now, Ms. Graham, to you, what precipitated your decision to move out of the agreement?

Ms. Rebecca Graham: I'm going to ask my colleague, Heather Martin, to speak to that because I wasn't at the university when that decision was made.

Ms. Heather Martin (Copyright Officer and Manager, E-Learning and Reserve Services, University of Guelph): I would say there were a number of factors that caused us to decide to opt out. It really was precipitated by the Access Copyright agreement that we had coming to an end, and Access Copyright's decision to file a tariff with the Copyright Board. So that was a change in structure around how it was going to be handled, but before that happened, we were already seeing, as Rebecca has mentioned, a shift to digital that meant that we were purchasing our content through digital platforms that were giving us the right to do the same things with that content that we were paying for through the Access Copyright licence.

So that was what precipitated the change. In the print world, it made sense to have a copyright licence with Access Copyright, because we were making photocopies to hand out in class and to share with students, but once we accessed that content through digital platforms where we're paying up front for the right to make multiple copies to hand out in class or for students to access, through the learning management system, we would effectively have been paying twice.

Mr. Matt Jeneroux: I do want to come back to some of the other comments that you made, but I'll give Mr. Harnum an opportunity to rebut that statement, if he'd like.

Mr. William Harnum: Well, it's hard to rebut, because, of course, we don't have numbers on the table. But the fact is the numbers we're aware of is that last year along over 600 million paper copies were made in Canada of the content of Canadian publishers and other publishers. All the publishers in the association that I most represent or that I most know at the association, Canadian publishers, have seen their revenue from Access Copyright from licensing decline to, in many cases, almost zero.

In the case of creators and in the case of authors, these are not people who have bundles of electronic content that are sold through CrCan or through JSTOR or other of the people that have been mentioned today. These are individuals who are writing books. They were used to perhaps getting \$600 to \$700 per year from their Access Copyright royalties, and they're now getting \$90. That's the direct result of the extension of fair dealing. It's certainly true that we have seen individual publishers who are used to selling class sets, for example, of plays or of volumes of poetry to universities across the country eliminated completely in favour of prepared and made anthologies of print materials that are sold in university bookstores as course packs, where you take a chapter from this book, a chapter from that book, a chapter from this book, a chapter from another book, put them all together, and what have you got? You have 10 chapters a book, you slap a sticker on it and sell it. No creator gets a penny from that work.

There's been kind of a red herring set up by a number of people who are talking about this issue, which is, "Well, there's so much digital, there's no print anymore". The fact is digital in the market for which I'm talking mostly, which is individual publishers in Canada, digital still represents less than 15% of their market. So 85% of our market is still print.

We're losing almost all the university market for.... It was never a huge market, it was never a huge amount of money, but it could be the difference between profitability and non-profitability, and that's the reality.

🕒 (1440)

Mr. Matt Jeneroux: Am I correct in saying the trend is going, though, to more digital? You're saying 15%, but—

Mr. William Harnum: No, the trend is flat.

Mr. Matt Jeneroux: The trend for going digital—

Mr. William Harnum: The trend for going digital, in the area which I know, certainly in my business, which small scholarly publishers from a small university press and others, is definitely flat. We're not seeing an increase. Other people who have more experience in trade publishing than I do now, I think can affirm that: we're looking at between 15% and 20%, and that's been pretty much stable for the last, I would say, several years.

Mr. Matt Jeneroux: Mr. Setzer, you're nodding your head. You would agree?

A witness: It's not the experience in the—

Mr. Matt Jeneroux: Sorry, we'll go with Mr. Setzer first.

Mr. Hugo Setzer: Yes, indeed, that's our experience internationally as well: that sales of digital products skyrocketed several years ago, and then they have remained rather constant, between 15% and 25%, something like that, depending, of course, on the type of book and so on. But, yes, we agree with that.

Mr. Matt Jeneroux: Okay.

Since I have you, and I don't have too much time left, so I won't go into too much else, notice and notice versus notice and take down, you didn't hit on it in any of your comments. Obviously, Canada has a notice and notice. Other jurisdictions have notice and takedown. I'm curious as to what your organization advocates for.

Mr. Hugo Setzer: That's something I don't have an answer to. We know there are different systems throughout the world. I'm not sure if we do have a position about that. I could—

Mr. Matt Jeneroux: No, I was just curious.

Mr. Hugo Setzer: —investigate and send you an answer afterwards.

Mr. Matt Jeneroux: We've effectively eaten up 45 seconds. That's perfect. Thanks.

The Chair: Thanks.

We're going to move to Mr. Masse.

You have seven minutes.

Mr. Brian Masse (Windsor West, NDP): Thank you, Mr. Chair.

Thank you for being here today.

I'll start with Mr. Harnum.

The Copyright Board, the current status, is it of interest to reform it, to improve the speed and the enforcement of decisions— and maybe we'll go across the pane—how do you think the Copyright Board is or is not working at this particular point in time?

Mr. William Harnum: The key issue, of course, is to make the tariff mandatory. That's the first issue for reform. In the document we submitted a few months on reform of the Copyright Board, that was one of our key positions. Another important position, of course, is that the penalties are too low. The penalties for infringement at the present time for educational institutions limited to the amount of the infringement, by that I mean the cost of the infringement. I think it should be much higher.

If I can ask my colleague, Marian, to add her response to that. Is that okay?

Marian Hebb (Vice-Chair, Canadian Copyright Institute): One of the problems is that the Copyright Board doesn't have enough resources to do things quickly and the tariffs, for example, one is deciding on what those royalties should be several years after in fact the licence would expire, the tariff had expired, so it's very difficult for school boards to administer and plan. It's completely impossible for the collective to distribute things. You don't know how it's going to turn out. So there are terrible problems with the resources of the Copyright Board.

As Bill has said, the fact that it's uncertain that the tariff is mandatory creates a level of uncertainty as well. If organizations can opt out, then who's going to pay if they can opt out?

If I could add something related...

Mr. Brian Masse: No. I've got to go across the board here. I'm sorry. I'll come back in a minute, but I only have seven minutes and I need to get my other witnesses in.

Marian Hebb: I'm sorry.

Mr. Brian Masse: Don't be sorry. I need to move across here. I'll try to get back to you, though.

Ms. Caron.

Ms. Susan Caron: I have very little experience with the Copyright Board. I do know that the general feeling, though, is it is under-resourced and needs to move more quickly.

Mr. Hugo Setzer: Specifically to that, I also don't have the numbers or the information specifically to the Copyright Board. I wouldn't have an answer to that.

Ms. Heather Martin: I would agree that the length of time the Copyright Board takes to make decisions have been problematic and even more problematic the fact that payments are retroactive. The post-secondary sector has a tariff that has impacted 2011. When you talk about paying retroactive amounts that's nominal. It's not only the uncertainty, but the amount of money that is sometimes involved in paying a retroactive tariff places an unnecessary burden on institutions.

In terms of the mandatoriness of the tariff, if that's a word and I don't know if it is, but I think that we have a concern when it comes to Access Copyright and literary collectives generally, because they're not the exclusive right holders. They own some rights, but there are also publishers and creators who own rights to content and there are other people who licence the same content that Access Copyright does.

So, making the tariff mandatory effectively takes the choice away from an educational institution like the University of Guelph in terms of where we want to purchase those rights from. If we want to be able to negotiate with someone and get more favourable rights than we can get under the tariff, it's a more responsible way for us to spend the public funds that we're given for that purpose if we can do that. We would definitely be opposed to a tariff being mandatory.

🕒 (1445)

Mr. Brian Masse: Ms Hebb, you have time if you wanted to add something.

Marian Hebb: I would say that the price that Access Copyright is offering a world repertoire for is I think unbeatable. It is true that some high-end publishers are charging very, very high fees and that kind of puts things out of

skew, but you can get everything, practically everything from Access Copyright. It's on an exclusion basis and so everything that isn't listed as excluded is there. You have almost everything.

Ms. Heather Martin: There are significant publishers excluded from an academic standpoint as well. We have some already that even when we had an Access Copyright licence we had to obtain transactional licences outside of it because there were publishers that were excluded.

Mr. Brian Masse: There seems to be at least unanimity that the Copyright Board is not working well enough for Canadians. I know that much from my knowledge of this panel and others, not to be a complainer of it or making the whole debate of it, but it seems that there seems to be at least consensus that this is not a functioning environment at the moment for the benefit of everyone involved.

With regard to the purchasing of materials internationally, how much and Guelph University I guess would perhaps the best, but anyone else can chime in, what has been kind of the trend? Is that increasing now that we have some major players that are international bodies that are basically reducing the sources to get from in terms bundling and so forth? What type of purchasing? Has that shifted to be more international over the last number of years?

Ms. Heather Martin: I think we should talk about scientific research or research generally, academic research. It has always been international. If a faculty member wants to get his or her research published in the most reputable journal in the field, if that happens to be a European journal or a U.S. journal that's where they get it published and that's the information that everyone else in that field wants to read.

I don't think of the shift to international in terms of content has been significant. It's significantly different than it was. I think it is the platforms through which we're buying it there's been a market consolidation. We're buying it from these five big publishers who dominate all of these highly reputed academic journals across the world and they sell them as packages to us.

Mr. Brian Masse: Just inherently there's less competition—

Ms. Heather Martin: Yes.

Mr. Brian Masse: —from that situation. I guess the issue is not necessarily the literature and the materials themselves have differed from..., but the mere fact is that you have consolidation of the market and less competition from that consolidation.

Ms. Heather Martin: Yes.

Mr. Brian Masse: So, it's similar to gas pricing.


The Chair: Thank you.

On that, we will pass on to Ms. Ng. You have seven minutes.

Ms. Mary Ng (Markham—Thornhill, Lib.): Thank you, everybody, for joining us today on this important topic and for all of your views on it. It's really important.

At the end of the day, we're going to hear a lot from many people, and we hope what we'll be able to do is put forward some recommendations as a committee on what we've learned.

A couple of you touched on what we should be thinking about. Mr. Setzer, you were talking about the need for a narrowing of the educational provision. What, in your view, would that look like, for example? Could you maybe expand on that a little bit?

 (1450)

Mr. Hugo Setzer: Yes, of course.

Perhaps what I was mentioning—and we have seen it in other studies by other people, like a study by Professor Daniel Singh, who did the study for the World Intellectual Property Organization—is that it's hard to find in other countries a very broad exception just for education. Usually they should be narrowed down or limited to comply with the three-step test of the Berne Convention: that it has to be a special case, that it does not conflict with the normal exploitation of the work, and that it does not unreasonably prejudice the legitimate interests of the rights owners.

I therefore think it must be very clear what an exception for education means. For example, I was discussing this afternoon that if a student wants to make a copy for himself—as happens in many countries—he can do so, but the students should not be allowed to make 30 copies for all of their colleagues in the class.

Ms. Mary Ng: Can I just pause there?

On that point, Ms. Martin and Ms. Graham, does that happen right now? We've certainly heard from post-secondary institutions which, overall, say they have a set of copyright policies that help guide their professors as well as their students. I know you'll speak for the University of Guelph, but in general does that happen?

Ms. Rebecca Graham: Certainly not in our experience.... We don't have a mechanism for monitoring, but I think because we have had a set of practices in place for so long, there's a lot of communication that happens with new faculty who come to campus, there's engagement with students, and there are notices on copiers and scanners across the campus. Our sense is that people understand what their responsibilities and rights are.

