



Standing Committee on Industry, Science and Technology

Comité permanent de l'industrie, des sciences et de la technologie

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🕒 (1405)

[English]

The Chair (Mr. Dan Ruimy (Pitt Meadows—Maple Ridge, Lib.)): Welcome to Vancouver, everybody. I'm talking about our committee. You guys, of course, live here.

I want to welcome everybody today to the beautiful, sunny Vancouver. We're at meeting 114 of the Standing Committee on Industry, Science and Technology. We continue our study of our five-year legislative review of the Copyright Act.

We've been seeing witnesses for a few weeks, already. This week, we've been on a five-day road trip. We were in Halifax, Montreal, Toronto, Winnipeg, and Vancouver. It's been an invaluable trip. We have met with such a diverse group of people, that have given us lots and lots of information to contemplate, as we continue to move forward.

If you've been following the proceedings, we've divided this up into sections. Each section is meant to help us build our own information and knowledge on copyright. As we continue to move forward, we'll be meeting with authors, radio, tv, publishing...it's been quite enlightening, actually.

We're supported of course, with our wonderful staff. We have translators in the booth over there. When you speak, if you could speak a little slowly.

A couple of things. If you're not using it, keep your headsets away from the microphones, because they can go pop-pop. Everything that's being said today will be recorded, as well as translated.

We have our clerk who keeps us on track, and then we have our two of three analysts. Only two are here with us today. Our analysts are the ones who will take all of this information, and that help us by doing briefing notes, give us background information, and at the end of the day will help us write our reports and our recommendations. We look to our wonderful, magnificent analysts...I keep building them up along the trip. And of course, we have our support staff back there.

Thank you all very much.

Today, we have with us from the University of British Columbia, Susan Parker, university librarian; from the British Columbia law association, Christine Middlemass, president.

Ms. Christine Middlemass (President, British Columbia Library Association): It's the Library Association, in fact. The Library Association.

The Chair: What did I say? Did I say law?

Ms. Christine Middlemass: I think some lawyers might be unhappy.

The Chair: It's been a long week.

From the Canadian Association of Learned Journals, Rowland Lorimer, treasurer; from the Canadian Association of Law Libraries, Kim Nayyer, chair, copyright committee, looking forward to that.

You will each be given five to seven minutes, if you need it, to do your presentation. Once we go through everything, then we will go back and forth with questions.

We're going to get started.

From UBC, Susan Parker, you have up to seven minutes.

Ms. Susan Parker (University Librarian, University of British Columbia): Thank you.

My name is Susan Parker, and I'm the university librarian at the University of British Columbia, and I'd like to thank you all for the opportunity to speak before you today. Also with me today is Allan Bell, associate university librarian for digital programs and services at UBC, and Michael Serebriakov, legal counsel in the UBC university counsel office.

UBC is a global centre for research and teaching, consistently ranked among the top 20 public universities in the world. We are Canadian authors and publishers as well, publishing material through UBC Press and other publications. The UBC library is the largest academic library in British Columbia, and one of the two largest in western Canada. In 2017, our total acquisitions budget was close to \$17 million. That is \$17 million spent each year on purchasing and licensing Canadian and international content in various formats, from print materials, which comes to about 20% of the total, to various kinds of digital content making up the other 80%.

I am here to reinforce the following message.

We are focused on fairly compensating content creators and their publishers to foster and support the creation of the best resources for our students and faculty so that they may achieve excellence in learning, research, engagement, fostering global citizenship, and advancing a sustainable and just society. These resources are increasingly digital resources, and they provide enhanced educational features such as enhanced content, embedded collaboration tools, and access 24/7.

As the digital industry inexorably grows, paper-based publishers are seeing their industry erode. The international trend is clear. Paper resources cannot compete with digital, and this is independent of fair dealing or the Supreme

Court's 2012 confirmation that fair dealing for private studies applies to the educational context. Even before 2012, UBC was buying fewer and fewer paper resources. Our faculty members are distributing fewer paper copies and making fewer paper course packs, and our students are demanding more digital content.

The plight of Canadian authors and publishers is very real. Many of the most prolific content creators are members of our own academy, so we are mindful of the importance of a copyright system that fosters the dissemination of content for the benefit of society and simultaneously creates the right incentives for creators. Eliminating or restricting user rights, or imposing extremely onerous statutory damages or infringements, will not reverse the digital revolution, nor will it restore the viability of the business model of paper-based publishers and their collective agencies.

What it will do is several things. It will increase the costs of an already increasing outmoded format, which will only accelerate the transition to digital course material. It will hurt authors and publishers as they, too, exercise user rights extensively. It will likely have unintended consequences in the digital sphere where user rights are a necessary counterweight to restricted forms of use that are imposed upon users, including a digital lock that may threaten to keep all content behind a pay wall, and the undue bargaining powers that statutory damages will grant to collective societies.

UBC's request is parliament to defer action on user rights. There are several important court and copyright board decisions that should be allowed to play out now. The market is already developing its own market-based solutions to what may appear to be an intractable problems. For example, large-scale subscription arrangements are being floated like those that have revitalized the music and television industries. Instead, parliament needs to use this opportunity to support a robust public domain. The public domain refers to the body of works where the author has waived copyright, or where the copyright term has expired. Currently, the term of copyright is the life of the author, plus 50 years. To put this in perspective, a work published when the author is age 30, and that author lives to age 90, it's protected under copyright for 110 years after its creation. That is more than adequate time for the author, heirs, and publisher to benefit from the work.

Realistically, of course, most copyright works have little or no commercial value, this testimony, for example, or exhausts the commercial value relatively quickly. To support a robust public domain, we urge parliament to do two things. First, to reject calls to further extend the term of copyright by an additional 20 years. Second, to develop a means by which libraries and archives may empower researchers, educators, and the public, to utilize and disseminate what are called orphan works.

🕒 (1410)

Orphan works are works that are protected by copyright but where the current copyright owner is unknown, cannot be found, the author has passed away or where the original publisher is defunct and it's unclear who has the rights. There is a debate about how to address this issue and I stand here to ask this committee to have the debate and resolve to act. Libraries across Canada are full of important works that demonstrate the richness and diversity of Canadian culture and scholarship. Parliament has the power to create a system that ensures that Canadians can fairly and respectfully tap into a rich source of Canadian content.

In closing, I ask you to please keep you eyes on the horizon and ensure that, whatever you do, that you're facilitating progress and innovation rather than seeking to bolster any particular industry or format. The world has changed. We can't turn back the clock.

Thank you very much.

The Chair: Thank you very much.

From the British Columbia Library Association, Christine Middlemass, you have up to seven minutes. Thank you.

Ms. Christine Middlemass: Thank you very much. Hello and thank you for the opportunity to address you this afternoon. My name is Christine Middlemass. I'm the incoming president for the British Columbia Library Association, the voice of libraries in British Columbia. With me is Donald Taylor, our copyright representative for BCLA and the copyright officer at the Simon Fraser University.

Libraries play a key role in the use, dissemination and creation of copyright protected works. We empower Canadians in their pursuit of lifelong learning, research and innovation by preserving knowledge and by providing equitable access to information.

The Copyright Act and its exceptions, likewise, underpin our mission. Libraries support Canadian creators by purchasing and promoting their works as well as providing services and information resources for their use in the creation of their new works.

BCLA thanks Canada for maintaining the copyright term of life plus 50 years. BCLA, likewise, is in agreement with the fair dealing and educational exceptions in the act and with the 2012 exception for non-commercial user-generated content.

Kindergarten and post-secondary libraries are hubs for education, as are public libraries, through their collections, literacy programs, outreach to new immigrants and their wide variety of community programs from reading clubs to indigenous programs. All library users depend on exceptions in the Copyright Act. For example, fair dealing for education or for research allows instructors, parents, library patrons and library staff to make copies for research and educational uses and allows libraries to send articles and other short excerpts to patrons of less well-endowed libraries as part of inter-library lending. These activities enrich society and make education and lifelong learning a reality for all Canadians.

Many post-secondary libraries and large urban public libraries in British Columbia have maker spaces. The current fair dealing in non-commercial, user-generated content provision in the Copyright Act allows library users to experiment and innovate in these makers spaces. Loss of these provisions will constrain their creativity.

B.C. libraries invest heavily in collections for their patrons. In 2016, approximately \$29 million was expended, collectively, within the province of British Columbia, on collections both physical and digital. Definitely the main increased areas were our digital collections.

Unlike printed material, digital works, such as e-books and online reference sources, are governed by licenses and all their uses, including reproduction, are governed by these licenses. This often means that clauses in a contract override statutory rights in the Copyright Act. Libraries may not be permitted by the license to lend to another library through inter-library loan and library users may not be permitted to print the pages. As these restrictions are barriers for our patrons to education, research and lifelong learning, BCLA would like to see the Copyright Act stipulate that contracts cannot override exceptions in the act.

Technological protection measures, or TPMs, are also used to limit fair dealing and other statutory rights in library licensed digital resources. In order for libraries and library users to exercise their rights in the Copyright Act, BCLA recommends that the act be amended to exempt fair dealing and other exceptions from the prohibition on the circumvention of technological protection measures.

Digitizing and making available historic materials, such as photographs, postcards and posters, to a wider public is fraught with copyright implications for B.C. libraries. The uncertain copyright status of orphan works, the fact that non-locatable copyright owner regime applies only to published works and, the extreme difficulty of tracking down myriad copyright owners, prevents cultural institutions from digitizing historic works of significant cultural and historic value to Canadian communities.

🕒 (1415)

Therefore, BCLA recommends that the Copyright Act be amended to clearly state that libraries, archives, and museums are only required to remove material if they infringe copyright when they had reasonable grounds for believing that their use of the copyrighted work was for a fair dealing purpose. They should not be required to pay statutory damages. This change to the provision will protect Canadian educational institutions, libraries, archives, and museums from being sued for digitizing orphan works in good faith.

According to Statistics Canada, Canadian publishers reported a profit margin of 10.2% in 2016. Canada is also the sixth most lucrative global market for streaming music sales and royalties. As well as being significant purchasers of Canadian content, libraries and librarians have long supported and participated in programs like the public lending right to ensure a vibrant Canadian culture. However, we believe copyright legislation is an inappropriate tool for subsidizing Canadian creators. Rather, BCLA encourages the pursuit of public and private programs, such as the public lending right, to help foster and remunerate Canadian creativity.

We strongly urge Parliament to maintain the amendments to fair dealing and the educational exceptions added in 2012.

Thank you, again, for the opportunity to speak to you.

The Chair: Thank you very much.

We're going to go to the Canadian Association of Learned Journals. Mr. Lorimer, you have up to seven minutes.

Dr. Rowland Lorimer (Treasurer, Canadian Association of Learned Journals): Thank you very much.

As the chair noted, I am Rowland Lorimer. I'm the founding director of the professional master of publishing program at Simon Fraser University, and treasurer of the Canadian Association of Learned Journals. I appear on behalf of the Canadian Association of Learned Journals, and I thank you very much for this opportunity. Before I start, I'll add that I'm also the publisher of eight journals, seven of which are online, open-access journals, and one of which has a print component and is open access to the level that is required by the tri-council agencies.

Canada has over 630 scholarly journals with budgets of over \$50,000 per title. This amounts to about \$30 million of economic activity. About 10% of funding comes from the Social Sciences and Humanities Research Council, and the rest comes from professional and institutional support and market earnings in and outside of Canada.

The notion of user rights and the inclusion of education as fair dealing are founded on the social behaviour of single readers. They wisely affirm exchange amongst readers, and facilitate the use of modern copying technology to allow close study.

The central problem for Canadian journal publishers, and most Canadian publishers, is that on the legal foothold of an education user right, educational administrators have seized the right to deliver all kinds of mostly unlicensed content, including core learning materials, to students without recompense to authors and publishers. Further, many educational institutions require their instructors to compile content that pointedly avoids triggering the education community's self-defined rules for compensating authors and publishers.

These rules were tested in Federal Court in a suit by Access Copyright of York University, and they were found wanting. The court found that the vast majority of copied content was unlicensed, as it mainly came from books, but it also included unlicensed Canadian journal content. In a way, the talk of millions spent on licences is mostly irrelevant to the Canadian content found in print course packs and uploaded to learning management systems without compensation.

Our suggestion is that the education user right be treated as a self-initiated right of biological persons and not extendable to institutions or other persons downloading and distributing on their behalf, nor as a means of delivering course content.

In scholarly journal publishing, recompense to authors is not an issue. Authors receive a basket of benefits for publishing their research. For scholarly journals, the issue is that educational administrators are undercutting the resources Canadian journals need to maintain efficient and effective not-for-profit publishing and distribution of Canadian research.

In Canada, journal costs are very affordable, largely because Canadian journal publishing is dominated by not-for-profit organizations. One fairly typical example of a subscription-based journal has 55 Canadian institutional subscribers that pay the journal just \$7,000 in direct subscriptions. The journal attracts roughly 200,000 article views per

subscription. The cost to Canadian institutions is 3.6¢ per article view, yet the education administrators want more, and are taking more, without recompense. Rather than supporting the development of Canadian journal publishers for their primary focus on knowledge dissemination, educational institutions are crippling the very sector that is best able to make knowledge available in an affordable fashion.

In short, the seizure of user rights by educational institutions to deliver course content without compensating creators and publishers weakens the generation and communication of ideas.

🕒 (1420)

For journal and other publishers, it forecloses on opportunities to build intellectual property founded businesses, a growth sector, in developed economies. More generally, it deprives Canada and Canadians of jobs and opportunities in copyright-based economic activity.

For individual students, it is already erecting unfair barriers to the generation and communication of Canadian knowledge for about the cost of a case of beer per student.

Thank you.

The Chair: Thank you very much.

Finally, from the Canadian Association of Law Libraries, Kim Nayer, you have up to seven minutes.

🕒 (1425)

Ms. Kim Nayer (Co-Chair, Copyright Committee, Canadian Association of Law Libraries): Thank you.

My name is Kim Nayer, I'm here on behalf of the Canadian Association of Law Libraries and I want to thank the committee for your careful and thorough work in this statutory review process. I do appreciate the opportunity to speak here in Vancouver and I thank you for undertaking these regional hearings.

Our association has 370 individual legal information professional members representing 210 organizations from various sectors of the legal environment. About 25% of our membership work in law firms, 22% are in court house and law society libraries, 21% are in the academic sector mostly but not only in law school libraries. Another 10% work in government libraries. Publishers represent about 5% of our membership and 12% of our members indicate other affiliations. Many of our members are also authors.

I myself am in the academic sector. I'm the Director of the Law Library at the University of Victoria and Associate University Librarian for Law there.

