



Standing Committee on Industry, Science and Technology

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

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⌚ (1540)

[English]

The Chair (Mr. Dan Ruimy (Pitt Meadows—Maple Ridge, Lib.)): Welcome to meeting no. 116 of the Standing Committee on Industry, Science and Technology. We are continuing our review of the Copyright Act.

Today, with us, we have, from the Council of Ministers of Education, Canada, the Hon. Zach Churchill, Minister, Nova Scotia Department of Education and Early Childhood Development, as well as Wanda Noel, External Legal Counsel, Copyright Consortium.

We're going to get right into it. Sir, you have up to seven minutes. Then we'll proceed with our questions. You have the floor.

Hon. Zach Churchill (Minister, Nova Scotia Department of Education and Early Childhood Development, Council of Ministers of Education, Canada): Thank you very much, Mr. Chair, committee members. Thank you so much for your time today. I do want to recognize Wanda Noel, who has been the counsel for CMEC on the copyright issue for quite some time. I would like to recognize Andrea John and Chris George, in the audience, who are here in a supportive capacity. Selfishly, I would like to inform the committee that my wife and daughter are also in attendance, Katie and Cecilia Churchill. That's who the baby is.

We very much appreciate the committee's time on what is a very important issue in this country. There has been

substantial conversation, since the 90s, around copyright. I think it's important to recognize that there's two key public policy objectives that we're trying to accomplish.

One, to ensure that the rights of authors, of creators are protected, that they're fairly compensated for their work, and that that industry can flourish in this country, but also to ensure that our public education system is able to access the widest range of materials as possible to ensure the long-term success and well-being of our students.

Fundamental to this conversation are two key aspects around copyright. One is fair dealing, and our understanding of fair dealing. That's a difficult question to understand, what's fair in terms of trying to juggle these two public policy priorities. Luckily, I think, for all of us in the room, the courts have done a lot of work in that regard to us and have worked very hard over the course of 10 to 15 years to establish an understanding of fair dealing in the country, which we, as ministers of education, believe our policies fit well within.

The second question is around the idea of a mandatory tariff to be imposed on the education system. This is something that we do oppose. We support the courts' definition of fair dealing. We do oppose a mandatory tariff on education materials.

I think it's important to recognize why that is. We believe that with the scarce public resources that we do have in this country, in our provincial jurisdictions, that we need to ensure that every single dollar that we spend is in the classroom and geared toward student success, achievement, and well-being. A mandatory tariff would take tens of millions of dollars out of our education system, out of the classrooms of potential future writers, creators in this country.

I think it's important to note that this is not an education sector versus the creative industry issue, although there is some disagreement. We have a vested interest in the success of a vibrant, robust, healthy, successful, innovative, creative sector in this country. In fact, our education system is dependent on that. We recognize that there has been some changes to the economic model of these sectors, as a result of technology, Internet, open source information, information that's being used in our education systems.

We don't believe a mandatory tariff is the best way to provide support to that industry, because we do believe that takes money out of our classrooms where our precious dollars are very much needed.

I do want to discuss two issues that I know have come up in conversations at this committee, one around the amount of full textbooks that are being copied. I know that's a concern for the industry. That would be a concern for us as well, that would fall outside of the guiding principles of fair dealing and use of copyrighted materials in the country.

Thankfully we've had the Federal Court of Appeals and the Copyright Board look at this question on two separate occasions, and they've discovered that 98% of copying that does happen in our education system is actually within the context of following the principles of fair dealing. I think that's something that we should take great pride in, 98% is a passing grade. I don't think we should look at bringing in a mandatory tariff in response to what is a 2% anomaly in our education system.

Also, I know it's been argued that the revenues from the education sector to the publishers and to writers has been impacted by the change in fair dealing and copyright legislation, but I think if you look at the Statistics Canada information that we've provided, you'll see these in your packages, you'll actually see that since 2012, sales have actually gone up for the K-12 education sector for books in our country. That's something that we should also take great pride in. That's happening at a time when, as I mentioned, technology is changing, and the delivery of education in our system is changing.

⊕ (1545)

In closing I do want to state that as ministers of education in this country who are responsible to be stewards of our education system, and who are responsible for delivering high quality education to our students, we do support the court's definition of fair dealing and I believe our guiding principles are in line with that. We've provided those as well to you and we are committed to working with yourselves, the federal government, and industry to come up with innovative creative ways to support that industry. to make sure that it's successful and thriving so that we can all benefit

from it.

We just don't believe that subsidizing it from money for the classroom is the best way to accomplish that.

I will let the committee know that we're also, as ministers, investing \$5 million nationally to further copyright education with our educators to make sure they are very well aware of their roles and responsibilities and also to do further assessments of compliance around copyright. I thought that would be of interest for the committee as well.

Thank you very much for those opening moments, Mr. Chair. I'm very happy to entertain any questions.

The Chair: Thank you very much. We're going to jump right into questions.

Mr. Baylis, you have six minutes.

Mr. Frank Baylis (Pierrefonds—Dollard, Lib.): Thank you, chair. Six minutes, I'm going to reset my clock then.

Thank you, Mr. Churchill. You say you're interested in supporting a vibrant, Canadian creative industry. How would you do that? I want to talk how about money, because, ultimately, people need to be paid, so I would like to see how you would do that financially?

Hon. Zach Churchill: I think there are various incentives that are in place across the country. There are tax incentives. There are grants for creative industries, and there are competitions. I think we need to look at best practices from one jurisdiction to the next. That's something that as ministers we can work with the federal government on to identify the best way to incentivize growth in that sector and ensure it is, in fact, successful.

What we don't think is necessarily forward looking is to look at a mandatory tariff on the education systems across the provinces as being the best way to do that. Because, again, that will take tens of millions out of our classrooms where those moneys are desperately needed; and instead, I think we need to look at more general opportunities.

Mr. Frank Baylis: That tens of millions of dollars, is that what you figure you've been saving since the fair dealings...that part of the act has come by to [Inaudible]an occasion to save? You said it would take it out, so let's assume that that's about the savings you've seen across the country, tens of millions?

Hon. Zach Churchill: I don't know if I would characterize it as savings. It's dollars that we have not been spending in tariffs that we have been directing into—

Mr. Frank Baylis: Yes, you're not spending it, but if the law hadn't changed, you would be spending it, so therefore you're not paying the creator that tens of millions. Do you how much that tens of millions is?

Hon. Zach Churchill: Well, the tens of millions we based on the \$1,331, I think, per textbook tariff that is currently being asked, I think, by Access Copyright. That's in response to that particular ask and obviously, as I mentioned, we don't believe that—

Mr. Frank Baylis: I believe Access Copyright says they've lost tens of millions since it's come in and we'll ask them when they come up after you. You're saying you would save tens of millions or you are saving?

Hon. Zach Churchill: If we were to have the mandatory tariff forced on the education systems across the provinces, there would be tens of millions of dollars that come out of our education system.

Mr. Frank Baylis: Fair enough and you did mention that you think the creators should be fairly compensated for their work. We've had a number of creators come before us, actual people, and to be honest with you, I was shocked when they started talking about the drop in income. They said 70% to 90%. But, fair enough, that's our statistics, but the overall amount where they shocked me was they're talking that I used to get \$2,000 now I'm paid \$300. I didn't meet anybody who was getting particularly rich off of these tariffs.

In fact, even my sister, who happens to be a publisher, and I asked her and she said, yes, I get a cheque from Access

Copyright. I can't remember what it was, it was a few hundred dollars. It was insignificant to her. She couldn't be bothered to look it up.

What would be fair compensation for someone who writes a book? Maybe they spend a year writing a book, what would be fair compensation?

⊕ (1550)

Hon. Zach Churchill: That's a difficult question for me to answer as a minister of education.

Mr. Frank Baylis: Give me a ballpark.

Hon. Zach Churchill: I'm not going to try to provide information that wouldn't be accurate and speak outside of my expertise and I hope you can appreciate that.

What I can point to is we recognize there's a whole host of factors that are impacting publishing in particular. The tech book isn't the primary source or is becoming less of a primary source of information in our classrooms. The Internet is changing the face of the publishing industry. Technology is forcing that industry to evolve and we recognize it's creating challenges.

But when you look at the actual revenues from the K or P to 12 system, those revenues to the publishing sector has actually increased and again I'll reference the statistics—

Mr. Frank Baylis: How much of those are going to Canadian content providers as opposed to international? When you say they're growing.

Hon. Zach Churchill: Yes, Wanda will help me answer that for you.

Ms. Wanda Noel (External Legal Counsel, Copyright Consortium, Council of Ministers of Education, Canada): If you look at the handout, you will see that Canadian publishers' sales of their own titles in K-12 educational institutions have gone up in 2012 and 2016 in that graph.

So, presumably Canadian publishers own titles are Canadian content. So, it's increasing.

Mr. Frank Baylis: Publishers' sales of their own titles. So you're saying that Canadian publishers last year went from \$300,000 to \$400,000. Is that correct?

Ms. Wanda Noel: It's actually million.

Hon. Zach Churchill: Three hundred million.

Ms. Wanda Noel: Yes, the graph contains Statistics Canada data. They study the publishing industry nationally and this was extracted from studies that were done of the publishing industry in Canada in 2012, 2014, and 2016.

Mr. Frank Baylis: In 2012 though, you would have been contributing before the law and 2016 you would not have been contributing. Is that fair to say?

Ms. Wanda Noel: No, I don't think that's fair to say.

Mr. Frank Baylis: What did you change then, when the law changed? Why are you trying to defend your fair dealings if it doesn't have an impact for you? I need to understand that. If it doesn't have a financial impact, why do you need to defend it.

Why are so many people coming here to defend it and at the same time saying it has no financial impact. There's a reason you want to defend it. You just said tens of millions. Can you make that link?

Hon. Zach Churchill: A change of understanding in fair dealing, we believe, would have a financial impact. The way fair dealing is defined right now is if you have a short excerpt of materials—

Mr. Frank Baylis: I know what fair dealing is, but you're defending it because you want to save money. Is that fair to say?

