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🕒 (1530)

[English]

The Chair (Mr. Dan Ruimy (Pitt Meadows—Maple Ridge, Lib.)): Good afternoon, everybody. What a gorgeous day it is outside.

An hon. member: Let's move outside.

The Chair: I was just going to suggest that. Could we do that outside? We wouldn't be able to hear anybody, but...

Welcome, everybody, to meeting 117 of the Standing Committee on Industry, Science and Technology, as we continue our five-year legislative review of copyright.

Today we have with us from the Canadian Teachers' Federation, Mr. Mark Ramsankar, president. From the Canadian School Boards Association, Cynthia Andrew, policy analyst. From the University of Calgary, Dru Marshall, provost and vice-president, and we'll save you for last.

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

Mr. H. Mark Ramsankar (President, Canadian Teachers' Federation): Thank you, Chair.

My name is Mark Ramsankar, and I am the president of the Canadian Teachers' Federation, but first and foremost I'd like to suggest that I'm a school teacher. I've had the opportunity throughout my career to teach all grades, as well as work as a consultant with the school board in Edmonton. I've been a special-ed teacher as well as an administrator, so I'm speaking from the perspective of the entire education system K-12 over my 25 years in the classroom.

As the national voice for Canadian teachers, I represent here today a quarter of a million teachers in the K-12 system in every province and territory in the country. We have a strong connection to Education International, which represents over 30 million teachers across the world. We have a long-standing member of the education coalition on national education organizations. We advocate for the rights of teachers and students in the federal government's copyright reform process. We work very closely with the education coalition partners to develop education materials for teachers on matters relating directly to copyright.

We believe very firmly in protecting legitimate interests of creators and publishers by ensuring there is no copyright infringement when teachers are copying materials for use in their classrooms and for students. We also believe that the current fair-dealings provisions maintain a very strong balance between user rights and creator rights, and we view this as very strong public policy. Even our global organization, through Education International, holds that the Canadian Copyright Act, as it stands, is held in very high regard. Teachers are professionals who respect copyright and we also teach our students when they do research to respect copyright.

Teachers will not copy materials if there is any doubt. They do not copy whole text books. It infuriates us through the profession when somebody says something such as this, where we take a teacher who is blatantly stepping on copyright rules. Over the last decade, there's been a dramatic shift from print-based materials and resources, like text books, to digital resources. Today in our classrooms, as challenging as they are, teachers find effective ways to teach through these evolving technologies. They are creating their own resources and materials and they're using collaborative approaches to content in creation, and engaging students so that they can learn through online resources, as well as more traditional print material.

As professionals, in the K-12 system teachers want their students to have access to the very best educational content that is available. Speaking directly to copyright, it is an important issue, and it's a subject that has been raised by the Canadian Teachers' Federation with teachers. We speak about compliance and take part in awareness of consequences to infringing on copyright. We also engage in a comprehensive awareness program in efforts to ensure that teachers are aware of copyright and the limits of the law when they are preparing for their classes.

Teachers are professional. Anecdotal stories of whole text books being copied are isolated incidents. I speak directly for the K-12 system in education, and that is public education. I don't stand here to represent extended education or private. For CTF, it's not about the money. From our view, it's about students and providing the best for their learning experience in our system, and their futures.

I came today to witness and represent the Canadian teachers, and I'm urging the standing committee to maintain the current fair-dealings provision, which balances the protection of both creators and users. I also ask you to consider your decisions, and consider the fact that one-quarter of a million teachers work with children every day in this country. Decisions made as we go forward in regard to copyright will have very damning effects on classrooms across the country, and every student in the K-12 system will be affected by the decisions that are made at the outcomes of these hearings.

Thank you very much, Chair.

The Chair: Thank you very much.

We're going to move right to Cynthia Andrew from the Canadian School Boards Association, and you have up to seven minutes.

Ms. Cynthia Andrew (Policy Analyst, Canadian School Boards Association): Thank you, Mr. Chair.

Good afternoon, everyone. Again, my name is Cynthia Andrew, and I appear before you this afternoon representing

the Canadian School Boards Association. Our association's members are the provincial school board associations that represent just over 250 school boards across Canada, and they serve slightly less than four million students, elementary and secondary school students, across Canada. I am an employee of one of those provincial associations, the Ontario Public School Boards' Association, and I am the key staff person both in Ontario and within CSBA for school boards on all matters relating to copyright. I am pleased to be able to appear before you this afternoon to speak about copyright and school boards.

Copyright law affects all of Canada's school boards, and it is reflected in policies and practices in school board administration and in classrooms across the country. As a result, CSBA has been attentive and active in issues related to copyright reform since the 1990s. CSBA works closely with other national educational organizations on copyright-related policy development, and that is why you will notice that many of our supporting materials are the same as those materials you have already seen from other witnesses before you on this issue. For example, the fair-dealing guidelines and the copyright matters booklet.

CSBA recognizes the importance of copyright awareness in the K-12 education community, and we do our part, along with our provincial affiliates and our education partners to impart the need to foster greater understanding and compliance within our schools and within our classrooms. CSBA provides advice to local school boards through its provincial association members. The provincial ministries and departments of education can exercise greater authority making certain policy requirements of school boards.

I know you heard from them earlier this week through the CMAC copyright consortium. CSBA works cooperatively with the CMAC copyright consortium and with other national educational partners to ensure that consistent information about copyright compliance and copyright rights and responsibilities are consistently shared through our provincial school board associations with all of the school boards and their employees. This decision to educate school board employees consistently across Canada was made late in 2012, and was only partially a result of the amendments to the Copyright Act that passed earlier that year. The decision was also significantly a result of the 2012 Supreme Court decision that found it was fair for teachers to copy short excerpts of copyright-protected works for their students. It is that Supreme Court decision that prompted national education associations to establish the fair-dealing guidelines.

CSBA supports the fair-dealing guidelines, supported the establishment of them, and worked with its provincial affiliates to ensure that directives from their respective provincial ministries were implemented effectively. CSBA believes that the fair-dealing guidelines provide school boards and their employees with clear copyright policy guidance ensuring that educators are aware of their rights and their responsibilities under the Canadian copyright law. The fair-dealing guidelines ensure consistent application of the Supreme Court's decision and its application is applied across the country. The guidelines are aligned with copyright law around the world so that our teachers and our students are on a level playing field with those from other countries.

CSBA further believes that fair dealing for education purposes is good public policy that supports student learning and ensures effective use of taxpayer dollars. The Copyright Act balances rights between copyright owners and copyright users, and the fair-dealing provision in the act is an important right for Canadian educators. Fair dealing for the purpose of education allows teachers to access a wide range of diverse learning materials and thereby enriches students' learning experiences.

The Supreme Court decision and the fair-dealing guidelines have established a stability that CSBA supports and wishes to see maintained.

⏪ (1540)

Teachers are now certain when they're selecting materials for their lesson planning and when seeking those supplemental materials necessary for teaching individuals who may be more challenged with the lessons.

CSBA is aware that publishers and Access Copyright have been vocal in their claims that fair dealing has caused them economic hardship. To date, they have not been able to present sufficient evidence to support this claim beyond anecdotal examples. The other gap that is evident from the testimony to date is the degree to which the success or decline of publishers and Access Copyright reflect what is fair remuneration to creators. Will restoring tariffs and

increasing tariff payments help those writers and those creators?

CSBA does empathize with the challenges currently facing the education publishing industry. The industry is struggling to stay current with advancing technology and new perspectives about teaching and learning. Text books, once the primary learning resource available to educators, are now just one in a series of choices that school boards and teachers have available when preparing classes for their students. School boards spend their learning-resource dollars on digital content repositories, on subscription-based databases, on online libraries, provincially developed or locally developed electronic resources, on apps, and of course in the Internet. Again, the true value of the educational use of fair dealing is that educators now have the flexibility to adapt their materials to the specific needs of each class, or even each individual student, in ways that were unimaginable just a few years ago.