Ms. Mary Ng: Picking up a bit on what Mr. Setzer said, and on what Mr. Harnum said as well, when there is an ability for students to use up to 10%.... In the example you have given around 10% of various course materials, then I suppose within the realms of the legislation that is in compliance of copyright. Do you not think so?

Mr. William Harnum: The 10% or one chapter is something that was made up by the universities. It does not exist in legislation. This is important to understand.

Marian Hebb: For 20 years what was allowed to be copied under an access copyright license was up to 10%. They did that, they paid quite happily, and they were very happy to have permission to be able to do that. Then, suddenly, the 10% that was being licensed became what they considered to be arbitrarily fair dealing.

Ms. Heather Martin: *[Inaudible]*

Ms. Mary Ng: Please. The whole purpose of this is to help us understand.

Ms. Heather Martin: We had 10% in our guidelines in 1984. When we implemented the fair dealing guidelines at the University of Guelph in 1984, 10% was the amount. It was, I believe, based on U.S. law on unfair use in the U.S., which actually specifically allows for multiple copies to be made for teaching purposes. So, our fair dealing guidelines back then were based on what we believed to be fair practice in the sector at that time, and they were not invented by access copyright. They existed before them.

Ms. Mary Ng: I'm going to try to get a quick response from everyone at the table from each of your standpoints.

We want to look at a set of recommendations. What would be the one thing you think we should be looking at here that's solution based as we look at the act?

🕒 (1455)

Mr. William Harnum: I think that finding a way to allow for fair dealing for individuals who want to copy in an immediate way one or two or three or four pages from a document for use for private study, and requiring that anything higher than that require a licence, if a licence is available...I think this is the law in the U.K., that fair dealing for education is allowed. However, if a licence like collective licence is available, that licence must be used. That would be a good solution to the way it is now.

Right now what we're having is hundreds of million of copies that are being made without any compensation going to the authors or the publishers.

Ms. Mary Ng: I'm going to move along in the interest of time.

Ms. Caron.

Ms. Susan Caron: We have an Access Copyright licence. For public libraries, that really is sufficient in terms of the kind of copying our customers do. The one thing I would like to see implemented is that the contract language for our digital products is not allowed to override fair dealing.

Mr. Hugo Setzer: I think it's not just the amount of what can be reproduced from a certain work, if it's 10% or 8%, the most important part is how many copies you are making. If you're making a copy for your own personal use, that's accepted in many countries. However, what I have heard—and I'm really not so familiar with the situation in Canada—from Canadian publishers is that some universities are taking this expression of educational exception in the law somewhat to make copies for older students from one chapter from one book and one chapter of another. Perhaps having one chapter is not too much, but having one chapter of 12 different books and then having distributed that to older students, that's definitely hurting the business.

The Chair: Very brief, please.

Ms. Heather Martin: We had a Supreme Court ruling in 2012 that said copies that teachers make on behalf of their students, the purpose to be considered is the purpose of the student. It's not the teacher who needs the copies, it's the student.

When you talk about fair dealing and it's okay for a student to make a copy, those copies that are being made by instructors are for the benefit of their students. I believe that fair dealing allows those copies to be made on behalf of students.

The Chair: Thank you very much.

We're going to move to Mr. Lloyd.

You have five minutes, please.

Mr. Dane Lloyd (Sturgeon River—Parkland, CPC): Thank you, Mr. Chair.

Mr. Setzer, I'd like to get your comment on something that Ms. Graham had stated earlier, that the decline in print sales and the rise of digital content made paying for Access Copyright obsolete. Does Access Copyright not also provide digital content? Do you believe that the rise in digital content is responsible for universities cutting off Access Copyright?

Mr. Hugo Setzer: I couldn't speak directly for Access Copyright, but most of collective management organizations throughout the world have also [Inaudible] digital content. What we are trying to do as publishers, together with authors, is to develop these licensing schemes with collective management organizations to make it easier for users to get the licences.

Mr. Dane Lloyd: These JSTOR and the other digital platforms, are they distinct from the content that is offered by groups like Access Copyright and yourself, or are they duplicative?

Mr. Hugo Setzer: I'm not familiar with this platform.

Mr. Dane Lloyd: We have academic journals that universities pay for, and it's a broad variety of journal articles and things like that. Are these also held by Access Copyright or are they distinct?

Mr. Hugo Setzer: Academic scientific journals are published by the main international publishers worldwide that do a lot of investment into publishing those journals. That's one part. They tend to offer the licences directly. Then there are things being licensed by Access Copyright, which is most of the textbooks and other learning materials that are being used in schools and universities.

🕒 (1500)

Mr. Dane Lloyd: Would you say that these textbooks versus the digital stuff, is there a lot of duplication there or are they distinct materials?

Mr. Hugo Setzer: They're different materials.

Mr. Dane Lloyd: Okay. This final one is a request from the International Publishers because you do have a unique position that I think can inform this committee.

Would your organization be willing to provide a breakdown in terms of spending by countries like Canada that have public universities, so United Kingdom, for example, France, on what their universities spend on copyright as compared to Canada. Would you be able to provide that information, not today, but through a submission?

Mr. Hugo Setzer: I'm not sure if we have information. If we have it, we'll be glad to do so. So it's the spending by universities for different countries?

Mr. Dane Lloyd: Yes.

Mr. Hugo Setzer: I'm not sure if we have that information, but I'll be glad to provide it if we have it.

Mr. Dane Lloyd: Thank you.

My next set of questions is for Mr. Harnum. Throughout our hearings, we've had multiple representatives from the library groups request for TPM circumvention measures in cases where it is covered by fair dealing, and also for the right to override contracts for the same case.

However, we haven't really heard anything from the publisher side saying they disagree with that. Could you comment on that?

Mr. William Harnum: I don't know. Certainly none of my members use TPMs, so I'll turn that over to Ms. Hebb. She may help you.

Marian Hebb: I think that's an overstated case. It isn't that important to a lot of Canadian publishers and as long as there are licenses in place, it shouldn't be an issue.

Mr. Dane Lloyd: Thank you. That's enlightening for me to know that publishers, TPMs are not really widely used. I'll ask the library.

Mr. William Harnum: We'd use it if we knew how.

Mr. Dane Lloyd: I would ask the libraries, in terms of TPM circumvention, whose TPMs are you trying to circumvent?

Ms. Susan Caron: For us it's really ebooks and it could be e-audiobooks. If we have for example a customer who wants to use a small portion of an ebook the same way they would use a portion of a printed book for personal research or study, they can't do it.

We have a program called Poetry Saved our Lives in the library where the participants take found poetry and turn it into performances. They often use small portions of books, but obviously one actually came and asked about an ebook

and we can't do anything about it.

One of the things I should say about it not being an issue for Canadian publishers as much for trade publications, there are very few Canadian ebooks available to libraries except through the big five multinationals. There are very few Canadian e-audiobooks and that is one of our main issues. We want to buy this material. In the case of one multinational, they are not selling their e-audiobooks to libraries. They are selling them, instead, to paid subscription like Audible or Kobo.

I should note that Prime Minister Trudeau's book is only available as an audiobook through Audible. Public libraries in Canada cannot buy Prime Minister Trudeau's book.

The Chair: On that note, thank you very much. We're going to move to the friendly side.

We're going to move to Mr. Sheehan. You have five minutes, please.

Mr. Terry Sheehan (Sault Ste. Marie, Lib.): We'll fix that right away.

First of all, thank you very much for all our presenters. It's great to take the proverbial show on the road. It allows us to hear from particular regions of the country that perhaps we wouldn't hear from or in a different way. It's always good to have a face to face in this sort of round table discussion because we can pick up on a lot of things that you would miss sometimes in other ways.

I'm going to begin with Susan from the Toronto Public Library. The public library, you started out using [*Inaudible*] of the Kanopy document, the one that was provided free to your membership. From what I understand, you're basically increasing your capacity to engage in digital lending for written, for videos and such other things.

The Copyright Act as it is, is it sufficiently flexible to accommodate your practices and to what you're thinking about the future for your library?

🕒 (1505)

Ms. Susan Caron: As I said, we have the Access Copyright licence, which is certainly sufficient for, I would say, most public libraries. If it's sufficient for us, given our size, I would say it's sufficient for most public libraries.

I think that, unlike academic publishing, we're seeing a huge increase. We're spending more and more money every year on e-books and e-audio books, and those are things our public is demanding. We're certainly seeing a growth, both in downloadable and streaming—videos are also another big area—and print, in fact. The reason we're able to continue to purchase the amount of print we do is because DVDs are falling rapidly, so we're able to shift our funds into e-books and e-audio books. For us, it's an ever-growing market. It goes up 20%, 30% year after year after year. E-audio books now are especially in a huge period of growth, and it's the same for publishers: it's the biggest format growth that they're dealing with right now.

Mr. Terry Sheehan: Are you concerned that Canopy could amount to a free version of Netflix, and then ultimately that would be depriving copyright owners of a source of revenue?

Ms. Susan Caron: I would say no, unfortunately, from my point of view.

In terms of our video streaming/downloading products, we also have one called Hoopla. You don't get the kind of material you get on Netflix. On Netflix you don't even get premiere feature content, and you certainly don't get that. Canopy has only documentaries. Hoopla has second-tier feature films, a lot of children's material. They're popular, but there literally is not any competition, I would say, with the major movie-makers.

We've talked to our vendors about that, and the cost of acquiring any kind, even at a Netflix level, would be astronomical, so I don't see that as an issue.

Mr. Terry Sheehan: Perhaps, Bill, you would like to make a comment on the comparison. Do you agree or disagree with that statement?

Mr. William Harnum: Well, I use Canopy all the time. I watched *Call Me By Your Name* three days ago on Canopy. That seems to me to be pretty.... I don't know what the arrangements are, but I love Canopy. I never thought of it as mostly documentaries.

Ms. Susan Caron: Yes, it's primarily documentaries but there are a few international features. It's based on a paper-use model, so it's very expensive for the library. We have to limit the number of downloads or streaming that somebody can watch in a month. We just launched it this year, and we're looking at the growth increasing and the price increasing, so we'll probably be limiting it more and more.

Mr. Terry Sheehan: Okay. You'll figure that one out.

Bill had mentioned the course pack that the union president had referenced, but I'm going to ask the question to the University of Guelph, which is in the neighbourhood, in the region, to basically comment about the course pack that has been developed and is used in the universities. There's trepidation on the one side that it infringes copyright. I just want to hear your perspective on it.

The Chair: Very briefly, please.

Ms. Rebecca Graham: The reality with course packs is the use of course packs. The production of course packs has dropped precipitously over time. I have a data point here, that for the summer of 2017 only a single course pack was produced, so that is a trend that's happening and has been happening—and for us, a handful in the fall and winter semesters.

Mr. Terry Sheehan: I'll ask why [*Inaudible*]

The Chair: Thank you very much.

We're going to move to Mr. Jeneroux. You have five minutes.

Mr. Matt Jeneroux: Thank you, Mr. Chair.

Ms. Martin, you made some comments earlier that copies are being made on behalf of students. I don't disagree with you, but I'm just curious as to how you know that. What's the mechanism by which you know that these copies are just being made on behalf of student?

⊕ (1510)

Ms. Heather Martin: That's the work that I actually do. We go in. When instructors ask for content to be made available for a course, our electronic reserves management system is integrated with the learning management system, and we copyright-clear all the content that needs to be made available for courses. It's posted. Those copies are made on behalf of the students.