Hon. Zach Churchill: We're defending it because we believe it's fair. The courts have gone through extensive deliberations and decisions to come up with this. It's quite complicated to develop what's fair from an academic learning standpoint to ensure our students have access to the widest range of materials possible, and obviously ensuring that creators are properly compensated.

That's not an easy question to answer. The courts have helped us do that.

The Chair: Thank you.

We're going to move to Mr. Lloyd. You have six minutes.

Mr. Dane Lloyd (Sturgeon River—Parkland, CPC): Thank you for being here at committee today.

My first question will be in regard to previous testimony that was provided by your organization in 2011 when the committee was reviewing the Copyright Modernization Act. Your group appeared before committee and promised that the addition of education to fair dealing would have no negative impact on creative incomes and that you would pay collective licences and would continue to do so after the amendment; that you were not trying to get material for free. Since 2012, you're claiming vast amounts of work for free. There's been hundreds of millions of pages printed. That's been documented. You have not been paying collective licences and creative incomes have been in serious decline.

Do you still stand by the earlier testimony provided in 2011, that there would be no impact on creative incomes?

Hon. Zach Churchill: We benefit today from having Wanda Noel, who was actually present during that who can speak better to the comments of the minister of the time, but in terms of the hundreds of millions of dollars of copies that we've seen used, that number, I do think it's important to question where that number comes from. We have not seen evidence on our side showing that is an accurate figure. In terms of what we do know based on federal court of appeal, assessment, and copyright board assessment is that 98% of copying that happens in this country in the education system is within the parameters of fair dealing.

We don't know where that number comes from. I think it's important to have a better understanding of where that number comes from.

🕒 (1555)

Mr. Dane Lloyd: I believe it's a PricewaterhouseCoopers' number, and that's an internationally recognized auditing agency. Presumably if that's the number that they're coming up with, there's some sort of evidence behind that. Your evidence that you brought today that there are savings of tens of millions of dollars is also backed up by PricewaterhouseCoopers information which indicates that since 2012 authors and publishers have lost \$30 million because of fair dealings which seems to corroborate the evidence that you provided that this does cost tens of millions of dollars for universities to provide collective licencing.

I'm just wondering, you have talked about the precedence in cases, but in regard to the recent York decision, which happened after the Supreme Court's ruling on fair use, do you still feel that you're on the right side of the law after the York decision?

Ms. Wanda Noel: There's a lot of questions there.

Let's deal with Minister Jennex's comments in the Copyright Modernization Act. Minister Jennex's statement in 2011 or 2012 was correct. It's still correct. That's because adding education as a fair dealing purpose, which is what happened

when the Copyright Modernization Act was passed, had nothing to do with the fair dealing guidelines. The fair dealing thresholds and guidelines are based on Supreme Court of Canada decisions that took place after the Copyright Modernization Act was passed. That's one thing. I saw a headline recently that said something like Minister Jennex lied to Parliament. Well, that's not correct, at all. It's just wrong.

On your reference to the PriceWaterhouseCoopers report, the origins of that report was one report that was filed at the Copyright Board by Access Copyright, who is in the audience this afternoon, and another expert report that was done by Deloitte. When you're in a Copyright Board proceeding, you have duelling experts. That PriceWaterhouseCoopers report takes one point of view. There is a corresponding study that says that everything that's in that report is incorrect. It's duelling economic experts. I would be more than happy, on behalf of Minister Churchill, to provide a copy of the other expert report that says that PriceWaterhouseCoopers is wrong.

Mr. Dane Lloyd: Is that a Deloitte report that you're referencing?

Ms. Wanda Noel: I think it was Deloitte. It was several years ago now, but I can provide the report.

Mr. Dane Lloyd: Just clarify after, thank you.

Ms. Wanda Noel: The other thing, the York case under appeal. Sorry, I'm not going to take up time here.

That is under appeal, and we have multiple cases interpreting fair dealing consistent with what Minister Churchill said. We have one case that has a different interpretation. We'll let the courts do their work, and they can figure it out. It's based on evidence and a very complicated process that can't take place in a parliamentary committee.

Mr. Dane Lloyd: One more minute. Okay.

My next comment would be that this is very interesting stuff that has been provided here. How much would you say that you spend on Canadian content? One thing that we've seen throughout our testimony is that university indicated spending is up, but we've seen that coming from international publishers, international authors, in terms of the scientific and engineering fields.

Can you provide some specific information on how much Canadian content creators have benefited, has there been increased spending on Canadian content creators since 2012?

Hon. Zach Churchill: The numbers that we do have available are provided to you in your package. I don't know that we can extrapolate Canadian content specifically from those numbers.

Mr. Dane Lloyd: Thank you.

The Chair: Thank you very much. If you can forward the report that you were referencing to the clerk, that would be very helpful. Thank you very much.

We're going to go to Mr. Masse. You have six minutes, sir.

Mr. Brian Masse (Windsor West, NDP): Thank you, Mr. Chair. Thank you, Minister for being here today.

Essentially the bottom line here—I want to make sure it's clear, just for your province, it's \$10 million. Is that correct in terms of the cost, if there was a change?

Hon. Zach Churchill: If the proposed tariff at \$13.31 was imposed nationally, that would be over \$50 million.

Mr. Brian Masse: Nationally, okay. Does that include the territories as well?

Hon. Zach Churchill: That does include the territories. That doesn't include Quebec. That is one thing I forgot to mention. I'm here representing the education ministers outside of Quebec. It does include the territories.

Mr. Brian Masse: Okay. I just wanted to make sure. The old system in place, has there been any work done in terms of what the cost differential would be for today? That's new money that you're being asked, if that is brought forth in terms of the fee. Do you have any idea of what the cost would have been had Access Copyright not proposed that, and it was just the status quo before fair dealing was brought in? What would your costs be today if the old system was in place? Has that been looked at?

🕒 (1600)

Ms. Wanda Noel: The rates of the tariffs are set by the Copyright Board, and they're almost constantly appealed. Prior to the tariff system, the fee was around \$2.50 for a full-time student equivalent. The Copyright Board set a tariff that was \$5 and pennies. It ended up at \$4.81 when the appeals were exhausted. There's four million students, so four million times \$5. You can do the math.

That was the case that the ministers of education took to the Supreme Court of Canada, and the decision was that short excerpts could be copied by teachers without paying copyright royalties. Then in 2013, based on that decision, the ministers of education stopped paying the tariff, and decided to rely on fair dealing and licences, and databases and repositories, and other things to meet their copying needs.

That's the range.

Mr. Brian Masse: Would it be fair to say, then, that there has been a cost savings in that process, that there's been fewer expenditures because of that?

Ms. Wanda Noel: I would say no. The money that's spent, as you'll see, is increasing. It's just not being spent on the same things. It's being spent on something different.

Mr. Brian Masse: Yes, this is what we're running into.

In general, though, what we're hearing from not only the witnesses.... I know you have StatsCan stuff in front of us. When we have witnesses and people coming forward, it's not always representative of the full picture—there's no doubt. But it would seem to me that there's a fair enough.... We're running into a pattern of experiences, where there seems to be some winners and losers with regard to the transition.

When government policy changes something, I think there's probably some expectation that there should be some amelioration or some public policy to help [*Inaudible*]. Do you believe that there has been, from your experiences in terms of the works you've been purchasing or your interaction...any changes with your own, maybe in your own province with regard to some of the content providers? Has there been any look at that as to whether there's been a shift since this has taken place?

Some authors say they've given up. They're not producing anymore. They have reduced their amounts. Has there been any examination to find out whether in Nova Scotia...? Has it transitioned to new content providers, or has it just been the same?

Hon. Zach Churchill: There's been a move in our jurisdiction to more local content, so we've partnered with our African Nova Scotian community. We've partnered with our indigenous population through the Mi'kmaq nation. We've partnered with local writers to ensure there's more local content in our curriculum. So there has been a move in that regard in Nova Scotia that I can speak to very specifically, and I do think that has happened in other jurisdictions, as well.

The fundamental question here is this. How do we define what's fair, between what the needs are of the industry, which we recognize, and what the needs are of the education system? Around the idea of fair dealing, the courts have done a lot of the work for us. They have heard extensive testimony from both sides of the equation and have come up with a definition that, we believe, makes sense, and that we don't want to see thrown out overnight.

Mr. Brian Masse: I understand. I guess I'm looking for the response.

Any time I hear that the courts are dealing with a process, that's a failure of public policy, from our point of view federally, in this particular instance. What we do is make decisions here that need sorting out in other jurisdictions, because they still haven't fully.... Perhaps with copyright, the complexity of it and the changing ways things are done, it was bound to end up there in some way or fashion anyway.

I guess what I'm looking for are the things that were done, or what could be done to help some of the artists who are still transitioning here. That's what I'm curious about. In terms of your representation of the provinces, was there any overall plan, or is it basically each province? You mentioned Nova Scotia and what you've done. Some of those things are actually.... I represent an area of the underground railroad to Canada, so I know some of the stories directly that link my community to yours, and so forth. But do you know if the other provinces are doing more comprehensive work to bring forth local culture, maybe new artists and new content providers?

Hon. Zach Churchill: It does vary from province to province, and it's primarily in the field of the heritage departments, the culture departments that exist provincially.

As a representative of the education system, I do think we're doing our part to make sure we have more local content, particularly around parts of our history that haven't really been told from a local perspective.

🕒 (1605)

Mr. Brian Masse: Thank you, Mr. Chair.

The Chair: Thank you.

We're going to move to Mr. Sheehan.

You have five minutes.

Mr. Terry Sheehan (Sault Ste. Marie, Lib.): Thank you very much, Minister.

I appreciate your being here, as well as Wanda, to help us out with this copyright review today,

Recently we did a cross-country tour, which allowed us to hear from various regions, various school districts, authors, universities, and colleges from coast to coast. When we were in Toronto, we heard testimony from someone who was fairly good and who likened it to the 401, which is their superhighway down there, where someone will drive 100 when they first get their licence but then go up to 105, 110, and so on, then it's 120, and next thing it's the autobahn. She was likening that to copyright, where someone takes one copy just because, and then so on. Then fast forward, we heard testimony from some authors in western Canada about their whole works being photocopied and distributed to classes.