While CSBA as an organization is not directly involved in any of the legal or quasi-legal actions that have occurred around copying in schools, some of our member school boards, those in Ontario, are directly involved. Other provinces' school boards are indirectly involved as their ministry is involved. While CSBA itself might not be directly involved in these matters, we certainly have an ongoing interest in ensuring that the Copyright Act continues to balance the rights of both creators and the educational users.

The fair-dealing provisions in the act provide balance in both rights and responsibilities. The Supreme Court and those other court proceedings that are playing themselves out today are providing the definitions and the clarity around fair dealing. There is a new normal in K-12 school communities that educators are adapting to, that publishers are adapting to, and that teachers and students are benefiting from, that is about access to enriched learning material. CSBA asks MPs to not be tempted to apply legislative amendments to what is already a fair and balanced approach to copyright in our schools.

Thank you.

The Chair: Thank you very much.

Finally, Ms. Marshall, you have up to seven minutes.

Ms. Dru Marshall (Provost and Vice-President, University of Calgary): Good afternoon. I'm Dru Marshall, provost and vice-president, academic, at the University of Calgary, and chair of the copyright committee there. I want to begin by thanking members of the committee for their support for the post-secondary sector. Investments in our campus through the post-secondary strategic investment fund, and through the previous knowledge infrastructure program, have had a transformative effect on research and learning spaces on our campus. We also really appreciate the significant federal investments made in support of Canada's research ecosystem.

I'm pleased to be here today to make recommendations to the committee and to speak about the University of Calgary's approach to copyright. First, I want to emphasize that the University of Calgary supports the retention of the fair dealing exception for education in Canada's copyright regime. As both creators and users of copyright material, universities must have a balanced approach to copyright and to the issue of fair dealing.

Fair dealing helps ensure a high-quality educational environment for students, and contributes to innovation in teaching by enabling an instructor to use a variety of examples in their lectures, exposing students to the most recent cutting-edge research. The speed at which textbooks and traditional print books are produced and distributed often does not allow for inclusion of these types of examples.

At the University of Calgary we take a measured approach to fair dealing, ensuring it is used to supplement or complement purchased material, not to replace it. We do not apply fair dealing to print course packs, because while the university produces course packs on a cost-recovery basis, the institutional printing contract with a third party printer includes a commercial element. We also do not apply fair dealing to compilations of works such as literary anthologies. Instead we look for original sources of these works, and in most cases purchase transactional licences for them. Indeed, the university applies fair dealing to a very small proportion of course materials used in classrooms today. In a sample of 3,200 learning items such as book chapters, articles, Internet resources used by instructors in our winter 2017 semester, fair dealing was applied to only 250 items, or less than 8%. We most commonly applied fair dealing in

instances where a chart, a graphic, or tables from a book or academic journal articles were included in the materials for a lecture.

I'd be happy to walk the committee through a detailed example of how fair dealing is applied to a specific course during the question period of today's meeting.

At the University of Calgary we also strongly encourage against introducing any measures to harmonize tariff regimes, imposing statutory damages, or introducing mandatory licensing into Canada's copyright regime. Doing so would remove or threaten a university's ability to choose how to manage copyright, compel them to purchase blanket licences, and result in a university paying twice for the ability to reproduce most of its copyrighted content. This move would be a fundamental change to copyright law and should be studied very closely for all the unintended consequences that would flow from it, especially the cost implications for public institutions.

We understand that in recent government consultations on reforming the Copyright Board of Canada, Access Copyright proposed statutory damages in the range of three to 10 times the royalty for even the smallest case of infringement, with no discretion for the courts to vary from this. We also understand that Access Copyright is currently pursuing royalties, at a rate of \$26 per FTE student for the university sector, through rate-setting proceedings at the Copyright Board of Canada. This rate has not yet been confirmed by the board, but if it were, this would mean statutory damages for a university, hypothetically, in the range of \$78 to \$260 per FTE student at the institution. That scenario would be difficult for any publicly funded institution.

Our opposition to this measure is in line with the University of Calgary's decision to opt out of the Access Copyright interim tariff in September 2012. This decision to opt out came after considerable consultation with our university community, and was driven by significant cost implications stemming from both the increase in the tariff and the limits in the repertoire offered by Access Copyright. The Access Copyright tariff applies only copying of print materials within its repertoire, and the details of the specific materials included were not sufficiently transparent.

⊕ (1545)

As a growing proportion of library materials are digital, the university increasingly found itself paying twice for the same resource, paying the Access Copyright fee for print copies, and also paying for the license for digital copies preferred by the university community.

This preference and the greater cost-effectiveness of digital resources drives a growing proportion of library acquisitions. We have a digital first policy and approximately 90% of our acquisitions in 2017-2018 in our library were digital, just over \$10 million, making print-based collective licenses less useful.

When we opted out of the Access Copyright tariff in 2012 it was because we recognized that we could implement institutional copyright policies that would be both more cost-effective and, importantly, responsive to the needs of the University of Calgary community.

At the U of C we take copyright compliance extremely seriously. We educate our faculty, staff, and students about copyright. For example, we recommend all course reading lists be submitted to the copyright office to ensure compliance. We have a copyright officer that attends and presents at new faculty orientation sessions and holds regular information sessions for instructors, staff, and students on copyright. In 2017, that copyright officer gave over 22 presentations and workshops to our community.

Our learning management system includes reminders about where to seek advice about copyright issues and for the appropriate use of materials.

We provide copyright compliance assistance services. We have a copyright office that employs four full-time employees, and they processed over 7,800 requests in the winter term of 2017. That same office negotiates transactional licenses and clearances on behalf of our instructors and professors.

In 2012, we became one of the first Canadian post-secondary institutions in Canada to adopt a policy on acceptable

use of materials protected by copyright that applies to the campus community. This policy includes sanctions for non-compliance.

We have a copyright committee that meets quarterly that includes students, administration, and staff, and we have developed a rigorous, we think, and comprehensive approach to manage copyright.

In conclusion, we urge the committee to take a balanced, measured, and fair approach to copyright, one that respects the rights of both creators and users.

Again, we appreciate the opportunity to appear before you and look forward to questions.

⌚ (1550)

The Chair: Thank you very much for all of your presentations today.

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

Mr. Terry Sheehan (Sault Ste. Marie, Lib.): Thank you, Mr. chair, and thank you to our presenters for the very informative information you have provided.

My background is I was a school board trustee many years ago, and my family come from a family of teachers. In fact, my father used to be president of OSSTF. I'm mentioning that because he's in Ottawa today too as well.

I'm going to start out asking you a question I've been asking various people across the country and here. It's about copyright as it relates to Canada's indigenous people. Canada's indigenous people feel the copyright laws as they exist do not serve their traditional culture and methods of communicating that.

We've heard from various ones whether it's the oral tradition and what not and how do we engage. Obviously, in your schools you have indigenous children, you have indigenous teachers, you have indigenous trustees, you have indigenous professors, and what not.

My question to you is could you provide some information to this committee about your thoughts on how we could improve copyright as it relates to Canada's indigenous population.

Anyone can start. It's for all three of you.

Mr. H. Mark Ramsankar: I will give it a start. Knowing that the indigenous population passes on knowledge traditionally through oral communication makes it difficult to put any kind of copyright on these types of learning environments.

When we're looking at a school per se that is addressing the needs of indigenous children through printed stories and materials, those are made available in classrooms that students would traditionally be able to borrow such as through libraries or as teacher resources.

When we're talking about building the culture, it goes far beyond just whether or not it's a piece of printed material because in the experience I've seen in schools right now it goes far beyond taking a piece of paper and putting it in the hands of the students. It's more of a lived cultural experience that has a lot more to do with it.

Ms. Cynthia Andrew: Thank you.