Essentially, we act on behalf of the instructors in making that content available, but it would also apply—it also always did apply—when an instructor made, for instance, print copies of something to hand out in class. That was permitted under fair dealing. In fact, it's something that always happened. We had fair dealing guidelines that allowed instructors to make copies for students.

Mr. Matt Jeneroux: Again, I'm not saying that it's not happening that way but I'm just looking more at what you call an Electronic Resource Management System and how that works. I'll give you kind of some We heard in Halifax a few days ago, it's called the Syllabus Service that the University of New Brunswick Are you familiar with their service?

Ms. Heather Martin: Yes, it essentially works the same as Electronics Reserves. [Inaudible] there's Syllabus where they give you the list of the items that they want made available for their class and then we facilitate those being made available. The vast majority of those are linked directly to content on the platforms, the digital platforms that we have licensed.

There's actually only a small percentage, 16% of all readings provided to students on campus are actually copied using the Fair Dealing exception. The remainder are all direct links to licensed content or content available on the Internet or faculty created content.

Mr. Matt Jeneroux: Okay, perfect.

Ms. Graham, you made a comment I don't think it was in your opening contents Maybe it was an answer to Mr. [Inaudible]'s question, about less students taking arts and humanities degrees. Is that because of what's happening with Fair Dealing with copyright or is that just a product of circumstance?

Ms. Rebecca Graham: I certainly think there's been a trend at Guelph and I don't think it's unique to Guelph, a reduced number of students going into our college of arts. The correlation that I was making which I think is in part I'm trying to say, I don't think there's a single cause and effect here. I think another possible cause is a reduction in the number of students pursuing arts and humanities degrees thereby reducing the amount of content being passed for by instructors, especially creative literary content than we would have been providing five or ten years ago. The numbers were higher.

Mr. Matt Jeneroux: You're not saying that there's less students taking it because of what's happening.

I just wanted to make that clear.

Back to Mr. Sheehan's question on Canopy Ms. Caron. I think we almost got to it there but just curious if you could lay out again how the creators are effectively, of the titles are effectively compensated by Canopy.

Ms. Susan Caron: We buy Canopies obviously through the vendor and that's one of the things that we as libraries really don't know what the compensation is between the creator and Canopy itself. The same thing is true of Overdrive which is the premier worldwide provider of E-books for libraries. We've actually talked to publishers who don't understand how much they are getting paid from Overdrive or what the agreement is. It's a very grey area because instead of just buying your book directly from the publisher or even through a library vendor where it's very clear, you have that third party who is between you and the publisher.

What happens within that realm is very difficult. As I was saying, when we asked them for example why we can not get access to Canadian titles that American libraries have access to like Louise Penny's books, we don't have access to them and yet they're in American libraries. When we ask, they say "well we forgot to negotiate the Canadian rights" which is no answer at all.

🕒 (1515)

Mr. Matt Jeneroux: I think there's a lot more to go into there. Can you just tell who your vendor is, just so that we can do some research.

Ms. Susan Caron: The E-book vendor?

Mr. Matt Jeneroux: Yes.

Ms. Susan Caron: It's Overdrive.

Mr. Matt Jeneroux: It is Overdrive, thanks.

The Chair: All right.

We're going to go back to Ms. Ng. You have five minutes, please.

Ms. Mary Ng: Thank you. I think I'm going to share a bit of the time with Mr. Sheehan.

I'm just going to pick up on a slightly different point that Mr. Jeneroux started. When we were—I think it was Halifax, although it might be Montreal—but we had heard from someone who has developed a digital platform. It's a digital platform that working with publishers and content producers that allow for the ability to provide to institutions, consumers, the ability to buy titles, but buy title rather than through a collective or through a package of this sort. What they were doing was they were sharing with us as a possible solution. I think it's a disparity. We're hearing that spending for institutions are going up. We're hearing that publishing the revenues overall have not been greatly impacted. We're hearing from content creators that they have absolutely been impacted. So there's a disparity. We also heard from everyone that everyone is in support of content creators being compensated for their work. So again, trying to get to what a solution could look like.

I guess the last [*Inaudible*] university, for example. Is that something that you could actually look at. Someone who has come in with a digital solution that provides the works that creators works [misheard], and has a different mode of sale, if you will, that allows then for transactional licences but even sort of more specific to that so that there is a more direct way of being able to provide compensation to the creators. Is that something that institutions could look at, the libraries there too?

Ms. Rebecca Graham: Part of it for us is both the flexibility as well as the efficiency. So while we have a lot of licensed content from five big vendors, some of which do include platforms, I think we would certainly be open to exploring that as a possibility because it's a model that we're somewhat familiar with. I think as they say, the devil is always in the details. But I do think libraries, certainly academic libraries fundamentally are not interested in taking money away from creators.

Ms. Mary Ng: And the library, please.

Ms. Susan Caron: As I said, we do buy the majority of our e-books on a one-on-one basis. We buy between one copy and 350 copies of e-books depending on demand. But the thing that overdrive uses is a platform and a place to store those e-books, so we have 400,000 e-book stored there. It allows us also to circulate those e-books, to place holds on them, so all of that system management is within the overdrive platform. We buy everything, select everything online, so that is what it gives us.

A few years ago, we were involved in an attempt with eBOUND a number of libraries to create a Canadian made platform for e-books, and we tried a number of things, but at the end of the day, it was incredibly expensive. It would have cost us far more to run the platform than it would have to purchase the material, so that was given up.

Ms. Mary Ng: Okay.

Mr. Terry Sheehan: Thank you very much.

And just finishing that question of why when you ordered the course packs, you said there was only one in use last year.

Ms. Heather Martin: One in the summer term, and I think we had six this past winter term. And the reason why is because the content's available online now. We've purchased licences to access the content in those course packs. So for instance instead of putting together a course pack full of journal articles, we simply put direct links in our electronic reserve system and the students access them that way. Instead of copying chapters from books and compiling them in a course pack, we have e-books online—

Ⓜ (1520)

Mr. Terry Sheehan: It's electronic. Okay.

Ms. Heather Martin: Yes. We can link directly to them online. The payment happens when we purchase the content in the first place, it also gives us the rights to use it in these ways.

Mr. Terry Sheehan: Okay, thanks for clarifying that. That was very helpful.

Back to the Toronto Library. Inter-library exchanges, and you must do them across Canada but also internationally as well, do you, or no?

Ms. Susan Caron: Very occasionally, we do them internationally. Occasionally we'll get a request from an American library or a U.K. library for something that is only available through Toronto.

In that case, and in many cases, the customer also pays for any costs that are involved in getting the book for them.

Mr. Terry Sheehan: That's what I figured.

I went to university in Michigan, so I'm familiar with some of the inter-library exchanges and what not.

To Hugo, who was talking about—and it was touched on a little bit—fair dealing versus fair use. If you could contrast the two for us, what are some the advantages of fair dealings and what are some of the contrasting deficiencies compared to fair use, if there are any?

The Chair: All in about 20 seconds, please.

Mr. Hugo Setzer: I'm not really familiar with the details of any of those, but what I could say is that as far as we understand, having such a broad exception as to having a broad educational exception does not comply with the specifics of the three step test of the Berne convention.

That's even being told by my American colleagues who use fair use. They have mentioned that it's too broad. It's not specifically enough of the fair dealing.

The Chair: Thank you very much.

Now for our final question.

Mr. Masse, you have two minutes.

Mr. Brian Masse: Thank you.

With the overdrive, I was just doing a little bit of that myself in terms of looking at that and getting a full understanding as to...I was interested in terms of the networking it does across other libraries.

How many copies and is there some cost-sharing that takes place? Maybe you can provide a little detail about that. That's what I'm interested in, in terms of the limitations and how libraries are linking themselves together apparently.

Ms. Susan Caron: There are some consortiums. There's a consortium, for example the SOLS, the Southern Ontario Library Service, has a consortium. There are a number of consortiums in the States. I think [*Inaudible*] of the entire state is a consortium.

In Toronto, we're just Toronto because we're privileged to have a very healthy budget. We have \$90 million a year to spend on material, so we are able to spend a lot of money on e-books and audio books. We don't take part in a consortium because given the draw from our population in Toronto, it would really not work well for us to be part of a consortium. We need to limit the materials to the customers of Toronto Public Library.

Mr. Brian Masse: Okay, that's what I was just looking at too. I'm from Windsor and they're part of that consortium.

Ms. Susan Caron: Yes.

Mr. Brian Masse: I just thought that was an interesting kind of...

I'm just curious as to whether it is still limited in terms of how many...I guess those whole areas will have, maybe, 10 e-books they can have out at once. Is the virtual world in lending the same as the physical world?

Ms. Susan Caron: It is, and that is very difficult for our customers to understand. They know that we're buying a licence for a digital file, and yet it acts as if it were a print book. There's one copy per user, so you put a hold on one copy of the file. We have to buy 300 copies, for example, of Bellevue Square by Michael Redhill because that's the demand. It's just like a book. There are 300 of them, you put a hold, and you have to wait until those 300 are used up. It's not concurrent users.

Mr. Brian Masse: The interesting thing I think a lot of people look at, Mr. Chair—and I don't want to run out of time—is I'm willing to bet the unlimited access...and the issue is whether or not the creator's being rewarded for the multiple copies out there.

I'm willing to bet that the management between the creator and the user is where the real money's at. It seems to be working that we're consistently getting testimony that there's more money, but there's consistently less going back to creators, and I can tell you—I have a daughter that's now going into university—that student debt and student tuition has not gone down either.

⌚ (1525)

Ms. Susan Caron: I should say, with Bellevue Square for example, which is obviously Canadian, we bought 280 e-books and we bought 339 print books. Ten years ago we would have only bought the print books, so now we're practically doubling the number of books that we're buying by Michael Redhill.

How much Michael Redhill ended up with at the end of the day, I don't know.

The Chair: That's a good question. It'll have to wait for another time.

Unfortunately, we are out of time. I'd like to thank our witnesses for coming down.

As you can see, a lot of hard questions and a lot of great answers. We certainly have a lot of work ahead of us. Thank you again for coming.

We will be suspending until 4 o'clock when we begin our second panel.

Thank you.

⌚

⌚

⌚ (1600)

The Chair: Welcome back, everybody, for our second hour of copyright.

I have a couple of housekeeping items. With these microphones, if you have a headset, keep it away from the actual microphone because it can create very loud feedback. There's an earpiece that goes there, and when you put it down, just put it away from the actual microphone or else it will go “pop”. That's more for the translation. If you're going to put it down, just put it away from the microphone.

Today we have with us, from the Ontario Book Publishers Organization, David Caron, president. We have from the Canadian Society of Children's Authors, Illustrators and Performers, Sylvia McNicoll, author. From the Colleges of

Ontario we have Joy Muller, chair, copyright interest group, heads of libraries and learning resources. From Artists and Lawyers for the Advancement of Creativity we have Mr. Ken Thompson. And finally, from Ryerson University we have Ann Ludbrook, copyright and scholarly engagement librarian. That's an interesting title you have there.

We're going to start off, and you're going to have up to seven minutes. After everybody presents, we'll do our round of questioning, going back and forth. We'll have a good panel.

We're going to start off with Mr. Caron from the Ontario Book Publishers Organization. You have up to seven minutes.

Mr. David Caron (President, Ontario Book Publishers Organization): Thank you, Mr. Chair, and thank you to the members of the committee for having us.