My question to you is this. What steps do school boards or the province take, the ministers of education, to educate teachers and students on the copyright laws, and what kinds of policies do they put in place? This would be my first question.

Hon. Zach Churchill: Thank you very much. That's a real important question because this is important to us as well.

We want to be following the guidelines of fair dealing, which means short excerpts only can be photocopied. We have heard anecdotally that there are examples of educators photocopying a full textbook, for example, and distributing that. The evidence, though, that has been assessed by the Federal Court of Appeal and the Copyright Board of Canada indicate that in 98% of cases photocopying is happening within the confines of fair dealing.

I think part of our success in that regard is the education that we're providing to our educators. We do have manuals that are distributed to every single school in the country. We have these sorts of posters that are supposed to be at every single photocopier to inform people.

We are further investing money as ministers of education, \$5 million, to enhance our education on copyright and

what the roles and responsibilities are of the teachers and to do further third party assessments on how we're doing. The Federal Court of Appeal, the Copyright Board of Canada consistently said 98% of the photocopying is happening within fair dealing. We're going to spend some money to utilize an independent third party to come in and provide us with an additional assessment to make sure that we're doing our part, because we do not want to be operating outside of the realm of fair dealing. We do have a vested interest in the success of our creative industries. Our education system is dependent on them. We need to make sure that short excerpts, information from a wide range of sources are accessible to our students and available and affordable.

Mr. Terry Sheehan: You've indicated 98% are complying. The 2% that the stat came out with, do local school boards, schools, monitor and, if so, how and then if they find a student or a teacher not in compliance what steps are taken?

Hon. Zach Churchill: In terms of enforcement that process will vary often times from province-to-province, from school board-to-school board. As with any rule that teachers are supposed to be following or that their administrators are supposed to be following, there's a process in place in each one of our jurisdictions to ensure that the rules are being followed.

If something happens it's either dealt with through a performance mechanism or through disciplinary action, depending on what's appropriate, but those processes do vary from jurisdiction to jurisdiction, but they're there.

Mr. Terry Sheehan: I was a former school board trustee many, many years ago. The funding models have changed in different jurisdictions where the mill rate isn't set in Ontario by the school board trustee but at the provincial level. Are the provinces and the school boards putting more money aside for copyright? Is it staying the same? That's one of the questions that we had was how was copyright being funded and are there mechanisms in place for the province or that school board in that district to put more money into copyright?

🕒 (1610)

Hon. Zach Churchill: As a whole on purchasing materials the number of dollars that we're spending is going up in terms of purchasing, purchasing materials and new education systems.

We are as the Council of Ministers of Education, Canada collectively putting forward \$5 million to enhance education around copyright and to, as I mentioned earlier, do further assessment on compliance with the rules around fair dealing.

The Chair: Thank you. We're good.

[Français]

Monsieur Bernier, vous disposez de cinq minutes.

L'hon. Maxime Bernier (Beauce, PCC): Merci.

Je veux juste revenir sur les questions d'argent. Mes collègues ont posé plusieurs questions en ce qui concerne le coût pour vous. J'aimerais savoir, en moyenne, les commissions scolaires dépensent combien depuis 2012 pour acquérir les droits d'auteur et chaque année.

Et suite — pour être certain, parce que c'est une question que le Comité se pose depuis le début de ses audiences — à la nouvelle Loi sur le droit d'auteur, cette somme a-t-elle augmenté ou diminué et à peu près de combien? Juste pour être certain, si vous pouviez clarifier ces chiffres.

[English]

Hon. Zach Churchill: *Merci beaucoup.* Thank you very much for the question.

Since 2012, and we do have the numbers from Statistics Canada in your packages, the sales have gone up to the publishing industry in the K to 12 or the P to 12 education system. If book sales have gone up from 2012 all the way to 2016 and you see those numbers detailed in each of those graphs there.

Hon. Maxime Bernier: Do you think that you saved some money at the end, or you're paying more for these rights?

Hon. Zach Churchill: We're paying more in materials but the nature of those materials is changing. We are investing more in course materials at our education systems. What we're worried about is the mandatory tariff if accepted at what the proposals is take approximately \$53 million outside of our education system as a subsidy to the industry. So that is something that we are concerned about and that number is not reflective of Quebec. That number is reflective of all the provinces involved in the consortium on copyright, but that is where we do have a concern because those dollars are precious. That is the equivalent of hundreds of teaching positions, specialized resources in our classrooms. That number will have an impact on education delivery for our students.

Hon. Maxime Bernier: So your point of view is to keep the status quo and what the court decided that a definition for fair dealing you're comfortable with that?

Hon. Zach Churchill: We do support the court definition for fair dealing. It's not an easy question to answer. I think the courts have done us a service in terms of tackling that important question over the course of 10 years. I do think practically it makes sense that if you're only photocopying an excerpt of a text, a chapter, or an amount that does not exceed 10% of the text that we're able to use those resources in the classroom to make sure that our kids have access to as wide range of information as possible.

Hon. Maxime Bernier: Do you think we need a more defined definition in our own legislation to reflect the court decision?

Hon. Zach Churchill: We're not advocating for any changes to definitions in the Copyright Modernization Act that were brought in 2012. We do believe that the case law has done that work for us.

Hon. Maxime Bernier: Do you want to add something?

Ms. Wanda Noel: No.

Hon. Maxime Bernier: That's it.

The Chair: Mr. Longfield you have five minutes.

Mr. Lloyd Longfield (Guelph, Lib.): Thank you, Mr. Chair, and thank you for being here both of you. I want to build on where Mr. Bernier was going with some of those questions. We can see from the curve the dollar volume increasing, but there are several things that we don't see is how much is going towards copyright fees within those dollar numbers. Another way of saying that might be, what's the average unit price of the books, is that going up? But are we actually reimbursing authors through publishers, through distributors, are we getting the collection done of fees to go to the creators?

🕒 (1615)

Ms. Wanda Noel: If I may the answer to that question is based in the contracts that are entered into between publishers and authors. They divide up the pot and that would vary on how prominent and important the author is. The prices are set and the education system doesn't have any control over that. The publisher and author divide up the pie.

Mr. Lloyd Longfield: Understood, but you can see what I'm getting is, and you may not be able to answer this because it's maybe for the publishers to say, but the dollar volume really doesn't get to the root of the question that we're looking to try to answer. That's something that we've been a little frustrated as a committee of trying to get into the supply chain to see exactly where are the leakages. When we talk about 2% leakage on legitimate copying versus non-legitimate copying what's the dollar on 2% of the whole? We're not talking about 100 pages here we're talking about

millions of pages that the school boards would be copying and 2% of that figure could actually be a pretty substantial number. Would we know what 2% leakage costs?

Hon. Zach Churchill: We actually have done the math on that and that would be if you're looking at per student that would be two copies per student per school year. So two illegal copies per student per year looking at that 2%.

Mr. Lloyd Longfield: We certainly had contrasting opinions from other witnesses on how many copies.

Hon. Zach Churchill: If we accept the 600-million-copy figure that's been presented, if you look at 2% of that—I wasn't a math major by the way—

Mr. Lloyd Longfield: That's okay, I was.

Hon. Zach Churchill: —what we've come up with is less than two copies per student per school year.

Mr. Lloyd Longfield: Yes. What about the cost of administering the current program? You're mentioning \$5 million advertising costs. There are posters being printed that are being put above photocopiers. I'm guessing, the way people are, you'll see the poster, you may or may not read it. The second time you won't even see the poster. But there are costs that are being put towards trying to administer the existing program. Those costs could be taken away if a standard licensing fee was charged that would be equivalent in dollar value to what the hidden costs are in terms of reimbursing authors. The cost of the existing program, do we have any idea of how many person-hours goes into administering programs, teaching people about copyright requirements, policing the services, the auditor costs that you're using? Do you know how much it costs to administer the existing program?

Hon. Zach Churchill: As ministers, we do have an obligation to inform our educators of the law and ensure there's compliance. That's not just the cost associated with copyright, that's a cost associated with the variety of roles they have to function under.

In terms of us quantifying how much money we're going to spend in resources to educate and to further assess compliance, we have that number at 5 million, which is drastically lower than 50-plus figure will be.

Mr. Lloyd Longfield: Is that a Nova Scotia number or is that a national number?

Hon. Zach Churchill: That's a national number.

Mr. Lloyd Longfield: Okay.

I'm yet to be convinced, but back over to you, Mr. Chair.

The Chair: Before I move on, I would just like to have a point of clarification.

You had mentioned two copies. Is that two pages or it two copies of works?

Hon. Zach Churchill: Pages.

The Chair: Two pages. Okay, thank you.

We're going to move to Mr. Jeneroux.

You have five minutes.

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

Thank you both for being here today.

Throughout the education testimony back in 2011, many representatives of the education sector explicitly stated that

institutions would not stop paying licensing fees to licensing collectives, like Access Copyright and Copibec, if education was included under fair dealing. On December 5, 2012, a new act came into force. Access Copyright was served with a letter from you, Ms. Noel, on behalf of CMEC and the Ontario school boards saying that they would no longer be complying with the tariff regime.

Can you explain this discrepancy between the testimony in 2011 and the 2012 letter to Access Copyright?

🕒 (1620)

Ms. Wanda Noel: I certainly can.

Your colleague beside you asked the same question. The decision to no longer rely on the Access Copyright tariff but other sources of copyright clearance, has nothing to do with the adding of education to the list of purposes for which fair dealing can be engaged in. That decision to not pay the tariff is based on the Supreme Court of Canada decision only. If the Supreme Court of Canada had issued a decision that was different from the one it did, there would have been no opting out of the tariff system. Prior to that decision...sorry.

Mr. Matt Jeneroux: No, go ahead. Keep going.

Ms. Wanda Noel: I was just going to say prior to that decision it was not clear whether a teacher could make a copy of a short excerpt, a little bit, the terms that were being used, for each of the students in their class. It's called "multiple copies for classroom use". You have a classroom with 30 students in it. You want a copy of a newspaper article. Can the teacher make a copy for each student in the class? It was thought up until that Supreme Court decision that you could only make one copy, that multiple copies for a class of students was not allowed. That decision had a profound change in the law on fair dealing, but had nothing to do with adding education as a fair dealing purpose. The Supreme Court decision happened in July, and the opt-out was the following January 1.