My experience in this matter is limited. I can say that with respect to the purchasing of materials, I think that some of the issues we're thinking about, if we're talking about printed materials, we could look at some arrangements where materials are printed or published with different parameters around them between the publisher and the creators themselves. That would be something the publishing industry would be better informed about than myself, but I know that when creators get their works published what their compensation is depends greatly on what their contract is with their publisher. That is one thought that I have.

With respect to materials that are not print published but are oral or other things, I know there are a number of school boards across Canada who participate in a program that brings indigenous creators into their school to talk to all students about indigenous art and they participate in art creating days and indigenous storytelling. By doing that, and by promoting artists in the school who come from indigenous backgrounds, we're making our students more aware of the stories and the art and the culture than they would currently be. There's often benefits to that for the community.

⊕ (1555)

Mr. Terry Sheehan: Dru.

Ms. Dru Marshall: I would say the current Copyright Act does not afford indigenous people protection for their copyright material. Part of it is the way those materials are produced. We have just spent a significant amount of time putting together an indigenous strategy. I'll give one example. During that strategy it was apparent that a written document would not tell the story we were trying to create, and so we wanted to use indigenous symbols to tell the story. Of course one of the issues is whether or not you are absconding cultural property if you use those symbols. What we did was we spent considerable time with the community, and one of our Kainai elders gifted us a series of symbols that we could use, and helped put those symbols together so that an indigenous community could pick up our document and essentially read it in their language without having to read the written word.

Mr. Terry Sheehan: So you asked permission.

Ms. Dru Marshall: We did ask permission. I think any Copyright Act moving forward should include this type of piece within it.

Mr. Terry Sheehan: How much time do I have? A couple of minutes?

The Chair: A minute and a half.

Mr. Terry Sheehan: Okay.

Mandatory tariffs, you're going to have to expand on this one, and I don't think with a minute and a half we'll be able to get there. But Access Copyright versus York University, the decision, and undoubtedly the appeal that's coming, do you feel in particular the dispute between departments of education across Canada and the school boards of Ontario is whether the tariffs put in place by the Copyright Board are mandatory. Do you believe that tariffs should be mandatory, yes or no, and why?

Ms. Dru Marshall: I'm happy to start on that if you'd like.

I don't think tariffs should be mandatory. I'll speak from a university perspective. I think there are options for tariffs and for ways to clear copyright. Right now Access Copyright is but one collective. There are a variety of different ways that you can gain licences. We had some issues with Access Copyright in terms of transactional licences, for example. We're not able to obtain them, and it was an all or nothing approach to licensing, and so we found that we were paying for licences twice. Furthermore, we also found their repertoire was not transparent, and so it was difficult to know exactly what we had paid for.

Mr. Terry Sheehan: Thank you.

The Chair: Thank you.

I'm sure we can get back to that one.

[*Français*]

Monsieur Bernier, vous disposez de sept minutes.

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

Bonjour, merci d'être avec nous aujourd'hui.

Ma question peut s'adresser à plusieurs d'entre vous. Nous avons entendu ici des gens représentant diverses organisations nous parler du coût d'accès pour avoir le droit d'utiliser les copies des auteurs et de l'exception d'utilisation raisonnable ou de *fair dealing*. J'aimerais donc vous poser des questions à ce sujet.

Access Copyright et Copibec ont encouragé le Comité à ne pas accorder trop de poids à des données et qui disent que les dépenses d'acquisition, de licence et des droits de reproduction peuvent être excessives. Pour Access Copyright et Copibec, dans le contexte numérique actuel, nous devons faire une distinction entre acquérir et reproduire une oeuvre pédagogique. Faites-vous la même distinction entre acquérir une oeuvre et reproduire une oeuvre? Les frais engagés par les gens sont surtout utilisés pour avoir le droit d'acquérir des licences et non pas de reproduire des extraits d'oeuvres. Quelle est votre position par rapport à cette distinction?

🕒 (1600)

[English]

Mr. H. Mark Ramsankar: I will open by suggesting that Access Copyright isn't in today's classrooms. Today's classrooms are complex, so to simply say that a blanket licence for acquiring material is one way to build a resource to work with the complex needs of students in a classroom is unfounded.

In terms of the separation between acquiring information and then being able to disseminate it, there is a very clear distinction on that. I do know that blanket licensing, when you look at the public system across the country K-to-12, is in various forms, so to have a single way to say this is how we should be accessing information and that you either have a licence or you don't would be doing a disservice to areas that don't necessarily have the same type of access.

We have all sorts of remote areas in the country, so getting access to material is part of it but then building and using that material to meet the complex needs of a variety of children in a classroom becomes of greater significance to the teachers who are working with children.

Hon. Maxime Bernier: On your position on fair dealing, you said in your testimony that you think we don't need to change that, the interpretation from the court is okay with the criterion to use the material, and it's a fair deal for the authors of these productions.

Mr. H. Mark Ramsankar: In the interpretation as it stands, that's been working. CTF has gone to great lengths to educate teachers across the country. We use our material such as this for our members. In fact, in my own school this is hanging right above the copy machine. We have materials going out in publications. I brought two of them today from across the country. Articles appear on the use of materials and the gathering of materials and how to deconstruct a purchased piece of material for use within a classroom that does not go outside the copyright laws, so the interpretation as it stands right now is something that we're in favour of.

Hon. Maxime Bernier: You don't think there's a need for us, as legislators, to change the definition of the use of fair dealing.

Mr. H. Mark Ramsankar: At this point, no.

Hon. Maxime Bernier: Okay.

Yes, Cynthia.

Ms. Cynthia Andrew: I would agree that we don't believe there is a need to change the application of fair dealing as it currently exists in the Copyright Act or the interpretation that was put forward by the Supreme Court of Canada in its ruling.

With respect to the issue of acquiring materials, it's important to note that school boards are very much aware when they acquire materials, particularly digital materials, of whether or not those materials include rights to reproduce or not.

One of the things that has been debated at meetings quite extensively is when you're looking at costs of materials, if you think those costs are high, then look at whether or not they include reproduction rights, and if they do, there is a very good reason why that cost might be higher than another resource that does not include reproduction rights, even though the content of the two resources may be similar.

Boards are very much aware of those two issues and the distinction between them and make choices about what materials they're going to be choosing accordingly.

Hon. Maxime Bernier: Ms. Marshall, can you tell us what the cost is for the University of Calgary, copyright costs that the university is paying?

Ms. Dru Marshall: The copyright costs for the university have varied. When we started in 2011 before the proposed tariff, we were paying 238 a student with 10 cents a copy. It varied between \$10 and \$15, I think, when all was said and done at the end of a year per FTE student. We have about 30,000 students on our campus, FTEs, so that gives you an idea.

We opted out in part because to go from \$10 to \$15 to \$26 or \$45 per FTE seemed like a very large jump. It cost us...we have to manage a number of, I would say, competing stories all the time at institutions and we are publicly funded, so one of the things was for us to look very carefully at the use of taxpayers' dollars. We are an institution that has not passed on the costs of copyright to students, believing that that's part of what we do as an institution.

I would say the issues for us in copyright....Fair dealing, we did not opt out until the Supreme Court of Canada's decision on fair dealing. We thought that this was an absolutely critical part for Canadian society. It's very important for universities to be able to share information and to build on information, so the idea that you could use part of the information available then to take and build on it to create different research is a very important part of what we do at the university, both in research and teaching.

I would strongly support the fair dealing concepts as they currently exist.

🕒 (1605)

The Chair: Thank you very much.

We are going to move to Mr. Cannings. Welcome to our committee. You have up to seven minutes.

Mr. Richard Cannings (South Okanagan—West Kootenay, NDP): Thank you, Mr. Ruimy. Thank you, Chair.

As you can gather, I'm not usually on this committee so I haven't heard the testimony leading up to this. I do have a bit of a background from both sides. I used to work at UBC for many years and I have written a dozen books or so, so I get my Access Copyright cheque every year. It's not a lot, but it's a nice surprise. It has been getting a lot smaller lately, so I see that.

