



**Opening Remarks to the Standing Committee on Industry, Science and Trade (INDU),
April, 23rd, 2018 - Canadian Association of Research Libraries (CARL)**

Bonjour. Je m'appelle Susan Haigh et je suis la directrice générale de l'Association des bibliothèques de recherche du Canada. With me today is Mark Swartz, a Visiting Program Officer at CARL, and Copyright Manager at Queen's University.

The Canadian Association of Research Libraries, or CARL, is the national voice of Canada's 31 largest research libraries, 29 of which are located in Canada's most research-intensive universities. Research libraries are deeply committed to enabling access and use of information, to fostering knowledge creation, and to ensuring a sustainable and open Canadian scholarly publishing system.

Our remarks today will focus largely on fair dealing.

The use of fair dealing in the post-secondary context follows an extensive body of Supreme Court guidance on its correct interpretation.

Since 2004, the Supreme Court of Canada has made it clear that **fair dealing is a "users' right"**, and that this right must be given a "large and liberal interpretation."

With three supportive Supreme Court decisions on fair dealing since 2004, and the 2012 changes to the *Copyright Act*, Canada has achieved well-balanced legislation and jurisprudence, landing between the more restrictive version of "fair dealing" in the UK and the more permissive "fair use" approach of the US.

The US approach (in place since 1976) applies explicitly to purposes – here I quote – "...*such as* teaching (including multiple copies for classroom use), scholarship or research."

In the interest of maximum flexibility and future-proofing, we think Canada could look to add the words "such as" to the fair dealing purposes given in Section 29 of our *Act*.

We wish to stress that the current application of fair dealing in the post-secondary context is responsible, informed, and working.

Canada's university libraries recognize that educational fair dealing is a right to be respected, used, and managed effectively.

Universities have invested substantially in copyright infrastructure. They have expert staff dedicated to copyright compliance and to actively educating faculty, staff, and students on their rights and responsibilities under the *Act*.

The Supreme Court ruled in 2015 that Copyright Board tariffs are not mandatory, and university libraries are working under this assumption.

(I note that the Federal Court's controversial decision in 2017 in the *Access Copyright v. York University* case appears to be contrary to the Supreme Court's ruling. But the York decision is under appeal, and will hopefully be reversed.)

Research libraries are often responsible for administering copyright clearances on campus. Increasingly, the works copyright offices deal with are: open access scholarly content, in the public domain, openly available on the web, or already library-licensed for use in learning management systems. This leaves a relatively small portion of works that will either be shared under fair dealing or will require a one-time license. We routinely seek such licenses when the test for fairness is not met.

It is clear that mandatory tariffs are not necessary to good copyright management. Choice is important to us: for some institutions, blanket licenses--assuming they are based on reasonable rates--are practical; for others, active local management with transactional licensing as needed is the preferred route.

Some parties are portraying fair dealing as the cause of diminishing revenues for creators. This is a fallacy. The shift from paper to electronic delivery of educational content over the past twenty years has fundamentally changed the way that works are accessed and used, and such shifts inevitably impact how rights holders are compensated (though not necessarily how much they are compensated). And we note that, despite pressures, Statistics Canada reported last month that the profit margin for Canadian publishing is a healthy 10.2%.

We believe that direct support--outside of the copyright system--such as grants to creators and publishers is more appropriate in this time of transition. The Public Lending Right program administered by the Canada Council is one good example of an alternative form of support.

Our final point is that **there are forward-thinking changes that *should* be considered** in this review.

We urge you to clarify that technical protection measures can be circumvented for non-infringing purposes, and likewise to add language so that contracts may not override the provisions of the *Act* and prevent legal uses.

These, and suggestions related to Crown Copyright, Indigenous Knowledge and some other areas, will be included in our forthcoming brief.

In conclusion, research libraries support the concept of balance in copyright, which dates right back to the original Statute of Anne in 1709.

Fair dealing in the *Copyright Act* is serving its intended purpose: enabling fair portions from works of creativity or scholarship to be drawn upon within learning environments, thereby stimulating innovation and the creation of new knowledge.

Merci, thank you. We look forward to answering your questions.