Mr. Matt Jeneroux: Okay. We go back to specific things that were said by Universities Canada—and I have the quote in front of me, but due to time I won't bother reading into the record—that said that absolutely under no circumstances would they be opting out of this. This was said in front of committee, and then you issue this letter to CMEC. I'm trying to—

Ms. Wanda Noel: Yes, you're trying to understand.

Mr. Matt Jeneroux: I'm trying to understand what happened from that moment to this moment, to now, essentially putting us where we're at today.

Ms. Wanda Noel: Okay, I'll try.

When education was added as a fair dealing purpose in 2012, that was in the spring and summer. We're in parliament. The question to Minister Jennex was, will adding education to the fair dealing provision as a new purpose have any impact on your paying rights holders? Her answer was no, it would not. Nor did it.

Then fast-forward to a Supreme Court decision that interpreted "fair dealing" far more broadly than anyone ever anticipated. The decision was that copying for student instruction is fair dealing as long as the excerpt is short. That was a much broader interpretation of fair dealing, and that, in turn, six months later led to the decision not to take up the Access tariff any longer because it wasn't providing value for money. There were millions and millions of dollars being spent for a licence that didn't have any value anymore because of the Supreme Court decision, not because of adding education as a fair dealing purpose.

Mr. Matt Jeneroux: I have one minute left. We'll have Access Copyright in front of us later, hopefully, to clarify some of that.

I do want to just get from you, Honourable Minister Churchill, how much money do Canadian schools and school boards, on average, spend each year to acquire copyrighted works in proportion to their total annual budget?

Hon. Zach Churchill: We don't have that number for you, but we'll see if staff can provide that to the committee.

Mr. Matt Jeneroux: Okay. Very good.

Thank you, Chair.

The Chair: Thank you very much.

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

Mr. Majid Jowhari (Richmond Hill, Lib.): Thank you, Mr. Chair. I'm going to split my time with Mr. Baylis. Thank you, Minister, for coming.

Minister, CMEC published its own fair dealing guidelines. Can you help me understand the process which CMEC went through to develop those guidelines? Whom did you guys consult with?

🕒 (1625)

Hon. Zach Churchill: Ms. Noel was there for that process, so I'll let her answer very specifically.

Mr. Majid Jowhari: Great. Sure.

Ms. Wanda Noel: When the Supreme Court of Canada decision came down in 2012, interpreting “fair dealing” broadly to say that copying short excerpts for student instruction was fair, we were faced—we being legal counsel for colleges, for universities, and for the Council of Ministers of Education—with a situation where we had to put some meaning around what is a short excerpt. The Supreme Court said you can copy short excerpts for students in a class, but it didn't say anything about what short excerpts were.

There were a number of sources that guided us in developing the limits that are in the fair dealing guidelines. On the same day that the Supreme Court decided how fair dealing should be interpreted in an education context, it issued another decision which interpreted fair dealing for the online sale of music. In that case it did put some numbers around the amount that could be copied under fair dealing. In that case, it was previews: when you buy music online you can preview it, you can listen to a piece of it. It was 30 to 90 seconds of a four-minute song. Now, at 30 seconds out of four minutes, that's 12.5% of the musical work. That was one source.

We also were looking at case law in the United States, where, as there is here in Canada, there is a dispute going on between publishers and the universities about how much could be copied for the use of students. In those decisions, which have now gone up to the federal court of appeal, back down on reconsideration, and back up again, with no decision yet, the threshold of 10% or a chapter was used many times in the court decision, finding that this threshold was fair.

Mr. Majid Jowhari: Let me ask a very specific—

Ms. Wanda Noel: Now I just want to make one other point.

The fair dealing guidelines are a conservative interpretation of “short excerpt”. Why they're conservative, around the world, if you want to go outside of Canada, in Israel there was a dispute between the higher education community and publishers. There the threshold is 20% of a work.

Mr. Majid Jowhari: As part of your review and development of the guidelines, did you talk to content creators to get their input of what “fair dealing” means?

Ms. Wanda Noel: We were in years of litigation with them. No, we did not, because there was no possibility of ever coming to an agreement. There still isn't today. That's what's before this committee. No.

Mr. Majid Jowhari: Okay. Thank you.

Mr. Frank Baylis: I want to delve in quickly on your statistics. They are very interesting, but I'm concerned they might be a little misleading.

When you did this you used Statistics Canada. Did you get it in what we call average dollars? Did you put it back in the same dollars?

Ms. Wanda Noel: Constant dollars? Yes.

Mr. Frank Baylis: This is a constant dollar charge that you applied—

Ms. Wanda Noel: I believe so. I asked the same question.

Mr. Frank Baylis: —the inflation rate against it?

Ms. Wanda Noel: Constant dollars was the answer I was given to that question.

Mr. Frank Baylis: It doesn't tell us what dollar then.

Ms. Wanda Noel: Ah....

Mr. Frank Baylis: I can see there's a mistake here too. That's why I've started wondering about it. It says here 66% of all Canadian sales are book sales. That's a bracket there. I have done the math quickly. I can't find any one at 66%. This led me to question some of your math here.

Are you absolutely certain it's in constant dollars or not?

Ms. Wanda Noel: There are statisticians that work at the Council of Ministers. I'm not one. They produce the list.

Mr. Frank Baylis: I know there are. I'm just asking. They made a mistake on one point here so I'm asking can you confirm to us that it's in constant dollars?

Ms. Wanda Noel: I asked the question. That was the answer. Yes. It is in constant dollars.

Mr. Frank Baylis: Can you provide it then as a reflection against the—They also have a consumer price index specifically for education how these numbers reflect the changes with respect to education.

Ms. Wanda Noel: If StatsCan has data on that we could do it.

Mr. Frank Baylis: StatsCan does have data on the consumer price index specifically for recreation and education. If you could compare that to that index how these are changing with respect to that index. You said they are in constant dollars. Perhaps you could tell us which one.

Ms. Wanda Noel: How changing with the CPI was one, and what dollar is the constant dollar?

Mr. Frank Baylis: Yes. Constant dollars. You said here—maybe I misunderstood it—66% of all sales. Maybe that's correct too. I couldn't do that math. If you could have that clarified for us as well.

Ms. Wanda Noel: What would the clarification be on the 66%?

Mr. Frank Baylis: It says here these are book sales in Canada, these are book sales in Ontario and in brackets this accounts for 66% of all Canadian sales. I just did the math. Say I multiply this number by that number and it doesn't add up.

Ms. Wanda Noel: I will get that out of Hansard and pass it on to the statisticians and see if I can get the answers.

Mr. Frank Baylis: So three questions. One, which constant dollars in. Two, could we have this comparison against the rate of change here versus the rate of change in the consumer price index specifically for education. Seeing how much of your education budget is constantly what you're spending in Canadian books, or is it going down, or staying the same?

Do you understand?

Ms. Wanda Noel: I can get your exact question out of Hansard.

Mr. Frank Baylis: That's it. The third one is, and maybe I've misunderstood something, but if you can clarify that too.

The Chair: Thank you.

For the final two minutes, Mr. Masse.

Mr. Brian Masse: Thank you, Mr. chair.

To follow up with your two copies per student just to get an idea of where that came from in terms of the accumulation of that data. Also, have you had specific cases where there was significant copyrighting, and then what were the repercussions to the people who were doing that? What's your policy on that?

How did you get the numbers? There are many students I'm sure who would do any copyright infringement, but have there been major cases, and what happens to those individuals with regard to those cases?

Hon. Zach Churchill: Thank you very much for the question.

That number comes from the 600 million pages that the industry has told us are being made free every year in Canadian schools. If you use that number—Again, we don't know if that number is accurate. If you look at 2% of that based on the Copyright Board of Canada and the Federal Court of Appeal saying only 2% of copying is falling outside of fair dealing. That's 12 million copies. We have seven million students so that's approximately two copies per student per school.

Mr. Brian Masse: You just applied their own numbers and never asked you. Really it's their own data.

Hon. Zach Churchill: That's using the data from the industry.

Mr. Brian Masse: Accepting the premise.

Is it province by province the repercussions with regard to copyright infringement?

Hon. Zach Churchill: The mechanisms in place for performance issues or disciplinary action does differ from jurisdiction to jurisdiction, even specifically sometimes from board to board.

Mr. Brian Masse: Yes. School boards.

Thank you, Mr. chair.

The Chair: On that note, I would like to thank Ms. Noel, and the Honourable Zach Churchill, for being here today with us and answering some pretty hard questions. You can tell we're a very inquisitive group over here. We're trying to get to the core of this. I want to thank you both for coming and speaking with us today.

We're going to suspend for a very quick minute while we changeover our panels.

Thank you very much.



(1635)

The Chair: Welcome back, everybody.

For the second hour of fun we have with us from Copibec, Frédérique Couette, Executive Director. From Access Copyright we have Roanie Levy, President and Chief Executive Officer.

We are going to start with Copibec.

[*Français*]

Vous disposez de sept minutes, s'il vous plaît.

Me Frédérique Couette (directrice générale, Copibec): Bonjour, je vous remercie de nous recevoir aujourd'hui. Je me nomme Frédérique Couette, je suis directrice générale de Copibec, soit la Société québécoise de gestion collective des droits de reproduction. Créé en 1997, Copibec est la société de gestion appartenant à la collectivité des auteurs et des éditeurs québécois. C'est un organisme sans but lucratif. Nous percevons les redevances et les remettons aux auteurs, aux journalistes pigistes, aux créateurs et aux éditeurs après paiement de nos frais de gestion.

Il y a environ six ans, nous témoignions devant le Comité sur le projet de loi C-32. Nous mettions alors en garde les députés contre les dérives et les risques liés à l'introduction du mot éducation dans l'exception d'utilisation équitable. Les représentants du secteur de l'éducation tenaient un discours rassurant. Jamais, affirmaient-ils, ils ne mettraient fin aux licences avec les sociétés de gestion. Il s'agissait d'une simple clarification sans aucune conséquence négative tangible pour les titulaires de droit. Pourtant, dès le mois de janvier 2013, ces mêmes instances ont commencé à mettre fin à leurs ententes avec Access Copyright.