This review is of great interest to CALL and our committee. In fact, our committee was established some decades ago to address copyright amendments of that day. Our members work daily with material that's protected by copyright law and with licensed copyright protected material.

Today I'm going to address four points: Inter-library loan, fair dealing, over-riding licence provisions and crown copyrights.

First, on inter-library loan, I'll draw your attention to section 30.2(5.02) and the requirement "that a library as defined by the act, take measures to prevent an inter-library loan borrower from taking some actions set out in that section". In practice, we don't find our members to be in a position to meet a positive obligation to enforce loan term compliance by inter-library loan borrowers.

Some libraries have the technological capability to limit use of inter-library loaned materials but many do not. We really aren't practically capable of meeting an onus of accountability for the actions of inter-library loan borrowers who are in other locations. Yet a core function of law libraries is to share resources when they are needed and as law permits.

We see this as an important element of access to legal information and therefore access to justice. We suggest perhaps the addition of reasonable before measures would meet the policy and legal goal of that section.

Now I'm going to move to fair dealing and I'm just going to speak briefly on this point. As noted, we have a large range of members in the Canadian Association of Law Libraries just like Canadian Society itself. In our experience, fair dealings as it stands now generally works well. The current provisions of flexible and responsive and our view is that interpretation of what constitutes a dealing that is fair should continue to be left to the context.

Thirdly, I would like to speak about over-riding provisions and licences. We suggest that the act stipulate that licence terms not over-ride activities otherwise established by the act as permissible. Occasionally, some of us are able to negotiate out of particular provisions and licences that would over-ride activities that are made permissible by statutes such as some aspects of fair dealing or inter-library loans. Not all of our members are in that position.

Licenses are often opaque, click through or otherwise presented as non-negotiable or they may be presented to someone less connected with the daily use of licenced material. The result is often that our members are inadvertently or inappropriately contractually limited from doing what Parliament otherwise granted them the right to do.

Lastly, I would like to speak about crown copyrights. Last fall, an e-petition presented to the House of Commons requested the addition of a section 12.1 that would provide that works covered by section 12 be no longer protected under that section upon being made available to the public. Many of our members support that view. I have to say, though, the question has not been formally presented to my association, so I can't speak in support or not in support of that on behalf of the association.

Today, I'd like to bring another idea related to section 12 to your attention. Our view is that public access to the law of all the jurisdictions of the country is central to access to justice.

🕒 (1430)

Our study of section 12, crown copyright and the royal prerogatives, and the origins and purposes of the Copyright Act, suggest that a fair and modern interpretation of Canadian law is that the act in section 12, or in any other section, should not be seen to govern primary law. It may be time for the act to state, whether in section 12 or elsewhere, that primary law—and particularly case law—is not a proper subject matter of the Copyright Act.

The trial court and the Supreme Court of Canada in the Law Society of Upper Canada NCCH decision touched on this point, tangentially, although the particular question was not an issue in that case. Paragraph 35 of the Supreme Court decision is worth noting:

In practice we do treat this as a given, as copying of primary law is necessarily done in the course of our members' work, and indeed in the daily lives of Canadians. We reproduce primary law to file in court, courts reproduce it for carrying out their business, law libraries and law teachers must reproduce law for the purposes of legal education. Clarity on this would enable other useful activities, and furtherance of access by Canadians to the laws that govern us. Our members and others, would then be unhindered in creating tools and resources to enable Canadians to access our own laws.

An example from the U.S.—where as I understand it primary law is expressly within the public domain—is Harvard Law School Library's recent digitization of the entirety of published U.S. case law, removing proprietary content from their source book. They've made this content freely available to the public, and they're working where that digital case law is data, to make new and useful presentations of legal information.

My association, CALL, suggests an addition to section 12 to confirm that case law, and perhaps legislation, are not works within the meaning of the act, and so aren't subject to its provisions. Or, Parliament may simply provide that legislation and case law of the jurisdictions of Canada are in the public domain.

Thank you very much for your consideration of my submissions. I'll do my best to answer any questions you have.

The Chair: Thank you very much.

We're going to move right into those questions, with Mr. Sheehan. You have up to seven minutes.

Mr. Terry Sheehan (Sault Ste. Marie, Lib.): Thank you very much to our presenters, and for everyone attending this evening. It's great to be in the chair's backyard.

We've been taking the proverbial show on the road, it gives us an opportunity as a committee to hear from the various regions in this country.

My first question is going to be for the presenter from UBC. It's consistent with some of the questions I've been asking other universities, around course packs. I'm interested in knowing how you apply and enforce copyright policy for the preparation of a course pack.

Ms. Susan Parker: We do have a system that we use. I would actually ask my colleague, Allan Bell, to come to the microphone to talk about that.

The Chair: Just for the record, could you state your name and your position, please?

Mr. Allan Bell (Associate University Librarian, University of British Columbia): I'm Allan Bell, I'm the associate university librarian at the University of British Columbia.

We go through a rigorous process when we make a course pack. I have to point out that our course packs have been declining quite dramatically, even though we have been applying fair dealing in those course packs to make them cheaper for our students. Over the course of the last few years, the revenues have gone from \$1.32 million to only \$0.30 million, so \$300,000. That's typical for many universities, and certainly ours. Our students are demanding more digital content, and more digital experiences.

Selling photocopies to 19 year olds is something that does not work today, and certainly won't work tomorrow.

Mr. Terry Sheehan: Maybe you can delve a little bit more into the electronic usage. You talked about the decline of course packs, but do you have numbers going the other way?

Mr. Allan Bell: Yes, I sure do.

I have a great graph that actually graphs it against our circulation, to also show that the print is being used less, as the digital is being used more.

Mr. Terry Sheehan: If you could submit that, to our analysts.

Basically describe the graph, a very brief....

Mr. Allan Bell: Basically, we've gone from 21% electronic in 2002 to 82% electronic in....

Mr. Terry Sheehan: It's flipped.

Mr. Allan Bell: Yes, it's flipped entirely over the course of time. That's 2002 until today.

The other thing is the yellow line, which is the circulation. Our books are being used less. Many of our books are being put into a storage facility, where they are safely not being copied.

Back to the course packs—what we end up doing is we use our library licences, many of those allow us to put that into the course pack. We apply fair dealing to that, as well. Anything else we license, to be able to put that in.

🕒 (1435)

Mr. Terry Sheehan: In there as well....

Mr. Allan Bell: Yes. I have stats on that from the bookstore, if you'd like me to do a little bit more with that.

Mr. Terry Sheehan: Yes, it would be great to have some more stats on that, as well.

This is a continuation on the line of questions I have been asking. How does the university inform, education, and enforce its own copyright policy as it relates to the university? For the library and a variety of people, they are very complex policies. We've got the poster on the wall by the photocopier "kind of thing". Could you describe that for us? I see you nodding your head. You obviously have one.

Ms. Susan Parker: Indeed, we do have the poster on the wall, but that's really not education. That's prophylactic, I guess—really.

A lot of the education we do in the library context at UBC is a host of things regarding literacy about intellectual property, because not only are students and faculty members creating and using other people's work, but they create and use one another's intellectual property.

It's become a suite of information we give to students in one fashion and to faculty members in another, in their appropriate context. Students are specifically instructed by librarians about what is and is not fair dealing in Canada so that they understand exactly what they're doing when they are violating that concept or not comporting to it.

What we express is that the library is an exemplar of using fair dealing properly and that we can explain it to them and show them to do it because they themselves are creating their own content and want that to be treated the same way.

I would say, it's an iterative process with students over time, because they're with us for a few years. As well, as they progress in their studies, it may be more related to the particular field of study they're working on.

With faculty members it's an ongoing effort. You don't get them as much or as often, so sometimes you start from zero every time. I think, however, that our faculty understand what the library's policies are. We explain them, and we make it very easy for them to comport by providing staff members to do all the work for them in educating them about that process.

Mr. Terry Sheehan: Very good.

Mr. Chair, how much time...?

The Chair: You have a minute and 20....

Mr. Allan Bell: As Susan said, we have an e-reserve system we use, and our staff looks over all the material that goes in there. We have an annual click-through of the copyright guidelines and requirements for the university. Every year people click through our requirements, and if we change our advice, they have to click through it again. That's another thing we've done.

Also, in the context of the Connect learning management system, there's a metadata template where the faculty members tell us why they think they can put this file into the learning management system.

Mr. Terry Sheehan: You have numbers, then, associated with—

Mr. Allan Bell: I can definitely give you the numbers in the context of the e-reserve system. Absolutely.

Mr. Terry Sheehan: One of the questions I do ask is whether you track and how—

Mr. Allan Bell: Yes.

Mr. Terry Sheehan: —and whether you have the numbers. If you can submit those numbers to us, that would be—

Mr. Allan Bell: I sure can.

Mr. Terry Sheehan: —most helpful to paint a picture of what's happening at UBC.

Mr. Allan Bell: Absolutely.

Mr. Terry Sheehan: Part of what we're trying to do here is explore the various ways these things are undertaken and take a look at best practices at the same time. That's just what we've been doing.

The Chair: We're going to move to Mr. Jeneroux. You have seven minutes.

Mr. Matt Jeneroux (Edmonton Riverbend, CPC): Thank you, Mr. Chair, and thank you, everybody, for being here today.

I'll start my questions on an open access policy, and we'll begin with you, Mr. Lorimer and then move to a little bit more of a focus on fair dealings and Access Copyright, which will most likely be you, Ms. Parker.

Mr. Lorimer, in February 2015 the then science minister, Ed Holder, introduced an open access policy that mandated that all publishing that resulted from research funded by tri-councils must be freely accessible to the public within 12 months of their publishing. Given that a large portion of tri-councils-granted money is delivered to universities, can you speak on behalf of your organization...whether or not you supported that policy when it came forward?

🕒 (1440)

Dr. Rowland Lorimer: Yes, the Canadian Association of Journalists supports that, and generally Canadian journalists, I would say a good 90%, follow that policy and make it available within 12 months. We don't have a quarrel with that.

What we worry about is whether the policy may end up going further so that we can't earn revenues in Canada our outside of Canada. And given the 12-month window, a journal can still earn substantial revenues.

Mr. Matt Jeneroux: Are you concerned that it would go shorter than 12 months, or are you concerned that it would extend to other areas?

Dr. Rowland Lorimer: No, we're concerned that it might go shorter than 12 months.

It works for science journals. You can go shorter in some sciences, right?

But in social sciences and humanities—and I was just doing some research on this—the 20 most used articles in one of the journals that I am involved with, were published from 1992 to 2009, so that's where you're getting the most use. So 12 months isn't really a lot of protection and we rely on the good graces of the libraries to continue to subscribe to the latest.

Mr. Matt Jeneroux: Right, okay.

Putting aside the 12-month window and keeping that the same, but extending that outside of just the tri councils, would you be supportive of that extension?

Dr. Rowland Lorimer: Extending it in the sense of requiring all the content of all journals?

Mr. Matt Jeneroux: No, all publicly-funded research, so speaking specifically about the granting councils.

Dr. Rowland Lorimer: Yes, we would support that, but with the understanding that journals add considerable value. They add it not only in the sense of just peer review, but professional editing, professional layout, and so forth. There is a work there that's being done. We don't sit around and just collect a little bit of money for shuffling things online.

Given that recognition, yes, we would support that publicly-funded material should be made publicly available.

Mr. Matt Jeneroux: Okay.

You referenced the position paper of journal open access policies where you note, and I'll quote, "There is a substantial difference of opinion among members of the working group about how to move toward open access and how open access should be pursued."

Could you elaborate on perhaps what some of those differences would have been?

Dr. Rowland Lorimer: What are you quoting from, sorry?

Mr. Matt Jeneroux: The "Position Paper on Journal Open Access Policies".

Dr. Rowland Lorimer: Ours?

Mr. Matt Jeneroux: Yes.

Dr. Rowland Lorimer: I'm sorry, it's doesn't immediately come—

Mr. Matt Jeneroux: CALJ has published a "Position Paper on Journal Open Access Policies" where it recommends that all journals adopt open access policies that permit free digital access for articles, and so on and so forth.

In there is a quote that says, "we note that there is a substantial difference of opinion among members of the working group about how to move toward open access", if it should be pursued.

Dr. Rowland Lorimer: Yes, I understand.

What we were basically referring to there is the various business models for moving forward. Some would immediately have all their content open access and there wouldn't be anything more to it than that. There are other journalists who earn considerable income and sell their content to secondary aggregators who assign contracts with foreign aggregations—secondary publishers, really—and make them available so that they're taking their earned income and putting it together with their costs, effectively, to make it open access as soon as possible, but trying to maintain a presence in the marketplace to earn enough income to have a quality journal.

Mr. Matt Jeneroux: Okay.

And in the same report you also note that there is lack of copyright savvy in the science community, and what support does the community require to better understand the connection between research copyright and publishing?

 (1445)

Dr. Rowland Lorimer: Basically the lack of savvy is that where people and academics publish in a journal, they think that is making it public and then they believe that they have a right to do anything they want with an article that they've handed over to a publisher that has copyright. So they effectively think that they can put it up on their own website, or in an institution or a repository, and so forth.

This sophistication is growing, but there is a lot of material that's being given away that actually belongs to publishers.

Mr. Matt Jeneroux: Yes, okay.

Moving to you, Ms. Parker, if we could, UBC opted out of Access Copyright in 2012?

Ms. Susan Parker: Correct.

Mr. Matt Jeneroux: That was pretty early on after the last...essentially when the new legislation came in place.

Were you there in 2012?

Ms. Susan Parker: No, I was not there. I've been there less than a year.

Mr. Matt Jeneroux: You had been there less than a year?

Ms. Susan Parker: I have been at UBC less than a year.

I don't know if...I was going to say if I could ask Allan Bell to return who was there, if you have specific....

Mr. Matt Jeneroux: Allan Bell was there. Perfect.

Can you walk me through what the decision was to move away from Access Copyright? I'm under the impression you're doing it now yourselves.

Mr. Allan Bell: We opted out in 2011, and we did that based on the analysis of the tariff. The tariff came in at \$45 and had removed the indemnity and had a lot of surveillance and other aspects to it that we objected to. We worked with Universities Canada, then AUCC, on that.

When AUCC had a model license, we looked at that again and we decided that that wasn't in the best interests of our institution as well. The main reasons for that were that we are doing much less photocopying, and a reprographic license was less valuable to us at that point in time.

That was a bold and a difficult move—don't get me wrong on that—but that was our analysis of the licenses that were available, that it would have been worse for us as we moved to more digital delivery of resources to continue to pay a reprographic license because we were doing much less photocopying. Essentially, we were buying a book, we were buying a reprographic license to copy it, and then we were buying the digital material on top of that. There was a lot of overlap and double-paying, which is what our analysis showed us.