My name is David Caron. I am the president of the Ontario Book Publishers Organization. I'm also president and co-publisher at ECW Press here in Toronto.

Also here is Holly Kent, executive director of the OBPO.

We represent more than 40 Ontario-based, Canadian-owned book publishers, companies that provide the risk capital and the creative partnerships to publish and print audio and digital for hundreds of Canadian authors every year in all genres to readers around the world.

Copyright is at the heart of our businesses, at the heart of our relationships with our authors, and those have been damaged by the Copyright Modernization Act.

You've heard in general the kind of effect the act has had. I want to tell you some specific stories about publishers in Ontario.

I have a publisher from southwestern Ontario that has seen a loss of \$50,000 per year in revenue and has been forced to develop scholarly books for the American market in order to survive as a business.

I have a publisher in Toronto that saw a loss of \$90,000 per year and whose author walked into a classroom where they were studying her Governor General's award-winning novel, and all the copies were photocopied, without compensation.

I have a university-based publisher that has seen a drop of \$65,000 per year in revenue because the institutions it works with believed that one library copy equals unlimited course use.

I have a literary publisher that has lost \$39,000 per year in sales, a sizeable chunk of its annual revenue; a legal publisher that is now missing \$55,000 of its sales; and a children's publisher that's seen a decrease of \$195,000 per year.

In our own case at ECW, I can tell you we've lost \$102,000 per year in educational course adoption revenue on average versus our loss last year, which was \$28,000. In other words, that revenue made the difference between being in the red and our profitability.

There are similar stories across our membership and I didn't want to go into all of them, but you get the picture.

It's not just the fact that the direct revenue through Access Copyright from educational institutions has dropped by almost 90%; it's the private companies that service those institutions, specifically companies that offer digital content subscriptions, that used to carry our material and have now stopped paying for that content.

A significant portion of our revenue, half of it in the case of our company, would have been paid out to our authors. So not only do we lose, but our authors lose as well.

A study by PricewaterhouseCoopers concludes that \$30 million in licensing revenue alone has been lost, not to mention additional losses from book purchases because educational institutions opt for free copying rather than buying

books.

The Writers' Union of Canada reported that 80% of authors' revenue from educational use has disappeared.

As a publisher, if I use an author's work in another book, I can only use the minimum that I need in order to discuss that writing. Even then, I cannot use an amount that would affect the commercial value of that writing. I cannot affect the revenue of the original book. That is fair dealing for us. Yet clearly from our examples, the educational copying without compensation has affected the revenue of copyright holders.

The facts of unclear copying have been tested in the Federal Court, through the York University case, and have come before the Copyright Board. The interpretation of the Copyright Modernization Act by Canada's schools, colleges, and universities has created a perception of free access that goes beyond those legal limits and has created significant damage for Ontario publishers and the authors with whom they partner.

We ask that you clarify fair dealing for education and end unfair copying; promote a return to collective licensing in the education sector—there exists a reasonable means to negotiate a fair price between institutions and the creative sector—increase statutory damages to discourage systemic infringement; and ensure that we meet our international treaty obligations.

As Ontario publishers, we are ready to look at systems that provide copyrighted materials in digital, audio, and print media searchable by educators. The OBPO is involved even now in an online project to make it much easier for educators to access learning resources for our books. Fair payment for the intellectual property used in our classrooms is not only right and relatively cheap—as you've heard, it costs only a few dollars—it also invests in our future as a nation.

Our copyright-reliant professionals and industry should be growing. They should not be shrinking. They should be contributing to our nation, not looking to produce outside of our borders. Students should be seeing that they could make a living in the creative and copyright-reliant professions, and not that such pursuits are deemed worthless.

Thank you. I welcome your questions.

🕒 (1605)

The Chair: Thank you very much.

We're going to move right to Sylvia McNicoll.

You have up to seven minutes.

Ms. Sylvia McNicoll (Author, Canadian Society of Children's Authors, Illustrators and Performers): Thank you. Thank you everybody.

My name is Sylvia McNicoll, as you know. I'm here to represent the Canadian Society of Children's Authors, Illustrators and Performers, better known as CANSCAIP because writers and illustrators for children are probably the most affected by the fair dealings educational exemption especially in the K to 12 sector, although I know my material is talking colleges as well.

We wish to have the educational exemption stricken totally from the Copyright Act. I've been writing approximately 30 years and served as CANSCAIP's president and in various other executive positions. My first book was published in 1989 and was chosen as a novel study for schools in Atlantic Canada. I think actually it was just Newfoundland, which meant an instant sale of 2,000 books and bumped it into a Canadian best-seller.

Since then, many of my novels, including that lucky first one, have been published internationally, in Scandinavia, England, Australia and most recently Korea and Colombia.

My colleagues consider me a successful, hard-working writer. Like most mid-list novelists I try to cobble a living

together through a stew of projects, writing books and articles, teaching, speaking, grants, public and access copyright payback.

When that early novel study sale occurred, a classroom set of novels would typically include 30 books. As the years went by that number dropped down to five. Different philosophies of education, cost-cutting and then in the latter years, yes, photocopying and that was earlier even, to downloading in the latter years.

A few years ago I visited a correctional facility for young adults in northern Ontario in which one of my novels was entirely photocopied for the students without my permission. Ironic, because it was the grade nine students who were incarcerated for breaking the law. This is what well-meaning, hard-working, law-abiding teachers do when the author is present to witness it.

But we did have Access Copyright licences that were respected in those days. I would receive some compensation for minimal copying. Licensing fees tend to act like speed limits on the 401. If the speed limit is 100 kilometres, most people drive at least five to 10 kilometres over and maybe 20 when you're late.

While the fees were intended to compensate us for a few pages of copying and downloading here and there, mostly for the purposes of research for a project for an individual student, we knew that schools were copying well over the hundred kilometre speed limit.

Enter Bill C-11, educational exemption. In 2012, the fateful year before it took real effect, I earned approximately \$46,000. Of that total, \$2,578.68 was Access Copyright licensing fees, which paid for two months of mortgage and three weeks of groceries. That's important to a children's writer.

Schools, universities and colleges decided that because of the educational exemption, 10% of copying now was entirely free. They decided Access Copyright licensing was unnecessary. They also decided copyright tariffs were optional and opted out and they are still photocopying and downloading well above that speed limit too.

My grandson recently brought home a photocopied story in a Duo-Tang folder. A Canadian authored retelling of an indigenous tale Canadian, illustrated Canadian, published Canadian, edited. The photocopy story was 100% complete.

Let's be generous and say that it was 10% of an anthology. Who knows. The well-intentioned teachers, and they are. They're hard-working and they just want to have their curriculum met. This is a photocopy of that folk tale year after year, instead of buying a text.

🕒 (1610)

It is not her fault that her school board thinks a 10% grab of an anthology is fine because of the fair dealing exemption. This photocopying, of course, of course, of course, negatively impacts the publishing industry and the cultural workers involved. Our bachelor of arts kids lose potential jobs, and they are good jobs.

I just finished preparing my income tax for 2017. My income is down 90% to \$12,000. My access copyright cheque is coincidentally also down by about 90% to less than \$400, down from two mortgage payments and three weeks of grocery payments to one week of grocery money. Groceries have also gone up.

And now boards of education are suing for part of my 2012 cheque back. Bill C-11 fair dealing exemption alone is not responsible for my income decline, but fair dealings is a beacon of disrespect for content. The world watches as Canadian schools download and copy curated content in a government sanctioned theft of 50%. You have turned the 401 speed limit in reproduction of materials into the autobahn, no speed limit at all.

Last year, I had two Canadian best selling middle grade mysteries for kids published, probably almost three. They straddled the year. I worked even harder in 2012 because, of course, authors are expected to do more promotion, social media, etc. But I give up, not on writing or presenting to kids, that is my passion. My identity. But I'm trying to make a living. It's impossible. I must tell my students the same.

I am drawing my pension and cashing in my registered retirement funds. After that, I will sell my house. What does that mean for future writers and cultural workers? Your job must become a hobby. You do it on your lunch break.

Can Canadian publishers survive that way? We are already seeing their demise. What we create needs, must appear in the school to represent Canadian values. Make no mistake about that. What we create provides excellent jobs. What we create deserves respect and what we create deserves compensation. You need to fix fair dealing by removing the educational exemption, otherwise we will have no Canadian culture.

Thank you.

🕒 (1615)

The Chair: Thank you very much.

We're going to move to Joy Muller, from Colleges Ontario. You have up to seven minutes, please.

Ms. Joy Muller (Chair, Copyright Interest Group, Heads of Libraries and Learning Resources, Colleges Ontario): Good afternoon, Mr. Chair, Mr. Vice-Chair, and members of the committee. Thank you for the opportunity to speak to you this afternoon.

As you've heard, my name is Joy Muller. I'm Associate Director of Seneca College Libraries here in Toronto and Manager of Seneca's Copyright Services. I'm here today representing the Ontario Colleges Heads of Libraries and Learning Resources.

Our college libraries' responsibilities include providing broad library collections, current technology and array of spaces, and library literacy instruction to support the various research and innovation endeavours within the academic programs and subjects offered at the 24 Ontario colleges.

Our colleges respect copyright and the importance of compliance with the Copyright Act, while we recognize that the copyright law needs to balance the interests and the rights of both copyright and moral rights owners and users of copyright material.

Our libraries have created opportunities for consistent messaging across the Ontario college community on copyright compliance through a series of locally collaboratively created training modules which are self-directed learning resources to help educate our faculty and staff. They're entitled "Copyright Literacy in Ontario Colleges", and these modules won the 2014 Ontario College and University Library Association Special Achievement Award. Over 90% of the English language Ontario colleges utilize them as either mandatory or optional throughout their institutions.

Consistently since 2012, many of the Ontario college libraries have identified copyright responsibilities as part of at least one employee's job scope. These staff advise students, faculty and employees on the use of copyrighted materials. In keeping with these best practice efforts by the Ontario college community to support copyright and the exceptions within the Copyright Act, our first recommendation of three is to allow sections 29, 29.1, and 29.2 of the Copyright Act which directed to fair dealing to remain unchanged in order to allow college libraries to continue to offer support and enhancements to teaching and learning which have grown under this legislation.

A further recommendation that Ontario college libraries submits is to urge upon the government that section 41 of the act be adjusted to permit circumvention of technological protection measures for all non-fringing purposes in order to ensure that we are able to exercise our statutory rights under the law.

The law should be clear that it is only illegal to circumvent digital logs for the purpose of copyright infringement. This change to section 41 would enhance our ability to serve our users.

While prior to 2012, our library collections were largely print based, it's important to note that according to Statistics Canada, Canadian book sales have actually increased between 2014 to 2016, as noted by Denise Amyot who presented to this committee.

College students have been asking for more flexible 24-7 access to learning resources and the ability to access these resources from multiple devices. Ontario colleges have an increased digital footprint as a result by purchasing licences to more and more databases and increasing our user licences within those databases.

These digital resources provide around the clock access that the students are seeking as well as supporting the students who are studying remotely through distance education opportunities. As a specific example, my library system at Seneca College has moved since 2012 to a collection which is 90% digital, approximately 15% of which is comprised of Canadian content. We have, in fact, tripled our digital collection in those years.

College library collections have also increasingly focused on providing our users with access to open access journals, open educational resources, creative commons licensed materials and resources that are publicly available on the internet.