Depuis, la situation n'a cessé de se détériorer. Ils se sont appropriés le droit d'établir des politiques de copiage permettant la reproduction d'un chapitre ou de 10 % d'une oeuvre, selon l'interprétation la plus large possible afin de ne plus payer les redevances versées aux titulaires de droit par l'intermédiaire de leur société de gestion. Les ministères de l'éducation hors Québec allant même récemment jusqu'à poursuivre les titulaires de droit par le biais d'Access Copyright, tout en refusant de payer la redevance pourtant minime décidée par la Commission du droit d'auteur du Canada en 2017.

Au Québec, la situation est également préoccupante. L'Université Laval, en juin 2014, a adopté une politique de reproduction calquée sur celle appliquée dans les établissements d'enseignement dans le reste du Canada. Les autres universités québécoises et les cégeps — le ministère de l'Éducation, également — continuent de travailler avec Copibec, mais chaque négociation des ententes entraîne une nouvelle baisse des redevances. Ainsi, la redevance annuelle par étudiant universitaire a baissé de près de 50 %, passant de 25,50 \$ en 2012 à 13,50 \$ en 2017. Celle des cégeps a baissé de 15 %.

Nous devons malheureusement constater que nos craintes se sont pour l'essentiel concrétisées.



(1640)

Me Frédérique Couette: Les revenus de licences des titulaires de droit fondent sous la pression du milieu de l'éducation. Les litiges se multiplient et s'éternisent pendant que la valeur et le prix des oeuvres ne cessent d'être dévalués à chaque négociation des licences. Ainsi, bien que Copibec ait maintenu ses frais de gestion à 15 %, la redevance payée aux auteurs, créateurs et éditeurs a baissé de 23 % pour chaque page copiée par les universités. Les

universités vont parler de millions de dollars qu'elles dépensent en budget d'acquisition pour accéder au contenu des grands éditeurs étrangers et de revues scientifiques.

Cependant, environ 80 % des déclarations de reproductions que nous recevons, quel que soit le niveau d'enseignement, portent sur des reproductions de livres et non de revues internationales. Ce ne sont pas les grands groupes étrangers d'édition de revues qui ont pâti de la baisse des redevances, mais bien aux petits et moyens éditeurs, nos éditeurs d'ici, ce pour qui les redevances représentent en moyenne 18 % de leurs bénéfices nets.

Pour certains éditeurs de livres, elles peuvent représenter plus de 30 % de leurs bénéfices nets. Ces revenus contribuent à ce point-ci de façon significative à la pérennité de revues spécialisées canadiennes et québécoises et peuvent faire la différence entre la survie ou la faillite de la publication. Pour nos auteurs dont la situation est déjà précaire, tout affaiblissement des revenus en provenance d'un des maillons de la chaîne du droit d'auteur se répercute sur leur capacité financière à créer.

L'expérience québécoise présente malgré tout un exemple de gestion collective permettant la négociation d'entente entre utilisateurs et titulaires de droit. Je ne dirais pas que tout va bien, ce n'est pas le cas. En fait, si rien n'est entrepris pour rectifier l'effet désastreux des modifications de 2012, la situation au Québec n'ira qu'en se dégradant avec une décroissance constante des redevances ou leur disparition pure et simple.

Actuellement, les étudiants d'universités québécoises payent 13,50 \$ par année pour la licence de Copibec. Cela représente moins d'un demi de 1 % du total des frais de scolarité annuels moyens d'un étudiant québécois. De plus, les ententes signées avec ces universités — elles sont signées avec les universités et non avec les étudiants — rien ne les oblige à répercuter ces coûts sur les étudiants. Pour une université telle que Concordia ou l'Université de Montréal, cela représente respectivement, pour l'année universitaire 2017-2018, 0,08 % et 0,07 % de leur budget de fonctionnement annuel.

Les frais de scolarité ne sont pas plus élevés au Québec que dans le reste du Canada. Payer des redevances pour la reproduction d'extraits d'oeuvres n'a jamais mis le système éducatif canadien en péril, ni entraîner le surendettement des étudiants.

On vous a présenté l'exception d'utilisation équitable à des fins en éducation comme l'outil par excellence de l'accessibilité aux oeuvres. Nous restons extrêmement perplexes sur ces infirmations qui ne sont soutenues par aucune démonstration pertinente. En revanche, nous savons que la gestion collective a toujours comporté cet élément d'accessibilité aux oeuvres, incluant les oeuvres sur support numérique grâce aux ententes signées avec les sociétés de gestion étrangère, membres de la Fédération internationale des organisations de droit de reproduction.

À taux indéniable d'une loi équilibrée, la gestion collective concilie accessibilité des oeuvres et facilité de gestion d'une part, avec rémunération des titulaires de droit, grâce aux paiements de redevances d'un montant raisonnable d'autre part. Elle favorise non seulement l'accès à la connaissance, mais elle préserve la création et la diversité culturelle de demain. Ce n'est pas sans raison que l'UNESCO considère que la gestion collective est un élément essentiel de construction d'un système national moderne de protection du droit d'auteur, capable de concourir efficacement à la dynamique du développement culturel.

Les droits fondamentaux protègent la rémunération des auteurs et des éditeurs. La Déclaration universelle des droits de l'homme énonce que tout travail mérite salaire et protège la propriété intellectuelle. Le droit d'auteur, dans toutes ses composantes, est également intrinsèquement lié à la liberté d'expression des auteurs en leur permettant d'obtenir des revenus indépendants qui favorisent une indépendance de pensée.

Monsieur le président, vice-président et membres du Comité, je vous remercie de nous avoir écoutés, aujourd'hui. Je tiens à souligner que nos demandes s'inscrivent dans une démarche de modernité et d'avenir, une société qui investit dans sa culture à l'ère du numérique. La gestion collective n'est pas un modèle du passé, mais un modèle contemporain garant d'accessibilité et de diversité culturelle.

Vos décisions à l'issue du processus actuel auront un impact fondamental sur l'avenir du secteur du livre et du développement culturel au Canada.

Je conclurai enfin ma présentation dans ce passage du cadre stratégique du Canada créatif 2017 concernant l'examen de la Loi sur le droit d'auteur. Notre cadre du droit d'auteur est un élément essentiel de notre économie créative et le restera. En vertu de l'origine de droits d'auteur efficaces, les créateurs peuvent tirer profit de la valeur de leurs oeuvres et les utilisateurs peuvent continuer d'avoir accès à une vaste gamme de contenu culturel. La gestion collective s'intègre dans ces objectifs, dans ceux poursuivis par la politique culturelle canadienne. Merci.

Le président: Merci beaucoup.

Madame Levy, vous avez sept minutes.

[English]

Ms. Roanie Levy (President and Chief Executive Officer, Access Copyright): Thank you for the invitation to appear before this committee.

My name is Roanie Levy, and I am president and CEO of Access Copyright.

Access Copyright is a not-for-profit copyright collective created in 1988 by Canadian creators and publishers of textbooks, trade books, newspapers, magazines, and journals to manage the reuse of their works.

The copying that creators used to get paid for is now being done for free under so-called fair dealing guidelines. These copying policies reflect the education sector's interpretation of fair dealing and were developed without the input or support of creators and publishers. These copying policies, which mimic the copying limits that had previously been paid for under the Access Copyright licence effectively replaced the collective licence with an uncompensated exception under the guise of fair dealing for education. The outcome is that 600 million pages of copyright protected is being copied for free each year by the education sector. This is content that is not licensed through academic libraries or made available under open access licences.

Royalties collected by Access Copyright from the education sector have declined by 89% since 2012. Historically, these royalties represented 20% of creators' writing income and 16% of publishers profits. The estimated loss of licensing royalties to creators and publishers due to the education sector's interpretation of fair dealing is \$30 million a year. To this loss, we must also add the loss in primary sales due to substitution effect of free content copied under the education sector's copying policies.

I have structured my remarks today around four questions, which I hope will be helpful to the committee.

When the act was amended, was it Parliament's intent to eliminate the collective licence and replace it with an uncompensated exception?

Are the copying policies supported by the teachings of the Supreme Court of Canada?

Are the copying policies damaging to the writing and publishing sector in Canada?

What should the true purpose of fair dealing for education be?

To learn what was intended and understood by the addition of education to fair dealing it is useful to refer to the representations made by the education sector during the legislative hearings on the bill. Representatives from the education sector repeatedly and emphatically assured the legislative committee that the changes would not result in the education sector stopping to pay for the copying of works. Fair dealing for education, according to their testimonies, was not going to replace the collective licence.

For example, Paul Davison, president of Universities Canada, said:

In particular, it has been suggested that the education community does not want to pay for educational materials and that Bill C-32, especially the addition of education as a new fair dealing purpose, will undermine the publishing industry in Canada and decimate the revenues of copyright collectives such as Access Copyright. (. . .) These claims are false and are not supported by the facts.

Similar assurances were made again and again by representatives of the elementary and secondary sector. "We are not asking for anything for free" was repeated numerous times.

The Honourable Ramona Jennex, as was mentioned earlier, came before the legislative committee and said:

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

Although replacing the collective licence with an uncompensated exception was not intended with the introduction of education to fair dealing, we now know that is exactly how the education sector acted following the coming into force of the Copyright Modernization Act.

Educational institutions across the country, except in Quebec, adopted copying policies that encourage the mass systemic and systematic copying of protected works without payment to the creators.

🕒 (1650)

Once these policies were adopted, most educational institutions walked away from their longstanding licence agreements with Access Copyright.

So if the copying policies were not intended by the changes to the act, are they in keeping with the decisions of the Supreme Court that you heard about earlier today?