Mr. Matt Jeneroux: The Chair is going to do his job and cut me off right away, but if I could just get one quick question to you and one quick answer back.

Do you have any relationship with Access Copyright directly or indirectly, right now?

Mr. Allan Bell: We do have a relationship with them in the context of course packs. When we need to get transactional license for course packs, it comes from Access Copyright.

Mr. Matt Jeneroux: The course pass is a vendor?

Mr. Allan Bell: Course packs, printed course packs which again are on the decline and are going to disappear.

The Chair: Good.

Mr. Jowhari, you have seven minutes.

Mr. Majid Jowhari (Richmond Hill, Lib.): Thank you, Mr. Chair.

Mr. Bell, you might want to come back, since you're going through all the numbers. Thank you to all panel members for making your presentations. Your contribution has definitely helped us in making sure that our study is comprehensive.

I want to go back to the comment that Ms. Parker, you made, and I think you echoed it back, Mr. Bell, around the fact that Universities Canada—and we've heard that from other testimony—said that they pay more now than before for access to copyright material.

You indicated that you're spending about \$17 million and out of that, about 80% is digital, 20% is print.

Can you give me a sense, since 2012, of what the change has been—I don't want to say it's been up or down—of your expenditure on your purchases and licensing?

Mr. Allan Bell: From 2012? We've got it back to 2002, and it shows it—

Mr. Majid Jowhari: You've gone from what to what?

Mr. Allan Bell: We track electronic expenditures and print expenditures because they're taxed differently, but we can tell you exactly what we've spent, one-time electronic, serially electronic, monographs and print serials. That is the total expenditures.

Mr. Majid Jowhari: Fair enough. Can you give me what your totals were in 2002 and what it is now in 2017 or 2018?

🕒 (1450)

Mr. Allan Bell: It was \$11,947,482 in fiscal year 2002/2003, and it was \$16,896,011—

Mr. Majid Jowhari: So you went from 12 to 17, so about \$5 million over 15 years?

Mr. Allan Bell: Correct.

Mr. Majid Jowhari: Okay. The digital you showed us, so it's reversed. That's 20% -80%—

Mr. Allan Bell: Right. We buy content to support the teaching and learning at UBC and increasingly it's become digital.

Mr. Majid Jowhari: Can you break it down by how much of it is from Canadian publishers versus international or non-Canadian publishers?

Mr. Allan Bell: This is what I've tried to do based on the questions in the past. We were going to try to use something in the mark record to be able to try to do that. I need a little bit more time on that analysis.

Mr. Majid Jowhari: Okay.

Mr. Allan Bell: This digital disruptions has also affected libraries because most of our processes were for when information was scarce. Now that information isn't scarce. In the digital age, all of our processes have changed too.

If I have a little bit more time with your analyst we can give them some data on that.

Mr. Majid Jowhari: Sure.

Can you also submit, or if you have it readily available, the academic journal versus the generalized acquisition? Do you have that breakdown?

Mr. Allan Bell: The academic journal versus...?

Mr. Majid Jowhari: Generalized acquisitions.

Mr. Allan Bell: That will be tougher, but we can give that a shot, too. Yes.

Mr. Majid Jowhari: Okay.

Can you share your experience, vis-à-vis, the open access and the development of open educational resources that you UBC does? Or Ms. Parker?

Mr. Allan Bell: We've been tracking that in the context of the bookstore as well, in their analysis they think that about \$500,000 has become open access. Therefore, it's not revenue for bookstore anymore.

The university tracks that on a site called Open UBC. They estimate that UBC students have saved \$4.72 million to six point something million dollars last year in the adoption of open learning materials. There's a lot more data on that site. That might be of interest to you as well.

Mr. Majid Jowhari: I have a first year student at university. He bought a book. He had a course pack and he's online using a lot of materials. When I started asking him, I said you know what, I'm doing a study on copyright. Have you been taught how to respect the copyright laws?

How do you go about ensuring that the students that they are not using the printed course pack or the electronic course pack when they are doing their homework etc., that they are not breaking copyright laws? Or for that matter the instructors?

Mr. Allan Bell: That's a tough question because piracy is generally not just a student problem or an educational problem. I think it's a broader societal problem with people who download *Game of Thrones* or use a proxy to try to get different content. I don't think it's an actual...

Mr. Majid Jowhari: Have you had cases where you've had to reprimand an instructor? What was the process?

Mr. Allan Bell: I do know that too.

Everything is funnelled through to the Scholarly Communication and Copyright Office. If there is something, I send it to the provost's office.

Mr. Majid Jowhari: How do you detect if an instructor or student is not in compliance?

Mr. Allan Bell: It's often people write us questions and we help to guide them to say that's not the right way to do it. This is the right way to do it.

The copyright librarians actually answer a lot of questions from faculty to try to guide them in the right way.

Mr. Majid Jowhari: There's really no oversight or a monitoring system. It's basically self-initiated either by the student or by the instructor.

Mr. Allan Bell: Arguably, Notice in Notice is an old site system. We do deal with that in the copyright office. As people get notices of notices we work with them on that.

We have been doing education and support. The part that we're looking at is the ramifications of York versus Access Copyright, right now. I think that's inevitable to try to start talking about how to proactively monitor more than we have in the past.

We've been trying to get people to use our e-reserve systems. Where we do all of this work for them so they don't have to worry about it at all. But you're right. I think it's one of those things where we will have to go into more monitoring. As the original AUCC guidelines outlined.

Mr. Majid Jowhari: Okay.

How much time do you I have?

The Chair: One minute.

Mr. Majid Jowhari: One minute. Great.

I'll go to Ms. Nayyer. I can't see from here.

Can you help me understand how law libraries collect material differently than other libraries in a digital format or in real content?

🕒 (1455)

Ms. Kim Nayyer: Again, it will vary quite a bit with the particular type of law library. I, myself, work in an academic law library. I actually forgot to mention that I also oversee the Copyright and Scholarly Communications Office. Many of our materials are licensed. For legal materials, it's quite interesting, because when we exited the Access Copyright agreement, what we did find in our review is that many of the resources that were used in the legal program, the law school, were not actually covered in the Access Copyright repertoire, so we were paying for paying licences when we weren't actually using those materials. Again, many of our resources we acquire in law libraries across the board are public domain as well. They might be very old cases or they might be legislation that we're licensed to use by a province or the federal government, for example in the Reproduction of Federal Law Order.

Generally when we acquire resources in print or digitally, our print resources are primarily Canadian books. There is actually very little course pack creation continue where I work. The course packs that have been used generally contain copies cases or excerpts of case law. We also have a number of electronic licences, and this is where things are getting challenging for us. Some of the licences that are presented to us actually deny us the ability to lend a few pages to another organization that might be missing that content from a print version of the same resources, for example. We do also have some technological protection measures now embedded in the digital resources themselves that make it a little bit more difficult for us to link to those.

Generally speaking, we use similar systems as UBC does at the University of Victoria in any case, which I can speak personally to, in that we use an e-reserve system. Our copyright librarian does a road show like you're doing. She goes to different faculties and gives educational sessions periodically, and also produces written materials and guidelines. At periods of time there will also be random audits of the learning management systems to ensure things that are posted there are matching what's in the e-reserve system and are meeting the Fair Dealing Guidelines that we have published.

Mr. Majid Jowhari: I think I'm out of time.

The Chair: Yes, way out of time.

Mr. Majid Jowhari: Okay, I'll come back. I have another question.

The Chair: You'll have more time to get back to her.

We're going to move to Mr. Lloyd.

You have seven minutes.

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

Thank you, everyone, for coming today, and your excellent presentations.

My first question will be for you, Ms. Middlemass.

Ms. Christine Middlemass: Could I invite our copyright expert to the table, Donald Taylor.

Mr. Dane Lloyd: Absolutely.

Ms. Christine Middlemass: Or I'd get myself into trouble.

The Chair: Just for the record, please state your name and your position, please.

Mr. Donald Taylor (Copyright Representative, British Columbia Library Association): I'm Donald Taylor. I am

the copyright representative for the BC Library Association.

Mr. Dane Lloyd: My question is for either Mr. Taylor or Ms. Middlemass.

What is your experience with TPMs at the level of your institution? How do you interact with TPMs? Can you give us some examples of TPMs in your field?

Mr. Donald Taylor: In libraries, the classic version of TPMs would be electronic books. Unlike journals, most electronic books come with some type of technological protection measure, which in some cases prevents any printing or downloading entirely, so you can't exercise any fair dealing rights whatsoever, you cannot send a chapter on interlibrary loan. You can't do anything with it, it's just completely locked down. And they go from that to limiting printing or downloading to 1% or 5%.

Mr. Dane Lloyd: So they allowed you to print 1% or 5%?

Mr. Donald Taylor: It would depend on who the provider of the content is.

Mr. Dane Lloyd: But it's not fixed? You can't print it all.

Mr. Donald Taylor: In some cases you can't print it all, you can't download it all, you can't do anything.

Mr. Dane Lloyd: Any other cases?

Mr. Donald Taylor: It certainly also will mean we have some databases of content that, again, has the same kind of restrictions. It's quite typical with standards organizations, they will just lock it down supertight.

⌚ (1500)

Mr. Dane Lloyd: One question that's been brought up consistently by generally the libraries is they would like the ability to override contracts if the reason they were overriding the contracts is covered under fair use. My question is: why can't it just be negotiated into the contracts in the first place, that fair use be respected? Why do you believe the government should give you the power to override a contract? The reason we have contracts, as you know, is to be in agreement, be stable, be a standard. If the government's introducing overriding a contract, that lowers market standards, it creates uncertainty, which is what the government does not want to create. Can you tell me maybe why can't you just do that at the beginning and make a deal on the contract? Why does it have to be a government power to override?

Mr. Donald Taylor: One part of it is that we believe, for example, fair dealing is in the Copyright Act because the government deemed it to be good public policy. To have a licence for information resources that obviated that fair dealing right completely, would be counter to good public policy.

Also, there is a bargaining imbalance between libraries and vendors. Many times a vendor will just say, "Take it or leave it". And the poor library is in a situation where you have your community users who desperately want that resource. So eventually you just say, "Fine, we'll take whatever it is you're giving us." Even though we might be spending millions of dollars per year on resources, the organization we are negotiating with has many times that, and they have all kinds of buyers. So there is certainly a market—

Mr. Dane Lloyd: So the contractors aren't willing to give you—

Mr. Donald Taylor: That's what I mean.

Certainly, the first step you try is to negotiate it.

Mr. Dane Lloyd: Yes.

Mr. Donald Taylor: You always ask, "Hey, could we please put in a clause that says nothing in this licence overrides the Canadian Copyright Act?"

Mr. Dane Lloyd: Thank you. I appreciate that insight.

My next question is for UBC and Madam Parker.

If you are moving to digital content.... And this seems to be the consensus across the board, that digital is the way you're moving in transactional licences. This may seem like a silly question, but why is the protection of education under fair use important, if you're moving to digital content and away from print? If we took education or clarified education, why is that a problem for you, if you're already moving away and into other fields?

Ms. Susan Parker: I don't know that it's necessarily a problem. I think that it's an insurance that something like what was just described doesn't become more normative in licensing.

Right now fair dealing helps us negotiate licences that allow us to do certain things with content. We put them into our course reserve systems that are walled off so that only students can use them for a time, and I think that's a really important tool. Otherwise, if you put the educational system of a university out into the marketplace with everyone else, the cost will also rise.

The market right now, I think, is tempered a bit. Even though we're spending a great deal on licensing material, it's nothing compared with what might happen should everybody be treated the same. I think that's a carve out that.... Maybe we like it because it's beneficial, but I think it also is a balancing act. I think the whole thing is a balancing act that publishers and libraries try to maintain.

Mr. Dane Lloyd: Yes, I think there is a consensus across the board that the inclusion of education has significantly reduced the costs for universities, which could be good public policy, depending on your perspective on this issue.

What would be your comment on Mr. Lorimer's very interesting suggestion that we redefine education as an individual right? Professors, if they want to access copyrighted material, that's fine. If students want to access copyrighted material under fair use, that's fine. But it would be limited. An institution couldn't mass-produce materials for educational purposes. What would be your comment on that?

Ms. Susan Parker: It would depend, for me at least, on how that would be managed. Many of our students aren't necessarily capable of paying any access rights that they might have to negotiate.

Mr. Dane Lloyd: Presumably they wouldn't have to pay, though, because they would be covered as an individual under fair right.

Ms. Susan Parker: Yes.

Mr. Dane Lloyd: It would be that as an institution, you couldn't mass-produce documents. What would be your comment on that?

Ms. Susan Parker: I think that would probably put a very different spin on what it is now.

In the United States more and more people are talking about this. Every time you touch it, there's a question about fair use. I think there are going to be more and more different opinions about what that is, and more and more conflict. Instead of an educational institution trying to manage it according to our understanding and in a consistent way, now you will have every actor individually in the institution trying to do so.

⊕ (1505)

Mr. Dane Lloyd: Interesting.

Am I good for time?

Thank you.

The Chair: Mr. Sheehan, you have seven minutes.

Mr. Terry Sheehan: Thank you very much, again, for the thought-provoking discussion.

I'm going to go back to Kim.

You had some very specific things that you pointed out for change, which is good, and we've recorded it. I'm trying to wrap my head around the difference between the law library that you're involved with, your association, and, let's say, the B.C. association of libraries. How are you different? What is it in the Copyright legislation that is specifically different from your point of view and a regular library?

Ms. Kim Nayer: Many of our libraries would be libraries as defined in the Copyright Act, but I think some of them would not be. For example, both large law firms and small law firms have libraries, and they're not able to take advantage of the library provisions in the act because I don't think they meet the definition of a not-for-profit organization in most cases.

Again, the range of membership is very broad, going from a very small law firm to a middle-sized law association or law society to a very large law firm to a university law library, and the interests can really vary among them. One thing we always bear in mind is that.... We have quite a positive and constructive relationship with our publishers—and again, some of our members are publishers—and many of our law faculty and lawyers across the country are authors who publish works with those publishers. We always have to bear in mind our own organization's interests, and it's quite a balance.

As far as the interests, your question was about how our libraries interact with copyright?

Mr. Terry Sheehan: Yes. It was about how you would see copyright differently than perhaps just a regular library or library association. You went down that path a bit there, so it was good.

We've heard different witnesses advocating for the elimination of crown copyright. Do you agree with this recommendation, and if so, why or why not?