Since 2012, most Ontario college library collection budgets have increased, and last year collectively, the Ontario college's libraries collections budget have exceeded \$8 million.

🕒 (1620)

Statistics Canada reports that since 2012 expenditures of print and electronic acquisitions for colleges and institutes have increased by 26%.

The Supreme Court of Canada has made it clear that fair dealing is a user's right and that it must be given a large and liberal interpretation. With the changes to the Copyright Act in 2012 we feel that Canada has achieved a balance. The act grants extensive economic and moral rights to creators, while granting limited exceptions to these rights for users, libraries and cultural institutions.

In the digital environment that college education is increasingly adapting for both teaching and learning, our libraries are licensing much of the content that our faculty and students use. These contractual obligations often have clauses which restrict the use of materials and override the exceptions that the Copyright Act provides. The Copyright Act should prevent vendors from overriding and removing uses of materials by licence that the statutory rights in our act provide.

We would, therefore, like to request as our third and final recommendation that an amendment to the Copyright Act be considered which indicates clearly that no contract can take precedence over the exceptions within the act itself.

Thank you.

The Chair: Thank you very much.

We're going to move right on to Mr. Ken Thompson.

Mr. Ken Thompson (Chair, Artists and Lawyers for the Advancement of Creativity): Good afternoon. My name is Ken Thompson and I'm here with my colleague Marian Hebb. I would like to thank the chair and the members of this committee for inviting us to appear on behalf of Artists and Lawyers for the Advancement of Creativity—ALAC.

ALAC is a not-for-profit corporation that for over 30 years has been helping artists, actors, musicians, dancers, writers, filmmakers, and other creative Canadians address legal problems. ALAC provides the Artists' Legal Advice Services—ALAS—which is a free legal clinic for creators wishing to understand their legal rights or obtain guidance on dealing with specific legal problems. ALAC also offers educational programs for creators to help them understand the laws that affect them.

The ALAS clinic is operated by practising arts and entertainment lawyers and intellectual property lawyers with the administrative assistance of volunteer students from the University of Toronto. Our lawyers donate their time to provide advice to those creators who may not be able to access expensive or more intimidating alternatives.

Twice each week, ALAS lawyers meet with Canadian creators from all artistic disciplines who experience the impact of copyright laws on their professional lives and who need to sign copyright-related agreements and contracts to pursue their professional endeavours.

Today, because of limited time, we would like to list a number of specific recommendations that would improve the situation of Canadian creators.

With respect to fair dealing for the purpose of education, we would ask that you revise or add regulations to the fair dealing exception, which was brought into law under section 29 in 2012, for the purposes of education. Educational institutions have adopted their own arbitrary and overly broad guidelines on what they think they should be able to copy without permission from authors and their publishers.

Limit the scope of the user-generated content exemption. Give collective societies management of the right of users to create new works using an author's existing work or performance without permission, such as fan fiction or mash-ups of songs, if for non-commercial purposes. A song mash-up or an unauthorized sequel to a novel or film by someone else, could scoop the value of the author's or performer's original. The user-generated content exemption was added to section 29.21 in 2012, and it should allow authors and performers to choose whether or not to authorize user-generated content for either non-commercial or commercial purposes, and if the latter, to receive payment.

Revise the parody and satire fair dealing exemption. Add to parody or satire as purposes of fair dealing in section 29 to cover additional forms of pastiche, and include the creation of works, including artistic works that use excerpts or clips from other works without further legal risks. Artists encounter these issues in their work and have brought them to our clinic, and an amendment here could make an existing work more accessible.

Extend the term of copyright for authors. The term of copyright of authors should be extended from 50 years to 70 years after the author's death to stay in line with legal developments elsewhere, including in the United States, the United Kingdom, the European Union, and Australia. Authors as well as owners of corporate businesses should be able to bequeath what they have worked to create at least to their children and grandchildren. This amendment requires a change to section 6.

With respect to musical performances in films and television, an amendment should be added to the act to remunerate performers for their recorded musical performances fixed in films and other audiovisual works when they are broadcast and digitally communicated. This would require an amendment to the definition of "sound recording" in section 2.

Remove the broadcasters' exemption. Remove the \$1.25-million exemption that subsidizes commercial broadcasters and deprives performers of remuneration. Repeal this special and transitional royalty rate in subsection 68.1(1).

With respect to statutory damages for non-commercial purposes, get rid of the caps and bars on statutory damages for infringement for non-commercial purposes that make the remedy in subsection 38.1(b) potentially nothing more than a single licence fee for many non-commercial infringements by more than one infringer. Effective statutory damages are essential.

🕒 (1625)

In conclusion, all of these items affect the incomes or financial interests of authors and performers and their ability to exert reasonable control of uses of their work. Several of them provide greater access for both professional and amateur artists to make reasonable use of works of others.

From our work at ALAS we know how difficult, often close to impossible, it is to earn a living working as a full-time professional artist. We thank the committee for the opportunity to share our experience and views for copyright reform. Marian Hebb and I will be pleased to answer your questions. Thank you.

The Chair: Thank you very much.

Finally, from Ryerson University, Ann Ludbrook. You have up to seven minutes, please.

Ms. Ann Ludbrook (Copyright and Scholarly Engagement Librarian, Ryerson University): Hi there. I'm going to start with a land acknowledgment because we're very near Ryerson. Toronto's in the Dish With One Spoon Territory. The Dish With One Spoon is a treaty between the Anishinaabe, Mississaugas and Haudenosaunee that bound them to share the territory and protect the land.

Subsequent indigenous...

The Chair: If you would move a little further away from the mic.

Ms. Ann Ludbrook: I'm sorry. Subsequent indigenous nations and peoples, Europeans and all newcomers, have been invited into this treaty in the spirit of peace, friendship and respect.

Thank you for giving Ryerson University time to speak to you today. I also appreciate all your work in this important statutory review process.

My name is Ann Ludbrook. I'm the copyright and scholarly engagement librarian at Ryerson University. I would also like to acknowledge my colleague, Julia Shin Doi, general counsel of Ryerson University who is also attending.

At Ryerson we are committed to diversity, entrepreneurship and innovation and to ensuring that what our students learn in the classroom is enhanced by real world knowledge and experience. As such, Ryerson provides an important voice in advocating for copyright laws that support innovation and research, scholarly work and teaching within the higher education sector in Canada. Such a copyright law includes fair dealing, as well the ability for circumvention of technological protection measures and related technologies for non-infringing purposes.

The law should be forward focused and flexible to enable Canadian innovation in artificial intelligence, augmented reality and other non-commercial data analysis. We also endorse laws ensuring protection of indigenous knowledge.

Like all university libraries, Ryerson spends substantial amounts to access and purchase essential information resources for students and faculty. Changes to the publishing world means that the vast majority of these scholarly resources are in digital form and this trend is continuing.

More available content, more content in digital form, as well as inflation from 3% to 7% per year all influence spending increases.

It is important to note that increasing digital content enables direct linking to purchased resources through secure learning management systems and at Ryerson to our e-reserve system, further reducing the need for print course packs and other course handouts.

Through Ryerson's copyright management e-reserve system and other commission services we spend more than \$150,000 annually in transactional commissions for copies that are not within our licensed resources or are beyond fair dealing. Some of these transactional licences are direct publisher transactions or brokered through the U.S. copyright clearance centre and fees are returned to Access Copyright as Access Copyright does not currently permit direct transactional commissions, as far as Ryerson knows.

More than 80% to 90% of the content we make [Inaudible] over to our students in e-reserve is covered through licences for digital materials, links to legally posted publicly available materials and open access content.

Ryerson has also put into place copyright management safeguards to help ensure copyright compliance at our institution. Ryerson has a fair dealing guideline that bases reasonable limits on the copying and use of copyright material. Ryerson also provides copyright education for instructors, staff and other community members.

We are aware of the committee's specific interest in Canadian content and creators and publishers. At Ryerson, the majority of what we both use and create for research and teaching purposes is scholarly material, rather than literary or creative works. A relatively small scholarly and publishing industry in Canada means that much of what we create and consume is published internationally. However, we do spend more than \$200,000 per year specifically on Canadian

collection materials, print and electronic.

It should also be noted that open access, open education resources and other models of freely sharing and accessing scholarly and educational materials are important and also continue to impact the traditional publishing industries over the last 10 years.

Ryerson strongly supports copyright laws that recognize both the rights of copyright owners and the rights of the users. We join with other higher educational sector stakeholders, including Universities Canada and COUT and CARL, the library association, in supporting fair dealing for private study, education and research.

We believe that 2012 modernization of the Copyright Act allow limited use of works for education and it remains an important investment in the future of our country to foster education, innovation and scholarship.

🕒 (1630)

The Chair: Thank you very much.

We're going to jump right to Ms. Ng.

You have seven minutes.

Ms. Mary Ng: Thank you, everybody, for joining us today and for allowing us to hear your perspective on this important study that we're doing.

As we travel around, we've been hearing a lot of perspectives. What we've certainly heard is a respect, I think, overall for content creators. Yet, at the same time, we've heard there's a real issue with respect to authors and content creators, and the impact on their income.

Through this study we're going to try to learn as best we can and, hopefully, at the end of this do everyone right by putting a set of recommendations forward based on what we will learn over the many months.

Mr. Caron, you talked about the need for clarification of the education provision, the education exception. Can you talk to us about that? We've certainly heard from a few people now the need for that. What would that look like for you?

Mr. David Caron: You've heard from both panels today that there is this gap between the guidelines that are posted and that are promoted by the colleges and universities to the people who are doing the copying and what's actually happening. There is also the issue of the gap between what those guidelines are and what publishers and content and copyright holders would agree those guidelines should be. These are the kinds of gaps that I think we need to bridge somehow.

🕒 (1635)

Ms. Mary Ng: I'll just pick up on that, because I was hearing about it today

We've heard from universities and from colleges that the content they are licensing for their students tends to be in the realm more of scholarly text and material and less of the literary material. We also heard that rather than paying through a tariff or to Access Copyright, they're acquiring more transactional licences. They're paying to authors directly. And we're hearing that the expenditures are there.

I draw this additional hypothesis. Could we say that at the post-secondary level—for colleges and universities—there's “an” issue, and then that for your literary works, it's the K-to-12 system? I'm trying to understand that a little bit, based on what we've been hearing. Can someone...?

Ms. Sylvia McNicoll: Ann said “reasonable limit”. But that reasonable limit, I would like to know what it is. I feel that whether it's colleges or K to 12, they have assumed it is 10%, whereas we feel it's the nature of the copying.

If you copy one page of my story, that's fine. But if you copy a whole poem in one page, you're copying someone's work—and distributing it if you are using it in place of a textbook. It's the nature of the copying; it's not the reasonable limit, or whatever they feel because of that educational exemption.

Ms. Mary Ng: Could the colleges and the universities please speak to that?

Ms. Joy Muller: Thank you.

In the case of the colleges, because of the money we are putting into our licensing of digital resources, when faculty are looking to create course materials, they are looking to our databases, where we have paid a licensing fee. As I noted, we are paying for more and more user licensing within the contracts with individual vendors. If a faculty needs to use a certain resource, there's a persistent link that the faculty can send the students to. They aren't making those physical print copies as much as they are linking to our database. A student has to log in and be using it as an individual user.

Many times they can't use it for a whole class, because we don't have an unlimited user licence. But there are some vendors where we do have unlimited licences that we have paid for. We have paid up front in our contracts for access to the materials for our faculty and our students.