I also have quite a number of authors living in my riding who have talked to me about this issue. A lot of them write fairly regional books on history and natural history that are used in schools and these people don't make a lot of money from their writing. That Access Copyright cheque was actually a good chunk of their annual income. For me, it didn't really matter that much. I see the fairness issues on both sides.

I want to start with Ms. Andrew. You mentioned that Access Copyright hadn't been able to show undue economic hardship on authors. I think that's what you were trying to say. I'm wondering what the economic hardship on schools, colleges and universities are. We have statements here in the notes, the Winnipeg School division spending \$34,000 a year on copyright materials, \$1 per student. Ms. Marshall was talking about something a little bit higher.

I'm wondering what you think would be fair and not causing hardship to school boards?

Ms. Cynthia Andrew: I'm going to backtrack just a little bit and clarify my comments about Access Copyright. What I was saying is that they haven't been able to convince with events in courts that that is the case. There's a lot of anecdotal evidence that they've come forward with, stories that they've told, and I know from my own experience that what you said about Access Copyright cheques going down is happening.

So what I'm trying to say is that they haven't been able to demonstrate in a court of law that that evidence exists to date.

What I would also like to say is that with respect to how school boards quantify what they spend on "copyright", those costs go beyond what they would spend on a tariff, because reproduction rights are built into many of the resources that they are currently purchasing, which is similar to what you were saying about paying for something twice.

So with respect to what a school board views as fair, we view the fair dealing guidelines as the most fair way to apply copyright to educational use of works, and with respect to authors who have regional interests in their works, I know that in Manitoba and in the Atlantic provinces, there are arrangements that the provincial departments of education—and I'm sure that this may happen in other provinces but these are two I'm aware of—have made with local authors to license their material separately and provide some sort of subsidy or grant so that those materials can be used in the schools outside of their relationship with Access Copyright. So that is something that a lot of provincial governments are looking at, particularly where resources have a specific interest for a local region.

🕒 (1610)

Mr. Richard Cannings: I'll just move to Mr. Ramsankar, and ask about the movement from print to digital that you were talking about, and to online resources. Perhaps all of you mentioned that.

I'm just wondering if you could expand on that. What's the proportion of online versus print material used in classrooms, if you know that, and how might this affect authors or producers of that material. How is that factored into your purchases? Are teachers going online and looking for free materials specifically because they're free.

Mr. H. Mark Ramsankar: I don't have the exact figure in terms of the percentage of online versus print material at my fingertips, in terms of the uses in classrooms, but I would suggest that teachers are subject to their own personal purchasing power, that of the school. Teachers don't purchase textbooks on an individual basis, for example. They would be purchasing individual materials that they would be using for either developing a curriculum, or building a unit for the students that they have. Depending on the complexity of the classroom, different types of access to material may be required.

The concern that teachers are looking at right now is what are they subject to in terms of the use of material that is purchased, and that they've already brought into their classroom, to augment the curriculum development.

What we're talking about right now, through fair dealing, is how it allows excerpts to be used by teachers. The notion, for example, that whole textbooks are being printed, I can say for a fact that the budgets in a school or a teacher's individual purchasing power to be able to photocopy, that's unheard of, and in fact many teachers across the country are subject to specific accounts that limit the amount of photocopying they're allowed to do, and when you're talking about your own developed material, and the materials that you would be using in your classroom, going out necessarily and printing something that has copyright applied to it is wasteful, and it's not used in that sense.

As digital material is brought into the classroom, teachers do talk about the development of copyright citing and giving credit for material and thoughts that are not their own, and students are made aware of the need to do that when they're using material in their own research.

That's the use, generally, in K to 12 classrooms.

The Chair: Thank you very much.

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

Ms. Mary Ng (Markham—Thornhill, Lib.): Thank you so much, and thank you, everyone, for coming in to speak to us on this study. It's an important study.

I'm going to start with the Teachers' Federation and pick up a little bit on what Mr. Cannings was talking about.

I think you already touched on this, but I'd like you to just talk to us about a set of policies that exists for teachers so that there is the compliance to fair dealings. We certainly have heard from publishers and authors about an excess use by teachers. I know you have a booklet, and I think that that booklet is out there for all of your teachers. Just expand on that a little bit, and maybe the School Boards Association could talk to us about that, as well, to help clarify for us an understanding about the policy and the rules that teachers actually work within to comply with fair dealing.

Mr. H. Mark Ramsankar: We went to work right after the Supreme Court ruling, and that was the production here, with our education partners. There were, during that time, professional development opportunities in the different provinces put on by our member organizations speaking directly to copyright. The article that I cited just recently is from March-April 2018. There's still an article talking about fair dealing and copyright. It's alive and well with our professionals as they're coming in and as our population or the demographics of teaching turns over. We are continually vigilant to make sure that teachers understand that what they're doing in terms of the use of copyrighted material falls within compliance of the latest definition.

So in answer to the question of how we continue to do it, the rules are laid out. Most of the evidence that I've heard in terms of teachers going outside compliant rules is anecdotal, and I would consider those very much one-offs, and I don't say that with tongue in cheek. Individuals who go outside opportunities or use are usually cited. Either the principal or the board itself will make note of that. The teachers are made aware of it, and material is either withdrawn or taken back. But these are very much one-offs, and I can't emphasize that enough. This is not a mass happening across the country.

 (1615)

Ms. Mary Ng: To the School Boards Association, what kinds of policies or rules are in place to help guide compliance in the schools?

Ms. Cynthia Andrew: I'm going to split your question into two. There's the education aspect of what we do to educate our staff, and Mark has spoken very eloquently about it. It happens at multiple levels. We all use consistent materials. You'll see that we have the same book. We use the same fair dealing guidelines. There are posters produced by provincial governments through their involvement in the CMEC Copyright Consortium that go out to every school. Every year, in September, this material is redistributed through the provincial associations or provincial departments down to the boards and through the boards to the schools. This happens on an annual basis. All the materials are shared on a regular basis, and then they're also shared through other means, like through their unions or through education articles and things like that. There are lots of opportunities for this information to get shared with school board staff—not just teaching staff, but all staff.

On the side of compliance, it is the school board's responsibility to ensure that its staff is following all of its policies. School boards have a number of policies. Any non-compliance that would be identified with copyright would be dealt with through a school board's process that it follows depending on which province it's in, because it's going to vary from province to province—it may even vary board to board—in terms of which process it follows to communicate with the teacher about what they've done wrong, and frequently, when things are brought to a board's attention about non-compliance, it's more a matter of, “Oh, I just didn't know that” than it is a matter of, “Oh, I didn't care”. It's a matter of ensuring that that person is educated about what they're supposed to do, and then, very rarely...in fact, I've yet to be made aware of a situation where reoccurrence of that non-compliance has occurred. From that perspective, I think that school boards are doing their due diligence as employers to ensure that their employees are following all of their policies and that laws are outlined in that.

Ms. Mary Ng: Thank you both. We certainly heard from everyone I think that will say to us that they want to ensure that the works of creators are respected and that compensation for them is fair and so forth, while at the same as I said earlier, we heard from publishers and authors who clearly indicated an impact.

This is just for our understanding, can you tell us from a school board perspective around spending then? Did you at one time, like the universities or institutions pay the tariff and now just because teaching methods have changed, materials are available in many different formats, rather than sort of a tariff method of paying for the material, it's the transition to paying for transactional licences.

Talk to us about There's two questions. Has your spending changed? What sort of before and the present now?

🕒 (1620)

Ms. Cynthia Andrew: I would suggest our spending hasn't changed. The tariff amount that we pay ...

Ms. Mary Ng: Did you not pay that at all? Do the school boards ...