Following the adoption of the copying policies, the creators and publishers only recourse to clarify fair dealing was to bring the matter to the courts. That is why Access Copyright sued York University. In a decision issued in June 2017, the federal court unequivocally concluded that the copying policies and practices adopted by York University, which are virtually identical to the policies adopted across the country by educational institutions, including the K-12 sector, are:

...not fair in either their terms or their applications. The guidelines do not withstand the application of a two-part test laid down by the Supreme Court of Canada jurisprudence to determine this issue.

The copying policies are not in line with the Supreme Court of Canada's teachings.

Do they harm writing and publishing in Canada? The York case involved a four-week hearing, during which time the federal court judge heard extensive evidence, including the evidence of duelling economic experts. They were presented by both sides. The court looked at York's copying policies and their impact on creators and publishers. After careful examination, the judge found that the policies are arbitrary and unfair, and ultimately result in an unfair "wealth transfer from creators to educational institutions". Importantly, the court concluded that "Any suggestion that the guidelines have not and will not have negative impacts on copyright owners and publishers is not tenable."

It is important to note that this decision is the only court decision or copyright board decision that examines the fairness of the copying policies. There are no other decisions by any court that examines whether 10% or a chapter is fair—only this one.

What then should be the true purpose of fair dealing? Here again I think it is instructive to go back to the representations made by the education sector during the legislative committee.

Here is a first example. Steve Wills, at the time manager of government relations and legal affairs for the Association of Universities and Colleges of Canada, stated it clearly:

First of all, in regard to the educational community nothing in Bill C-32, for starters, is going to change the revenue going to collectives such as Access Copyright and Copy Deck. It's not about saving money. What it is about, the change to fair dealing in particular, is allowing certain

educational opportunities that right now sometimes don't occur.

The Honourable Ramona Jennex also helps us understand what the true purpose of fair dealings should be.

We are not asking for anything for free. The education system, the sector, pays for licences and copyrights and will continue to do so. What we're asking for with these amendments is to have things clarified.

The true purpose of the 2012 amendments, as represented by the education sector to the legislative committee was to clarify that fair dealings can be relied on by educational institutions when the copying of a work is not covered by licences or easily available through the rights holders, not to do away with collective licensing.

We urge the committee to recommend that this be clearly stated in the act. As the litigation endures, uncertainty around what can be copied challenges educators every day. Creators are deprived of a significant chunk of their income and educational publishers are making tough decisions. Publishers are leaving the educational market, resulting in lost jobs and significantly reduced investments in the creation of Canadian content. This in turn means fewer opportunities and reduced income for creators.

🕒 (1655)

At the end of the day, we all lose when Canadian creators and publishers do not have the economic incentives and ability to continue to create content that reflects who we are, our experiences and values as Canadians.

Thank you.

The Chair: Thank you very much.

We are going to move, mindful of the time, to Mr. Baylis. You have six minutes.

Mr. Frank Baylis: Thank you, Chair.

Merci, Madame Couette, and thank you, Ms. Levy, for being here.

Question, we are hearing two sides. On one hand, the universities come in, their representatives saying we're paying more and more. On the other hand, we're hearing from authors, publishers and yourselves as your association saying we're getting less and less.

Can you help clarify that? Do you agree with that? Are they paying more? Are you getting less? If so, what's happening?

Ms. Roanie Levy: We don't dispute that the university sectors may, in fact, be paying more for content. What's important to keep in mind is that the content that they are licensing and paying through their library licences is different from the content that they are copying under their copying policies. We're talking about two different buckets of content. There is some overlap, but very little overlap.

The content that they are licensing is, through their own testimony before you, mainly journal articles. As an example, CRCan testified that out of \$125 million, \$122 million is spent with foreign publishers. That content is content that is created often by academics, people who rely on a salary in order to be compensated for their contributions.

The content that is copied under the access copyright or historically under the Access Copyright licence today under their fair dealing guidelines is mostly books, not journals. This is content that is created by professional authors who rely on royalties for compensation. It is not content that is licensed by and large through the library licences.

It's two different buckets of contents. The Canadian content that is adapted and customized, that tells our stories, is in that B bucket, the content that is being copied today for free.

Mr. Frank Baylis: Fair dealing, whatever way it's applied or not, the idea is to give a bit of oil in the system to let

people...if I've got to make a couple of copies of a book or that...Is Access Copyright...Are you looking to clamp...Do you want to make money, monetize every single copy or are you against?

Can you give us your view of what fair dealing should be? You're not happy with what it is, so should it exist, number one, and if it should exist, how should it exist?

Ms. Roanie Levy: Yes, fair dealing should exist. We're not arguing that fair dealing be removed. What's important to keep in mind is that the fair dealing needs to allow a market to take place. The way it's being applied today doesn't allow the educational market to survive.

I think we could be inspired by the way fair dealing is used in other jurisdictions such as in the U.K. and Australia. The outcome in those jurisdictions is the copying that is done by the institutions, by the educational institutions, is not allowed under fair dealing. If there's a licence, it has to be paid for. The copying that is done by the students, the self-generated reproduction of works, that is fair dealing, and that's what we see in Australia and in the U.K. that both have fair dealing provisions. The mechanisms to achieve that are different in the two jurisdictions, but that is the bottom-line outcome.

🕒 (1700)

Mr. Frank Baylis: They allow the students to say fair dealing is for the students, but the institution has to pay.

Ms. Roanie Levy: That's right, so the systematic mass copying that happens by the institutions, for example, the copying of chapters and 10% that get loaded in online learning management systems, that gets reproduced in course packs that substitute for the purchasing of books which is what the conclusions of the judge were in York, that should not be fair dealing.

[Français]

M. Frank Baylis: Madame Couette, Mme Levy vient de nous donner l'exemple de l'Australie et du Royaume-Uni comme étant des solutions.

Copibec serait-il d'accord avec cette approche? Comment voyez-vous les choses du point de vue de Copibec en termes de solutions?

Me Frédérique Couette: Oui, c'est une vision que nous partageons avec Access Copyright. Nous sommes dans la même inclinaison. Nous considérons que nous devrions nous rapprocher des dispositions que nous trouvons en Angleterre, au Royaume-Uni et en Nouvelle-Zélande — c'est le même processus. Il y a des dispositions où, à partir du moment où une licence est en place...

Il y a dans la loi canadienne actuellement une disposition à l'article 2 qui parle d'accessibilité sur le marché et qui est déjà utilisée pour limiter certaines exceptions en faveur de l'éducation qui pourraient être étendues à l'article 29 qui oeuvre en son coeur les notions de ce qui est raisonnable. À partir du moment où il y a cette application, l'article 2 dit que, s'il y a une licence disponible et qu'elle est à un coût raisonnable selon des recherches raisonnables et dans un délai raisonnable, alors cela ne permettrait pas l'utilisation équitable. Cela permettrait de le limiter. On aboutirait...

M. Frank Baylis: Pour les institutions quand même.

Me Frédérique Couette: Pour les institutions, tout à fait. Cela nous permettrait de permettre aux étudiants de satisfaire leur besoin de recherche personnelle, pour les fins, par exemple, de travail à la maison, etc. Or donc, tout ce qui est institutionnel serait couvert par la licence.

[English]

The Chair: Thank you very much.

Mr. Bernier.

[Français]

L'hon. Maxime Bernier: Merci beaucoup.

Je vais partager mon temps avec M. Généreux.

Ma première question sera pour vous, madame Couette. Êtes-vous d'accord avec ce que Mme Levy a dit tout à l'heure en ce qui concerne les deux, la façon dont l'université utilise les droits d'auteur pour les copies en général des bibliothèques et, l'autre côté, par rapport à ce que les étudiants font en classe, avez-vous la même lecture?

Me Frédérique Couette: Vous voulez dire au niveau du partage acquisition versus licence?

L'hon. Maxime Bernier: Oui.

Me Frédérique Couette: Oui. On reçoit encore, parce qu'on a nos licences avec les universités, donc on reçoit effectivement une déclaration des universités et ce que nous recevons comme déclaration, c'est 80 % de livres.

L'hon. Maxime Bernier: D'accord.

Me Frédérique Couette: Ce qu'ils nous déclarent, ce sont des livres effectivement et ce que la licence couvre, ce n'est pas ces éditeurs internationaux. D'ailleurs, dans les montants que nous remettons à ces éditeurs internationaux, ce sont des peccadilles pour eux. Là où cela a eu un impact vraiment important, la baisse des revenus du côté des licences, c'est vraiment nos éditeurs locaux, nos éditeurs nationaux canadiens et québécois.

🕒 (1705)

L'hon. Maxime Bernier: Donc, vous êtes d'accord aussi que, lorsque les universités nous disent qu'elles paient de plus en plus pour les droits d'auteur, d'un côté c'est vrai et, de l'autre côté, vous êtes d'accord aussi en disant que vos revenus, d'un autre côté, diminuent et l'explication est celle que vous venez de donner, c'est cela?

Me Frédérique Couette: Absolument. En fait, ce qu'ils vous disent, c'est surtout qu'ils paient plus pour de l'acquisition.

L'hon. Maxime Bernier: C'est cela.

Me Frédérique Couette: Alors que nous, ils nous paient pour de la reproduction.

L'hon. Maxime Bernier: D'accord, parfait.

Et en ce qui concerne les solutions, vous avez dit tout à l'heure que vous aimez bien la législation du Royaume Uni et d'autres pays, doit-on garder dans la loi l'utilisation raisonnable pour le domaine de l'éducation? Si oui, il faudrait mieux l'encadrer ou si on devrait aller jusqu'à revenir avant la législation et ne pas l'inclure pour le domaine de l'éducation?

Me Frédérique Couette: La notion d'utilisation équitable a toujours été dans la loi canadienne, cela fait partie intégrante, tout comme les sociétés de gestion en font partie intégrante, cela fait partie de l'équilibre. Cependant, tel qu'il est interprété aujourd'hui pour les fins de l'éducation, c'est cette interprétation-là, telle qu'elle est proposée par les universités, qui pose problème. Si on va dans le sens des dispositions qu'on retrouve en Grande-Bretagne, en Nouvelle-Zélande ou en Australie sous une forme différente, cela permet de venir rééquilibrer la situation et d'aller chercher ces redevances lorsqu'on parle de reproduction de masse institutionnalisée et systématique.