I will just mention that in the case of course packs, for example, many of us have third-party printers that have licences with consortiums like Access Copyright. If a faculty wants a course pack put together and printed, they will be working with a third-party printer that we do not engage with, and that third-party printer has the appropriate consortium licensing arrangements.

Ms. Ann Ludbrook: After the copyright, we actually have an access copyright [*Inaudible*] protection at Ryerson. We do our fair dealing with our e-reserve system and our digital content. We do actually still have an [*Inaudible*] relationship with access to copyright.

Ms. Mary Ng: True avenger.

When you said that 90% of your collections now are digital, 50% has increased in Canadian content and you tripled the digital collection, do you know if that increase in purchase is getting back to the Canadian creators?

Ms. Joy Muller: We have no idea of that. We are engaging with the vendors specifically on the databases that we want or the e-books specific, and we can only engage because many of our faculty are authors as well at Seneca and across the Ontario community colleges, we can only assume that vendors are being fair to their authors and their creators. But we have no way of knowing that individually.

Ms. Mary Ng: To the publishers want to comment on that?

Mr. David Caron: Yes, I can comment on that directly from our experience at [*Inaudible*].

I mentioned \$102,000 that 70% of that came through these digital database providers, and two years ago, they came to us. We predominately use EBSCO, one of the databases, came to us and said because of the educational exemption, they were not seeing and no longer needed to pay us for that content.

🕒 (1640)

The Chair: Thank you very much.

We're going to move to Mr. Jeneroux. You have seven minutes, please.

Mr. Matt Jeneroux: Thank you, Mr. Chair, and thank you everybody for being here today.

Ms. Ludbrook, can you just clarify what your relationship is with Access Copyright? I was under the impression you didn't have any—

Ms. Ann Ludbrook: We don't have an access copyright model licence or a site licence agreement, but what we do do is our course packs are actually produced in an outside vendor that is covered by an access copyright licence, then they're delivered to the bookstore and we sell them. The copyright is cleared through an outside vendor.

Mr. Matt Jeneroux: So the vendor has a relationship with Access Copyright and you purchase from that vendor indirectly—

Ms. Ann Ludbrook: Yes. We purchase the content back. As well, we do have an e-reserve service at Ryerson.

Mr. Matt Jeneroux: What's the name of that vendor, just so we get in on record?

Ms. Ann Ludbrook: I don't actually...I'm at the bookstore, so I think it's Gibson in Ottawa. It's a printer. But I'm not actually the bookstore manager, so....

Mr. Matt Jeneroux: My original question until you mentioned that was going to be similar to the question asked of Guelph, if you were in the room at the time. Maybe we'll still go down that road.

Your licence expired with Access Copyright in 2015. Sorry, the legislation comes in 2012. Your licence expires in 2015. Were you there at the time in 2015?

Ms. Ann Ludbrook: I did. I was there when the licence expired. I've been at Ryerson since 2011.

Mr. Matt Jeneroux: Okay. Why did the university choose not to renew the licence with Access Copyright?

Ms. Ann Ludbrook: One of the reasons we didn't choose to do it was because we were looking at our increase. We had actually wanted to track our usage in terms of fair dealing and what we were actually used before we opted out, so we chose to sign a model licence in 2012, and we actually looked at what we were actually using in e-reserve as sort of a snapshot because we have quite a few courses in that system and found that only 10% of what we were making available was fair dealing, and 90% were either transactional licences or database material that we link to directly, or internet links or open access material. So 90% of our content was electronic and we felt that at that time, with the Canadian laws as they stood, that we were going to go ahead without a licence.

Mr. Matt Jeneroux: So it had nothing to do with any increase of price or any adding of tariffs or anything like that?

Ms. Ann Ludbrook: In terms of an increase of price?

Mr. Matt Jeneroux: Yes. Are there other factors at play? We heard Guelph said that because—

Ms. Ann Ludbrook: Well, certainly, that had been an original situation. I think that there was a feeling that it wasn't a good value for our students as it stood, and we were certainly having students advocate for that.

Mr. Matt Jeneroux: Sorry, students were advocating that—

Ms. Ann Ludbrook: Yes, they did not want it.

Mr. Matt Jeneroux: —they didn't want this copyright. Oh, okay. How were they advocating?

Ms. Ann Ludbrook: They were expressing themselves to the president.

Mr. Matt Jeneroux: Was it in the form of student elections? Was it an election issue? I'm just trying to get to the bottom of it. Take me back to 2015 and what happened exactly. We've had representatives from other universities in here, and Copibec was with us yesterday, and a number of witnesses indicated that essentially there was an agreement in place that everybody was going to stay with Access Copyright back in 2011 during the original hearing. I'm trying to get a sense of what changed from 2011 to 2015, and from then to today.

Ms. Ann Ludbrook: I really think it was that we tracked our use of the licences. Because fair dealing for education is

actually in the Copyright Act, we felt that our decision was reasonable, and we decided to go outside of the collective licensing because it didn't seem to be a good value for us.

Mr. Matt Jeneroux: That just happened because of the timing of the license expiring in 2015. Okay.

I saw a few heads nodding. Does anybody else want to comment on that before I move on? No. Okay.

If we could go to the UGC exemption that you mentioned, Mr. Thompson—the YouTube exemption—we're seeing a number of associations come forward and say the UGC exemption is problematic. YouTube and Google are essentially creating their own music platform. I forgot the name of it. I was saying it the last few days. It's YouTube review or something. They're moving to their own music-playing platform. Does that essentially help mitigate some of the UGC exemption issues?

🕒 (1645)

Mr. Ken Thompson: Marian Hebb has joined me here, and she'll address that.

Marian Hebb: Can you just rephrase that a little bit? The UGC exemption has opened up an enormous area in which people can base new works on existing works, and can use those existing works in ways that are competitive with the existing works or [*Inaudible*] to them. They can use them in different ways. It's very leading-edge internationally, and it's an exception since Canada is the only country that we're aware of that has done anything like that. It's considered quite extraordinary internationally to give such freedom to people to use other people's existing works, and it's causing problems.

Mr. Matt Jeneroux: You're doing a great job in buying us some time. I'm finding it here. When my staff provides me notes, I'm supposed to stick to them but I don't.

Part of the concern is that it was essentially put in place for the mash-ups and compositions that Mr. Thompson indicated. Now with the changes to what YouTube is doing, is the YouTube exemption essentially making it okay now, in your opinion?

Marian Hebb: It's making it okay for the people making the new works. It's not making it okay for the people who have written the original novel on which somebody else has written a sequel, or for songs that people have mashed into new songs and maybe displaced or made a mockery of the original song.

Mr. Matt Jeneroux: I'm sorry for my incoherence. It's YouTube remix. Thank you to everybody who passed that on to me. I am done.

The Chair: Thank you very much.

We're going to move to Mr. Masse. You have seven minutes.

Mr. Brian Masse: Just to follow up, they went to some of the other publishers and platforms for it.

Ms. Muller, one of the things you identified, and we've heard it from academic institutions, is that staff, professors, and so forth are also the authors and creators. You mentioned that you don't have any idea what compensation they're getting. What amount does your own college compensate in that respect?

Ms. Joy Muller: Right now, I'm not involved with the intellectual property negotiations between authors and administration at the college so, I couldn't speak to that specifically. I do know that from the library perspective, if an author makes us aware that they're publishing, we purchase a copy for the library whether it's in E-form or print form, whatever the author prefers. We will keep that as part of our collection. But the negotiation between the administration of the college in terms of whether the author has done it, has created their work as an employee of Seneca or as an independent author on their own time with their own resources, would be completely different. I'm not advised of that.

Mr. Brian Masse: They're probably different. I guess the thing is this, we're still trying to figure this out. What's consistent about the testimony we've heard is basically creators, one way or another, are not getting compensated. That's really, from what I've heard so far in terms of Ottawa and Halifax and Montreal and Toronto here, is that seems to be one of the recurring themes.

It would just seem odd to me that universities and colleges wouldn't I don't know, is it a free for all in terms of each creator or do they go to the publishers? Is it a mixture of things? I'm just trying to figure out exactly kind of ...

🕒 (1650)

Ms. Ann Ludbrook: Can I comment on this because I'm from Ryerson.

I actually consult with faculty members that are signing author agreements with journal publications. The majority of the material that we purchase is journals. We purchase in terms of serials, 78% of what we purchase in the library is journal material. When an author is signing with a journal like Elsevier or Taylor and Francis, they sign an exclusive licence to the journal publisher and they receive no fees and no royalties for that use at all. It's basically what they're getting is reputation but they are not getting any money. They work for free.

Mr. Brian Masse: It's like Youtube.

Ms. Ann Ludbrook: Yes, they work for free as editors for those journals. They work for free as authors for those journals. They work for free in that [*Inaudible*] for what they do. What they get is reputation and they get impact and they may get tenure because they have published in a certain journal. That is the scholarly publishing cycle. It's a very strange and elastic market.

Ms. Joy Muller: I'm not sure if this is on.

I was recently at a conference in Washington, D.C. on computers and libraries and one of the things they noted at that conference was that there's three tiers now for authors. There is the gold tier where the author will actually pay the publisher to include their work in the publisher's publication in order to get that recognition.

I'm suspecting that, that is happening more and more with the larger publication companies because a researcher wants to get their research out there and they're willing to pay to get their materials published but it is not directly impacting a library who would pay the publisher to get access to the database where that piece of material is published.

Mr. David Caron: Just from a Canadian publishing perspective, we publish a scholarly journal and there was no way that we would not pay an author who contributed to each issue of the journal. Every author that contributed was paid. That's actually the material that is no longer carried by that digital platform.

Ms. Ann Ludbrook: [*Inaudible*] agreement and I consult in this area that actually pays authors on a book publishing contract.

Mr. David Caron: The publishers that you have cited are foreign publishers and there are ... for us who deal with the Canada Council and Girard's Council, there are very clear positions for us as to how we must compensate our creators.

Mr. Brian Masse: I honestly think from the delegations we've had, everybody wants to see a sense of justice in this. It seems the process in itself and the way that we have the system is certainly one that's frustrating everyone.

Can I just maybe get your take on the Copyright Board and if you have an opinion on it and any suggestions for that?

I'll start with you, Mr. Caron. If you don't, you don't have to but I'm trying to get this as I go across.

Mr. David Caron: I'm not as familiar as my colleagues are about the Copyright Board.

Ms. Sylvia McNicoll: I find it doesn't matter what the copyright says, the schools ignore it anyway.

Ms. Joy Muller: From the Ontario Colleges library's perspective, we recognize that they don't seem to have the resources to make any decisions.

We've heard many things over the years about how long it's taking, and how we are losing creators in Canada because the Copyright Board is not making certain decisions in a timely way. We would encourage the government to give them those opportunities and resources to make decisions that benefit creators and users.

Ms. Ann Ludbrook: We do feel that the Copyright Board is taking a really long time, especially on the educational tariffs, especially in the university sector. As was said earlier, we've been waiting for a tariff to be completed since 2011.

Retroactive payments are considerably worrisome for universities. I don't think that there should be retroactivity.

Mr. Ken Thompson: The Copyright Board is a very essential body in this area of law. In fact, most of the Supreme Court of Canada decisions start at the Copyright Board.

I'm not downplaying the book publishing industry, but it cuts across all of the industries that rely on tariffs that the board sets.