Ms. Cynthia Andrew: Not nationally, no. Education is a provincial jurisdiction. So it's very difficult to get national information on how spending occurs. It's actually difficult to even get it at a provincial level because not all provinces have the same budgeting structure. What might count as learning resources in one province doesn't count as learning resources in another, that sort of thing.

Ms. Mary Ng: I think I'm almost out of time. Could you try to get at that.

Ms. Cynthia Andrew: All right.

Now I've completely lost track of my mind.

With respect to spending, I would suggest it hasn't changed but what's changed is what we're buying and we're buying more the digital-based resources and greater variety of material.

What was the other half of the question?

Ms. Mary Ng: That's it. I think I'm out of time.

The Chair: That's good. That's all you've got time for.

Mr. Lloyd, you have five minutes.

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

I appreciate everyone coming out and your testimony today.

I'm just interested, Miss Andrew, do you have any idea—it's kind of related to the previous question—what are the current costs overall for copyright for your stakeholders and can you break that down on a per student cost on average across Canada?

Ms. Cynthia Andrew: I can't and I wish I could because I would love to be able to answer that question. I think that it would serve me well to be able to answer that question.

Mr. Dane Lloyd: The evidence that we have been provided, the Winnipeg School Division told us about \$1 per student is what they pay. So for 34,000 students, they said the cost is about \$34,000. Then the information that was provided to us by Access Copyright says that the tariff has been set at \$2.41 per student per K-12 student. However, the majority of schools outside of Quebec are no longer paying any tariffs and so the cost would be zero dollars for collective licences.

Would you say that's correct?

Ms. Cynthia Andrew: For collective licences, yes. For licensing, I would suggest no. I think that we do pay for licensing and I do think we pay for reproductive rights.

Mr. Dane Lloyd: Who is being paid for that?

Ms. Cynthia Andrew: Who is being paid?

In some cases, it's a distributor of an online database. It is the creator of a repository, provincial governments when they do material portals will often pre-clear all of the materials that go on those portals, where payment is required, will make that payment. This happens at board levels, at provincial levels.

Mr. Dane Lloyd: Previous to 2012 and you were paying a collective licence and after 2012, you're no longer paying a collective licence and so would you say there's any correlation in the loss of revenue for Access Copyright?

Ms. Cynthia Andrew: I think that the loss in revenue for Access Copyright can be attributed to many different types of changes.

Mr. Dane Lloyd: If you're not paying them, then that's a lost revenue for them, correct? It seems kind of obvious.

Ms. Cynthia Andrew: I think that if we were paying them, they would have that revenue, yes. Who wouldn't have it would be the same creators only in a different area. They wouldn't be getting it through these other areas.

Mr. Dane Lloyd: There's a direct correlation between the K-12s not paying the collective licensing and then the authors not receiving the royalties for their costs. So authors are hurting because K-12s aren't paying for the copyright, correct?

Ms. Cynthia Andrew: I would suggest that most of the purchasing that happened in K-12 sections were through education publishers and very little of it went to individual authors.

Mr. Dane Lloyd: Okay.

Ms. Cynthia Andrew: Yes, there would be some impact.

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

My next line of questioning is for Mr. Ramsankar. Thank you for your testimony. Would you say that previous to 2012 teachers had a hard time accessing copyrighted works to give to their students, and has there been a significant change after 2012 for the on-the-ground teacher?

Mr. H. Mark Ramsankar: For the on-the-ground teacher, when you're speaking of access to copyrighted material, it has to be defined. If you're talking about textbooks and textbook material, that's provided by the employer. The individual teacher who is using resources in the classroom would be using material that would be in the form of articles, individual novels, and that sort of thing that a school may produce.

Mr. Dane Lloyd: Were they having trouble before 2012 accessing those resources you just mentioned?

Mr. H. Mark Ramsankar: I want to be careful in how I say this, because for the bulk of my career I've been focusing on resourcing schools and classrooms. That takes on many different forms. It takes on forms of time and material as well as the ability to be able to produce materials on their own for classrooms.

🕒 (1625)

Mr. Dane Lloyd: Was there a big difficulty in accessing files before 2012?

Mr. H. Mark Ramsankar: Teachers did not have issues accessing materials that were provided by the employer.

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

My final 45 seconds are for Ms. Marshall. I really appreciate your testimony.

I'm going to rant a little bit here, because a lot of universities have not been able to provide us with the data. You said you have 3,200 works you've used, with 250 that have been used for fair dealing. I really appreciate receiving that breakdown, because that's the kind of accountability that I think a lot of the stakeholders want to see from the universities so that we can dispel the confusion around this issue.

Your fear of having to pay \$26 going years back is such a huge fear. Would you say it would be better for the Copyright Board to be more forward-looking and to set rates over the next five years so that you can have predictability and stability in your funding and what you need to pay?

Ms. Dru Marshall: Yes.

Mr. Dane Lloyd: You would say, yes, that's something you'd like to do.

Ms. Dru Marshall: Yes. I think there's a fear across the country in post-secondary institutions about any retroactivity, particularly when we think we've been managing copyright in an appropriate fashion.

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

The Chair: Thank you very much.

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

Mr. Majid Jowhari (Richmond Hill, Lib.): Thank you, Mr. Chair, and thank you to all the witnesses.

Mr. Ramsankar, I'm going to start with you. In your opening remarks, you made a comment. I'm not quoting you, but my understanding of what you made a comment about is that the need in the classroom has changed and Access Copyright is not in the classroom and they don't understand the change of that need and the complexity of today's need to be able to help the children in the class from K to 12. Can you expand on that and explain to me why Access Copyright doesn't understand that? What has changed? Until last year, I had a K to 12..., and he was still using textbooks.

Mr. H. Mark Ramsankar: The variety of material that is used, in a teacher's view, needs to be accessible. However, the use and dissemination of that will change depending on the nature of the students in the classroom.

When I talk about the change in the classroom, I'm talking about the demographics within the classroom and children who have needs that go beyond the norm. Teachers need to have the flexibility to be able to alter and work with the material to meet the individual needs of a child.

For example, if you have a student in grade 3 who is reading at a grade 3 level, there are certain approaches and strategies teachers will be able to use. If the same classroom has students who are reading at a grade 1 level, then the same material, because it's part of the curriculum, has to be disseminated differently. It has to be broken down. It has to be created in such a way that the child at that level will be able to understand the concepts being taught.

When I talk about understanding what it's like to be in the classroom, the idea of just doing blanket material and blanket licenses that's the same for all because you're purchasing the material, I am suggesting that doesn't necessarily work in all scenarios, because you're not able to take one type of material and then just apply it to today's classroom.

Mr. Majid Jowhari: Thank you.

Ms. Andrew, you said that Access Copyright is using anecdotal numbers, and they really haven't been able to clearly demonstrate in the court of law that there is actually infringement in reproduction. They were here on Tuesday and shared some numbers with us. The claim they made is that 600 million pages are copied for free. They said they've had an 89% reduction in their royalties. Can you expand? Where do you think those numbers might be coming from?

Ms. Cynthia Andrew: I think I would like to know as much as you where that 600 million copy figure comes from, quite frankly. I'm not sure where it came from, and I'm not sure if it's K to 12 only or if it includes post-secondary copies as well. If there are 600 million copies per year, and if there are 5 million students, that's 120 copies per student per year. That makes how much per month? In 10 months that makes six copies per student per month. I'm getting that wrong. My math is not my strong suit. Anyway, it makes for a low enough number that, to me, this does not demonstrate industrial copying, if you will, or widespread copying. It means that teachers are copying short excerpts, like the Supreme Court said they were.

🕒 (1630)

Mr. Majid Jowhari: So before they were not, because Access Copyright said its aggregate revenue went down after 2013, from \$40 million, to 2017, which is somewhat below \$10 million. Is that attributed to the complexity? I'm wondering if one might be the complexity in the way we are providing material.

Ms. Marshall, you're trying to jump in. Anyway, you can answer that question, sure.

Ms. Dru Marshall: I'd love to answer that question.