Ms. Kim Nayer: I don't have a strong view that crown copyrights should be eliminated. I have not investigated it that much myself, but I have had conversations with other law librarians who are a lot more familiar with crown copyright than I am, and they assert that there is good reason for maintaining crown copyright over certain subjects. However, I do think crown copyright over primary law, and particularly over case law, is not helpful to furthering the work we can do in Canada.

One example is CanLII, which is a legal information provider. They are able to make case law and legislation available to all Canadians for free, but they do have to rely on agreements with courts. I can't supply them with all of my books and tell them to go ahead and digitize them and take out the proprietary content from the publisher, because that's not seen as permissible right now.

There's so much more than we can do, and I think it's really in the interest of the country as a whole to no longer include that part of crown copyright. It does enable us to keep that information public and open, as opposed to it being controlled by publishers that may have deep pockets and extensive international connections, and it gives us the ability to go further with digital content to create more resources and tools. We don't want to tie ourselves to the for-profit international industry when we could have the ability to create wonderful things locally in Canada with open access to the raw data that forms public law.

⌚ (1510)

Mr. Terry Sheehan: I had a question about CanLII, and you've talked about that. You have a positive opinion of it, then?

Ms. Kim Nayyer: As far as crown copyright itself?

Mr. Terry Sheehan: Just in general. That's a free online legal reporter, right?

Ms. Kim Nayyer: Yes. I have a positive opinion of CanLII.

Mr. Terry Sheehan: Okay.

I'm going to go to Rowland. Thank you for your testimony. I'm just trying to pull out information specifically about the copyright legislation as it is and how it has changed. A statutory review happens every five years, so we're listening, and I would like to hear from you—and there may be an opportunity for our other presenters to respond as well—on specifics. Do you have a top priority item to change within that copyright law, or do you feel it's okay as is?

Dr. Rowland Lorimer: No, we don't feel it's okay as is, and that's specifically to the point I made about educational institutions using the education fair dealing right, which is an individual right for readers, to basically make the material available again. They're republishing it inside course management systems. We think that goes way beyond what the act intended, and we think it is absolutely critical to change.

Mr. Terry Sheehan: —that specific piece. That's what we had heard....

Dr. Rowland Lorimer: Yes.

Mr. Terry Sheehan: Susan, the same question, what is your top priority if you will?

Ms. Susan Parker: The Supreme Court of Canada decisions in Bill C-11C-11, Copyright Modernization Act, improves things for the educational sector all over. Teachers are there to facilitate students' research and private study, it says. But the teacher's purpose in providing copies to students is to enable students to have material that they need. The Supreme Court characterizes teachers as sharing this symbiotic purpose with the student or the user who engages in private study. So, it's really not an individual act all the time. But on the basis of that, the Supreme Court has said that the fair dealing exception lets teachers make copies. I think, again, it's based on that symbiotic relationship in the act that happens within education that's different than an act that happens when an individual person interacts with materials. So I would say that my priority to change is probably to make sure that we don't change the law so that the educational institutions are beholden to a third party to pay certain fees automatically.

Mr. Terry Sheehan: Is that it? Somebody will probably ask....

The Chair: Thank you.

We're going to move to Mr. Generoux, for seven minutes.

Mr. Matt Jeneroux: Let's go back to the questions I was asking earlier. Mr. Bell was at the table—I don't know if he wants to return or not—but I'll pose them to you, Ms. Parker for the time being.

You mentioned that you're paying Access Copyright. The question was, directly or indirectly, how are you paying Access Copyright? You're saying that you are paying Access Copyright for course packs.

Ms. Susan Parker: We're paying Access Copyright when it's appropriate that the material that is requested for a course pack comes from material that we need to negotiate that payment for. So, in other words, if a faculty member is creating a course pack that includes a printed work or a chapter or more from a printed work that requires to get a copyright permission then that's when we would pay for Access Copyright. But there are materials, and others have mentioned it, that Access Copyright license doesn't cover. So, if the whole reason the course packs are disappearing is that we have licenses for digital material that allow us to include them in the reserve system so that we're not even creating as many course packs. So the whole thing becomes that less and less and fewer and fewer people are even asking for course packs or creating them. As Allan Bell mentioned earlier students really don't want them either.

Mr. Matt Jeneroux: So, there is only certain material that's available that Access Copyright has that you would have to pay Access Copyright for and that's what you're doing.

Ms. Susan Parker: Right. That's what I'm trying to say. Thank you.

Mr. Matt Jeneroux: We've heard from other universities that they don't pay Access Copyright at all. They have opted out of the license and that's essentially it.

⊕ (1515)

Ms. Susan Parker: Well, it depends on the copyright holder. We try when we can. We have the system, as Mr. Bell explained, a number of steps that we devote solely for the purpose of trying to find out who owns the copyright and we'll negotiate either a permission or a payment depending. So that may go directly to the copyright holder or it may go to Access Copyright. But we haven't stopped dealing with Access Copyright to my knowledge.

Mr. Matt Jeneroux: So, then you opted out in 2011, like Mr. Bell said but now you still have a relationship. So, what essentially did you opt out of then in 2011?

Mr. Allan Bell: The blanket license.

Mr. Matt Jeneroux: But you still have this relationship.

Mr. Allan Bell: What we end up doing is that we use our licenses in the course packs or in the reserve system. Anything we have to transaction license we have a number of options including the CCC in the United States or, in the case of course packs, it's convenient to do it in the context of Access Copyright.

Mr. Matt Jeneroux: Okay. Because you can only get it from Access Copyright, in particular.

Mr. Allan Bell: It's convenient to get that license from Access Copyright, yes.

Mr. Matt Jeneroux: I trying to get at, because you said the tariffs were essentially the reason why you opted out of it. So now you have the collective license. Are these more expensive? Do you kind of moan and groan when you have to go to Access Copyright to get these things? What is the decision on that?

Mr. Allan Bell: On how we actually do course packs, or are you talking more of the blanket license?

Mr. Matt Jeneroux: How you do course packs.... I guess your dealings with Access Copyright is what I'm trying to get to the bottom of.

Mr. Allan Bell: Essentially, it's what I just said. We have licenses that allow us to put in things in the context of course packs, and then we have a number of options, including fair dealing, to make the course packs cheaper for students. In the case where we do need a transactional license, we have an option for where we do get those licenses, and one of those options is still Access Copyright.

Is that clear.

Mr. Matt Jeneroux: It's getting a little more clear. I apologize. We're trying to figure this out as we go.

What would be the regularity of this? Is it once every five years you're kind of dealing with Access Copyright?

Mr. Allan Bell: I'm not sure about that. I would need to go to the bookstore data, and I can do that with your analyst to get some more there.

Mr. Matt Jeneroux: Okay. Sure.

I do want to move on quickly to a couple of other issues, if we could.

We're missing our good friend from the New Democratic Party, Brian Masse. He asks everybody about the Copyright Board and their dealings with the Copyright Board. I would be remiss if he didn't have the opportunity here in British Columbia to ask that question.

We'll go quickly across the table, maybe starting with you, Ms. Middlemass. What are your thoughts on the Copyright Board? I think we'll start with Mr. Lorimer first, then, if that's okay.

Ms. Christine Middlemass: Sure.

Dr. Rowland Lorimer: Our dealings have been very limited with the Copyright Board, but we believe it makes good judgements and those judgements should be respected.

Mr. Matt Jeneroux: Ms. Nayyer.

Ms. Kim Nayyer: I don't have any dealings to report with the Copyright Board. I have heard reports from others who have interacted or had proceedings before the Copyright Board that processes might take...long.... However, I personally don't have anything to say on behalf of CALL or the University of Victoria.

Mr. Matt Jeneroux: Excellent.

Mr. Taylor.

Mr. Donald Taylor: There are two areas of the Copyright Board that impact libraries. One is the speed of tariff decisions, which are quite slow at the Copyright Board. We would like to see those sped up. If they can't be sped up, then at least have the non-retroactive so that when the tariff is approved is when it becomes effective. The other issue would just be to expedite the non-locatable copyright owner regime. That's a pretty slow and cumbersome process.

Mr. Matt Jeneroux: Ms. Parker.

Ms. Susan Parker: It's similar for us too. We don't really have direct dealings that I am aware of with the Copyright Board, but I would echo what was just said down at the end of the table.

Mr. Matt Jeneroux: I have about 30 seconds.

Ms. Parker, I'm sorry to be picking on you so much with my questions today. You made one comment in your opening statement about extending the life plus 50 years. What would that cover right now? We only see life plus 70 years with sound recordings. What would be the scope of the life plus 70 in your field?

🕒 (1520)

Ms. Susan Parker: I'm sorry. I'm not following. What is the question?

Mr. Matt Jeneroux: What would the scope of a life plus 70 cover in yours? We only see life plus 70 right now in the music industry with sound recordings.

Ms. Susan Parker: My understanding is that's the length of the copyright—life plus 50.

Mr. Matt Jeneroux: Yes, but you said in your opening comments that you'd like to extend that.

Ms. Susan Parker: No. The opposite....

Mr. Matt Jeneroux: The opposite?

Ms. Susan Parker: The opposite. I would not.

Mr. Matt Jeneroux: Okay. I misunderstood you. Where would you like it to go, then?

Ms. Susan Parker: It's fine as it is. I wouldn't extend it. I don't have a recommendation for reducing it. I think it is what it is.

Mr. Matt Jeneroux: It's interesting that you put it in your opening comments, then.

Ms. Susan Parker: Well, what I'm saying in my opening comments is that I do not wish for it to extend to 70 years.

Mr. Matt Jeneroux: Okay. That's fair. Thank you.

The Chair: Mr. Jowhari, we're back to you. You have about seven minutes.

Mr. Majid Jowhari: Thank you, Mr. Chair.

I'm going to go across the panel. I'd like to get your feedback on what we've heard from content creators. What they have consistently told us is that their revenue keeps going down year after year, despite the fact that they continue creating the content. Without the content, we won't be in a position we are here. Also, some of the smaller publishers are saying that their revenue is going down.

Yet we see the universities are spending a large amount of money. In your case about \$5 million over, I think, 15 years that...has increased. We also heard from some of them that the reason is that large international distributors are charging a significant amount of money.

Can you give me your thoughts on how we can find that balance? Everyone also coming and saying that without creators of the content, we won't be here. We want to protect them, and yet we want to make sure there is access to good-quality information because we want to foster growth and innovation. Yet we hear from the authors on the open mike, and those...are heart-wrenching.

Give me your thoughts. How would you approach it if you were in our shoes?

Ms. Susan Parker: Because I deal in an academic institution and most of the content that we're talking about is academic in nature that's requested and required by our faculty and researchers—that's also what they feed into—there's a great bit of dynamism right now among academics who publish to try to remake their own system of scholarly communication to basically create in an open access fashion, ways that they can disseminate their research that don't require a pay wall. It's challenging because I don't care who you are, if you're publishing a journal in whatever format, there's a cost to it.

These discussions are not by any means complete, but there are a lot of different efforts that are afloat and I think that that's the most important thing, is to keep trying different things, for scholars and other creators to try different things, but for authors of literary works, how many can we purchase? I think that that's a really interesting question for us. We have to balance a budget where we try to prioritize, in our case, purchasing British Columbia authors, purchasing indigenous authors, helping them find a platform for their works. When we catalogue something that we've purchased, everyone around the world knows that it exists, and I think that those kinds of megaphones that libraries provide are helpful.

I think that there's a lot that creators have to do in order to figure out the best mechanism of distributing things.

Mr. Majid Jowhari: It's going back to the creators, again.

Ms. Susan Parker: I think that creators have some power. I know that that's true in the academy.

Mr. Majid Jowhari: Ms. Nayer.

Ms. Kim Nayer: I think it's fair for me to say that across sectors among law libraries budgets are decreasing and there's less funding available to purchase particularly packaged resources or digital resources or licenses or continuing

resources, which are very common in law—books that are supplemented and we pay annually for additional supplements to the same book.

What I can say is that there is also, in my personal experience, definitely an increase in monograph purchases and one outcome at University of Victoria, of our exit from Access Copyright is that we tend to proceed when we reproduce materials by either fair dealing or permissions, —and the permission may be associated with a fee or it may not be—or the library often orders extra copies, purchases extra copies of the books. Law books are very expensive and that is one reason that we tend not to require students to purchase them. However, just this past term for the first time ever, I required all my students to purchase a book on legal writing because it's an excellent book and I knew that I would want to assign more readings than fair dealing would allow for that book. Again, I worked out a really good arrangement with the publisher for a reasonable cost for the students.

I think generally speaking, I'm not sure if it's the case for other academic institutions, but our monograph budget is not going down, and we're trying to get it to go up. The problem is the pressures from the larger packages, academic packages that bring our commitments to those to a greater ratio or greater percentage of our acquisitions budget. A similar situation exists in law society libraries and legal firm libraries where many of the large subscription products are simply not purchased in print anymore because they're too expensive.

⊕ (1525)

Mr. Majid Jowhari: Great.

Mr. Lorimer.

Dr. Rowland Lorimer: Yes...

Mr. Majid Jowhari: I'm really interested to hear your perspective [*Inaudible*] publication thinks of open access, one in print and...

Dr. Rowland Lorimer: Yes, for sure.

The Canadian Association of Learned Journals has been working for over 10 years to try to get the libraries to understand that Canadian publishing, journal publishing and monograph publishing is fundamentally different than international publishing in science, technology, medicine, engineering. That we are primarily devoted to dissemination of material, a communication of knowledge amongst academics and so on.

The number of proposals for international committees of the libraries saying “why don't you work with us. We are responsible citizens, etc.” Many of the meetings I go to after all this has happened, we get into this complaint of how about the libraries are victims because they're so much smaller than these international organizations. It's true. But we are sitting there and we have the same relationship to libraries that they have to international publishers. Who gets killed in a situation where copyright doesn't work and if open access goes too far, it's Canadian publishers reporting on Canadian research and publishing Canadian authors.

Last year we put forward, July 17, 2017, we put forward a proposal called the “Journal Impact and Innovation Fund”. We took it to the libraries and we said “we would like to work with you and effectively we'd like to get double the amount of subsidies and purchases that we get and we will help you solve the problem of paying vast bills for retrieving Canadian research from international publishers.”

We got ...

Mr. Majid Jowhari: Could Ms. Middlemass answer the question?

Dr. Rowland Lorimer: We didn't get anywhere.

Thank you.

The Chair: Ms. Middlemass, if you have a very brief, brief response.

Ms. Christine Middlemass: Just in our original remarks, we have identified recent information from Statistics Canada about how Canadian publishers had reported a profit margin of 10.2% in 2016. I would also just like to point out that within the Lower Mainland with libraries that I've been familiar with, there have been recent programs to encourage self-publish local authors who often are really completely unfamiliar with how to even really sell their works. We've developed programs and are actually working with authors and some vendors and some publishers to help them get their works to market and into our libraries, public libraries. We are acting on the ground in some of these areas in a way to really help authors.