We know that the Senate held hearings a couple of years ago into the operation of the Copyright Board. There have been internal studies that have been going on for years. I understand now that the heritage committee is having a second look at remuneration. It clearly needs to be reformed, something needs to be done, whether it's to add more resources, or to set standards to require the board to meet its obligations in a timely manner.

🕒 (1655)

Mr. Brian Masse: Thank you very much.

Marian Hebb: I'll add a bit to that . Very briefly.

The tariff is dealing with royalties right across the board, affecting a whole collection of bodies of work.

It just gives me the opportunity to correct something that was said before. Beside the tariffs, you have these transactional licenses. I would just like to put on record that Access Copyright does do a lot of transaction licensing.

The Chair: Thank you.

We're going to move to Mr. Sheehan. You have seven minutes.

Mr. Terry Sheehan: Thank you to all the presenters. I said at the previous panel, it's always great to go to the different regions.

[Inaudible] in Sylvia McNicoll. In her analogy she used the driving...if the speed limit is 100, if the people on the 401 and the highways around here, they start driving at 110, now it's 120, next thing you know they're blending in and now they're at 140 and 150. Driving here from northern Ontario I experience that and notice that. I'm like wow, are they ever...it seems that everyone starts driving at those speeds.

It's going to the discussion...we're talking about the Copyright Board and tariffs. In my mind as well, it goes to some of what Ken was saying, and this is where the question for Ken and the board—are we doing a good enough job educating people. Regardless of what the rules are...the rules seem to be...perhaps not enforced by everyone all the time.

It's that what you did before wasn't...you didn't receive any issue or problem, then you go on.

Ken you talked about an interpretation of the rules, and whatnot. You're dealing with a number of artists, and a number of issues. Are we doing a good enough job educating whoever it is. In the previous panel they mentioned by the photocopier there is a sheet of paper saying what the rules are. Is anybody reading that.

Are our educators, even at the highschool level educating our students. Are our educators at the highschool level being educated on what the rules are, regardless.

Sylvia, I think I'll go to you first. Some of your comments...do you think we could do a better job regardless of the rules are in educating some of the people, and the importance of copyright and protecting the creator's rights?

Ms. Sylvia McNicoll: Unfortunately, because of the Internet and the feeling of free content, students are extremely resistant to the idea that intellectual property isn't a free-for-all, so start with that.

Can we educate the teachers better, or the students better? You're going to have to jump over that hurdle that for some reason content is free, and, "I don't care. I'll spend \$1,000 on a phone, and that phone should come with free music and books because I spent \$1,000 on that phone."

I am still with that 10%. That is my issue and that is my problem, that somehow schools have assumed that 10% is okay. So if that's okay if they do that, and then the students do it, look at that prison. If she photocopies a book, what are the prisoners going to do when they get out?

We are leading by example as well. We're saying that it's okay to photocopy that little.... I know I'm coming from a different perspective, I'm coming from the K to 12, and with the younger kids you photocopy more than you download, per se.

But have I answered your question?

🕒 (1700)

Mr. Terry Sheehan: I think so, and that's some of the stuff that I made note of.

Ms. Sylvia McNicoll: We almost need a campaign with kids to understand that content is curated and created.

Mr. Terry Sheehan: Keeping with your analogy, I think that's part of what we've done with any kind of driving, whether it's drinking and driving, distracted driving, or speeding, or stunt driving. The education has always been imperative, and the fact is that it's my daughter who is the enforcer of the family to make sure that everyone is adhering to the rules. I just want to point that out.

I'm hearing that more and more that—

Ms. Ann Ludbrook: Could I just add something to that?

Mr. Terry Sheehan: Yes, go ahead, Ann.

Ms. Ann Ludbrook: Right now I'm working on an OER Textbooks project for eCampusOntario, which is actually a digital citizenship tool kit. We have a chapter for first-year university students on copyright and being a good digital citizen who deals with that kind of issue.

I do think the universities are aware of that, and that digital literacy is being taught at universities. At our institution we are thinking about that, libraries are thinking about that, and we have modules that are available. The colleges have a module, and some of the authors actually on the project that we're working on right now are college authors who help to work on modules for the college sector.

I think that universities are grappling with this issue, and we are educating our faculty as well. In fact, I would say that since we've opted out of the Access Copyright agreement, we have, across the whole higher educational sector in Canada, been working far more on trying to raise awareness and talking about what copyright is, what they have to do and what their responsibilities are than they have ever heard before in the collective licence regime.

Mr. Terry Sheehan: Joy, you were nodding your head. Would you comment?

Ms. Joy Muller: This is very close to my heart because I was the project lead for the copyright literacy in Ontario for a community colleges project.

Of these modules—there are almost 20 of them—seven of them are very specific to fair dealing in copyright, as the Copyright Act lays out fair dealing. And then we have very specific modules that are based on questions, but faculty have come to us and asked, “Can I post this YouTube video on my course management system class?” We go through all the fair dealing steps, the six steps that faculty have to consider, in individual cases of materials.

These modules, as I mentioned, have won an award and we presented at a library conference about a year after they were created, and many universities have approached us to allow for access to these modules. We've put them under a creative commons licence now and they are actually available through a link on eCampusOntario through the Ontario College Libraries learning portal. If you go to eCampusOntario and you see a nice little blog right now that's just come out about the learning portal, which was created by the heads of libraries and learning resources—under the auspices of their chair, Tanon Sync, who also happens to be my director—you will see that we have a faculty tool kit there, and those modules are available for anyone to access now on the web.

So we are striving very hard to educate.

Ms. Sylvia McNicoll: Could I just comment?

Nobody ever consults the writer, though. I don't feel that they consult the content provider.

Mr. David Caron: That would be my question also.

What was the involvement of the copy right holders in the development of those modules?

Do they have a voice in that message being sent out to that faculty?

Ms. Joy Muller: We based those modules on the Copyright Act itself. Consulting with CICA, which was a triple C at the time of creation. That deals with creators and authors as well as the educators and legal counsel. We try to touch on as many areas as we could in creating these.

The Chair: Thank you very much.

We're going to Mr. Jeneroux. You have five minutes.

Mr. Matt Jeneroux: Great.

I'll quickly follow up on that.

Writers weren't consulted essentially because the other organizations and lawyers satisfied that need is what your *[Inaudible]*.

Ms. Joy Muller: I feel that's correct.

Although I would say that my recollection isn't exact in terms of when we took the faculty questions and created these modules. Many of the faculty we consulted with may have been creators themselves.

🕒 (1705)

Mr. Matt Jeneroux: Okay.

Ms. Muller, just so I know. Are Colleges Ontario...? It's a little different where I come from. We have our polytechnics and that. You guys just lump them all into one, right? Is that...?

Ms. Joy Muller: Well, I hear rumours that might not be the case in the near future. Right now we are all colleges.

Mr. Matt Jeneroux: Depending on the outcome of the provincial election, perhaps. We'll see.

We won't get into politics here.

Ms. Joy Muller: Thank you.

Mr. Matt Jeneroux: Have colleges opted out of Access Copyright?

From my understanding about half of universities have and half universities haven't.

Is that a similar ratio in Colleges Ontario?

Ms. Joy Muller: Thank you for your question.

I actually did a survey when I received permission to speak of the Ontario 24 community colleges. Most have opted out. Of the 24 there's four or five who still have licenses with Access Copyright.

I will point out that collection budgets, size of library, size of student and faculty populations really vary across the community colleges in Ontario. Directly answering your question, not all 24 have opted out. But the majority have.

Mr. Matt Jeneroux: Do you get a sense as to why in your survey that you took?

Ms. Ann Ludbrook: I would say that many of us when Access Copyright applied for their increase tariff, we went from \$3.50 per student in our total population. So every year we would pay \$3.50 and they proposed for the colleges \$35 per student. At that point in time because we were all moving towards a more digital environment and demand by students for 24-7 access, we similarly to what Ms. Ludbrook told you, we started looking at our transactions. We started noticing that many of the things that we would pay Access Copyright for, if we continued in our license with them, we were already paying with our vendors online for our digital.

Really, we were trying to figure out why are we double paying for access to this content particularly when we pay and give our students 24-7 access. Our faculty could create persistent links that they don't have to make any copies. They can send the student directly to the link themselves. Really, all of us started looking much more closely at what we were paying for. Seneca was one of the first back in 2012. Our contract was coming due and we opted out.

Mr. Matt Jeneroux: You opted out in 2012.

Ms. Ann Ludbrook: Can I just comment?

Mr. Matt Jeneroux: Sorry, I know you both want to comment.

I just want to get to what that means. Explain to me the difference between.... You keep mentioning the digital 24-7 content versus the paper content.

Ms. Joy Muller: We are currently dealing with over 80 vendors of digital content for our students. If a faculty decides they want a student to purchase a textbook, that's arranged through the bookstore, and the student's required to purchase the textbook. We have nothing to do with that. In the case of faculty wanting supplementary material, or to create a digital course pack using the resources the library has paid for by sending the students to different articles, different journals, different newspapers, even e-books, they have that option now. They can browse our library catalogue, and they will find resources they need.

In the case of many of the college libraries, we have directional resources. We call them subject guides. If the student is learning about biology or chemistry, we might have a subject guide which sends them to the databases that contain the articles that would be relevant for their course. This is both available for faculty and for students.

In addition to that, there are more and more committees springing up across the college library communities around open educational resources and open access as encouraged by eCampusOntario.

🕒 (1710)

The Chair: Thank you very much. We will get back to you.

We're going to move to Mr. Jowhari. You have five minutes.

Mr. Majid Jowhari: Thank you, Mr. chair. Thank you all for participating on this important topic.

A couple of words came out I want to echo back. I want to get your input into a topic that in my mind needs a little bit more clarification, at least I need some guidance.

A number of times there was discussion around gaps existing. This is the gap between the content creators getting fairly compensated and quality contents being available for the users.

Reasonable limit was discussed and also the nature of work. Is there an issue with the interpretation of the act? Are there concerns around definition of the act around clarity? Are there issues around open interpretation that allows that much flexibility for someone to drive 100 kilometres and then somebody else drives around 150 kilometres? Is there an over-application of the act in other areas that doesn't need to be there? Is there a scope issue? Do we have an oversight issue? Is there an issue with the process? Do we have a punitive damage process?

Help me try to figure this out. Mr. Thompson, you touched on a number of recommendations, and as fast as I was trying to write—I think you would be a great start to this.

Mr. Ken Thompson: What referred to is what you probably heard of as the value gap, the value between the user, and the creator. From the creator's perspective, there is less value given to the work they create on the user's side. Their interest and compensation is diminished because of the value gap.

There are a number of reasons why we have a value gap as has been expressed. One of them is that intermediaries—this comes back to YouTube and user-generated content—are not liable. That means third parties are often not liable. I come to my issue about performers and their ability to collect compensation when their recorded musical performances are used in the soundtrack of a film. They are not entitled to that money even though other creators are.

Mr. Majid Jowhari: What would you recommend we change to amend the act?

Mr. Ken Thompson: The good thing is we have a five-year review. That's one of the best things instead of putting the Copyright Act on the shelf. I think it's more important now than ever that copyright be given a very good going over because it impacts much more than it did previously. It was kind of an arcane area of law, but now it cuts across everything including software development. One of the best ways to protect software is through the use of copyright law.

Laws have to be clear. Obviously, the discussion here this afternoon indicates it's the law about an educational exemption. It's not clear to everybody at the table.