There is no question that Access Copyright revenue would have gone down because a number of groups opted out of the collective. They were no longer paying their fees, so of course their revenue was going to go down.

Mr. Majid Jowhari: Is that fair?

Ms. Dru Marshall: Well, here's the choice you have as an administrator of a university: you can choose to belong to that collective and recognize that on multiple occasions you pay twice, or you can choose to manage it your own way and clear copyright in a different way. It's not that we are not clearing copyright; we're just deciding to do it in a different way. We're deciding to purchase licences in a different way, so there's no question there's a tie to a decision where people decided to opt out of a collective. I'm surprised, to be honest, that with the number of universities that opted out of its licences, Access Copyright has been able to survive as long as it did.

Mr. Majid Jowhari: I'm over by 45 seconds, so I thank the chair for his indulgence.

The Chair: That's okay. We enjoyed your answer.

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 for being here. Actually, Ms. Marshall and Mr. Ramsankar are both coming from Alberta. I appreciate seeing you both again. Not to leave you out, Ms. Andrew, coming from the big city of Toronto—

Ms. Cynthia Andrew: I actually live in Brantford.

Mr. Matt Jeneroux: Oh, you do? You've cleared the record.

Mr. H. Mark Ramsankar: I'm actually living in Ottawa.

Mr. Matt Jeneroux: You're living in Ottawa. Oh my goodness.

I just want to quickly ask you, Ms. Marshall, do you have any relationship at all with Access Copyright now—

Ms. Dru Marshall: No.

Mr. Matt Jeneroux: —even through a distributor of any sort?

Ms. Dru Marshall: We opted out of its licences. We have gone back on occasion to ask for a transactional licence for something that is in their repertoire. It has used an all-or-none approach. If you're not in the licence, in the collective, you're not allowed to do a transactional licence. Interestingly, that has resulted in our going to different copyright collectives, like American Creative Concepts, to purchase transactional licences.

Mr. Matt Jeneroux: When was the last time you would have contacted Access Copyright?

Ms. Dru Marshall: It would have been, probably, 2013-14. Once we opted out in December 2012, we went back on occasion. We were surprised by what we found out, as we opted out, how many licences we had paid for twice because we weren't sure that the licence was included in the repertoire we had purchased.

Mr. Matt Jeneroux: Right. Okay, interesting.

Mr. Ramsankar, I'll question you a little bit. We heard from Ms. Marshall about the potential of retroactive payments that could happen if the York decision maintains where it is right now. It's against the fair dealing guidelines. It's now under appeal—we know that—but there is a potential that it stays the same.

Your website directs visitors who have questions about copyright to the fair dealing guidelines that were produced by one of our previous witnesses—I think you brought the booklet there with you—the Council of Ministers of Education, Canada. I take from it that the CTF is obviously endorsing the guidelines even though they were essentially thrown out in the York decision, which again, is under appeal. Does the CTF have any plans, considerations in place, if that decision remains the same, to continue to pay for that copyrighted material?

🕒 (1635)

Mr. H. Mark Ramsankar: At this point the York decision is in the courts and it's viewed as an outlier, so to make speculation or to try to suggest decisions that we would be going at this point, I think, would be premature. On that basis to be able to say that we would go in one direction or the other is too soon.

York was an outlier and right now the courts are dealing with them.

Mr. Matt Jeneroux: Okay.

We've had it addressed by Ms. Marshall and Mr. Ramsankar. I'll give you the opportunity, if you wish, Ms. Andrew, on any plans if, again, the York decision maintains the way it was decided. Are there any plans in place to have to pay retroactively from your organization?

Ms. Cynthia Andrew: I'm going to repeat the sentiment that Mark has put forward. At this point we do not have any plan in place. All of those decisions will be made once a final decision on the court case has been determined. And, again, we do believe it's an outlier, and that previous court cases found in favour of users, so we're hopeful.

Mr. Matt Jeneroux: Okay.

The Chair: You're very effective with your time.

Thank you very much.

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

Mr. David de Burgh Graham (Laurentides—Labelle, Lib.): Thank you.

I'll start with Ms. Marshall.

You mentioned today that 90% of your spending in 2017-18 was on digital material. Can you compare that to five years ago or 10 years ago? Obviously 20 years ago there wasn't very much? Can you give us a sense of that timeline?

Ms. Dru Marshall: Yes, I think this is a really important question, actually, because there had been many stories that tie the loss of revenue to authors, to fair dealing. In fact I would tie that loss of revenue to the digital revolution.

We actually have a digital library. We do not have books in our library, or very many books in our library.

Probably when we started—our digital library opened in 2011—I think we were close at that time to probably 30% digital and we're now up to 90% in terms of costs in a year.

Mr. David de Burgh Graham: So the change has been very rapid.

Ms. Dru Marshall: Yes.

Mr. David de Burgh Graham: To all of you, do you see a significant difference in behaviour between educators of different generations—and I'll put it that way—between who uses digital and who uses traditional paper materials? As a new generation of educators is coming up, are they not looking at paper?

Ms. Dru Marshall: I'll maybe just give a quick answer.

At the universities right now we are dealing with students who are digital natives, so you ignore digital content at your own risk when you're a professor.

Mr. David de Burgh Graham: That's fair.

You mentioned earlier that there are sanctions for non-compliance in your processes.

Ms. Dru Marshall: Yes.

Mr. David de Burgh Graham: How do those work? What are the sanctions?

Ms. Dru Marshall: Some—

Mr. David de Burgh Graham: [*Inaudible*] to your detailed example that you mentioned in your opening if you get a chance to do that.

Ms. Dru Marshall: Yes, well I have our policy here. I'll say the sanctions for people who are out of step with our policy, and I'll read them directly:

For employees and post-doctoral fellows who use material protected by copyright in violation of this policy may be subject to formal disciplinary action up to and including dismissal.

Mr. David de Burgh Graham: Has it happened?

Ms. Dru Marshall: It's very, very serious. It has not happened, but we certainly have had sanctions before.

In students' cases:

Students who use material protected by copyright in violations of this policy may be disciplined under the non-academic misconduct policy

—which allows for expulsion from the university.

As I said at the beginning, we take this very seriously. We take an educative approach in the first instance. In the first offence we say, "Here are the things you must be aware of." When we find something that has happened, we go back to

ensure that authors are appropriately provided with the dollars that they should have been in the first place.

But I am happy to give you an example of fair dealing, or of e-books versus the print copy costs, if you'd like.

Which one would you like?

Mr. David de Burgh Graham: Why stop at one?

Ms. Dru Marshall: Okay.

Let's go e-book versus print costs. Because we're a digital library, e-books are purchased whenever possible and when available, we look at the cost of a multi-user e-book. It's often less than a transactional licensing fee and it doesn't limit access to students only enrolled in one course.

For example, licensing of two chapters of the book, *Oil: A Beginner's Guide*, 2008—this is an important book in Alberta right now—by Vaclav Smil, for a class of 410 students, it would cost the library \$2,463 in U.S. currency.

In contrast, the cost of an unlimited licence for three e-book versions would be \$29.90 through Ebook Central, and the book would be available to all library users.

That's, in many cases, why we've gone digital.

I would say, similarly, the cost of licensing two chapters from the book, *Negotiations in a Vacant Lot: Studying the Visual in Canada*, by Lynda Jessup, for a class of 60 students would be \$414 Canadian, while the cost of an unlimited licence on Ebook Central would be \$150 U.S.

So there is a tremendous difference in these costs. We use those, and we also are dealing with the needs of our students, who want the material digitally. They prefer to do that. Our professors are very conscious of ensuring that students are getting materials in a way that they're going to use them.

🕒 (1640)

Mr. David de Burgh Graham: I appreciate that.

Do I still have time?

Another question I've got for all of you is the Copyright Modernization Act five years ago became famous for bringing in TPM exemptions to copyright. I'm wondering how, if at all, that affects you? The technological protection measures, so if you have a digital lock, fair dealing no longer applies.