I don't know, Don, do you have ...

🕒 (1530)

The Chair: On that note, I want to thank our panel for coming in today, a lot of great information that we seem to be leaning over to these guys and asking them, is this good stuff and they're saying “yes, it's great stuff”.

I want to thank everybody for coming today. We're going to suspend until 4 o'clock where we will resume with our second panel. Thank you very much for coming and participating.

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🕒

🕒 (1605)

The Chair: Welcome back.

We continue our study of the five-year statutory review of copyright.

Again, for our new panel, you are our last panel of the day for us. We started off in Halifax on Monday, went to Montreal on Tuesday, Toronto on Wednesday, Winnipeg yesterday—although we didn't do anything, we just watched the hockey game. No, that's not true. Go Jets, go. Today, we are here with our second panel.

First of all, I want to thank our panellists for coming in today. We've learned a lot, and we continue to learn. It's like an onion. Every time we think we know something, we peel a layer, and something else pops up. A lot of the questions that you'll be asked today are meant to probe, to dig deep, and try to get a clearer understanding of copyright legislation.

As we start, you'll each have five to seven minutes to make your presentation. After that, we'll go into our questions.

From the Association of Book Publishers of British Columbia we have Kevin Williams, past president and publisher of Talonbooks; as individuals we have Jerry Thompson, author and journalist; Maya Medeiros, lawyer, Norton Rose Fulbright Canada; Carellin Brooks, author, university and college instructor.

Am I pronouncing your name right, Carellin?

🕒 (1610)

Ms. Carellin Brooks (Author, university and college instructor, As an Individual): No, it's actually Carellin.

The Chair: My apologies, Carellin. Thank you very much for correcting me.

We're going to start with Mr. Williams. You have up to seven minutes.

Mr. Kevin Williams (Past President and publisher, Talonbooks, Association of Books Publishers of British Columbia): I'd like to think that we're going to be your most vivacious panel of the day. That will help you out.

As mentioned, I am the proprietor and president and publisher of Talonbooks which is one of Canada's oldest independent literary presses. We celebrated our 50th anniversary of book publishing last year. We've always been independently owned.

This will be my 42nd year in the book trade. I spent 10 years as a retailer. I spent 21 years as the manager, executive and partner of a distribution/publisher firm called Raincoast Books which is one of Canada's largest distributors in town. In 2007, my wife and I bought Talonbooks from the previous owners. For the last 11 years I have been an independent literary publisher. Publishing works of drama, poetry, books in translation from Quebec literature, indigenous studies and some social issues.

I've also served for a few years on the Access Copyright board. I've been on the Association of Book Publishers of British Columbia board for 12 years. I have had a lot of opportunity to become familiar with the issues.

The issue from the point of view of independent Canadian publishers, from the point of view of Canadian authors is that our works are being systematically copied and used in educational settings. Both in the K-12 and the university level for commercial purposes. Because they are being used for course packs and for delivery of what would technically be textbook materials.

I know that people like to interpret the current Copyright Act and the fair use provision. As that means that they are free to copy our works and use them for course packs and in these large use situations. But fair use implies that there's no commercial damage suffered and that they are in fact not being used for commercial purposes. That is exactly what's going on.

To our point of view, the people who least can afford it in the whole chain of endeavour are the ones who are being asked to sacrifice. Basically being told all the university and teachers and everybody who works for the system, the infrastructure, the administration, we should all be paid. We should get benefits. We should have benefits.

The people who don't have benefits and whose salaries on average are about \$40,000 a year, are the ones who therefore should sacrifice their hard work. My contention is that in the long run you're crushing the spirit of Canadian publishers and creators. We're going to gradually create a situation where we no longer have the extremely high level of authors and independent publishing that Canada enjoys today. Whose works are known around the world and around the country for being amongst the very best.

People say, what are the numbers? The numbers are prior to the Copyright Act, our average.... The thing that's unique about Talonbooks, and that perhaps goes against maybe some of the comments you heard today, is that we're an independent literary press of whom 65% to 70% of our sales are academic or school course adoption. Our literature, our books that bring to light Canadian stories, by indigenous authors, by diverse authors, from authors from the margins of the community as well as by some of Canada's most prestigious poets are used throughout academia. Same with our drama. All the great plays that are used throughout the academic stuff are all used in academic settings. That's where most of our income comes from.

Our average sales a year are about \$400,000 a year. Our income from Access Copyright prior to the changes of the Copyright Act, averaged \$18,500 a year. Our income over the last two years has been \$3,700 a year and it's dropping. It's obviously a significant decline.

Of our sales, \$18,500 is about 4.6%. It's a substantial number of sales. But license sales are basically pure margin when they arrive. So, \$18,500 represents 9.25% of our gross margin, so 10% of our gross margin. We would have to generate another \$40,000 to \$45,000 in sales to replace that.

Our sales have been relatively stable. We've maintained between anywhere between 330,000 to 400,000 a year ever since say 2005. All through the difficult downturns and the advent of e-books and all sorts of other stuff. But basically

to try to increase sales against the downward pressures of markets is extremely difficult. The overall book market in North America is basically not shrinking or gaining, it's the same.

If anybody increases sales, you have to take market share from other people.

🕒 (1615)

I think we've been somewhat successful about taking market share from other people, but I can tell you here and now that there is absolutely no way to replace \$20,000 a year, or 10% of our gross margin on an ongoing basis, out on the open marketplace. That's not going to happen.

So what does this mean from the point of view of the authors? For every cent that we get, the author gets a cent. Our authors have also foregone the \$20,000 a year in income from Access Copyright.

For example, I was talking to a magazine writer today and she said to be sure to tell them how important the cheque from Access Copyright has been to her every year, as a magazine writer, being a crucial part of her magazine income, often enabling her to produce feature articles where there is a long period of pay before they are paid.

First of all I'd like to say that the collective licensing process, I think, is recognized as being the easiest one. I think the York case pointed out that the systematic copying of 600 million or 700 million copies a year is anything but fair use. In fact, probably the best way to deal with that is through a universal licence, and I definitely support that point of view.

I go to academic conferences all the time and the profs there all tell me that they use our stuff all the time. I know how much of our materials were being used before, and if anything, Talon is a stronger publisher today than it was over the last few years with the best-selling books like: best sellers; a key indigenous book that has won numerous prizes; we have a Griffin Poetry Prize here; we have a Governor General's award winner in drama here; and we have another Griffin Poetry Prize winner here by an indigenous author; we have Mercedes Eng, from Chinese-Canadian background who just won the Dorothy Livesay Poetry Prize; and we have this book by another indigenous author who won the Lambda award; and we have another indigenous author whose book was shortlisted for the B.C. Book award.

None of these books come without the production of intellectual capital on the part of the author, and the very long value-added chain that publishers go through. I know that all our works are being well used in greater quantities than they were used before. I have not received a single request for permission of use from the University of British Columbia since the change in the Copyright Act. I have not received a single permission request from the University of Victoria, and I could go through a litany of just about every university in the country. The only requests I have received to use our materials are from the people who used to request them before—the University of Guelph, and couple of others, four of five of them—the same ones that we got before the act changed. I've had nothing, zero, from the rest of them.

What have I been told? I've been told by professors at the Canadian Association of Theatre Research Conference that it's very common for them to sit down in a classroom and for the whole classroom to check out our e-book from the library and for everybody to use that for a course back. The fact is, our licence to the library never included the right for them to be doing that. There is no enforcement, there is no prevention of that.

I asked to present a picture today—and I was not given leave to—that we were tweeted on social media, of a high school class reading one of our most successful indigenous authors, Drew Hayden Taylor. His works are used all the time. The classroom is proudly reading a play called, *Only Drunks and Children Tell the Truth*, and you can see one person in the classroom holding a copy of the book that's been cut, and every other single person in that class is reading a photocopy.

They'll say that it's not up to them to enforce people who are copying whole works, but they are copying whole works in the library, so we need some kind of compensation to at least offset this wholesale adaptation of our materials and free use. The royalty on one book to an author is \$1.69, so basically we have 20 or 30 books in that classroom and the suggested royalty for K to 12 is \$2.41 per student. Basically they're suggesting that they pay, on an annual basis, the

royalty for one and a half books to make up for the millions of copies that they are copying.

That may not be an adequate fee, but it's better than paying nothing and saying, "Well, we should be able to copy all these materials for free because, well why don't you creators and publishers donate your works to the system?"

I met last year with the Ministry of Education—

The Chair: I'm sorry, I'm going to have to cut you off because we can move on. I'm sure we're going to have lots of questions for you.

We're going to go to Mr. Thompson, please. You have up to seven minutes.

Mr. Jerry Thompson (Author and Journalist, As an Individual): Thank you.

I am the author of a book about earthquakes published by HarperCollins. I have written for *Reader's Digest*, *Equinox*, *Vancouver Magazine*, *The Globe and Mail*. I've made documentaries for CBC, CTV, Global, Discovery, etc. I'm also a member of the Federation of BC Writers, the Writers Guild of Canada, and the Writers' Union of Canada. I didn't realize I would actually have to do that, eating into my time.

My presentation is called "Stealing from Canada's Writers". When York University published guidelines in 2017 stating that the revised Copyright Act allowed their faculty and staff to copy up to 10% of a book without compensation, including entire chapters, poems and articles, the Federal Court of Canada said, no. York's policy was struck down. Yet here we are, millions of stolen pages later, still fighting the fight, and still paying lawyers' fees. A cynic might think Canada's big universities and school boards are trying to bleed us writers dry.

The illegal copying of works created by Canadian writers is only the latest twist in the ongoing saga of digital piracy. Rent any DVD movie and you will see a short video warning against the theft of intellectual property. The writing, directing, acting, filming, and editing of a movie involves years of creative work. Illegal copying of the final product is a crime in both the United States and Canada. We've all seen the FBI logo and the caution so many times now that people tend to ignore it. But the tag line is clear: piracy is not a victimless crime.

Why are provincial governments and education administrators behaving like modern-day pirates? Why the attack on Canada's writers?

In British Columbia, the Ministry of Education recently joined Ontario and others in a lawsuit against Access Copyright, the agency that collects royalties due to Canadian writers and publishers. The issue is the copying of millions of pages of non-fiction books, novels, poetry, and magazine articles for educational purposes under the guise of "fair use" concept that was rejected, shot down, in the case against York. As most of you know, the Copyright Act was reviewed and partially modernized in 2012. Somehow the definition of "fair use" got muddled or lost in translation.

How much of a book, article or poem can be copied for free? Well, we obviously don't agree. The lack of clarity that came from the 2012 review fed the appetites of anti-copyright activists, who encouraged university and public school administrators to think that a "new" consensus had been reached. They argued that quick and easy public access to information was more important than intellectual property rights, that it was more important for cash-starved school systems to get something for free than it was to pay the workers who had created the books and the poems in the articles. The argument is and always was bogus. It was the same empty-minded, moral sludge used previously to justify the wholesale downloading and theft of music and movies. Digital technology made it too easy to steal. So what the heck, everybody else is doing it, school boards and universities might as well get in on the looting, too, eh?

"Information wants to be free" came the cry of the ethically challenged. Yes, sure, free until it's your information that someone else wants to steal. Creativity is work. Books are the product of work, just like baking bread or building cars. You don't expect to get bread for free. You certainly don't expect to get a car for free. We all pay for the work of a teacher or a professor, so why should anyone expect a writer to work for free? Which brings us back to the current lawsuit. There never was a new consensus about what constitutes fair use. The court ruled clearly against York's libertarian twaddle. Yet for reasons that defy commonsense, school administrators across the country chose to ignore

that decision. They pounced on the so-called lack of clarity in defining “fair use” and decided they could stop paying to copy. The Association of Canadian Publishers reports that more than 600 million pages of published works have been copied for free by the education sector since 2013. But hang on, the ruling against York has not been overturned.

🕒 (1620)

It is still the law of the land. Why would any clear-thinking school administrator or provincial government be pressing ahead with yet another lawsuit that uses faulty reasoning to get something for nothing at the expense of some of Canada's poorest-paid workers? It boggles the mind.

A few lucky writers in Canada also have jobs in universities or as school teachers and, therefore, some authors have a foot in both camps, but most don't. Most writers have no sinecure, no reliable monthly paycheque, no job security, and no benefits. A recent survey of writers nation-wide documented that 83% earn \$15,000 or less per year from writing. In other words, writers in Canada earn significantly below the national medium. If illegal copying of their work sounds like an unfair labour practice, you're right, it is.

I do realize and sympathize with the fact that years of budget cuts to education have caused schools and universities to look for some way to cut corners, but writers are not in a position to subsidize under-funded schools. You cannot cover a budget shortfall in public education by stealing from writers.

As a writer, my message to this committee is: please help us clarify fair use as quickly as possible. We can't afford to wait for a long, drawn out deliberation. Canadian writers and publishers have been losing \$30 million a year since 2013. That's a lot of unpaid rent, unbought groceries, daycare, prescription medicines, you name it. Writers are not rich people. This loss of income hurts. Stealing from writers is not fair use. Piracy is not a victimless crime.

🕒 (1625)

The Chair: Thank you very much.

We're going to move to Ms. Medeiros for seven minutes.

Ms. Maya Medeiros (Lawyer, Norton Rose Fulbright Canada, As an Individual): I'm an intellectual property lawyer and I also studied computer science and math before going to law school with a focus on artificial intelligence. I'm going to provide an overview of artificial intelligence technologies, and I'll highlight issues that impact copyright in relation to these innovations.

The term “artificial intelligence” is often applied when machines mimic cognitive functions that humans associate with the human mind, such as learning and problem solving. It's a field of computer science that includes something called “machine learning”. Machine learning can automate decision-making using programming rules that dynamically update. This involves training the system using large datasets. Supervised learning involves labelling these datasets, such as “cats” and “dogs” for images of cats and dogs. Unsupervised learning involves training data without those sets, and clusters are discovered automatically.

AI learns to think by reading, listening, and viewing data, which can include copyrighted works such as images, video, text, and other data. It's different than typical software because it automates decisions that are not normally in the realm of computers, and then the code adapts or changes over time in response to the learning of this data. This triggers new ethical and legal issues, which is what we look at as a law firm.

One of the issues is that AI systems need to meet certain ethical standards, and those ethical standards often embed rights and values. One issue that comes up from this point is that there is an increase in biased AI systems, and we're trying to discover why these systems are so biased. Consider a very simple example. In 2016, there was a event called Beauty.AI, which was an international beauty contest judged by an AI system. Six thousand people from more than 100 countries submitted photos to be judged, but the vast majority of the winners were white-skinned. Upon investigation, they realized that the AI system had been trained on hundreds of thousands of images that did not include non-white faces, so the training dataset was not sufficiently diverse.