Mr. Majid Jowhari: Sylvia and David, can you give some input into that?

Ms. Sylvia McNicoll: Well, as I keep saying everyone jumped to thinking that it was a 10% grab and that's really why the college has opted out because that 10% is now free....

Mr. Majid Jowhari: That's a definition. Is it perceived that or...?

Ms. Sylvia McNicoll: No, it's perceived by the educational institutes and if we narrow that down and I would suggest that we return to the Berne Convention. I don't know but I think they had three measures. One, does it interfere with the creator's ability to be compensated? For example, my example of copying a whole book, of course, it interferes. Or, if

you may be photocopying 10% of an anthology, yes, but you are interfering because that creator....

Mr. Majid Jowhari: Is it fair to say that the perceived 10% guideline is only a perceived guideline?

Ms. Sylvia McNicoll: Yes, it's only perceived and it's in every one of their....

Mr. Majid Jowhari: We really don't have a well-defined.... Is it fair to say that we don't have a well-defined process to be able to determine...?

🕒 (1715)

Ms. Sylvia McNicoll: Exactly, sir. It's the court of law is where we're determining it.

Mr. Majid Jowhari: So, if you don't have a process how could you measure it and how could you bring oversight to it? Do you believe there is an oversight that exists—

Ms. Sylvia McNicoll: Yes.

Mr. Majid Jowhari: —to any body that says this content was misused or it was replicated more than the number of times that it needed to be?

Ms. Sylvia McNicoll: I feel they have created guidelines and everyone is happy with it but we're not. You know that they have decided that a certain percentage is open to them because of fair dealings.

Ms. Ann Ludbrook: What I would say about Sylvia is that she said that one poem wouldn't be acceptable for students. I think that one poem is a collection of poems. Say you have 100 poems in a collection and you can't share one poem with a student or one newspaper article for a student for their learning. Data shows that the creator sector has a very limited idea of what a fair dealing would be. I remember talking at a communications conference in 2014 at Sir Wilfred Laurier. I actually asked the [inaudible]copyright executive director what she felt was fair dealing. What she said was it was four pages per student per year. I feel that that is not a properly useful guideline for students at all.

Mr. Majid Jowhari: You that there is an oversight....

Ms. Ann Ludbrook: I feel that there is fair dealing for education. Fair dealing for private study and research is pretty clear in Canadian laws and fair dealing for education I think that the creator industry is not happy about that exception at all and they would like it to go away. But I think that we do....

Mr. Majid Jowhari: So, what would happen...? One last question.

The Chair: Sorry, we're way over time.

We're going to Mr. Jeneroux, for five minutes please.

Mr. Matt Jeneroux: Thank you.

I think we'll get into some of that in my questions. But let's go back to where both you, Ms. McNicoll and Ms. Ludbrook wanted to comment. Before I do that reminded me of your opening comments about driving on the 401. I'm from Alberta and I don't think I've ever driven more than 20, not just 20 over but 20 kilometres on the 401. Everytime it is packed. So, take that what you will as an analogy but I'll let you have the floor, Ms. McNicoll.

Ms. Sylvia McNicoll: Sorry, what was my question?

Mr. Matt Jeneroux: Talk about what you like, I guess with regards to?

Ms. Sylvia McNicoll: When I said one poem, again, let's go back to the nature of the photocopying. If you have a whole anthology of different poets and you take one poem and consistently photocopy it or download it or whatever you

want or post, at worst and use it consistently every year too. I mean obviously the nature of the reproduction is taking away from the income of that poet. I am not saying that you can't take a page of my story or a page it really depends on how you're using it. We would all love to have a really easy formula but there isn't. The exemption didn't even try to give a formula. So the colleges created their formulas. So did the K to 12 sector and here we are.

Mr. Matt Jeneroux: I'm sorry, I just want to clarify. Going back, not to Mr. Jowhari's question but more so on talking about the Access Copyright and questions earlier on to Ms. Muller. Ms. Ludbrook, would you like to stab at that?

Ms. Ann Ludbrook: Just say that again.

Mr. Matt Jeneroux: Back to my questions to Ms. Muller about the opting out of Access Copyright.

Ms. Ann Ludbrook: I had actually, when I first came to Ryerson, did a course pack study. What we found was that, for instance we have a database licence through the *Toronto Star* to seven different databases. We pay *Toronto Star* directly every year. But we also pay for that content in seven different databases. Everything is packaged for us. We buy it through [*Inaudible*] platform. I can give you a list, Canadian Newsstand which is now global. We purchase it through PPIQ, Progress Global News stream, Activa, ??? CBC.A. Some of them allow us to course pack the content without paying for it.

Some of them allow us to post the full text. We usually just link to material but we have licences for that content. But what we were doing in the book store wasn't checking and we were just paying that licence to Access Copyright for that *Toronto Star* material that was already licenced. We started to start looking at what we were doing in terms of print course packs in a more careful way and started to think what is the content.

🕒 (1720)

Mr. Matt Jeneroux: When did you start doing that?

Ms. Ann Ludbrook: That was 2011.

Mr. Matt Jeneroux: Prior to the act coming in. You started to ...

Ms. Ann Ludbrook: It partially came out of Access Copyright, it was \$45 per student originally and we started to say, "well are we actually using that content?". What I would say is that what we found doing E-reserves is that we actually didn't use that much material. Most of what we use in E-reserves is electronic material that we have already licenced. That is what our students, especially at Ryerson. We're a very practical, we have an engineering school, we have a nursing school. We are not heavily into literary material. Most of what we publish and put up in our E-reserves system is not literary. It's scholarly.

Mr. Matt Jeneroux: You have a checklist, a do it yourself copyright checklist? I'm going to ask you to speak on behalf of other universities but is that standard across the Did you guys create that yourselves?

Ms. Ann Ludbrook: We created that ourselves in consultation with Julius and Joy and we created a work flow for professors that didn't want to use our other options. Other options are to print course packs if they want to print through an Access Copyright vendor or to use E-reserves where we do the copyright checking.

Mr. Matt Jeneroux: Who looks over that? Is that held in your department? There's a checklist and somebody has to go and I guess the instructor checks off the checklist, hands it in to you and you are satisfied.

Ms. Ann Ludbrook: No, what we do is we actually have E-reserves so, a large portion of our readings at Ryerson actually go through E-reserves and they're copyright checked. We're looking at that content.

The do it yourself checklist is for faculty who wants to go follow the rules of Fair Dealing and using licence for courses. Sometimes what will happen is they won't know how to do the link so, they sent to me a Syllabus and I do links

directly for them or we just direct them to use E-reserves instead if they don't know. Some of the faculties do it themselves. They have the option to do that.

The Chair: Thank you.

We'll move to Mr. Sheehan, you've got five minutes.

Mr. Terry Sheehan: Thank you very much for your participation today. Some of the questions I've been asking is I'm from Sault Ste. Marie in northern Ontario and we have a lot of rural first nations in northern Ontario as well as we have across this great nation.

One of the questions I'm going to be asking is for Sylvia. We're in particular interested in the relationship between the Copyright Act and indigenous creators and their works.

Do you have any sense from your indigenous members as how the Copyright Act affects their work, any dealings?

Ms. Sylvia McNicoll: I'm sorry I do not have specifically to the indigenous authors but I would say it probably at this point affects them more only because we have the Year of Reconciliation and the schools are looking for more curriculum material. Our indigenous authors are going to schools more, visiting more.

Mr. Terry Sheehan: It is part of the Truth and Reconciliation process but one of the issues that we've uncovered so far First nation community onto itself, the Copyright Act usually deals with an individual or an individual creator and the tariffs are paid to that person or individual and whatnot.

But the indigenous communities, a lot of times they take a look at traditionally, they look at a lot of things as a collective as the particular first nation owning that symbol or that particular story which has been passed down by generations. It's really very difficult to apply the ownership to an individual. It's to the community itself and that's the way they view things.

That's one of our challenges is with this Copyright Act, it really doesn't apply in a way that's meaningful for our indigenous people. We're trying to kind of unravel that particular mystery. I don't know if anybody here at this particular table has any comments about indigenous or indigenous artists that they've been dealing with.

Ken.

Mr. Ken Thompson: All I would say is that the World Intellectual Property Organization has been studying the issue. It's called traditional knowledge, and the reason that it creates somewhat of a legal issue is that traditional knowledge often isn't written in an expression which can be copied. As you say, it's handed down from generation to generation, felt that it's owned by the community rather than by an individual.

Obviously our act should address that at some point, but I think that more importantly, we need an international treaty or understanding of how that would be dealt with. It's not something that I think we can, unfortunately, do on our own.

I would encourage the government to be very involved in traditional knowledge on an international scale.

🕒 (1725)

Mr. Terry Sheehan: That's a good point, we haven't heard that one. That's good.

We have Sioux College in Sault Ste. Marie, a very large college and the libraries unto themselves that are there. It's sort of a technology type thing and you're seeing a lot of technological processes in place. Whether you want to talk about 3D printing or...a lot of things are happening in the digital world and the technology world.

How are the colleges managing copyright as it relates to those new technologies that are out there?

Ms. Joy Muller: We're all working within the college environment that contains learning management systems, and

libraries are working within those learning management systems themselves. Even though the Ontario community college libraries may have varying systems—Seneca doesn't, in fact, have the same one as in the Sioux, I'm very good friends with the director of libraries in the Sioux, Jason Bird—we're always working together to find commonalities that we can share through the heads of libraries and learning resources. In fact, Jason and I are on the Ontario Library Association Copyright User group together because it even goes beyond the colleges. We try to encourage all the users to be compliant and use the fair dealing six factors.

We're all trying to work from the same framework and the same guideline, even though our budgets may vary, the size of our libraries may vary and the size of our user communities would vary, as well. We still work very closely together to ensure that we have those technologies that enable our students to get the best education that they can.

Mr. Terry Sheehan: Thank you very much.

The Chair: Thank you very much, and for the final two minutes of the day, Mr. Masse.

Mr. Brian Masse: Thank you, Mr. Chair, and thank you again for your presentations.

Ms. McNicoll, you noted your concerns about your income, but also what would your advice be to younger people, though, with regards to their trying to enter into a situation where you would want to use either artistic creation or literary, in your particular situation, as a base for lifestyle and contributions. I think it's important to—

Ms. Sylvia McNicoll: I've always said they have to cobble together a living. I have never said that you can write one poem and live off of it or one picture book or one novel, but now I say you really can't make a living. I have tried every different way. I've written about shot beaming, I turn nothing down, I just find it's not possible anymore.

Mr. Brian Masse: I think that's some of the testimony that we even heard from Halifax, though, is that people's incomes had been supplemented as part of a repertoire of either work but had basically dropped 70% to 50%, sometimes 90%.

Ms. Sylvia McNicoll: Yes, in my case, 90%.

Mr. Brian Masse: It's part of those things, so....I'm going to leave it at that, Mr. Chair.

The Chair: On that note, we come to the end of another successful panel. As you can see, the task before us is not an easy one. I'm going to reiterate what we said at the very beginning of this. Let's not assume the outcome of what this is. We are asking hard questions of everybody because we know everybody is concerned. Everybody's got concerns. One way or the other, there are concerns with this and the only way to really, truly understand this is to ask the questions that we're asking and then put all of that onto our analysts to figure it out and write a magnificent report, and then we can work on recommendations.

Having said that, we are going to adjourn for the day and be back at 7:00 for the open mike portion of this.

Thank you all very much.