Mr. H. Mark Ramsankar: The teachers that we are looking at don't have the ability to unlock, so you're using a one-time piece of material. It's not like you can unlock it and then go through it. That's the experience that I've had with the teachers in our systems.

Mr. David de Burgh Graham: Is there a lot of material they're not accessing as a result of that?

Mr. H. Mark Ramsankar: That is the result. Teachers, by and large, don't have time to be able to start trying to unlock things and figure out how to use one specific material. If it's not accessible, they're moving on.

Ms. Dru Marshall: I think this is a really important area for this committee to pay attention to.

Mr. David de Burgh Graham: That's why I bring it up.

Ms. Dru Marshall: Let me give you an example. We purchased, not long ago, a variety of CDs and this is how rapidly the technology changes.... Now of course, people want to stream the material live in their classrooms. If we want to do that, we have to pay for a new licence for exactly the same material.

It's interesting, I think, while the digital revolution has been absolutely spectacular in terms of teaching and research, this is a new age and I think the copyright laws have to be updated to help us manage.

Mr. David de Burgh Graham: I'm out of time, but if I have a chance later, I'd like to come back.

Thank you.

The Chair: Thank you very much.

We're going to move to Mr. Cannings. You've got two minutes.

Mr. Richard Cannings: I'll just go straight to Ms. Marshall.

You mentioned other collectives that you're part of. Is there a place for a national collective like Access Copyright, and if there is, how should it be designed?

Ms. Dru Marshall: That's a fantastic question.

One of the values I think we hold near and dear as a country is choice, and it seems odd to me that we would force institutions like ours to make one choice around something that is really important from an educational perspective. We have to balance the rights of creators and users.

I'll leave it at that. I would hate to be forced into something when you know there are alternatives that might be better for particular institutions, and I don't think it's fair to say one size fits all.

Mr. Richard Cannings: Is there no way that a new Access Copyright could be designed so that there was that flexibility?

Ms. Dru Marshall: It's possible, but I think you'd have to look at that very carefully. There would probably be sliding scales of cost depending on what people would want to do. I think Access Copyright took some very draconian steps to try to protect users and the associated decreased author fees with a number of things that actually were fallacious. I would say decreased author fees are more associated with the digital revolution than with fair dealing, for example.

Mr. Richard Cannings: Do either of you want to comment quickly on that?

Mr. H. Mark Ramsankar: I'd just echo Ms. Marshall's comments. The onset of the use of digital material has had a dramatic effect on the use of print material in that sense. To try and draw a direct correlation between print material and the non-use of Access Copyright, as opposed to how the impact of the digital age has had isn't doing a service to the people who are using the materials at this point.

🕒 (1645)

Ms. Cynthia Andrew: I would like to add to that, the fact that we cannot purchase transactional licensing from Access Copyright. I get numerous requests from school boards that say, I'd like to copy more than what the fair dealing guidelines allow. How do I do this? My answer has to be, you approach the author, publisher, or copyright owner directly and if they say no, then you do not copy. Your choice is get permission and payment where it's required and if you cannot get permission and payment where it's required, you do not use that material. You find other material. Nine times out of 10, people have had to find other material, because they cannot acquire a transactional licence.

The Chair: Thank you very much.

Mr. Bratina, you have five minutes.

Mr. Bob Bratina (Hamilton East—Stoney Creek, Lib.): Thanks.

I'm going to try out like Mr. Sheehan.

I married a teacher. Her brother was a teacher. He married a teacher. They're two kids are teachers. One married a teacher. One married an EA. So I ran for federal politics so that for six months of the year I don't have to listen to teacher's conversations.

Voices: Oh, oh!

Mr. Bob Bratina: My son has his MA in Library Sciences and he's now a Mountie in northern B.C. I think....

The reason I mention that is all of those dinner conversations I never heard this come up. The only thing that I ever heard really was whether on a snow day if she could play the movie *Oliver* for the kids who showed up.

You held up Mr. Ramsankar, the piece that you have hanging. Your both have it.

Is that how it's circulated among the teachers?

Mr. H. Mark Ramsankar: We work with our member organizations to see that the material is available. It is in schools. I say this is hanging in the photocopy room. But we go beyond just the material that's contained here with the rules.

I cited the example, as I said, this is March-April 2018, out of Newfoundland. The articles in here talk about the copyright issue, whether or not teachers are complying. To be honest with you when you're talking about your dinner conversations around the table talking about education. Teachers that I sit with don't sit around the dinner table and talk about copyright. What they talk about is how are we strategizing to work with student X, or what happened in the classroom. When copyright comes up is when you have parameters set around you to access material or to help children access material. That's when copyright comes up. The title of our booklet is right there *Copyright Matters*. There is respect when you're talking about developing materials to use in your classrooms.

In fact, I will take it a step further, as I've said, I speak for K-12. When we're teaching about ethical research and writing papers it goes right back to simple things like plagiarism. Giving people credit for what they have written and what they do, and make sure that they are cited correctly. As teachers, we need to model that.

Simply making the statement that a teacher would blanket copy a hardcover or a piece of paper and then disseminate that out on one hand, and then say, oh, by the way, you have an ethical responsibility. That doesn't fit. That's why I say most of the anecdotal evidence are one-offs. Or people who have gone outside.

When cited about it, it's not automatically that an employer or a principal will take a punitive measure on an individual. It's a teachable moment. You talk about copyright and how it goes. You make the corrective measure and you move on. That is what we're talking about in terms of the use of materials in classrooms.

Mr. Bob Bratina: The digital topic is common. At almost every conversation now, by the way.

Who monitors compliance? How is it monitored?

Ms. Cynthia Andrew: Firstly, the person who would monitor it would be the principal because that is the person who is responsible for distributing. Once they get it from the board, it's their responsibility to distribute the material to the staff and to talk in a staff meeting. Every principal across Canada is asked to speak at a staff meeting at the beginning of every school year.

That is the first step.

Every board is asked to have a staff member in their administrative office who is familiar with copyright. So when principals have questions that go outside their original knowledge base they have someone to turn to. There is someone at the board level.

If the question goes beyond the person at the board level, there's a list that's available. I don't think it's actually in this book. It isn't. There's a website that was created by the people who worked to create these materials called copyrightdecisiontool.ca. I encourage you all to go and take a look at it. That particular website has all of these materials on it for instant download. It also contains a list of provincial contacts.

If your question goes outside what can I copy under the guidelines, and it's more complicated than that, there is a list there of contacts at the provincial level for you to reach out to and get the answer to your question.

🕒 (1650)

Mr. Bob Bratina: That's very helpful. Thanks very much.

The Chair: Thank you very much.

We're going to go to Mr. Lloyd. You have three minutes.

Mr. Dane Lloyd: Thank you, Chair.

This next line of questioning is for you again, Ms. Andrew.

My colleague Mr. Jowhari had some incorrect information. It wasn't 600 million pages for the K to 12 sector. We actually have evidence from the Copyright Board's decision in February 19, 2016, that there were 380 million pages copied each year of published works from Access Copyright's repertoire and this was done by the K to 12's from 2010 to 2015, and the Copyright Board ruled in 2016 that out of that 380 million pages, 150 million pages were illegally copied by the K to 12's.

Ms. Cynthia Andrew: [*Inaudible*] was that those copies were compensable.

Mr. Dane Lloyd: Yes, they needed to be compensated for. Have the school boards been compensated for those in the wake of the decision by the Copyright Board?

Ms. Cynthia Andrew: We have not because Access Copyright does not offer us transactional licensing.

Mr. Dane Lloyd: But it's really up...the Copyright Board has made the decision that you copied 150 million pages without compensating but you haven't compensated the board, so are you...?

Ms. Cynthia Andrew: If you look at the breakdown of what those pages are, those pages come largely from materials that are considered to be consumable documents, documents that were sold for one-time purposes.