Other examples relate to human resource tools, credit scoring, as well as policing and public safety. These biases can cause harm and inequality, and responsible AI should maximize benefits instead of these harms.

What does this have to do with copyright law? The AI training datasets can involve copyrighted works such as images, video, text, and data. The training process can involve reproductions of the training data, and these can be temporary reproductions to extract features of the data that can be discarded after the training process. An AI system can rely on the factual nature of the works to understand these patterns. The AI system algorithm is separate from the training data, but the training data may result in an improved or optimized algorithm. It is unclear whether the use of copyrighted works for training an AI system is considered copyright infringement if the copyright owner's permission is not obtained. This uncertainty exists even if the initial training is done for research purposes, an enumerated fair dealing ground, and then the trained system is eventually used for commercial purposes or made available under a licensing arrangement. This uncertainty can limit the data that is used by AI innovators to train the AI system. The quality of the dataset will impact the quality of the resulting trained algorithm. There's a common saying in computer science: garbage in, garbage out.

There are public or open datasets available, but they may not be made up of the best quality data. In fact, a number of examples show that the available open datasets under different licensing arrangement actually do result in biased algorithms due to gender inequality in the underlying datasets. An algorithm trained on this sub-optimal data may result in a generated bias.

An AI developer can develop their own large body of training data, but this may not always be feasible if a certain quality or type of data is required. For example, when training a face-recognition algorithm, it's desirable to have a diverse dataset with thousands of images representing different types of people. However, this may be very difficult for a company to generate unless they are a large social media company, for example, collecting a lot of images on a daily basis.

A recent decision also creates additional uncertainty when that machine-generated raw data is the copyrighted work because human skill and judgment was used to set parameters around creating that data. This creates additional uncertainties about the scope of copyright protections afforded to data and what can be used for training these systems. Further, even temporary reproduction of copyrighted works for technical purposes can be considered copyright infringement, which creates additional uncertainty.

Another issue relating to AI systems and copyrighted works is that they're now starting to generate new works that can be considered literary works, artistic works, and musical works.

🕒 (1630)

The role played by a human in the creation of these works will vary depending on the technology. An example is a system called Avathat actually composes classical music and has an album out. It has already released an album and also has other tracks available.

It's difficult under the current copyright law to clearly define whether these machine-generated works are protectable as copyright works but also shows that the nature of these technologies is changing and we need to consider how the copyright can address these future technologies and uses and resulting works. This uncertainty creates uncertainty around ownership and the commercialization of these works.

The Chair: Thank you very much.

We're going to move to Ms. Brooks. You have up to seven minutes.

Ms. Carellin Brooks: Thank you so much. My name is Carellin Brooks. I am a writer and a member of the Writers' Union of Canada. I was on the board of the Vancouver Public Library for eight years.

I new that wanted to be a writer from the time that I was a very small child. I wanted to contribute to Canadian

stories, I guess. I didn't quite think of it that way when I was six years old but I wanted to do that. When I became an instructor I also wanted to represent the work of my fellow writers in the classroom. So I take pride in both introducing students and readers to Canadian writing.

The 2012 Copyright Act, when it was under consultation, myself and other people came and talked to MPs about it and it seems like none of what we said at that time went into the actual act. Before the Copyright Act we had Access Copyright payments that came to us every year. As other speakers have said, those payments have dropped by more than half or more. I think one of the other speakers said that 83% of Canadian writers make under \$15,000 a year from their writing. I'm definitely in that category. I just cashed my most recent royalty cheque for my most recent book and it was \$48. This is the book. It was also translated into French.

I've worked at universities, including the University of British Columbia and at [inaudible] currently. Both of them have opted out of paying their Access Copyright fees since the modernization of the Copyright Act in 2012. This puts me in a difficult position as an instructor and as a writer because I know, from surveys that the Writers' Union runs nationally, that copyright is one of the top hot button issues among my writer peers. So I feel that if I am providing Canadian content in the classroom in the form of photocopies I am undercutting them and undermining them. I can't, in good conscience, hand out photocopies of works that I want my students to see. I have to do a weird little work around where I display it on the board but don't give everyone a copy.

here was one time when I knew that I was going to teach a course in advance so I contacted some writers than I knew and asked them individually for permission to use their work and they said "yes" and they did not charge me anything for this. This isn't really a viable solution for me. University instruction is, in some cases, a bit precarious itself. Sometimes, depending on where you are on the list, you don't know if you're going to be teaching until a few weeks or even a few days before your courses start. So, even if you had the will you just wouldn't have time to go and individually ask each author if you could use that person's work.

When students tell me that they are going to copy a chapter I have to put my fingers in my ears and make that little singing "la, la, la" noise because I don't want to hear it and I don't want to lecture them. I often feel like I am the only person in this setting who cares about this stuff. I talk to my peers, other instructors, they don't have any consciousness of why it would be an issue to photocopy large amounts of book chapters, articles, so forth and so on. There is no issue for them in terms of the ethics of that.

This Copyright Act of 2012 has had huge impacts and a huge negative impact on me and on the other writers I know. It also has a huge impact on our families. I, myself, am the sole breadwinner in my household. There was a time when my Access Copyright cheque came and I would use it to pay for my Christmas and Access Copyright doesn't do that anymore.

So, I would love to see some changes to the Copyright Act.

Thank you very much.

🕒 (1635)

The Chair: You're supporting a cast of characters today.

Thank you very much.

We're going to jump right into questions. We're going to start off with Mr. Sheehan. You have seven minutes.

Mr. Terry Sheehan: Thank you very much. Those were fantastic presentations. I really do appreciate it.

We're undertaking this study, and we're trying to figure out [Inaudible] and how we support our creative economy, our authors, and other people working in that field. I have friends and family working in that field as well. I know how much work is put into a book. With one young lady I know, from idea to finally getting it published and working with the illustrators, it was four years for her first book. She's travelling around B.C. right now. I can truly appreciate that.

The voices are important. We need to hear Canadian voices and indigenous voices as well, so I truly appreciate your presentation.

We also want to make sure we have a very strong...university and college students are benefiting. We have discovered from a number of different testimonies that there are some policies in place in some schools and some...not. It seems to be quite irregular.

I'm going to start with Jerry first. In the last five years, just try to give me sense of how much of your revenue has come from copyright. Do you have sort of a ballpark idea of the last five years?

Mr. Jerry Thompson: Unfortunately, I can't give you a number on that, because my wife runs the company.

Mr. Terry Sheehan: Okay. That's no problem.

Mr. Jerry Thompson: I've only collected royalties from this for a couple of years, because it took me a while to learn that Access Copyright even existed. The short answer is that I don't know the answer to that, but I think Ms. Brooks' answer is the same. I have received a few thousand dollars from them, but I don't really know the number.

I'm sort of focusing my message, instead of on the exact dollars, on the morality of it and the notion of why this system expects me, the guy at the bottom end of the food chain in publishing.... Aren't we asking professors and university administrators to contribute 10% of their income to the greater good of the public education system? When MPs give up part of their income to help finance the deficit in schools? When we do that, come back and ask me to donate free publishing.

🕒 (1640)

Mr. Terry Sheehan: You attribute a lot of this to the deficit in the school systems. I heard your testimony over and over again. You think there's a lack [*Inaudible*].

Mr. Jerry Thompson: Yes. Let's face it. We had a licensing system that was in place before that was working. People may have disagreed about percentages, but still it was working to some extent. Am I right? He's been at this a lot longer than I have and has far more background.

From a writer's perspective, I made documentaries for years for CBC and others, and whenever we wanted to buy somebody's archive footage, my wife and I would have to purchase a license to use that. It was always a license for a limited time, usually about seven years, and it gave us permission for the commercial use of that footage for those seven years. Then after that we didn't have the permission to use their stock footage, so therefore we also couldn't sell our finished film which contained their stock footage.

It's a situation I understood and agreed with. I knew those were the rules of the game. You buy a license, you pay, and why would it be different for writing a book?

Mr. Terry Sheehan: That was one of my questions. [*Inaudible*] about that.

Mr. Jerry Thompson: I don't think it should be.

Mr. Terry Sheehan: Jerry, and I'll stay with you for a bit, because we have time. We're going to be going to different people at different times.

We had some testimony earlier from the Fédération nationale des communications. You just brought up your journalistic background. They're the ones who advocate for news and media professionals, and they presented a number of recommendations to this committee hoping...to support the remuneration of Canadian journalists. These recommendations included the creation of a new category of protected work—a journalistic work—as well as the establishment of a collective rights society charged with defending the copyright of journalists and working to assure for fair compensation. Can you provide the committee with a sense of how the remuneration of Canadian journalist has

evolved in the last 10 years?

Mr. Jerry Thompson: I don't have details on that because I worked at CBC in-house or on contract for about 20 years, and then got mad and quit one day. After that I was an independent film maker for another 20 years. My income for the last 20 years has all been mixed up in trying to put together money to make independent documentaries, so there isn't a clear and simple answer to that in my particular case.

For example, as I was explaining earlier, if we went to pitch a film, to make a film, which is equivalent really to writing a book, except that it's more expensive, we would get 15% of the budget in a licence fee from a broadcaster. Say CBC says, "Yes, we'll green-light your project", you get 15% from the CBC, and you have to raise 85% from a whole slew of other things, including tax credits and all kinds of stuff like that. Finally, you're the last guy to get paid because you have to pay the subcontractors that you hire, the cameramen, the musicians who do the sound track for it. It's a really convoluted way to make a living, and you basically never do more than break even most of the time.

I had no idea until I dropped out of television and decided I wanted to do this for a living how much worse it is in publishing. I thought television was messed up.

Voices: Oh, oh.

Mr. Terry Sheehan: In general, would you agree with the recommendations that they were trying to put forward towards Canadian journalists?

Mr. Jerry Thompson: Absolutely, and it still goes back to the conceptive ethics of the thing. When people say it's too hard to keep track of all of these things, and thousands of things get written in magazine articles, things get published. If it's a hot topic an instructor might need that on short notice at the university and they would say, "Gee, I can't go through all the rigmarole of paper work to try to track down who I should be paying for this." That's bogus. You can track anything with computers now. You can use barcodes to figure out how many times something gets used, whether it's an article, a poem, a chapter. Every time it gets used, it should be paid for. Why should it be otherwise? None of the rest of the people in this room expect to work for free.

🕒 (1645)

Mr. Terry Sheehan: Thanks.

I'm good.

The Chair: Mr. Lloyd, you have seven minutes.

Mr. Dane Lloyd: Thank you, and thank you to all the panellists for being here. I really appreciate your testimony.

My first line of questioning is going to be put to Ms. Medeiros. It's very interesting having you here because we haven't had anyone talk about AI or new technologies besides just a general digital sphere. It does seem that one of the big problems that we've been hearing on this committee as we've travelled is that the digital age has changed everything in terms of e-books and resources available online, but we haven't had a corresponding rise in technology to protect copyright, so copyright is just being abused with this great technology that we have. It's being misused, but we don't have the technology to protect copyright.

I noted in your sort of background here that you're interested in blockchain technology. Can you maybe comment on the possibilities of blockchain technology being used to protect copyright.

Ms. Maya Medeiros: I can, without getting into specifics because I am a patent lawyer so you work on a bunch of different things, but blockchain essentially could be a great tool to track usage in a way that it's distributed, depending on how set the networks. Blockchain is just a fancy data structure that can be distributed across a series of different nodes, and those nodes can be controlled by different entities. It's a nice scalable solution, and there's some trust built into that inherently in this architecture because it's a chain effect essentially, using encryption technology where you

can't swap out things. It's supposed to be an authentic trail.

The issue is, it's kind of what Jerry was alluding to, if you're using it from an outright management perspective, it's a great way to store a bunch of data about how rights are being used. It can also include technology tools within the block. It doesn't just have to be data. You could actually put a smart contract into a block, which is essentially a piece of code that executes automatically, so if Jerry's book gets used, pay x out to Jerry.

The question I think from a technology standpoint is how we can upload that usage information automatically to the blockchain. Just think of it as this fancy data structure with a bunch of different blocks, so if I want to use Jerry's book, how can we facilitate the technology, that usage, so that it can update that information on the blockchain, and it can trigger that contract to pay Jerry automatically. It can eliminate some of the middle people, and might put more money into Jerry's pocket, hopefully, and the automated fashion of that can help eliminate a lot of other—

Mr. Dane Lloyd: It doesn't really seem that viable for print, unless you're scanning the bar code, as he said.

We've been hearing from the universities, and the K-12s, and these groups, that digital is what they're moving towards. Would you say that this block chain technology would be very helpful for the publishing industry, and for authors when it comes....

Ms. Maya Medeiros: If there's an electronic record of that book, and there's a way that it facilitates an automatic uploading of a usage...I access an electronic book, that should be automatically recordable in block chain technology.

Mr. Dane Lloyd: Yes.

One of the things...I'm going to rant a little bit, here.

The universities and the K-12s, they all have a copyright policy. They even have copyright officers. But when we ask consistently, how are you enforcing copyright, there's sort of a pause. We've been told consistently that copyright is not being enforced. They do education. If you want to ask them, they'll be like, this is our policy, 10%, just like York University. If you say, well how do you that know somebody's not doing 20% or 100%, it's sort of just a shrug, and it's like we can't monitor that.

I'm guessing that block chain seems like the technology that can also come up as digital age. It would be able to track whenever a university is distributing a copy of something. Then as an author, if you wanted legal recourse to sue a university that you believe is infringing on your copyright, that data would be available for you as evidence in a court case.

Ms. Maya Medeiros: Presumably, if the architecture is set up that it's an open system, that those read privileges exist...but that would be something you could definitely engineer.

Mr. Dane Lloyd: I'm not trying to be too biased against the universities and the K-12. Can you also comment on how this could be helpful for K-12s and university, by giving them the data to track usage.

Could it be helpful for the universities, from a cost-savings perspective, from a legal protection perspective?

Ms. Maya Medeiros: I think from a cost-savings perspective, and in legal protection, they have actual numbers on things. Even from a usage standpoint—oh, our students really like this book, and we can just track a little bit better. Let's figure out why. Maybe they're reading it out of the classroom. They can actually keep on book trends a little bit easier, using it from that end.

There are a lot of recommendation technologies. Once you have that data, you can use that, and what other books, and discoverability tools.... It could broaden the discoverability of books that maybe they might not be aware of otherwise, too.

It's just a better way to track data. I think more data could be used very efficiently, for different purposes.