L'hon. Maxime Bernier: La jurisprudence des cours et les critères, il faudrait donc resserrer ces critères-là et non se fier à l'interprétation que les cours ont fait de la législation, selon vous?

Me Frédérique Couette: Si on parle de l'interprétation des cours, ce que vous a dit Mme Noel, c'est qu'elle se fait à

l'interprétation de 2012 dans la décision *Alberta c. Canadian Copyright Licensing Agency (Access Copyright)*. Cette décision n'a jamais dit qu'on pouvait reproduire jusqu'à 10 % d'une oeuvre ou un chapitre au complet. Dans cette décision-là, on parlait de quatre pages et demie par année par étudiant, on est très loin du 10 % au niveau des universités.

Écoutez, j'ai des chiffres de déclaration. Au Québec, on parle de 47 millions de pages, 22 millions pour les cégeps où ne sont donc que 10 % des écoles au primaire-secondaire, c'est 3,6 millions, c'est multiplié par 10, on est à 36 millions, on est très, très loin du 4,5 pages. Je vous rappellerai que la Cour suprême déclarait également que, oui, cette portion-là, c'est 17 millions je pense, ce 17 millions de pages qu'on met sur l'utilisation équitable, mais que les écoles payaient pour le reste. Elles ne payent plus pour le reste.

L'hon. Maxime Bernier: D'accord, merci.

[*English*]

Mr. Matt Jeneroux: Great.

Picking up on some of my colleague's line of questioning you heard Ms. Noel's comments earlier and I'll give you both a chance to comment on what she said. In particular, take us back to 2011. We have the testimony and you read some of it into the record, Ms. Levy.

Are you then blindsided by a letter from Ms. Noel on this? Take us back to before December 5, 2012.

Ms. Roanie Levy: When Craterson Publishers came before the legislative committee in 2011-2012 looking at the Copyright Modernization Act we were very concerned that the addition of education was going to lead to exactly the situation we're in today with the education sector abandoning all the licences. The education sector, time and again, came to the committee and essentially said that the creators, publishers, and the collective, were fear-mongering and that in fact that was not at all what it was intended. It was really for these other uses of other works that are not covered by the licence essentially and that the licence would continue to remain whole and they would pay it.

Are we completely blindsided? We were always concerned that we were going to get this point. We were not completely blindsided but we are a little bit surprised that they did such a quick turn on their position.

Mr. Matt Jeneroux: Madam Couette, do you have any comments on Ms. Noel's earlier testimony?

[*Français*]

Me Frédérique Couette: Nous avons eu la même situation, dans le sens où, pour nous, ce n'est pas la fin des licences qui nous a été annoncée. Dès le mois de juillet 2012, les universités québécoises nous ont demandé de renégocier la licence. On venait de finir la négociation en mai ou juin 2012. L'adoption a eu lieu à la fin du mois, et les décisions de la Cour suprême étaient en juillet. Les universités québécoises ont demandé de renégocier, ce qui a fait que la licence est passée de 25,5 \$ en juillet 2012 à 21 \$ en janvier 2013. Effectivement, nous avons subi la même situation suite à l'adoption des dispositions.

[*English*]

The Chair: *Merci beaucoup.*

Mr. Masse, you have six minutes.

Mr. Brian Masse: Thank you, Mr. Chair.

Thank you for your testimony today.

I want to get clarification with regard to the illegal copying that's taking place. I've heard different numbers. What exactly are they and where do the numbers come from? Those have been used by several witnesses prior to today's

testimony as well too, but I think they're all using these numbers, the 600 million and then there were some other ones. Where does that come from?

Ms. Roanie Levy: There is a document which was distributed earlier and it has some of the key numbers in there explaining where they come from. You'll see where the 600 million pages of published works copied every year comes from.

Mr. Brian Masse: For the record where exactly does that come from?

Ms. Roanie Levy: It comes from a couple of places. The first place is the Copyright Board decision in the elementary/secondary school sector. There were 380 million pages copied there to answer your question.

🕒 (1710)

Mr. Brian Masse: How did they come to that conclusion?

Ms. Roanie Levy: A study was done. There was a study that was done.

Mr. Brian Masse: I want to make sure because we're hearing that number quite a bit.

Ms. Roanie Levy: Yes, absolutely.

Mr. Brian Masse: If people are following perhaps they want to know.

Ms. Roanie Levy: A study was done and that's where the 380 million came from. Of that 380 million, the Copyright Board concluded that 60% of that is fair dealing and, therefore, not compensable.

Mr. Brian Masse: Okay.

Ms. Roanie Levy: And the remaining 40% is compensable. So, in fact, there was 150 million pages that still need to be compensated, but the ministers of education are still refusing to pay that. They're claiming the whole thing under fair dealing, even the amount that the Copyright Board said had to be paid for.

Mr. Brian Masse: There's about 150 million of outstanding invoices?

Ms. Roanie Levy: Outstanding payments that they're claiming for dealing on, 380 million in total for elementary/secondary.

In the post-sec sector we did a study in the York University case and in that case as a result of the study which looked at the copies that were loaded on learning management systems and Coursepacks, we see 360 pages per student per year being copied on average.

Mr. Brian Masse: Okay. So, it's—

Ms. Roanie Levy: When you use all of that data, on a conservative end you end up with 600 million pages that are copied and not paid for. These are copies that are not licensed, no transactional licences have been obtained for, that are not available under open access licences either.

Mr. Brian Masse: Would it be fair to say that as educational age and grade level increases that the increasing amount of copyright takes place?

Ms. Roanie Levy: Yes.

Mr. Brian Masse: I don't want to draw assumptions. I'm not going to read the studies.

Ms. Roanie Levy: Yes. No, absolutely.

Mr. Brian Masse: So that's where the particular problem is. Has that increased and is there any data related to that since the decision has been in place? Has the behaviour pattern changed with the decision?

Put that aside, has that increased? Has there been a pattern of behaviour or do we know? These may not be fair to you, but I'm trying to get some scope of what's taking place.

Ms. Roanie Levy: It's hard to tell because we had historical data about what used to be copied, at least part of what used to be copied because before 2013 when they stopped paying in the post-sec level they would report to us all copies that were made and included in Coursepacks, in paper Coursepacks.

Today we don't know what gets copied anymore. What we do know is only from the study that we did with York University and in the context of that litigation.

Mr. Brian Masse: Yes.

Ms. Roanie Levy: In that context 360 pages per student per year were copied.

Mr. Brian Masse: That's going to be pretty onerous too with digital and a series of different format changes that are more dynamic than ever before. I can appreciate that. That helps.

With regard to much of the testimony that we've heard and you've heard some of it today is that an incremental amount of money is being spent on materials. You're mentioning that Canadian publishing firms in Quebec are down. Is this basically what's happening is most things are being streamed to three to five publishing conglomerates? Is that really what's taking place or are they really not telling the full story here that their costs for publications is actually going up?

Ms. Roanie Levy: Based on what I heard in their testimonies and they're in a better position to tell you how much they spend, they are increasing spending on journal articles. This is research material, by and large, not instructional material.

Mr. Brian Masse: Okay, yes.

Ms. Roanie Levy: The material that gets used, it tends to get copied and used in class for instruction is different from the material that is used for research. That's where you get the science, technical, and medical journal publishers, The five big multinational publishers are in that category. The licences that they have to CrCan, those are the STM science, technical and medical journals. What gets copied and no longer paid for is the educational content, the trade content, the stuff that is used for instructional purposes.

Similar to what Frédérique mentioned about the experience in Quebec and in the rest of Canada as well, what we saw historically is that only about 15% of the copies that they use to historically make and report to us was from STM, science, technical and medical journals: the rest was books and that does intend to be licenced through university libraries.

Mr. Brian Masse: That was very helpful.

Do I have any time left?

The Chair: Seconds.

Mr. Brian Masse: Thank you very much, that's been very helpful.

The Chair: We're going to move right to Mr. Longfield, you have five minutes.

Mr. Lloyd Longfield: Thank you, Mr. Chair, and thank you both for coming with detailed information for us. We are trying to get to the bottom of what's fair and not just fair use, but what's fair in terms of legislation.

Mr. Masse mentioned earlier that when it ends up in court, that means we haven't done our job. We've had 21 hearings since the new legislation has come in. What was the relationship before that? Did you have hearings? You're both involved with litigation right now, both of your organizations, class action in one case, and in another case the litigation against licences that weren't being paid.

What was it like before this legislation? Was it better or worse?

🕒 (1715)

[Français]

Me Frédérique Couette: Pour ce qui concerne Copibec, nous avons toujours négocié nos licences. Nous n'avons jamais fonctionné par le biais de la Commission du droit d'auteur du Canada ou par un litige quelconque. Nous avons toujours privilégié la négociation. C'est encore aujourd'hui ce que nous privilégions avec les autres universités, à l'exception de l'Université Laval. Il s'est trouvé qu'en 2014, l'Université Laval a refusé toute discussion et n'a jamais voulu s'asseoir à une table avec nous. Nous n'avons pas eu d'autre choix. Ce n'est pas le mode privilégié de négociation des redevances que nous avons, mais depuis 2012 c'est ce à quoi nous avons été confronté concernant l'Université Laval.

[English]

Mr. Lloyd Longfield: Thank you.

Ms. Roanie Levy: If I may, I've been at Access copyright for 17 years. I've been there, in a way, through this whole process and what I'm going to express is my personal view of what has happened through the years. The Copyright Modernization Act took 15 years.

For 15 years the parties came before committees, sometimes legislative committees and some standing committees to look at another iteration of the Copyright Act and you had the creators, the writers, and publishers and the collective on one hand and you had the education sector on the other hand. Creators and publishers wanted stronger copyright, and users and in our situation, the education sector, the libraries, wanted more exceptions. We were at odds with each other for 15 years and in the context of that tug of war around what the Copyright Act is ultimately going to say, big licences came up for negotiations.

It became increasingly difficult for us to sit down at a table and negotiate the licence and that's why we ended up before the Copyright Board. As the process continues with these five-year reviews and litigation that takes almost decades to conclude, we are stuck in this tug of war. It is not our preferred situation.