What we did in response to that was we sent out a prohibition to all of our school boards across Canada, through the ministries of education, through CSBA and through the unions that consumables are no longer allowed to be copied. They are illegal and therefore shall not be copied. There is a poster—

Mr. Dane Lloyd: That's very important, and I think they would appreciate that and the authors would appreciate that, but what about the pages that were printed before that time? I know it's going forward, but has it been compensated for going back? Have you complied with the Copyright Board?

Ms. Cynthia Andrew: We paid a tariff going back.

Mr. Dane Lloyd: You paid the tariff going back previous to the 2016 decision.

Ms. Cynthia Andrew: We paid the tariff for 2010, 2011, and 2012.

Mr. Dane Lloyd: These numbers go from 2012 to 2015, as well, so you're not paying the tariffs for that period?

Ms. Cynthia Andrew: That is correct. We are not.

That data, by the way, was found in a survey that was conducted in our schools in 2006, so it's more than 10 years old. I would suggest to you that copying habits from that time to now are substantively different. The Copyright Board itself did say in that very same ruling that that data is outdated and beyond its useful purpose. I would suggest that copying from consumables would look very different if we conducted a survey today.

Mr. Dane Lloyd: I'm not familiar with consumables. Can you describe them briefly?

Ms. Cynthia Andrew: When you go to Costco and there is Math for Grade 2, and it's colourful and it's got pictures and you fill in the little blanks and it's intended for you to take home to your child and have them fill it in, there are similar kinds of materials that are created by publishers for educators. They're intended for one-time use. Those kinds of copies are [*Inaudible*].

Mr. Dane Lloyd: They're distinct from a book, for example.

Ms. Cynthia Andrew: They're distinct from a book. They're also distinct from a resource that's intended to be copied, which we call a reproducible where a creator will give a teacher's guide that has blank pages in it. It's intended to be copied.

🕒 (1655)

Mr. Dane Lloyd: I appreciate that explanation, thank you.

My final question is for Ms. Marshall. We've heard from many different universities and there seems to be—although many of them had joined York in this case—a difference in policies at these universities. For example, I believe Guelph university actually continues to pay for a certain level of collective licensing.

Is there a disagreement amongst the universities or is there a monolithic agreement over fair dealing, copyright and licensing?

Ms. Dru Marshall: I think there's general agreement on fair dealing. I think there's various points of concerns and part of it is related to the size of the university in how you manage copyright and whether you can be effective. For example, some universities opted out in 2012 and when there was a model licence developed, opted back in because they thought there was better protection for doing that.

Mr. Dane Lloyd: There are some universities that have chosen to opt back in to the process?

Ms. Dru Marshall: Yes, absolutely.

Mr. Dane Lloyd: Something that I thought was interesting was it seemed like Access Copyright was asking for an exorbitant \$45 amount initially, but that it was negotiated down to the \$26 amount.

Ms. Dru Marshall: Right.

Mr. Dane Lloyd: That's almost half of the amount. And that might very well be the best number, but isn't there an opportunity for more back and forth to get a better number for the universities?

Ms. Dru Marshall: I hope there would be. For example, if we were paying in the \$10-to-\$15 range with the \$2.38, plus the 10¢-per-page fee, going up to \$26, and then \$45 to me seemed ridiculous. When we're doing our costs, if our students are \$10 to \$15 a student, why would I pay \$26? That's the concern for me: do we have the numbers the right way, and why did we jump to \$26?

Part of that is, I think, Access Copyright, and rightly so, wants to protect creators, but part of the issue we have not discussed at all here is the publishing industry. When one of our professors, for example, writes a textbook, we don't control the contract with the publishers. The publishers are having record profits while the authors are getting less

money. There is something wrong.

We balance not only being part of a collective.... And we try to be parts of collectives, in response to an earlier question, both for copyright.... All those opt-out institutions got together. We shared information. We talked about how we would clear copyright. We shared best practices on how we did that. That, I would argue, is a collective in and of itself. We also joined together in many ways to purchase product from publishers to see if we can get a better deal if we're part of a collective. We've had to come out of those as well because we're finding the publishers are just ratcheting up and there's a monopoly with five or six companies. Intellectually, when we talk about academic material, that makes it very difficult. This is why you see the rise of open educational resources and open access materials that also have had an impact in this area.

Mr. Dane Lloyd: I appreciate that.

Thank you.

The Chair: Thank you.

The publishers are actually coming in next week.

For the final three minutes, Mr. Graham, you have to the final take of the day.

Mr. David de Burgh Graham: I hope my three minutes are about the same as Dane's three minutes.

The Chair: No, it's a tight three minutes.

Mr. David de Burgh Graham: All right.

The first question. On a couple of occasions, Mr. Ramsankar and Ms. Andrew, you've held up a book. This meeting is not recorded on camera—or is it?—so I want to make sure that we have it on record. It's called “Copyright Matters”, is that right?

Mr. H. Mark Ramsankar: Yes, it is.

Mr. David de Burgh Graham: Is that in itself in the Access Copyright repertoire?

Ms. Cynthia Andrew: No.

Mr. David de Burgh Graham: Okay. Is that something we could get a copy of? I think what it says could be quite informative for our study.

Ms. Cynthia Andrew: I can leave you my copy. I believe it was distributed by CMEC last week when they were here.

Mr. David de Burgh Graham: Okay. I wasn't here last week.

Ms. Cynthia Andrew: It's also available for free download from CopyrightDecisionTool.ca.

Mr. David de Burgh Graham: Excellent. I'll take a look at that. Thank you.

For my last question of the day I want to come back Ms. Marshall. In your earlier comments you discussed at length the lack of transparency from Access Copyright. Why don't you go into more detail. You mentioned that you were double paying for the same material. Can you expand on that? How do we even know?

🕒 (1700)

Ms. Dru Marshall: There are two ways universities double pay. The first one is if we purchase a licence in print

material, and then we want it in digital, we have to pay for it again, right? Access Copyright doesn't deal very much in digital material, so that creates an issue.

The second way is related to research that universities produce. Research on campuses is typically federally or provincially funded through the public purse, right, for the vast majority of it. Universities take that money, researchers do research, and then they are required by tricouncils—and we really agree with this policy—to publish their material. We're trying to go more open access. But in order for researchers to get promoted or merit on an annual basis, they want to publish in the best journals. They pay to publish, right? They provide a publishing fee to the publishers, and then the universities in turn pay a licence to read that same material. It's a good racket.

Mr. David de Burgh Graham: I appreciate that.

Thank you very much for coming.

Mr. Chair, your mike's on.

The Chair: I thought you said you wanted three minutes. That's two minutes.

Mr. David de Burgh Graham: All right. I can keep going if you'd like.

The Chair: No, we're good.

Mr. Jowhari, you have something to say?

Mr. Majid Jowhari: Yes, I have one comment I want to make.

In response to my colleague, Mr. Lloyd, I wanted to make sure the record is clear. The number of 600 million pages that I referred to—and I'm going to quote from the blues—this was a response by Ms. Levy. This was the response to the question that Mr. Masse raised.

Now I'm going to read Ms. Levy's comment, “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”. The 600 million that I made a comment on was the aggregate, and you referred to the 385 million was as it related to K to 12. But my 600 million basically—

Mr. Dane Lloyd: Is about everything.

Mr. Majid Jowhari: —is about everything.

Mr. Dane Lloyd: Yes, and I'm not defying that.

Mr. Majid Jowhari: No, that's fine, I just wanted to make sure the clarification is that.

Mr. Dane Lloyd: I'm not saying you're wrong, just different groups.

Mr. Majid Jowhari: Thank you.

The Chair: We're still one big happy family.

On that note, I would like to thank our three panellists today. Every time we think we have it all, you give us more. We look forward to continuing this process. I want to thank you all coming today.

We are adjourned.