🕒 (1650)

Mr. Dane Lloyd: Another interesting point that's been brought up, mostly by the libraries in their testimony, is that they desire for the right in the copyright legislation, to be able to circumvent technical protection measures. And also, to be able to override contracts in cases where they believe that the use is covered under fair use.

If they're already not monitoring for copyright infringement, what sort of consequences will we see if this committee were to recommend, and the government were to implement legislation allowing the circumvention of TPMs and contract overrides?

Ms. Maya Medeiros: I can't comment on that, specifically. I think that if you're allowing overrides of technology protection measures, and that measure was set there to protect intellectual property, I think that will have a greater impact.

I think we are seeing a rise in technology trying to protect intellectual property rights. I work with a company, the CEO is based in Vancouver, she's a fantastic woman, she used to be the legal officer of RIM, or Blackberry. They have a technology they're developing, that's helping track 3D rights online. Now with 3D printers, you can imagine all of this other interesting stuff that's coming up from there.

Even in Vancouver there's another company called Copypants that has this technology that can crawl the internet and try to figure out usage for images.

Mr. Dane Lloyd: I have about 30 seconds left.

How can the government, or we in this copyright review, put force behind these measures? How can we give them teeth, so that they'll actually help writers and publishers?

Ms. Maya Medeiros: I think to facilitate the proof, the standard and onus of proof, because it is very expensive to show that there has been an infringement. You often need a lawyer—

Mr. Dane Lloyd: That's the onus of the writer's [*Inaudible*] though, they have to show that they're being infringed upon.

Ms. Maya Medeiros: Yes.

Mr. Dane Lloyd: But they can't get the evidence because universities and K-12s aren't tracking it right now. So it's basically like trying to find a needle in a haystack.

Thank you.

The Chair: Fun stuff.

Ms. Maya Medeiros: I'm taking a very balanced approach, of course.

The Chair: I think you fit perfectly in with this panel right here. They're totally engaged in your conversation.

Mr. Jowhari, you have seven minutes.

Mr. Majid Jowhari: Thank you.

I want to start with Mr. Williams. You didn't get a chance to finish the last piece of your opening remarks. Since your remarks are being recorded, if you wish, you can use some of that time to finish what you were not allowed to, because you passed the seven minutes.

Mr. Kevin Williams: I was indicating that, our works are being copied, are being used freely digitally, that e-books and stuff are being used without any reference at all to the original licence in which it was sold to the library to form

course packs and that we are receiving no compensation for that at the university level. At the high school level and in the K to 12 level, the teachers have such an enormous burden to produce their own curricular materials that they're running around copying stuff left and right and they can't really be expected to be chasing down permissions and trying to deal with that.

That's why the licence through the access to copyright was such a fair thing. They paid one fee per student per year and basically could copy under the guidelines as much as they like. We know that maybe they don't follow those guidelines closely but at least in principle, they know that they can go out, generate their course materials and copy them.

I think that the best way to ensure that there's a fair process is for tariffs that are set down by the Canadian Copyright Board are respected and paid by the ministries of education and by the universities. The ministries of education and the universities have decided to try and exhaust the resources of authors and publishers and access copyright for a long legal struggle and to draw it out and bring as many actions as possible to basically exhaust our resources.

Not only is it not fair, and not only are our works being copied in a systematic and commercial way, but I also regard this as the highest form of bullying and basically they've taken tactics in a wider market place and brought them into the sphere of culture and education which I consider an inappropriate place.

Mr. Majid Jowhari: Great, thank you.

We have three authors here and you've all brought print books and you've also talked about the downward pressure of the digital era. How would you going forward would you consider still writing prints or writing books and publishing paper in actual paper or will you be moving to digital that hopefully with the eyeing and watching would be able to trace and get you compensated?

Can you comment on those?

Let's start with Ms. Brooks.

🕒 (1655)

Ms. Carellin Brooks: Thank you very much. I'm not a big fan of digital as most people who know me know. I've certainly tried it once because then I never had to do it again. I don't mind if my publisher Bookside is involved in e-books and I'm sure [*Inaudible*] but I like print. Christina de Castell who is the Acting Chief Librarian at Vancouver Public Libraries and she can tell you a great deal more than me about the trend.

While e-book use has really gone up in enormous amount, we're talking very small numbers compared to the numbers of print books that people read. People tend to like reading e-books for very specific things like for textbooks for example because textbooks are so expensive or for romance novels because people who read that genre, read a lot and so they need to go through a lot of printed material.

Again, I'm not going to say no but I would also always want the printed copy.

Mr. Majid Jowhari: Mr. Thompson.

Mr. Jerry Thompson: I have sort of accepted that digital is inevitable whether I like it or not. I can sort of as an environmentalist appreciate the fact that we don't cut as many trees down when we do things digitally. But digital also makes it easier to steal things. The good news is that digital may also make it easier to track the stealing which sounds good to me.

I have another little anecdote about this business. That is that the music industry, where this stealing started in such a wholesale way, eventually got around piracy by switching their focus to live concerts. You can take a cell phone and try to record a live concert but it's usually just junk. If you really appreciate the artist, the singer, the songwriter or the band, you're going to pay the money. You're going to go to the concert. There's no way to cheat on that. The artist actually

gets paid for it.

Unfortunately, there is no live performance equivalent of writing a 336-page book. Imagine how long it would take me to stand here and read this to you. Don't get me wrong, this book is a pot-boiler about earthquakes and it's a science mystery of how we didn't understand this problem and it's also the only Canadian version of this story in print so far that explains exactly what the biggest natural disaster in North America is going to be. In a way, I should be happy that people are stealing my book because it gets the word out to the public.

On the other hand, if my publisher loses money because of the stealing, there would be no incentive to do this again. In fact, if it becomes the trend, why would they ...

Mr. Majid Jowhari: So you'll continue print.

Mr. Jerry Thompson: Yes, I will continue with print.

Mr. Kevin Williams: If I publish a book, and I have a room of 50 people who want that book, generally speaking, 40 people will want the print book and 10 people will want the e-book.

I consider my job to be the intermediary between the author and the reader. Obviously, in addition to all the editorial production, marketing, accounting, and shipping work we do, we also try to make sure that people can access the material in the formats they want. We try to publish the books simultaneously in both print and e-book forms.

The e-book market has basically stopped growing and seems to have reached its natural limits. My own perception of it, having published books for the last 10 years and having seen how people consume them, is that, generally, you'll see this kind of breakdown. About 40 people want the print, and about 10 will want the e-book.

Mr. Majid Jowhari: Mr. Chair, how much time do I have?

The Chair: [*Inaudible*]

Mr. Majid Jowhari: Okay, I'll come back to you.

The Chair: Thank you.

Before I move to Mr. Lloyd, I have a question.

Mr. Dane Lloyd: Is this going to take my time?

The Chair: No, it's going to take my time. I'll siphon it off somebody else.

Ms. Medeiros, in the beginning of your presentation you had mentioned AI and learning, and that in order for it to learn, if I have this right, it would be able to go online and take images. Does that also apply to text?

🕒 (1700)

Ms. Maya Medeiros: Yes, it can learn from text or video images.

The Chair: For the purpose of this conversation, could it, then, access Mr. Thompson's book?

Ms. Maya Medeiros: It could access that book. Whether the trainee of the system or the owner of the system would do that without their permission probably depends on that person. But those who are being diligent and law abiding would not use that without his permission, because there's an uncertainty right now in the law.

The Chair: So it's programmable. It's not something it would do on its own, go out, like Google, with all the little robots—"Oh, this is a good part of a book, I'll take a chapter out of here" or "I'll take a page out of this book". I guess what I'm asking is this. Is this going to present even more of a challenge to writers?

Ms. Maya Medeiros: The technology can be set up to crawl, just along...what you mentioned. Some technologies might be doing that already, crawling the Internet, trying to find whatever it can out there and learn from it.

Whether a company is going to take those documents, make copies, bring them in-house, and train on their own systems depends on the lawful acts of that company. A lot of them will probably refrain from doing that, given the uncertainties in the law right now. But conceivably, from a technology perspective, that kind of system can be created.

The Chair: Is there any way to track if that's happening, currently?

Ms. Maya Medeiros: I don't know of a way to track if that's happening. But there could be systems that are hosting the book. If a system is offering that book, they might notice that a crawler has come in and accessed that book.

The Chair: My last question is this. Assuming that Mr. Thompson has a lock on his book, can the AI program circumvent that lock?

Ms. Maya Medeiros: It conceivably could, if the technology is set up to do that, and that would be a violation of the technology protection measure. But it conceivably could. There are technologies that can circumvent technology protection measures that exist out there. You could combine some technologies.

The Chair: Thank you.

Mr. Lloyd, it's all yours. You have three minutes left.

Mr. Dane Lloyd: The chair and I are kind of nerding out on this issue, so I appreciate your commentary, Ms. Medeiros.

One interesting thing that was brought up at a previous committee meeting with some indigenous witnesses was that oral tradition and oral knowledge isn't protected under copyright, because one of the tests is fixation. So it must be written.

I'm interested to know if audio books are protected under copyright.

Mr. Kevin Williams: Yes, they are.

Mr. Dane Lloyd: How are they, if they're not fixated?

Mr. Kevin Williams: Because it's a performance of the work, and the recording of the performance becomes a fixation of the work.

Mr. Dane Lloyd: Interesting.

Thank you for that. I didn't know. That's good for my knowledge.

This one will be more for Ms. Medeiros again.

I guess I already know the answer to this, but I want to get it on the record. Can artificial intelligence be programmed to ethically deal with copyright?

Ms. Maya Medeiros: It can be programmed to ethically deal with copyright in the event that there is, let's say, an embedded tag thing—do I have permission to copy this work, or not? It could listen to that tag. It's a computer code that would run that. So it could be set up that way.

Mr. Dane Lloyd: Thank you for that.

My next question is this. Can AI become a tool for monitoring copyright infringement and copyright enforcement?

Ms. Maya Medeiros: It could in the sense that it can detect patterns and similarities between texts, so it could be used to detect copying, and that would help in the enforcement.

Mr. Dane Lloyd: For example, could an AI system moving through the Internet notice that an institution or an individual was possibly pirating millions of copies or thousands of copies of pages, and basically flag that to a group like Access Copyright or to the government, for example?

Ms. Maya Medeiros: If it exists in electronic form, it could find that. It might not even need to be AI, it could just be a more simple process. Often in image recognition, there's usually an AI component, so if it was crawling around looking for a similar image and I posted it initially, technology exists that could find other versions or copies of that image out there.

Mr. Dane Lloyd: Do you think that part of the government's role is that it would be necessary for us to include a recommendation or legislation to enforce giants such as Google and Facebook to rapidly take down copyright-infringed work on their search engines or is that already happening?

🕒 (1705)

Ms. Maya Medeiros: I can't...it's difficult for me to say because I'm not sure exactly how that would be implemented all the time and given that there's a jurisdiction issue...Before the Supreme Court already they tried to issue an injunction against a technology company. That was a Canadian injunction, and then the U.S. courts had said no, that doesn't apply, so I think there are fundamental jurisdiction issues that need to be addressed whether it's copyright or whatever other lawful act that's at issue. This was actually relating to a copyright infringement of technology more, so it is hard to enforce from a jurisdiction standpoint.

Mr. Dane Lloyd: Okay.

Ms. Maya Medeiros: Even if you changed that law, query whether companies that don't reside in this country would have to follow that.

Mr. Dane Lloyd: Print is still such a dominant thing as we've heard from many witnesses, and it seems to me that if I went to my local public library, which I do enjoy doing, if I were to take a book off the shelf, I can take it home and with the advent of home copiers and home scanners, which are quite affordable, nobody's going to stop me from scanning things. It's a little bit unenforceable.

Who do you think the onus should be on to track that sort of thing, or is it just basically an individual's responsibility to themselves?

Ms. Maya Medeiros: It'll be very difficult to track that kind of behaviour and have to know what's happening in somebody's home. It would be quite difficult. But if that copy were uploaded onto the Internet somewhere, even if it was in image format, not textual, there are OCRs—character recognition technologies—that exist that could locate that, so there could be tools that could try to monitor it to help facilitate that process, but it would be very difficult to figure out what's happening in people's private homes.

Mr. Dane Lloyd: I agree, it's basically impossible to enforce.

Mr. Williams, from a publisher's perspective, what's your commentary? Are you engaging in any new technology, or how do you try to protect copyright with your business?

Mr. Kevin Williams: We do have some digital rights protection on our PDFs and predominantly we rely on the vendors of ebooks to use the digital rights protection because basically we sell our books through ebook vendors.

Mr. Dane Lloyd: Who are these vendors?

Mr. Kevin Williams: Everyone from Amazon to Apple iTunes. There are probably about 30 different ones, and we

use a commercial distributor that basically sends the file to all of them. In some ways, the copyright protection is on them.

On ebooks that we sell off our own site, we have a limited digital protection, and if we send out desk copies to academics for review, we ask them not to copy.

Basically, if an individual checks a book out of the library and decides to copy it for private use, that's fine, right?

Mr. Dane Lloyd: So there's no problem with that.

Mr. Kevin Williams: There's no problem with that, they just can't sell that copy or use it for commercial purposes.

Mr. Dane Lloyd: Your problem is the systematic abuse.

Mr. Kevin Williams: That's right.

And I wanted to make one comment, because I don't think someone's going to ask me this question, and it's a bit of a thorny issue. Hopefully, I can do it in a minute.

Basically, at Access Copyright they tried to refine the payment of authors by improving the tracking of which works were being copied, because obviously that's an issue, trying to distribute the revenues fairly. They asked basically....The schools tracked it for awhile, but they asked within the university systems for them to provide a database of works that were being copied. There was a push-back on the intellectual freedom side of it from the professors who argue that now they're giving us knowledge of who's using what, and we can use that knowledge for nefarious purposes.

Whereas I would argue that the publishers and authors are unlikely to ever come anywhere close to using that knowledge for nefarious purposes, and the only people who are likely to use that are the university administrators who already have that knowledge through their blackboard and course management systems.

Mr. Dane Lloyd: Thank you. Mr Chair, I'm going to take this extra time.

What sort of nefarious purposes could you possibly use that information for?

Mr. Kevin Williams: Well, you could try to politically discriminate against somebody who puts in practice politics to your like, by the fact that they were adopting certain books and so forth and so on.

That seems to me like almost beyond reasonable to think that authors or publishers whose lives depend on intellectual freedom are going to try and infringe on university professors' rights. The only people who I think might be interested in trying to solve problems of political correctness in that sphere are in their own sphere in the university faculty or otherwise. Those people already have that knowledge. I think there's no reason not to keep track what's being copied and pay people fairly accordingly.