Mr. Lloyd Longfield: Right. I should have mentioned that I was going to share a minute of my time with Mr. Sheehan, but I'm going to touch on this just a little further, because I think we're on to something when it comes to licences.

The intention at the time was that there would be revenue neutral. Licences would continue to be paid; users would be able to have access for the purposes of study and education; institutes would continue to pay licences on behalf, knowing that students would have access to the material to copy in terms of their studies and research.

Then at some point we came off the rails, that the licences with the institutions weren't getting covered off. Is that a fair assessment?

[Français]

Me Frédérique Couette: Je pense que l'exemple québécois montre justement un exemple de ce qui est une forme d'équilibre. C'est certain que je ne vous dirai pas qu'à 13,50 \$, je trouve que le montant des redevances est équitable, mais à tout le moins nous sommes capables de nous asseoir autour d'une table. La seule raison pour laquelle ça se passe ainsi au Québec, c'est qu'il y a un ministère de la Culture et un ministère de l'Éducation qui ont à coeur la continuité d'une industrie de l'édition forte qui raconte l'histoire québécoise plutôt que d'aller chercher ce qui se passe en France, en

Belgique ou ailleurs. Si on n'a pas ça derrière la notion d'utilisation équitable à des fins d'éducation, s'il n'y a pas quelque chose qui vient la renforcer pour guider les universités, le ministère de l'Éducation dans interprétation, on a abouti à la situation d'Access Copyright. C'est dans cela qu'on finirait par tomber, si rien n'est fait au Québec.

[English]

Mr. Lloyd Longfield: Thank you.

Mr. Terry Sheehan: Very quickly, on the tour UBC had shown us a charter where course packs used to be 80% usage and 20% digital. Just recently they did a study and the number absolutely flip-flopped on that. As it relates to digital form and the transactions that are happening a lot of universities are opting out of access copyright, etc.

Could there be a situation where Access Copyright would sue a university or a purchaser for use in your repertoire when they had already and legally received permission to use elsewhere?

🕒 (1720)

Ms. Roanie Levy: I think that's a hypothetical and I can't really answer a hypothetical especially when it involves suing someone.

In answer to the switch from paper to digital I think it's important to note that both the Access Copyright licence and the Copibec licence covers a reproduction both in paper and digital. The fact that, instead of producing paper course packs, they now just PDF it and upload it on a learning management system doesn't change the impact on consumption of works that are protected by copyright and not paid for. The mechanism to pay for it is in the collective licence to make it simple and easy for professors across the country to make the reproductions that they need to instruct their students and ensuring at the same time the payment flows back to the creators.

The Chair: Thank you.

We've going to move to Mr. Lloyd.

You have a very quick five minutes.

Mr. Dane Lloyd: Thank you for coming today. I appreciated your testimony.

I'm going to reference the document here that was provided by the CMEC Copyright Consortium in which they talk about book sales in Canada, book sales in Ontario, Canadian Publishing Industry profit margin, and Canadian publisher sales of their own titles 12 institutions.

I was looking for some clarity from you. You guys don't actually sell books. You are a reproduction company and primarily derive your income from educational institutions.

Do you think that these statistics really have any value for us as a committee?

Ms. Roanie Levy: Those statistics don't refer to the reuse rights, the reproduction, that's for sales. Unfortunately, I'm not in a position to comment about the source of that data and how it marries with our own experience.

Mr. Dane Lloyd: Let's assume, because it is StatsCanada data, that it is probably very accurate. Would you say that it's not really pertinent for this committee to review book sales when we're talking about copyright? Are they two totally different issues?

Ms. Roanie Levy: One thing to keep in mind is what gets sold and what gets copied are sometimes different works. So, a group of works that is not being bought can be copied so you may see sales revenues go up for this group of creators but it's another group of creators that get reproduced and not paid for. The example that we heard here over and over again is university libraries spending hundreds of millions, more than ever, on science and technical medical journals and not paying the reuse rights for the copying of chapters, short stories, and plays, that they upload on their

learning management systems and share with their students. There are two different groups of rights-holders. One is primary sale and the other is secondary revenues; one they pay for and one they don't pay for. The impact is not felt the same way.

Mr. Dane Lloyd: So, when we're—

Ms. Roanie Levy: The fact that they pay for one does not give them a free pass to copying the other group of books.

Mr. Dane Lloyd: We're looking at book sales like it's been put in previous testimony, you can't compare the average author to a J.K. Rowling for example who is selling millions of books around the world. These book sales are reflecting all books from all authors including best sellers. But when you actually look at the percentage that are educational books, it's probably a very small margin as part of the overall book sales market in Canada.

Ms. Roanie Levy: Again, I don't know the source of that data so I can't really comment about that data per se.

Mr. Dane Lloyd: I'll move along to another area.

Ms. Roanie Levy: Generally speaking, I think your comments are accurate.

Mr. Dane Lloyd: Some witnesses have claimed that it's because of the increased use of digital content in our age of the Internet that has led to a decreasing relevance for access copyright as a collective society and by extension copyright. Would you say that this is true that is Access Copyright not really involved in the digital era?

Ms. Roanie Levy: Absolutely not, that is not correct.

I think what you need to do is look at the York University case. It is the time the opportunity we had to actually see the content that gets used in course packs and on learning management systems at York University. In the context of that litigation, a study was done. Individual titles were looked at. The titles had to be determined whether they were in Access Copyright's repertoire, whether York had licences, whether they were available on Open Access. The outcome was that 360 pages per student per year were in Access Copyright's repertoire were not being paid for, were not available under Open Access. That's an average, 360 pages per student per year. That is a huge amount of copying.

🕒 (1725)

Mr. Dane Lloyd: I guess my final question would be in my conversation with the previous witnesses who came in today, they were talking about competing evidence coming in before the Copyright Board and I was referencing the PWC's report which was commissioned by access copyright. Then you had spoken about Copyright Board's decision but they referenced and they said it was probably from DeLoitte that there was another piece of evidence in there.

Can you elaborate on the differences, the contrasts between those reports?

Ms. Roanie Levy: I think one thing that's important to note that got very confused in the earlier panel is which courts or tribunals have looked at the copying guidelines. The Copyright Board did not look at the copying guidelines, has not said anything about the fairness of the copying guidelines. Only the federal court in the York decision has had to examine the copying guidelines, the 10% a chapter and determine whether it's fair. It's in that context that there were duelling experts, in fact, there was two on each side and the court concluded unequivocally that the fair dealing guidelines are arbitrary. They are unfair and they lead to economic harm.

The Chair: Thank you.

Mr. Jowhari, you have a quick four minutes, a very quick four minutes.

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

Thank you, Ms. Levy and Ms. Couette.

You were very clear in explaining to us the difference between acquisition and between the reproduction. We're always trying to find what was the reason that the cost of acquisition was increasing and now it's become at least clear for me, that a lot of that has to do with the articles as well as the publication that's being done and the transition into the digital.

One of the other things we heard was that the students get their material for the instruction material either from the textbook store or they get it through the course packs. Usually the university or the libraries also buy one or two copies and they put it in the library. We're also told that the number of course packs that are being created is also drastically reduced. One example when we were—I think we were in Halifax—and we were looking at the university and they said they have one course pack for all their curriculum. We were saying how could that be? Where are they getting the material?

Help me understand. If the textbooks are not showing up on the textbook store to buy and the course packs are not created and printed and I know you touched on it, it being digital now and it's not part of the acquisition. Where are the students getting the material that they need to get instructed and how did 600 million pages show up?

Ms. Roanie Levy: Educational institutions across the country have what is called learning management systems. They're essentially digital platforms that allow professors and students to upload content and share it with their class. They've gone from taking the material that was published and produced in course pack form to making it available on learning management systems.

It's not that they're not using the content anymore because it's not in a paper course pack. They're still using the content. They've now moved it from paper to digital and it's still being used. This we saw in the York University case where we, because it was part of the discovery process of the case, we had a look not only on the paper course packs that they produced but on everything that the university posts on learning management systems.

Mr. Majid Jowhari: Does the university actually scan the textbook and put the content in a PDF?

Ms. Roanie Levy: Sometimes they scan it. Sometimes they already have it in a PDF. Sometimes they extract it from a larger PDF. There are many ways they get it in digital form and then upload it onto learning management systems.

To be clear, the study that we did at York University did not have anything to do with links, so any links were excluded. It was just documents that were posted on the learning management system, and, importantly, in that study we needed to see whether or not they already had the rights for those works because you have heard of hundreds of millions of dollars being spent on accessing content, and those claims were made to the judge as well. York said at the beginning of the process that most of what they copy they have licenses for.

By the end of the hearing, they had to abandon that claim completely because they could not marry the works they upload on learning management systems and copy in course packs with the licences that they have. It is not a question of faulty paperwork. It's because these are different works.

🕒 (1730)

The Chair: Thank you.

For the final minute, Mr. Masse.

Mr. Brian Masse: Thank you, Mr. Chair.

As this has progressed—and we're going to have hearings and we'll make a report to the minister and the minister will then respond to the report, then I imagine it would take, if there are going to be some changes, legislation, which would be another review—are there things in the interim you would suggest could be done from your perspective right now?

Ms. Roanie Levy: There are things that can be done immediately by communicating from the government's perspective whether they believe this approach is right or not. Just signalling to the education sector is a start.

The government has also committed to making some changes to the Copyright Board of Canada process and while that does not touch on fair dealing, at least what is left after the ravages of fair dealing, at least what is left after all of that has been taken off, is something that is enforceable and usable. That would be another suggestion.

Mr. Brian Masse: Has your organization conveyed that to the minister at this time?

Ms. Roanie Levy: Yes, we have.

Mr. Brian Masse: Would you be willing to share that information with the committee?

Ms. Roanie Levy: Absolutely.

Mr. Brian Masse: Thank you.

The Chair: If you forward that to the clerk, that would be great.

Is there anything else? Are we good?

On that note, we could have spent two hours with you guys. I want to thank you both for coming in today and sharing your experience and knowledge with the committee. Thank you.

On that note, we will adjourn.