The Chair: Now your seven minutes are up.

Mr. Dane Lloyd: There you go.

Thank you.

The Chair: She did say seven minutes.

We're going to move to Mr. Sheehan.

You have seven minutes.

Mr. Terry Sheehan: Sure.

Thank you very much.

I'm just going to start very quickly with Ms. Carellin Brooks.

In your presentation you had mentioned that five years ago you had made a presentation or made contributions to this particular review.

Is that correct?

🕒 (1710)

Ms. Carellin Brooks: We went individually and spoke to our MPs.

Mr. Terry Sheehan: Five years ago.

Ms. Carellin Brooks: Yes.

When....

Mr. Terry Sheehan: What did you say then? What were you noticing?

Ms. Carellin Brooks: We said this was crap. I mean, sorry. This is going to torment writers. Which it did. Our salaries are going to plummet. Which they did. Universities are going to take advantage of this. Which they did.

It was a prophecy that nobody wanted to hear at the time. No, no, no, it's all going to work out. It's all going to be good. We have to modernize the act. We said this was not the way to do it. They said, "ah, don't worry about it". We worried. It turns out we worried correctly in terms of our incomes as writers.

Mr. Terry Sheehan: What were your recommendations at the time? Do you recall?

Ms. Carellin Brooks: Don't do this.

Did we present a credible alternative? Hey, we liked what was going on before. We liked the Access Copyright structure in the sense that yes, it is a pain to count individual pages that people photocopy for individual courses. It's difficult to track.

As I think another speaker said, the university's have copyright offices. If you go to the copyright office and say I want to use this work, they say okay, you deal with the copyright. What are you there for? You know.

It was a system that wasn't perfect, but it worked reasonably well some of the time. It's a lot better than what we have now.

Mr. Terry Sheehan: Okay.

Thank you very much for that.

To Kevin, your Association of Books Publishers of British Columbia.

Have they seen a decline—I asked Jerry the same question, and he suggested to ask you—in revenue from copyright in the last five years? Do you have some quantitative numbers that you could provide us?

Mr. Kevin Williams: Yes. I mentioned them earlier but I have them here before me. The best example is of course to give you my own numbers. I carefully looked these up for you before I came.

Prior to the Copyright Act we average close to \$20,000 a year in copyright income. That would be \$18,500. In the last couple of years it's been below \$3,800 and has been dropping. I think most of the other publishers have experienced a

similar decline.

That's a decline of you know, about 400% for us. I also heard it argued that it's not a significant part of an income. I pointed out that it's almost 10% of our gross margins. That's really a significant part of our income.

I heard someone mention earlier today that according to Statistics Canada, the average profitability of publishers in Canada in 2016 was 10.1%. I can tell you that the profitability of independent publishers and literary publishers and not the multinationals, because are skewing in the multinationals there, is between 4% and 5%.

To make a profit margin of 4% and 5%, means that if there's the slightest fluctuation in your revenue where you stand in a position to lose money. If you lose money, the independent proprietor basically has to write a cheque. I've been known to write some cheques in my time.

Mr. Terry Sheehan: We've heard from other witnesses, publishers and authors that there are also other challenges that they are facing at the same time. Copyright is one of them. Mixed in with some others make it a very difficult and challenging particularly times.

Mr. Kevin Williams: I can point out a few of them.

For example, as I think I indicated earlier, a lot of our sales are in the university market, so the bookstores and stuff have made a real effort to get students to sell back the textbooks. There's a real increase in the amount of used textbooks that are being used in the university market and there's also a lot of use of whole digital books in the university market, that obviously has nothing to do with copyright and is not particularly legal, and is taking advantage of the legal licences, but nobody seems to care. Basically, we have the same amount of course adoptions, we sell the same amount of books into the university system, but our returns rate has gone from about an average of 18% to an average returns rate now of 40%. Books are returnable. It's a great business. We can sell the books to people, and then they can send them back to us and get full credit. We get to have the expenses twice: once for processing them in and once for processing them out. A significant change in the returns rate, a doubling of the returns rate, is practically enough to bankrupt the publishing industry so it's been suggested to us that we should get more government funding to replace the legitimate funding that we get from sales and from rights income. I would argue that's not a good idea, because, one, it's not fair, two, it's not a representation of reality, and, three, it doesn't look after the authors in the equation. The 50¢ of every dollar that we get in rights sales, the authors get 50¢, and for all those books that aren't sold in the universities or come back in returns, the authors don't get any royalties. It's not really an answer on the creator's side to try and say, "Well, don't worry about us of using the copyright back because we'll slip some money to you through the back door". I don't really think that's an answer to our problem.

🕒 (1715)

Mr. Terry Sheehan: I just have a little bit of time left. You went through many of the books that you have published, including some from indigenous authors. I'm from Sault Ste. Marie, and there's a large indigenous population around there. The feedback from indigenous communities has been that copyright has not worked for them, for a variety of reasons. Dane picked up on one of them, the oral tradition, whether it's talking about their stories or sometimes their sacred stories. We heard some good testimony in Winnipeg. One woman had said that you have to go and ask permission of the indigenous community because the ownership in the indigenous community sometimes it is collective, sometimes it would be a clan, or it could be an individual. What has been your experience working with your indigenous authors and non-indigenous authors writing about indigenous stories?

Mr. Kevin Williams: Thank you for the question. I really appreciate the chance to address this particular issue.

First of all, in our publishing program we have made a big shift from having a lot of people who weren't indigenous people writing about indigenous subject matter to try and make more of an effort to engage indigenous people to write about indigenous subject matter. Then there's the complicated issue of people bring forth the traditional stories, the traditional oral stories from their particular nation. How is that handled? Publishers in Canada are developing a lot of practices around making sure that either the author or the publisher have gone back and talked to the stakeholders involved in those stories, whether it be the band council or the elders or the particular group of people or the particular

family, because sometimes within the indigenous tribe the stories will be dear to particular families and clans. We go through a lot of trouble now to make sure that trail is traced and those permissions are in place, and that quite possibly the royalties are being paid either to the band or the indigenous elders where the story is being derived from. We will no longer take a story from an indigenous author that is traditional material unless we've made sure they've gone through some process to basically validate why they're able to present that ownership.

Our second rein of attack right now is putting as much effort and study as we can as to how we can get more people at the editorial level, whether it be from an indigenous background or other diverse backgrounds, into the Canadian publishing industry. One good way to make sure indigenous material is treated more respectfully is by having indigenous editors.

The Chair: Thank you very much.

Mr. Lloyd, you have five minutes.

Mr. Dane Lloyd: Thank you so much, Mr. Chair.

This next question is going to be on the experiences that you alluded to in your testimony, Ms. Brooks.

As somebody who is a writer, and also works within the education system, you see both perspectives, and your frustrations with that. Do you think what people are doing with copyright is just innocence, they're aren't really thinking about it, it's not even in the consciousness of people right now?

Ms. Carellin Brooks: I think that universities, for a variety of reasons, are trying to become more student-centred. We see this with course evaluations. Student course evaluations really have an impact on instructors now, especially instructors who are in more precarious employment. However, one thing that seems easy is to have materials that don't cost students anything. Students complain about the high cost of their education

Mr. Dane Lloyd: They blame the professor.

Ms. Carellin Brooks: Well, not exactly, but if they have to go and buy books that are hundreds of dollars, there is a bit of push-back. I think instructors are very aware of that and aware of that impacting the students' satisfaction with the course.

Mr. Dane Lloyd: Then they won't sign up for the class, and then, with precarious employment, you're risking yourself, basically.

Ms. Carellin Brooks: Yes. The University of British Columbia, at one point, put out a press release that said that they were decreasing student costs by making course packs free. When the Writers' Union of Canada saw this, they wrote them a blistering letter and said that they were doing this on the backs of writers. The response of the university was not to say, "Gee, maybe we should reconsider our stance on this"; it was to go to the chair of the creative writing department at UBC and say, "How dare your writers take us to task!"

🕒 (1720)

Mr. Dane Lloyd: We had an author in Halifax who was quite unequivocal about this culture of "free". He said that free culture is not sustainable, and free culture will lead to the end of artists and authors in Canada. Can you comment on that?

Ms. Carellin Brooks: I don't know how many writers have told you that they've stopped doing various forms of writing. I used to do freelance short pieces quite a bit. I freelanced for different newspapers and magazines across Canada. At one point I went to the B.C. Magazine Awards. I can't tell you how long ago this was. I'm going to say...around 2000. The guy who was given the Lifetime Achievement Award said, "The rate has been a dollar a word for feature articles in national magazines for too long now. It was a dollar a word when I started 20 years ago, and it's still a dollar a word. That has to change, because people can't afford to write feature"—

Mr. Dane Lloyd: I'm sorry. What is a dollar award?

Ms. Carellin Brooks: If you wrote a feature article for a national magazine, the rate you were paid was a dollar a word.

Mr. Dane Lloyd: Oh...a dollar per individual word. I thought you said “dollar award”.

Ms. Carellin Brooks: A few years later I was asked to do a cover story for a Vancouver magazine, and I did it, and the editor said to me, “You've done such a great job. You've been so great to work with. I'm going to give you my top rate—85¢ a word.” It's just gone down since then, so it doesn't really pay. As other panellists have mentioned, at a certain point it's not worth it for writers. When you're trying to broaden the number of stories and voices in Canadian culture, which has so many economic effects that are good, you end up narrowing to people who can afford to subsidize that themselves.

Mr. Dane Lloyd: When I walk into the local Chapters, there's a very small Canada section. I know Chapters tries its best to have Canadian authors up there—or our local authors. I don't know if there's more, but it seems to me there's a real shortage of authentic Canadian authors who are publishing. Also, it seems you go to this bookstore and it's just all American and European works. With this current status quo, is there a real threat to indigenous—and not just indigenous in the aboriginal sense but indigenous to Canada—Canadian writing?

Ms. Carellin Brooks: I think it's really not common knowledge. A few years ago I served on a B.C. awards jury, and I was shocked. I think our awards were either \$6,000 or \$12,000. It was \$6,000 for a less established writer and \$12,000 for a more established writer. I was shocked at the number of big names in Canadian writing—people whose names you would recognize if I said them—who were still applying for these \$12,000 awards. People are on very narrow margins, and every penny really does count, along with the publishers as well—as Mr. Williams has said.

Mr. Dane Lloyd: Thank you.

The Chair: Thank you very much.

Mr. Jowhari, you have the final five....

Mr. Majid Jowhari: Thank you, Mr. Chair.

I'm going to address my five minutes to Maya.

You talked about AI and about developing the logic and using training data sets to make sure the logic is going to do what it's intended to do. This training data is going to come from various sources. If it's in a digital format, whether it's content that's been created by an author or it's images, are these now subject or not subject to the Copyright Act? That's the first question.

Ms. Maya Medeiros: If the data is a book, like a digital copy of the book, it would be subject to copyright. It's just the digital format of a literary work.

Mr. Majid Jowhari: Even if it's just used for making sure that logic works. Once the logic is completed and it's launched, does it continue reaching out to various sources to [*Inaudible*] and learn more. There's an initial data set that is used and then there's an ongoing data set. Right now, both of those data sets based on the Copyright Act are subject to copyright fees.

🕒 (1725)

Ms. Maya Medeiros: There is uncertainty whether the underlying work itself if it is a digital copy of a book, that would be a literary work regardless of what stage. Think of natural language processing for example, you want to teach a system how to understand a sentence and context and meaning and sentence. You would probably want to give it a lot of different books and a lot of different text to figure that out. That would all be part of the training process. When

you've got something in real time, it could figure out, not in the training stage, it could figure out what the context of that sentence is and the meaning of that sentence.

In the training process, it's actually unclear under the current act whether that activity would be an infringement of copyright or not. There's uncertainty there that prohibits often using works that a company might want to use for that training process. They're not releasing those works, a substitute for the digital text but they're using it to learn how those sentences are structured in that process.

Mr. Majid Jowhari: That's exactly that I was trying to make is that when it comes to machine learning, you need a large set of data. So whereas when we are using copyright, we're going and saying 10% let me copy this one story or this poem of a list of all the poems, within the machine learning, you have to provide almost a whole book where the book of the poems or the book of the pictures and all of those. Then there's no so-called 10% rule applies.

How do we deal with that because it's going to come and it's going to be around the corner?

Ms. Maya Medeiros: I'm not sure how you would deal with that. I think that there should be some clarity in terms of whether that's permitted or not and to the current framework. I think the 10% rule I think is a little bit different in this context because you're not giving 10% of the book to a student or to another person and saying "don't buy the book". It's not a substitute for the original intent of that work. Ideally you want more than just 10 poems. You want every poem in the world if possible.

[*Inaudible*] diversity because you're looking at translations and what have you. If you're only looking at one poem or a set of poems, then this where it's good. But all of those poems are created by one type of person, then that notion of what's good or with a happy sentiment is flat or biased because you don't have access to a larger training [*Inaudible*]

Mr. Majid Jowhari: Let's go to blotching. We know based on the encryption and the distributed model, it's gaining recognition in being able to help us deal with issues such as cyber security or even infringement in information.

How would then given the fact that we need this large base of information or input and blotching would be able to help us?

Ms. Maya Medeiros: I think blotching would be able to help us in a sense that it can automate decision-making using a smart contract for distributing payments for example or tracking usage. It's just a way to upload that data. It could use a huge data set. Then you could run artificial intelligence systems over that data set as another training set if you wanted. It's another data structure, understanding usage or patterns and that kind of thing from it. I think blotching is helpful particularly with smart contracts embedded in it for distributing payments or tracking usage in a way that it doesn't enable one centralized source to handle all of that data.

Mr. Majid Jowhari: Okay, great.

The Chair: That brings us to a close for the second panel. I really appreciate all your input. We've been hearing these stories all across the country. It's a lot of work that we have to put together. Trying to marry the new technology with the old technology and making sure that culture can thrive.

We are going to adjourn for the day. We will be back at 7 o'clock for the open mike. I encourage you all if you want to come back and spend two minutes and get to the heart of the matter and say what you have to say, I encourage you all to come back.

Thank you very much.

Ms. Maya Medeiros: I have one question about the process. I understand that written submissions are going to be accepted. Is there a timeline around when they should be submitted?

The Chair: Currently, if you go to INDU's homepage, you can find the report, and you will see a button for briefs. You can submit a brief or correspondence. There is no time table because this is a longer study.

Ms. Maya Medeiros: Okay.

The Chair: We haven't put a time limit on it as of yet; is that correct?

A voice: If you give it to us before the summer, we'd love it because then we can read it over the summer.

The Chair: They have nothing to do over the summertime.

Thank you very much.

The meeting is adjourned.